

CLIENT ALERT

# Effective January 1, 2018: New York Paid Family Leave Law

December 26, 2017

## AUTHORS

Michael A. Katz | Andrew Spital | Christine N. Cea

Effective January 1, 2018, New York's Paid Family Leave Law will permit eligible employees to take up to eight weeks of paid family leave ("PFL") at a portion of their salary to care for an ill family member, to bond with a newborn child within the first year of the child's life or, in the case of adoption or a foster parent, within the first 12 months of placement, or for reasons relating to the military duty of a close family member. The program is employee-funded, and to cover the benefit, employers can either obtain PFL insurance or self-insure. All employers with employees who work in New York should familiarize themselves with the new law.

### **Coverage**

The new law covers all New York employers in the private sector with one or more employees who work in New York for 30 or more days in a calendar year. Public employers are not subject to the law, although they may opt in to the program.

Eligible employees include both full-time and part-time workers. Employees who work 20 or more hours per week and have worked for at least 26 consecutive weeks prior to the first full day of leave qualify. This 26-week period may be tolled for periods of absence related to employment, such as vacation or other employer-approved leave. Employees who work fewer than 20 hours a week are also eligible, so long as they have worked for 175 days preceding the first full day of leave.

Additionally, the law covers employees who work in New York, regardless of where the employee lives or where the employer is located. For example, an employee who works from home in New York is eligible for PFL, even if the

---

## Effective January 1, 2018: New York Paid Family Leave Law

employer's offices are outside of the state. The law does have limited exemptions, such as, for example, certain employees subject to collective bargaining agreements.

### ***Reasons For Leave***

An employee may take PFL for one of three reasons relating to the care of a family member:

1. To care for the serious health condition of a spouse, domestic partner, child, parent or parent-in-law, grandparent, or grandchild. To obtain benefits, the employee must be "in close and continuing proximity" to the care recipient. Siblings are not included.
2. To bond with the employee's newborn child during the first 12 months of the child's life, or within the first 12 months after a child is adopted or placed in foster care with the employee. This applies to all employees, regardless of gender.
3. Upon specific qualifying exigencies, as set forth under the Family Medical Leave Act ("FMLA"), arising out of the fact that the employee's spouse, domestic partner, child, or parent is on active duty in the armed forces of the United States.

Unlike FMLA leave, employees cannot take PFL to care for themselves.

### ***Amount of Leave and Rates***

The new law will be implemented in phases over the next four years, and the amount of leave and rate of payment will steadily increase as follows:

<b>Effective Date</b>	<b>Amount of Leave</b>	<b>Rate</b>
January 1, 2018	8 weeks	50% of the employee's average weekly wage capped at 50% of New York State's average weekly wage (currently \$1,305.92)
January 1, 2019	10 weeks	55% of the employee's average weekly wage capped at 55% of New York State's average weekly wage (currently \$1,305.92)
January 1, 2020	10 weeks	60% of the employee's average weekly wage capped at 60% of New York State's average weekly wage (currently \$1,305.92)

---

## Effective January 1, 2018: New York Paid Family Leave Law

January 1, 2021	12 weeks	67% of the employee's average weekly wage capped at 67% of New York State's average weekly wage (currently \$1,305.92)
-----------------	----------	--

Although not mandatory, an employee may replace PFL with accrued paid time off to receive his or her full salary. If so, the employer is entitled to reimbursement of any PFL benefits due from the employer's PFL insurance carrier if the arrangement is insured.

PFL is available in both weekly and daily increments. If an employee chooses to take weekly leave, he or she is entitled to the maximum number of weeks in any 52-week period. If an employee opts for leave on a daily basis, the daily benefit is calculated based on the employee's weekly wage divided by the average number of days the employee worked per week.

### ***Funding***

PFL is funded by employees, who are obligated to contribute either .126% of their weekly wage or of New York State's average weekly wage, whichever is less (max of \$1.65 per week) through paycheck deductions. These deductions may occur before an employee qualifies for PFL or before the effective date of the policy. Employers are currently permitted to begin collecting contributions, and they may choose to fund all or part of the employees' contributions on their behalf.

Seasonal, temporary, and other ineligible employees may opt out of the deductions, but they must first file a PFL waiver with their employer. If a waiver is not filed, the employee is required to contribute as set forth under the law, and the employer is required to provide PFL to that employee.

### ***Notice Requirements***

#### By the Employee

In the case of a "foreseeable qualifying event," such as the birth of a child or planned medical treatment of a qualifying family member, employees must provide their employer with 30-days' notice before their anticipated leave is to begin. If 30-days' notice is not possible, the notice must be given "as soon as practicable." An employer may, in its discretion, waive these notice requirements.

