

YOUR QUESTIONS ANSWERED.

New York Paid Family Leave

OVERVIEW AND GENERAL INFORMATION

Q: What is New York Paid Family Leave (PFL)?

A: The New York PFL law is new legislation passed by the state of New York in April 2016 that provides employees working in New York with job-protected paid leave to bond with a new child, care for a family member's serious health condition or deal with qualifying military exigencies. PFL doesn't provide leave or wage replacement benefits for the employee's own health condition. Qualifying leaves under New York PFL may or may not qualify under the federal Family and Medical Leave Act (FMLA) of 1993, which only requires unpaid leaves of absence.

Q: When do New York PFL benefits take effect?

A: January 1, 2018.

Q: Who does the New York PFL law apply to?

A: The law applies to all private employers with employees **employed** in the state of New York – regardless of where the employer is located or where the employee lives. 'Employment' includes work performed in the state of New York and certain work performed outside of New York as long as the:

- Services are localized to New York;
- Base of operations is in New York or;
- Services are directed and controlled from New York.

Further, if an employee performs work in New York and any other state, but the base of operations or place from which such service is directed or controlled is not New York or any of the states in which the employee performs services, the employee will be considered a New York employee if he or she resides in New York.

For example, if an employee lives in New York and works in New York, New Jersey and Connecticut, but the employee's base of operations or the place from where his service is directed or controlled is in California, then the employee will be considered a New York employee. However, if the base of operations or the place from where his service is directed or controlled is in Connecticut, then the employee will be considered a Connecticut employee.

Public employers may choose to opt in. Covered employers with unionized employees aren't required to provide New York PFL coverage if the collective bargaining agreement provides equal or better benefits and doesn't permit an opt-out except as permitted by statute.

Q: Can an employee be covered for New York PFL through more than one employer?

A: Yes. Employees who work for more than one employer in New York would pay premiums for each employer where they may become eligible for PFL benefits. Those employees may not take PFL for a single qualifying event from different covered employers at separate intervals, but must take FMLA from all covered employers during the same family leave period.

Q: Are certain employees excluded from New York PFL coverage?

A: Yes. Certain individuals are excluded from the definition of “employee” under New York PFL, including:

- Employer’s spouse or minor child (for example, where an employer is a small grocery store and the owner’s husband is employed as a cashier and daughter is employed as a shelf-stocker – neither the husband nor the daughter would be entitled to New York PFL benefits).
- Duly ordained, commissioned or licensed ministers, priests, rabbis, sextons or members of a religious order in the exercise of duties required by such order.
- Volunteers or individuals in a professional/teaching capacity for a religious, charitable or educational institution.
- Individuals participating in and receiving rehabilitative services in a sheltered workshop operated by a religious, charitable or educational institution under a certificate issued by the U.S. Department of Labor.
- Recipients of charitable aid from a religious or charitable institution who performs work in or for the institution, which is incidental to or in return for the aid conferred and not under an express contract of hire.
- Independent contractors.
- Individuals covered by the Independent Livery Disability Benefits Fund, Black Car Operator’s Fund and New York Jockey Injury Fund.

Q: What leave reasons are covered under New York PFL?

A: The law provides wage replacement and job protection to employees who need time away from their job to:

- Bond with their child during the first 12 months after the child’s birth, or during the first 12 months after placement of the child for adoption or foster care.
- Care for a family member’s serious health condition (family members can include spouse/domestic partners, children (including adult children), parents, parents-in-law, grandparents, grandchildren).
- Perform activities relating to the employee's spouse, domestic partner, child or parent’s active military duty (or impending call to active duty).

Q: What if an employee had a child born in 2017 – are they be eligible for bonding under New York PFL?

A: Yes, as long as the leave is within 52 weeks of the child’s birth. PFL benefits are payable through 52 weeks after the birth (or placement, in the case of adoption or foster care) of a child.

Q: What if an employee has more than one baby (including twins, triplets, etc.), or adopts/fosters more than one child, in a 52-week period? Would they get eight weeks of bonding for each child?

