



# COMPLIANCE BULLETIN

## New York Paid Family Leave

### HIGHLIGHTS

- New York enacted a paid family leave law, which will be phased in over a four-year period.
- The paid family leave benefits will be funded by employees' payroll deductions.
- Employers will be required to post a notice about the law and provide written notice to certain employees.

### IMPORTANT DATES

#### July 1, 2017

Employers may begin collecting employee contributions of up to [0.126 percent](#) of employees' weekly wages.

#### January 1, 2018

Employees will be eligible for paid family leave benefits.

### OVERVIEW

New York enacted a [bill](#) that will require employers to provide paid family leave benefits to eligible employees as part of the state's disability insurance program.

Paid family leave benefits will be phased in over a four-year period, beginning Jan. 1, 2018. When the law is fully implemented in 2021, employees may be eligible for up to 12 weeks of paid family leave.

The paid family leave benefits will be funded through employee paycheck deductions. Employers are not responsible for contributing to or funding paid family leave benefits.

### ACTION STEPS

New York employers, and employers with employees in New York, should review their existing family and medical leave policies. These policies may need to be revised to comply with the new paid family leave program.

Also, employers will need to comply with the administrative task of deducting the appropriate amounts from employee paychecks to fund paid family leave benefits. Further, employers should prepare for the potential costs related to employee absences during paid family leaves.

**Provided By:**  
Creative Benefits, Inc.

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## Eligibility

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**. The [revised proposed regulations](#) (which have **not** been finalized) provide that a **part-time employee** (an employee who works fewer than 20 hours per week) is eligible for paid family leave if employed by a covered employer for **175 days**.

Covered employers include those that have one or more employees employed in New York on each of at least 30 days in any calendar year.

## Paid Family Leave Benefits

When fully implemented in 2021, eligible employees may receive up to 12 weeks of paid family leave at 67 percent of their average weekly wages. The amount of paid family leave benefits will be phased in as follows:

Date	Maximum Benefit within 52-week Period	Paid Family Leave Benefit
Jan. 1, 2018	8 weeks	50 percent of the employee's average weekly wage
Jan 1, 2019	10 weeks	55 percent of the employee's average weekly wage
Jan. 1, 2020	10 weeks	60 percent of the employee's average weekly wage
Jan. 1, 2021	12 weeks	67 percent of the employee's average weekly wage

An employee's paid family leave benefits are also capped at the state average weekly wage. For example, effective Jan. 1, 2018, eligible employees may receive up to 50 percent of their average weekly wage during family leave, not to exceed 50 percent of the [state average weekly wage](#). 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.

In addition, 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.

## Funding for Paid Family Leave

The paid family leave benefit will be funded entirely through employee payroll deductions. No employer is required to contribute to or fund the paid family leave benefit.

The NYDFS has set the [2018 employee contribution rate](#) for paid family leave benefits. The employee contribution rate for coverage beginning Jan. 1, 2018, is **0.126 percent** of an employee's weekly wage, not to exceed the statewide average weekly wage (currently, [\\$1,305.92](#)). This percentage will be updated by the

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NYDFS annually, on Sept. 1 of each year. The proposed regulations provide that, although not required to do so, **employers may begin collecting employee contributions July 1, 2017** (for the 2018 benefit year).

## 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 revised proposed regulations allow the employee to file a waiver of family leave benefits.

If a waiver is filed, 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 does not file a waiver, he or she will be obligated to make paid family leave contributions during employment.

## 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; or
- ✓ 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.

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 revised proposed regulations provide specific employee notice requirements for use of intermittent leave, as described below.

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## ***Employee Notice and Certification***

When the need for family leave is foreseeable, 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.

Under the revised proposed regulations, 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, the revised proposed regulations provide that 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. Under the revised proposed regulations, medical certification can be required to include:

- ✓ The name, address, telephone number, email address (if available), license number and state of license of the health care provider, and the type of medical practice/specialization;
- ✓ Approximate date that the serious health condition began, and its probable duration;
- ✓ Certification regarding the patient's health condition that paid family leave is being requested for (certification must be sufficient to support the need for leave); and
- ✓ An estimate of the frequency and duration of the leave required to care for the family member, including whether the need is continuous or intermittent.

## **Interaction with Other Laws and Benefits**

An employee is not able to receive both full disability benefits and paid family leave benefits at the same time. However, an employee may be able to supplement partial disability benefits with paid family leave benefits, up to the family leave benefit maximum, when combined with the partial disability benefit. No employee is entitled to more than 26 weeks of combined disability and family leave benefits during a 52-consecutive calendar week period.

***No employee is entitled to more than 12 weeks of paid family leave benefits within a 52-week calendar period.***

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. No employee is entitled to more than 12 weeks of paid family leave benefits within a 52-week calendar period.

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). When paid family leave runs concurrently with an employee's FMLA leave entitlement, the revised proposed regulations provide that an employer may charge an employee's accrued paid leave in accordance with the provisions of the FMLA. However, under the

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FMLA, an employer may **not** require use of available paid leave when an employee's FMLA leave is not unpaid. Additional guidance from the New York Workers' Compensation Board on how these rules work together would be helpful.

## Employee Protections

An employee who takes time off for a permitted paid family leave reason must be reinstated to his or her original position upon return to work, or reinstated to a comparable position with equal pay, benefits and other terms and conditions of employment. In addition, an employer may not retaliate against an employee who takes paid family leave.

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. Additionally, an employee may not lose any benefits accrued during employment prior to taking family leave.

## Employer Notice Requirements and Possible Penalties

Employers will be required to 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.

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: How it Works](#)—that provides additional information for employers, including frequently asked questions. It must be noted that the website incorporates information outlined in the proposed regulations that have **not** yet been finalized, and are therefore subject to change.