

PAID FAMILY LEAVE (PFL) FREQUENTLY ASKED QUESTIONS

Since the NYS Paid Family Leave benefit is new, there are still some outstanding questions and concerns that we are waiting to receive clarification on from the Workers' Compensation Board. If you do not see the answer to your question(s) below, please contact Kerry Steenburgh at ksteenburgh@flandersgroup.com or (866) 462-6435 X3234 for further information.

GENERAL INFORMATION

i *What is Paid Family Leave?*

Paid Family Leave (PFL) is a New York State mandatory benefit effective 01/01/18. Employers will be required to allow eligible employees up to 8 weeks paid time off for 2018* in a 52 week period to allow for bonding with a newborn or recently fostered/adopted child, allow care for a serious health condition of a family member or for a family member being called into military service. This benefit will be provided by your Disability Insurance provider and is an employee paid benefit. (*Benefit will increase to 10 weeks for 2019 and 2020 and will be 12 weeks starting in 2021).

i *What is the benefit of Paid Family Leave for employers?*

Paid family leave provides an opportunity for financial security for employees while taking care of a family member in need. This benefit is expected to promote greater job satisfaction and employee retention when it is clear that the employee does not need to sacrifice their job in order to take care of important family obligations outside of the workplace which has been the experience for other states who offer a paid family leave benefit.

i *What do you mean by "employee paid benefit"?*

In most cases, the employee will need to pay for this benefit through payroll. A deduction will come out of the employee's paycheck each pay period. The employer can voluntarily choose to cover this premium cost of this benefit.

i *Do the employers have to pay the employee while out on Paid Family leave?*

No, the employee will receive payment from the insurance provider (not the employer) while out on leave similar to disability benefits.

i *Do all employers need to offer this?*

Yes, effective 01/01/18 any employer in New York State with 1 or more employees will be required to offer Paid Family Leave. (Public employers such as government offices, schools, etc. that are not required to offer disability insurance are not required to offer this benefit but can choose to if they would like.)

i *Is PFL the same as FMLA?*

Job protection and maintaining health insurance coverage are requirements for both PFL and FMLA, however, FMLA does not provide paid leave. To be eligible for FMLA, employees must have worked for the employer for 12 months (worked 1250 hours in previous 12 months) while PFL requires an employee work for 26 weeks for full time employees (more than 20 hours/week) or 175 days for part time employees (less than 20 hours/week) . FMLA can run concurrently with PFL and offers 12 weeks of coverage which can be taken intermittently or consecutively and can be used in increments of 1 hour or more, whereas PFL offers 8 weeks of coverage in 2018 and can only be taken in a minimum of 1 day increments.

i *Is PFL the same as disability?*

PFL does provide paid leave but it differs slightly than the disability benefit. Unlike PFL, disability insurance can be taken for the employee's own medical condition. To be eligible for disability coverage, a full-time employee only needs to work for an employer for 4 weeks to be eligible for benefits (25 days for part time employees). The maximum pay rate while an employee is on disability is \$170/week. Also, disability requires a 7 day waiting period for the employee and there is no waiting period for PFL. Disability and PFL cannot be taken at the same time.

i *What if an employee doesn't want this benefit?*

This is a mandatory benefit and employees cannot opt out of the program with very limited exceptions. (An employee can only opt out of this program if they work above 20 hours per week but will not work 26 consecutive weeks or if an employee works less than 20 hours per week and would not work 175 days because they would never be eligible to use the benefit – a seasonal worker, independent contractor or farm laborer would fall under this exemption). A waiver form will be provided by the Workers' Compensation Board and must be kept on file with the employer the entire time the employee is working for the employer.

PFL BENEFIT

i *What protection does this benefit provide?*

An employer is required to 1) maintain an employee's position while they are out on PFL and reinstate them to their position or a comparable job upon their return from leave and 2) maintain health insurance benefits for the employee while they are out on PFL (the employee will still have to contribute any cost share they currently pay to maintain this benefit while out on leave. If they choose to drop coverage while out on PFL, the employer must reinstate their health insurance coverage upon return from leave.)

