



COMPLIANCE BULLETIN

HIGHLIGHTS

- New York recently enacted a paid family leave law, which will be phased in over a period of four years.
- 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

June 1, 2017

Deadline for New York to set the maximum employee contribution to be taken via payroll deduction for the paid family leave benefit.

January 1, 2018

Employees will be eligible for paid family leave benefits.

New York Enacts Paid Family Leave Law

OVERVIEW

On April 4, 2016, New York Governor Andrew Cuomo signed 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.

New York's paid family leave benefits will be funded through deductions from employee's paychecks. Under the new law, 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

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for the potential costs related to employee absences during their paid family leaves.

Eligibility

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

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 employees are eligible to receive paid family leave benefits.

In addition, the [New York Department of Financial Services](#) 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.

New York will set the maximum employee contribution by June 1, 2017, and it will be updated annually thereafter, on Sept. 1 of each year.

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An employee's annual contribution cannot exceed the employee's per capita share of the actual annual premium charged for the same year. An employee's annual contribution must be determined consistent with the principle that employees should pay the total costs of the family leave premium.

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 federal 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).

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.

An employee may be required to provide medical certification completed by a health care provider to support the need for family leave.

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

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

benefits during a 52-consecutive calendar week 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.

Also, an employee may choose, but cannot be required, 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).

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.