The notice must inform the employer of the qualifying event and the anticipated duration of leave. When the employee requests time off for a qualifying reason under the new law, he or she need not specifically assert a right to PFL; the burden is on the employer to seek further information as to whether the employee is seeking PFL benefits.

---

## Effective January 1, 2018: New York Paid Family Leave Law

### By the Employer

Employers must provide employees with written guidance on the new law. If employers maintain an employee handbook or similar document that outlines employees' leave and benefits rights, it must be updated to include information on the new PFL law. If employers do not maintain these types of written policies, they must provide employees with written guidance of their rights under the new law.

In addition, all employers must display a printed notice regarding PFL. Insurance carriers will provide employers with this form. Those who are self-insured can obtain a notice by contacting the Workers' Compensation Board at: [certificates@wcb.ny.gov](mailto:certificates@wcb.ny.gov).

### ***Filing a Claim***

In order to obtain PFL benefits, an employee must submit a completed claim form to the employer's PFL insurance carrier or self-insured employer 30 days prior to the first day of paid leave. If leave is foreseeable and the employee fails to provide the requisite notice, the insurance carrier or self-insured employer may file a partial denial for a period of up to 30 days from the date the notice is provided.

In submitting the form to the insurance carrier, an employee must also provide specific documentation substantiating the reason for leave. For example, employees may be required, in the case of an ill family member, to provide medical certification from a health care provider that includes the family member's health condition and the anticipated duration of leave.

### ***Overlap With Other Leave***

#### Disability Leave

An employee may not simultaneously receive both disability and PFL benefits. Furthermore, an employee may not receive a total of more than 26 weeks of disability and PFL benefits during any consecutive 52-week period.

#### FMLA Leave

FMLA leave and PFL can run concurrently, so long as the FMLA leave is for one of the qualified reasons under New York's Paid Family Leave Law. If an employer seeks to have an employee take PFL concurrently with FMLA leave, the employer must notify the employee. Otherwise, the employer will be deemed to have permitted the employee to take PFL in addition to leave available under the FMLA. Note that, because PFL does not cover self-care, FMLA leave for an employee's own serious health condition does not reduce the amount of paid leave the employee is entitled to under the new law.

---

## Effective January 1, 2018: New York Paid Family Leave Law

### ***Employer Check-List***

To ensure compliance with the new law, effective January 1, 2018:

- Contact your insurance broker to get information as to available PFL policies, if choosing not to self-insure. While the deadline to self-insure this year has passed, only employers who self-insure New York State disability benefits are eligible to self-insure PFL benefits.
- Create or update written guidance, including employee handbooks or other policies, so that they include information regarding PFL.
- Post a notice in a conspicuous place in your office regarding employees' PFL rights.
- Work with your payroll manager to appropriately deduct PFL contributions from employees' paychecks if choosing not to fund the benefit on behalf of employees.
- Consider whether, if an employee takes accrued paid time off in lieu of PFL, you will seek reimbursement from the insurance carrier.
- Inform temporary, seasonal and other ineligible employees that they may waive coverage.
- Familiarize human resources personnel with claim and waiver procedures.

### ***Additional Resources***

For additional resources published by New York State, see:

- [Overview of Law](#)
- [Employee Fact Sheet](#)
- [Business Owner Fact Sheet](#)
- [Model Language for Employee Materials](#)
- [Employee Opt-Out Waiver](#)
- [Statement of Employee Rights](#)
- [Paid Family Leave Guide For Employers](#)

---

## Effective January 1, 2018: New York Paid Family Leave Law

If you have any questions regarding this client alert, please contact the following attorneys or the attorney with whom you regularly work.

---

**Michael A. Katz**

212 728 8204

[mkatz@willkie.com](mailto:mkatz@willkie.com)

**Andrew Spital**

212 728 8756

[aspital@willkie.com](mailto:aspital@willkie.com)

**Christine N. Cea**

212 728 8521

[ccea@willkie.com](mailto:ccea@willkie.com)

Copyright © 2017 Willkie Farr & Gallagher LLP.

This alert is provided by Willkie Farr & Gallagher LLP and its affiliates for educational and informational purposes only and is not intended and should not be construed as legal advice. This alert may be considered advertising under applicable state laws.

Willkie Farr & Gallagher LLP is an international law firm with offices in New York, Washington, Houston, Paris, London, Frankfurt, Brussels, Milan and Rome. The firm is headquartered at 787 Seventh Avenue, New York, NY 10019-6099. Our telephone number is (212) 728-8000 and our fax number is (212) 728-8111. Our website is located at [www.willkie.com](http://www.willkie.com).