i *What can the benefit be used for?*

1. Bonding with a child – a **parent, both father and mother (including foster and adoptive parents), spouses, domestic partners and legal guardians or those acting *in loco parentis*** are eligible to take paid family leave to bond with a newborn child, a newly fostered child or an adopted child. This leave can be taken in full or used intermittently in no less than 1 day increments. Leave can be taken up to 52 weeks from the date of birth, foster or adoption of a child. Employees who had children born in 2017 or adopted/fostered in 2017 could be eligible to take leave starting on 01/01/18 to bond with their child.
2. Caring for a Serious health condition of a family member – employees can take PFL to care for a family member such as **spouse, domestic partner, child, parent (which includes biological, foster or adoptive parent, legal guardian, step parents and in-laws), grandparents and grandchildren** with a serious health condition. A serious health condition is considered an illness, injury, impairment, or physical or mental condition that involves: inpatient care in a hospital, hospice or residential health care facility; or continuing treatment or continuing supervision by a health care provider. Continuing treatment/ supervision is considered a period of 3 or more consecutive full days during which the family member is unable to work, attend school, perform regular daily activities or is otherwise incapacitated due to illness, injury, impairment, or physical or mental conditions and any subsequent treatment or period of incapacity relating to the same condition that involves treatment two or more times by a health care provider or treatment of a health care provider which results in a regimen of continuing treatment under the supervision of a health care provider.
3. Military Exigency Leave – Employees can take paid family leave to attend to family matters if a family member, identified as **spouse, domestic partner, child or parent**, is on active duty or has been notified of an impending call to active duty in the armed forces of the United States. PFL uses the FMLA guidelines and definitions for military leave.

i *What does NOT qualify as a serious health condition of a family member?*

Some examples that would not be covered are routine examinations, a treatment or regimen than is initiated without a visit to a health care provider such as taking over-the-counter medications, bed rest, drinking fluids, exercise, etc., the common cold, flu, ear aches, upset stomach, minor ulcers, headaches other than medically diagnosed migraine, routine dental or orthodontia problems, periodontal disease, and cosmetic treatments such as treatments for acne or plastic surgery (unless complications arise).

i *Can the employee go out on leave for multiple reasons?*

Yes, the employees can utilize the full 8 weeks (in 2018*) or time intermittently for any of the qualifying reasons but cannot take 8 weeks for one qualified leave and an additional 8 weeks for another qualified leave (ex. Having a baby and then caring for a sick parent). The maximum paid family leave is 8 weeks in a 52 week period.

ELIGIBILITY

i *Are all employees eligible?*

Employees will have to work for their employer for 26 weeks for full time employees (working more than 20 hours per week) or a total of 175 days for part-time employees (working less than 20 hours per week) to be eligible to take this benefit. This benefit applies to any eligible employee regardless of citizenship or immigration status.

i *What if an employee resigns or is terminated, are they still eligible for PFL benefits at the new employer? Do the employees get their deductions back?*

No, transferring to a new employer will reset the employee's eligibility. The employee will need to work 26 weeks (FT) or 175 days (PT) to become eligible again. Employers do not have to reimburse employees for any deductions made prior to the employee's date of exit.

i *Can an employee use the PFL benefit at the end of the year and be eligible for the benefit again at the beginning of the following year?*

No, the employee is only eligible to take PFL once in a full 52 week period of time, it is not measured by calendar year.

i *If an employee is not a US citizen, can they still use Paid Family Leave?*

Yes, all employees are eligible for this benefit regardless of citizenship or immigration status.

i *What if an employee wasn't going to work enough hours/days and waived their rights to PFL but now we've changed their hours and they would be eligible? (For example: A seasonal worker that would not work enough to become eligible for PFL signs the waiver to opt out but then the employer decides to hire that person on permanently (no longer seasonal), the person may now work enough to become eligible.)*

The employee will now have the opportunity to become eligible so their waiver will be revoked and they will be responsible for making contributions to PFL, including any retroactive amounts due from date of hire. The employee must be notified of this obligation by the covered employer prior to taking these retroactive payments.

DEDUCTIONS

i *How much will the employee have to pay?*

The employee deduction will be a percentage of the employee's average weekly wage, calculated at 0.126% of the average weekly wage up to \$1.65 per week in 2018*. For example, if the employee's average weekly wage is \$500/week, your deduction would be calculated as $.00126 \times 500.00 = .63/\text{week}$. For those whose average weekly pay rate is more than \$1305.92 per week (2016 NYS Average Weekly Wage amount) the maximum deduction will be \$1.65/week. These rates will change annually when the state average weekly wage amount is released on September 1st of each year by the State Department of Financial Services.

i *When should employers start taking deductions?*

Employers are able to start taking deductions any time after 07/01/2017. However, if an employer takes deductions early and takes more than the premium amount due, they must promptly repay any surplus back to the employees. We are advising clients to consider how they currently get billed for their disability insurance. If you receive your bill in advance (annually, monthly or quarterly), and you cannot pay the upfront premium cost, then you should consider taking deductions early. If you will be billed in arrears, you should most likely not begin deductions prior to 01/01/18. Remember, the cost of the premium will all be recouped through employee deductions during the year. Also consider how your employees will feel about contributing to a benefit that they will not be able to use until 01/01/18. Feel free to contact us or your tax attorney to discuss if and when you should start deductions early.