A: No. The maximum period of leave available in a 52-week period, counted on a rolling backward basis, is eight weeks – regardless of the number of births, adoptions or foster placements the employee has within that 52-week period. Bonding leave is measured from the birth of the child or the earliest date of leave for placements so the 52-week period would be measured for each separate event based on that occurrence.

Q: How much are the benefits and how long is the leave?

A: Because New York PFL is new and funded by employees, the leave duration and benefit amounts will ramp up over the first four years. The chart below lists the weekly benefits and amount of leave available to employees by year. An employee can’t take more than a total of 26 weeks of leave within a 52-week period for combined PFL and Disability Benefits Law (DBL) reasons. Benefits are capped at the same percentage of the statewide average weekly wage, currently \$1,305.92 per week. The average weekly wage will be set every year.

Effective date	Weekly wage maximum benefits amount	Maximum benefits duration
1/1/18	50%	8 weeks
1/1/19	55%	10 weeks
1/1/20	60%	10 weeks
1/1/21+	67%	12 weeks

Q: Can employees take New York PFL on an intermittent basis?

A: Yes. New York PFL provides benefits for intermittent leave using increments of a full-day of absence.

Q: Is there an eligibility waiting period?

A: Yes. The law defines eligibility based on the number of hours an employee is scheduled to work each week. Employees scheduled to work 20 or more hours per week become eligible after 26 consecutive weeks of employment and employees scheduled to work less than 20 hours per week become eligible after working 175 days. There is no minimum threshold for the number of hours worked in a day for the day to count as a work day.

Q: Can employees opt-out and choose not to be covered under New York PFL?

A: For the most part, no. Employees may only opt-out when they will not be employed for 26 consecutive workweeks (for employees who work 20 or more hours a week) or work for 175 days in a 52 consecutive week period (for employees who work less than 20 hours), and therefore wouldn't meet eligibility. Examples of such employees may be employees with regular temporary or seasonal schedules. Such employees must be presented with an option to file a waiver of family leave benefits. Employers should begin deductions from employees who are not eligible for a waiver beginning with the date of hire.

BENEFIT FUNDING

Q: How is New York PFL funded?

A: Employers may deduct the PFL premium cost from their employees through a payroll deduction or choose to cover the cost themselves.

Q: How much is the payroll deduction?

A: The state has set statewide community rates, which they'll review and potentially update annually. The current maximum employee contribution is 0.126% of employee weekly wages and is capped at the current statewide average weekly wage of \$1,305.92 per week. Contributions for New York PFL can only be taken from employees who are employed in the state of New York. This premium contribution is separate from any New York state disability insurance premium contributions.

Q: Should premium deductions occur pre- or post-tax?

A: Currently, there is no basis under the Internal Revenue Code to permit a pre-tax deduction for New York PFL contributions.

Q: Will NY PFL benefits be reported on a W-2?

A: No. NY PFL benefits are considered taxable non-wage income and insurers are required to report benefits paid on form 1099-MISC.

Q: Where can I learn more about tax treatments of contributions and benefits?

A: The state of New York has published guidance on the topic of taxes that can be found at this link: tax.ny.gov/pdf/notices/n17_12.pdf. You should consult your tax advisor for additional information.

Q: When will payroll deductions begin?

A: The state set statewide community rates, which they'll review and potentially update annually. Employers are allowed to begin deductions as of July 1, 2017 or any time thereafter. Contributions for New York PFL can only be taken from employees who are employed in the state of New York. This premium contribution is separate from any New York state disability insurance premium contributions.

NEW YORK PFL ALONGSIDE OTHER LEAVES

Q: What if I already offer a paid leave or want to offer a more generous benefit?

A: If an employer offers a paid leave program that provides benefits equal to or greater than the New York PFL, and an employee is entitled to payment from that program, the New York PFL cash benefit is not payable to the employee. The employer may request reimbursement similar to the New York DBL process. We will track the leave time as New York PFL based on a qualifying reason and reimburse the employer for New York PFL cash benefits due for the period benefits were paid from the employer program.

Q: Can FMLA time run concurrently with New York PFL?

