

NEW YORK

EMPLOYMENT LAW

Paid Family Leave



Lawley

STATE RESOURCES

New York Workers' Compensation Board

<http://www.wcb.ny.gov/>

Overview Webpage

New York established a [Paid Family Leave: Information for Employers](#) overview web page.

Model Language

The New York Workers' Compensation Board provides [model language for employee materials](#)

New York's [paid family leave law](#) requires private sector employers to provide paid family leave benefits to eligible employees, starting Jan. 1, 2018. Under the law, paid family leave benefits will be phased in over a four-year period. When the law is fully implemented in 2021, an employee may be eligible for up to **12 weeks of paid family leave at 67% of his or her average weekly wage** (capped at 67% of the New York state average weekly wage).

The paid family leave benefits are funded through employee paycheck deductions. Employers are not responsible for contributing to or funding paid family leave benefits, but may choose to do so. Paid family leave coverage is typically added as a rider on an employer's existing disability insurance policy.

This Employment Law Summary provides an overview of New York's paid family leave requirements.

COVERED EMPLOYERS

New York's paid family leave law applies to private sector employers that have one or more employees employed in New York on each of at least 30 days in any calendar year.

ELIGIBLE EMPLOYEES

An employee who works **20 hours or more per week** is eligible for paid family leave benefits if the employee works for a covered employer for **26 or more consecutive weeks**.

[Final regulations](#) implementing the law confirm that a **part-time employee** (one who works fewer than 20 hours per week) is eligible for paid family leave after he or she has worked for a covered employer for **175 days**.

PAID FAMILY LEAVE BENEFITS

When fully implemented in 2021, eligible employees may receive up to 12 weeks of paid family leave at 67% of their average weekly wages. An employee's paid family leave benefits are also capped at the New York state average weekly wage.

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The amount of paid family leave benefits will be phased in as follows:

Effective Date	Length of Benefit within 52-week Period	Maximum Weekly Benefit
Jan. 1, 2018	8 weeks	50% of the employee's average weekly wage (up to 50% of the state average weekly wage)
Jan. 1, 2019	10 weeks	55% of the employee's average weekly wage (up to 55% of the state average weekly wage)
Jan. 1, 2020	10 weeks	60% of the employee's average weekly wage (up to 60% of the state average weekly wage)
Jan. 1, 2021	12 weeks	67% of the employee's average weekly wage (up to 67% of the state average weekly wage)

The [New York Department of Financial Services](#) (NYDFS) has discretion in delaying the increases to family leave benefits if there are concerns about the stability of the program or potential negative effects on the economy.

The following weekly benefit rules apply for 2018, 2019 and 2020:

- Effective Jan. 1, 2018, eligible employees may receive up to 50% of their average weekly wage during family leave, not to exceed 50% of New York's average weekly wage for 2018 (\$1,305.92), which is \$652.96.
- Effective Jan. 1, 2019, eligible employees may receive up to 55% of their average weekly wage during family leave, not to exceed 55% of New York's average weekly wage for 2019 (\$1,357.11), which is \$746.41.
- Effective Jan. 1, 2020, eligible employees may receive up to 60% of their average weekly wage during family leave, not to exceed 60% of New York's average weekly wage for 2020 (\$1,401.17), which is \$840.70.

When an employee is eligible for paid family leave, there is no waiting period before he or she is eligible to receive paid family leave benefits.

Also, according to a [notice](#) issued by the New York Department of Taxation and Finance (DOTF), paid family leave benefits are taxable non-wage income that employees must include in their gross income. Taxes will not automatically be withheld from paid family leave benefits, although employees can request voluntary tax withholding.

FUNDING FOR PAID FAMILY LEAVE

The paid family leave benefit are funded entirely through **employee payroll deductions**. No employer is required to contribute to or fund the paid family leave benefit. The NYDFS is required to update the employee contribution rate annually, by Sept. 1 of each year for the policy year period beginning on the following Jan. 1.

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The following chart shows the employee contribution rates for 2018, 2019 and 2020:

Effective Date	Employee Contribution Rates
Jan. 1, 2018	Employers may deduct 0.126% of an employee's weekly wages, up to an annual maximum of \$85.56
Jan. 1, 2019	Employers may deduct 0.153% of an employee's weekly wages, up to an annual maximum of \$107.97
Jan. 1, 2020	Employers may deduct 0.270% of an employee's weekly wages, up to an annual maximum of \$196.72

New York provides a weekly payroll deduction [calculator](#) to estimate weekly deductions.

According to the DOTF, contributions should be deducted from employees' wages on an after-tax basis. Employers should report employee contributions on IRS Form W-2, using Box 14.

Employers may self-insure paid family leave, but only if the employer currently self-insures short-term disability benefits. Eligible employers that wanted to self-insure paid family leave must have elected to do so by Sept. 30, 2017.

WAIVER OF PAID FAMILY LEAVE

If an employee will not be eligible for paid family leave because he or she will not work 26 consecutive weeks (for employees who work 20 or more hours per week) or 175 days in a 52-week period (for employees who work fewer than 20 hours per week), the employer must inform the employee of his or her ability to file a waiver of family leave benefits.

If an employee chooses to file a waiver, the employee is exempt from making paid family leave contributions during his or her employment. If employment circumstances change so that the employee would be eligible for paid family leave, the waiver will be automatically revoked. If an employee chooses not to file a waiver, he or she will be obligated to make paid family leave contributions during employment. A [model waiver form](#) has been published by the New York Workers' Compensation Board.