i *What if an employee works multiple jobs?*

An employee only has to pay the deduction amount at one employer to receive the benefit. They will be able to complete a form to opt out of deductions with any additional employers (they will have to show that they are paying the benefit through another employer). If an employee works for two covered employers, they may not take PFL benefits from both employers for the same qualifying event. The maximum PFL benefit is 8 weeks (2018) in a 52 week period.

i *What if the employee is a commissioned employee and doesn't have a true weekly wage to average since it varies greatly?*

We are waiting for further information from the Workers' Compensation Board to clarify that situation.

i *Can an employer continue to take PFL deductions when an employee is out on Workers' Compensation or Disability?*

Yes, an employer may continue to deduct the employee contributions when an eligible employee is receiving Worker's Compensation or Disability benefits but may NOT collect deductions if the employee has not met the required eligibility and is out on disability leave.

PROCESS

i *How will employees be informed about this benefit?*

Employers are required to inform the employees of their Paid Family Leave benefits. In addition, a policy should be added to the employer's policies or employee handbook if the employer maintains a written handbook or policies. Employers will also be required to display a poster that will be visible to the employees in the required posting area of the organization. If an employee mentions to the employer (their supervisor, HR employee, etc.) they have a family member with a serious health condition or family member going on military leave, it is the employers' responsibility to provide information to the employee about PFL, even if it is not specifically mentioned or requested by the employee.

*Posters are not available at this time but will be released prior to 01/01/18.

i *How does an employee apply for the benefit?*

Similar to FMLA, the employee will need to complete a PFL request form (PFL-1) initially and may be required to complete additional certification or proof of claim forms depending on the nature of the PFL request (forms PFL-2, -3, -4 or -5). A birth certificate or letter from adoption agency or department of social services may be required for bonding leave, a medical certification may be required from a treating physician for a family member with a serious medical condition and a military member's active duty orders or other military documentation indicating active duty may be required for military exigency leave.

i *Does the employer need to do anything for the employee's application?*

Yes, the employee will have to complete Part A of the PFL-1 application and submit to their employer to complete Part B of the form. Once the employer receives an employee's request for family leave, the employer is required to complete Part B of the PFL-1 form and return to the employee within three (3) days. Failure of the employer to complete this document will not be grounds to deny or prevent the employee from receiving PFL benefits. Once returned to the employee, it is the employee's responsibility to submit the completed forms to the carrier.

i *How much notice does an employee need to give to the employer?*

If the leave is for a foreseeable event such as non-emergency surgery (planned in advance) or the birth of a child, employees will be required to give 30 days' notice to the employer. For those events that were not planned, as much notice as reasonably possible should be given to the employer. Employees will need to complete paperwork (similar to disability) to request leave and to determine if the leave qualifies as PFL.

i *Is there a waiting period for PFL?*

No, there is no waiting period, benefits begin from the first day of qualified paid family leave.

i *How much do employees receive as payment while on PFL?*

In 2018, the pay amount received by the employee will equal 50% of the employee's average weekly wage up to \$652.96/week for 2018* (50% of the defined NYS Average Weekly Wage). This amount will increase to 55% of the employee's average weekly wage in 2019, 60% in 2020 and 67% in 2021. *The maximum payment will be set as the required percentage of the NYS average weekly wage amount published each year.

i *How long does it take for the employee to receive payment for PFL?*

It should take no longer than 18 days for payments to begin once a completed application has been received by the carrier.

i *Can my employer require an employee to use any accrued time before using PFL?*

If the employer has a policy in place requiring the use of accrued paid time while taking FMLA and will be running FMLA concurrently with your PFL benefit, then the employer can require you to use your accrued time consistent with their current FMLA employment practices.

i *Can employees take disability and PFL at the same time?*

No, FMLA can run concurrently with PFL but disability benefits cannot. If you are getting paid through another benefit, you typically cannot get paid by the PFL benefit as well. Also, PFL does not cover personal injuries/illnesses and therefore would not qualify.

i *Can this benefit be combined with other benefits?*

PFL can run concurrently with FMLA. It cannot be taken while an employee is being paid disability benefits. If an employee is receiving partial workers' compensation benefits, they can also receive PFL (for qualifying reasons) but cannot receive more than the average weekly wage rate. Employees cannot take more than a total of 26 weeks combined time off in a 52 week period.