A: Yes, as long as the leave is FMLA-qualifying and the employer designates the leave as FMLA within five days of learning of the need for leave.

Q: What if an employee requests New York PFL and has already exhausted their FMLA entitlement?

A: Eligibility for New York PFL must be determined separately from the FMLA and eligibility is not dependent on having FMLA time remaining.

Q: How will Cigna coordinate intermittent leave between FMLA/NY PFL since FMLA allows partial days?

A: The regulations allow an employer to deduct a day from the New York PFL entitlement when FMLA absences for a qualifying reason total a full day of absence, although the employee is not entitled to receive cash benefits for that day. Cigna will not proactively aggregate FMLA absences to deduct from the New York PFL entitlement.

Q: Can employees receive both New York PFL and DBL at the same time?

A: No. The law and regulations specify that employees can't receive both New York PFL and DBL benefits at the same time. However, an employee who gives birth may receive both New York PFL and DBL benefits during the post-partum period, but not at the same time.

Q: How will New York PFL benefits be coordinated with other PTO benefits?

A: Employers may offer employees the option to charge their New York PFL time to unused PTO to receive their full salary. If the employee elects this option, the employer may request reimbursement out of any family leave cash benefits due, or to become due, by filing a reimbursement claim with the carrier prior to the carrier's payment of such family leave benefits. Further, the leave time may still be designated New York PFL and FMLA leave with appropriate notice to the employee.

NEW YORK PFL INSURANCE

Q: Where can I get New York PFL insurance coverage?

A: Insurers who provide statutory disability insurance must include coverage for New York PFL effective January 1, 2018. The coverage will be added to the New York statutory disability policy via a rider, effective January 1, 2018. Employers who self-insure their New York DBL benefits may also choose to self-insure PFL and must be approved by the state. Applications and security deposits must be submitted to the state by 9/30/17. The law requires that employers purchase PFL insurance from the same carrier that provides their DBL insurance. Likewise, if your New York DBL program is provided through the state, you'll receive your PFL coverage through the state.

Q: If I am self-insured for New York DBL, can I purchase a PFL policy from Cigna?

A: The state does allow employers who self-insure their New York DBL to purchase an insurance policy that only provides the PFL benefit. Cigna has chosen not to offer standalone PFL coverage.

Q: If I have insured New York DBL with Cigna – will my policy be updated to include New York PFL?

A: Yes. Insurance carriers are required to update all New York DBL policies to include a rider covering PFL benefits effective January 1, 2018. You'll receive additional information about how Cigna is updating your policy and associated processes prior to January 1, 2018. Benefits will be paid by Cigna when coverage is insured.

Q: Can I extend coverage under my Cigna statutory policy to employees who are working outside of the state of New York?

A: No. Employers may choose to offer an internal PFL policy to employees, but not under the same policy that provides the statutory benefits.

Q: How will Cigna bill employers for New York PFL?

A: We are still working out the details, but clients will receive a single bill that includes rates for both New York PFL and DBL, broken out as separate line items. Billing will occur in the same frequency as New York DBL and via the same method (e-bill, etc.) More information will be shared at a later date.

ADDITIONAL INFORMATION

Q: Are the New York PFL regulations final?

A: Yes. Final regulations were adopted by the Department of Financial Services on June 1, 2017, regarding insurance practices and claim regulations were adopted by the Workers' Compensation Board on July 19, 2017.

Q: Is there anything still outstanding?

A: Yes. The state of New York has yet to issue the employer poster regarding PFL that must be posted in plain view in the workplace and a number of forms referred to in the regulations, including the PFL-1 claim form and the PFL-2, 3, 4 and 5 certification forms, which will be translated into seven languages and available on the state's website. The state must also issue a waiver form for use in those situations where an employee will not be employed for the requisite time period to meet eligibility requirements. Other outstanding forms are the proof of coverage form; coverage change forms; employee request for compliance on reinstatement; discrimination or retaliation complaint form; request for arbitration and forms relating to self-insurance.

Q: Where can I find more information about the New York PFL law?

A: The state of New York has a website that provides information and includes a link to the regulations: ny.gov/programs/new-york-state-paid-family-leave.

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