

New York Paid Family Benefits Law: A Guide for Employees

November 10, 2017 • Legal Updates & Insights

Beginning January 1, 2018, New York becomes one of a handful of states to offer paid family leave benefits. The [New York Paid Family Benefits Law](#) ("NYPFL") provides employees with monetary benefits to help them take leave to bond with a child, care for a close relative with a serious health condition, or take time away from work in connection with a spouse, child, domestic partner or parent being called to active military service. This article provides an overview of an employee's eligibility, benefits, notice requirements and protections under the NYPFL.

Who Is Eligible for Paid Family Leave Under the NYPFL?

Almost all full-time and part-time employees working for private employers in New York State will be eligible for paid family leave. Employees working for public employers, or who work as part of a union, are also eligible if the public employer has opted into the program, or the union collectively bargains for the benefits. Employees who are regularly scheduled to work 20 or more hours per week are eligible for paid family leave after 26 weeks of employment. Meanwhile, employees who are regularly scheduled to work less than 20 hours are eligible after 175 days worked. [Independent contractors](#) are not eligible for paid family leave benefits unless the independent contractor elects to pay for coverage.

What Are the Qualifying Reasons for Paid Family Leave?

Under the NYPFL, an eligible employee may take paid family leave during the first 12 months following the birth, adoption or fostering of a child; to care for a close relative with a serious health condition; or when a spouse, child, domestic partner or parent of the employee is on active or impending military duty. The term close relative includes parents-in-law, grandparents and grandchildren. A serious health condition is an illness, injury, impairment, or physical or mental condition that involves either inpatient care in a medical facility, or continuing treatment or supervision by a health care provider. Unlike the [Family Medical Leave Act](#), paid family leave cannot be used by an employee to care for his or her own serious health condition.

What Is the Amount and Duration of Paid Family Leave Benefits?

The amount and duration of paid family leave benefits will be gradually increased over 4 years. In 2018, eligible employees will be entitled to 8 weeks of paid family leave a year and will receive 50% of their average weekly wage or state average weekly wage, whichever is lesser. The state average weekly wage is currently set at [\\$1,305.92](#) and updated annually. In 2021, eligible employees will be entitled to 12 weeks of paid family leave and will receive 67% of their average weekly wage or state average weekly wage, whichever is lesser. Paid family leave benefits are funded through an employee payroll deduction,

which for 2018 is set at [0.126%](#) of an employee's weekly wage, up to the state average weekly wage (maximum of \$1.65 per week). Employers cannot require eligible employees to use their existing employer sponsored sick leave or vacation benefits before using paid family leave unless the employee wants to receive their full pay during the leave. An employee is also entitled to continued health insurance coverage while on paid family leave. Finally, the NYPFL does not affect an employee's eligibility for unpaid leave under the [Family Medical Leave Act](#), right to a reasonable accommodation under the [Americans with Disabilities Act](#) or earned sick time under the [Earned Sick Time Act](#).

Am I Required to Give Advance Notice to Use Paid Family Leave Benefits?

An employee is required to provide an employer at least [30 days advance notice](#) of his or her intention to take paid family leave if a qualifying reason is foreseeable. If the qualifying reason is not foreseeable, notice needs to be given as [soon as practicable](#) based on the facts and circumstances. An employee may also need to provide supporting documentation to an employer to support the need for paid family leave. The NYPFL also obligates employers to provide employees with clear notice of their rights to paid family leave and make a reasonable inquiry if the employer is aware of circumstances where an employee may be seeking paid family leave.

Does the NYPFL Provide Any Protections if I Use Paid Family Leave?

The NYPFL provides employees with some protections to ensure their ability to use paid family leave. First, the NYPFL requires employers to reinstate an employee returning from paid family leave to his or her former position, or a comparable position with comparable pay, benefits and other terms and conditions of employment. Second, the NYPFL prohibits discrimination and retaliation against any employee who exercises or attempts to exercise his or her right to paid family leave. An employee has up to two years to file a complaint against an employer. Any complaint or dispute over benefits is handled exclusively through the New York Workers Compensation Board.

Any employee who feels like his or her right to paid family leave has been violated, or who wishes to file a complaint for unlawful discrimination or retaliation, should promptly consult an attorney. Wigdor LLP has extensive experience representing employees in connection with claims of unlawful discrimination and retaliation. If you have any questions concerning a discriminatory or retaliatory act taken against you, the attorneys and staff at Wigdor LLP would be happy to speak with you about your rights.

Bryan L. Arbeit

Senior Associate

WIGDOR LLP

85 Fifth Avenue, New York, NY 10003

T: [\(212\) 257-6800](tel:(212)257-6800) | F: (212) 257-6845

barbeit@wigdorlaw.com
www.wigdorlaw.com