FAMILY LEAVE USE

An employee may receive paid family leave benefits for any period of "family leave," defined as:

- Leave to participate in providing care, including physical or psychological care, to a family member with a serious health condition;
- Leave to bond with the employee's child during the first 12 months after the child's birth, or after the placement of the child for adoption or foster care with the employee;
- Leave taken because of any qualifying exigency as interpreted under the federal [Family and Medical Leave Act](#) (FMLA) arising out of the fact that the spouse, domestic partner, child or parent of the employee is on active duty (or has been notified of an impending call or order to active duty) in the U.S. Armed Forces; or

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- Leave to help a family member prepare for, and recover from, surgery related to organ or tissue donation (effective Feb. 3, 2019).

Update: On Nov. 5, 2018, Governor Andrew Cuomo signed the [Living Donor Protection Act](#) into law, expanding the reasons for which workers can take paid family leave. Effective Feb. 3, 2019, employees may take paid family leave to help a family member prepare for, and recover from, surgery related to organ or tissue donation.

For purposes of family leave, “family member” is defined as a child, parent, grandparent, grandchild, spouse or domestic partner. The definition of a “serious health condition” is similar to the definition under the FMLA.

If there are two employees of the same employer that are eligible for leave for the same family member, an employer may implement rules to limit employees from receiving paid family leave benefits at the same time. For example, an employer may restrict spouses (who both work for the employer) from taking family leave at the same time to care for their child.

INTERMITTENT LEAVE

Paid family leave benefits may be received on an intermittent basis (less than a full workweek), in increments of one full day (that is, one-fifth of the weekly benefit). The [final regulations](#) implement specific employee notice requirements for use of intermittent leave, as described below.

EMPLOYEE NOTICE AND CERTIFICATION

When the need for family leave is foreseeable (for example, for the birth or placement of a child or for planned medical treatment), an employee may be required to provide his or her employer with 30 days’ advance notice of the intention to take family leave. If the need for leave is not foreseeable, the employee must provide notice as soon as practicable.

An employee who uses paid family leave on an **intermittent basis** is required to provide the employer with notice as soon as practicable **before each day** of intermittent leave.

In addition, an employee must notify the employer of the specific qualifying event (type of family leave use) and the anticipated timing and duration of the leave. An employee may be required to provide medical certification completed by a health care provider to support the need for family leave. In all instances where certification is required, it is the employee's responsibility to provide a complete and sufficient certification. A failure to do so may result in the denial of family leave. The New York Workers’ Compensation Board provided [model leave request and certification forms](#) that employees may use.

INTERACTION WITH OTHER LAWS AND BENEFITS

An employee is **not** able to receive both state disability benefits (DBL) and paid family leave benefits at the same time. If an employee is eligible for both types of benefits, the employee may be able to receive benefits under each program during consecutive periods of time (not at the same time). No employee is entitled to more than 26 weeks of combined DBL and family leave benefits during a 52-consecutive calendar week period. However, an employee may be able to supplement partial disability benefits (under workers’ compensation, volunteer firefighters’ benefit law or volunteer ambulance workers’ benefits) with paid family leave benefits, up to the family leave benefit maximum, when combined with the partial disability benefit.

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In addition, any paid family leave benefit must run concurrently with an employee's available entitlement under the federal FMLA, unless an employer chooses to permit otherwise. Employer policies should outline how paid family leave interacts with the FMLA, and employers must provide employees with proper notification when an employee's paid family leave is designated as FMLA leave.

An employee may choose to use accrued and available vacation, or other paid time off, to receive a full salary while on family leave (in lieu of the paid family leave benefit). If an employee chooses to use available paid leave, employers may seek a reimbursement from the carrier.

When paid family leave runs concurrently with an employee's FMLA leave entitlement, the [final regulations](#) provide that an employer may charge an employee's accrued paid leave in accordance with the provisions of the FMLA.

EMPLOYEE PROTECTIONS

An employee who takes paid family leave for a permitted reason must be reinstated to his or her original position upon return to work, or to a comparable position with equal pay, benefits and other terms and conditions of employment.

An employer must maintain an employee's group health plan benefits for the duration of paid family leave as if the employee had continued to work. This includes the employee continuing to make his or her share of the premium contribution. Additionally, an employee may not lose any benefits accrued during employment prior to taking family leave. An employer may not retaliate against an employee who takes paid family leave.

EMPLOYER NOTICE REQUIREMENTS AND POSSIBLE PENALTIES

Employers must conspicuously post a notice in the workplace to indicate their compliance with the paid family leave requirements. In addition, employers must provide employees who take eight or more consecutive days of family leave with a written notice of their rights under the paid family leave law.

Employers that maintain an employee handbook must include a paid family leave policy that outlines employees' rights and obligations, including how to file a claim for paid family leave. An employer that does not maintain a handbook must provide each employee a written notice regarding all of the employee's rights and obligations under the paid family leave law, including information on how to file a claim for paid family leave.

The New York Workers' Compensation Board published [model language for employee materials](#) as well as a model [Statement of Rights](#) that employers can use to fulfill notice obligations.

An employer that fails to comply with the requirements of the paid family leave law is guilty of a misdemeanor and may face penalties, including fines and imprisonment.

ADDITIONAL INFORMATION

New York established a website—[Paid Family Leave: Information for Employers](#)—that provides additional information for employers on the paid family leave law.