



PROFESSIONAL GROUP PLANS
Specializing in Employee Benefits

Paid Family Leave New York 2021

Need-to-know PFL Information for Covered Employees

What is Paid Family Leave?

In January 2018, **Paid Family Leave (PFL)** became a mandatory benefit in New York, providing you with job protections and paid time off for these qualifying events:



To provide care for a family member with a severe health condition

Providing care for a family member with a serious health condition.

The common cold or taking off for general doctor visits **don't qualify** – the person you care for must have a **“serious health condition.”**



To bond with a child after birth adoption, or to welcome a child into foster care

Bonding leave after giving birth, adoption, or welcoming a child into foster care. You can use paid family leave benefits during the **first 12 months** after your baby's birth, adoption, or foster placement – and **yes, dads can go out on paid leave, too!** You may take paid leave even for events leading up to adoption, such as travel to another country to complete an adoption.



To cope with a military exigency leave event

Qualifying military exigency

You can take paid leave to attend to family matters if your family member (spouse, domestic partner, child, or parent) is on **active duty** or has been **notified of an impending call** or to active duty.

Am I eligible for Paid Family Leave?

Your employer provides PFL coverage. General rule of thumb: if you have DBL (NY's statutory disability insurance), you are already automatically getting PFL – that's usually the case if you work in a private sector business in NY (with at least one employee) and don't fall into an excluded class of employees. If you're not sure, check with your employer to find out if the place you work at is considered a "Covered Employer."

Got the green light? Then here's what it takes to be eligible to go out on paid leave: You must make it through what's called a "qualification period," i.e:

- If you work 20 or more hours per week, you must have been employed at least 26 consecutive weeks at your current employer
- If you work less than 20 hours a week, you must have completed at least 175 work days at your current employer
- If you change jobs, your time worked at the previous employer does not count. In other words you start over with a new qualification period
- Time out on DBL (statutory disability insurance) does not count towards your qualification period

How much can I get?

For 2021 employees will receive payments as shown in the schedule below (for leave taken in weekly increments):

Benefit Stage Effective Date:	Maximum Length of Paid Leave	Maximum Benefit Amount		
		Payable % of Employee's Average Weekly Wage	To the Maximum % of NY Average Weekly Wage	\$ Max based on NY AWW of \$1,450.17
1/01/2021	12 weeks	67%	67%	\$971.61

Intermittent Leave

- The benefit for employees who take paid leave in daily increments is based on their average number of days worked per week during the last 8 weeks before taking paid leave.
- Number of hours worked during those days has no influence on the maximum benefit.
- The total number of intermittent days is capped at 60 days, even if you work more than 5 days/week on average.

What does this actually mean for you?

In 2021, your weekly benefit is 67% of your "average weekly wage" as defined in Article 9 (AWW) capped at 67% of New York State's Average Weekly Wage (NYSAWW). That means, if you earn more than the current NYSAWW of \$1,450.17 you're maximum benefit is capped at \$971.61/week. For example, if you make \$2,000 per week, your PFL benefit will be \$971.61 (not \$1,340); and if you make \$1,000 per week, your PFL benefit will be \$670 per week (not \$971.61).

- The benefit amount that is in effect at the time your leave began applies to the full duration of your paid leave for that event, even if a new calendar year with increased benefit levels falls within that period.
- You can take intermittent paid leave even in daily increments, such as every other Monday.

Top 10 things to know about using Paid Family Leave:

1. For **foreseeable events** (such as birth or scheduled treatments/therapy), you should provide your employer with a **30-day notice** of intent before using Paid Family Leave benefits. If you are not able to provide this notice due to the sudden nature of the qualifying event (such as a family member's stroke, emergency delivery, or short-notice deployment), you are still entitled to the leave but have to notify the employer as soon **as reasonably practicable** (typically within 2 days).
2. If you take intermittent leave, your employer has the right to require you to provide notice before each day of leave – even if it is a regular schedule.
3. There is no **"waiting period."**
4. Once on leave, you will receive a monetary PFL benefit (partial income replacement) from your employer's DBL/PFL insurance carrier.
5. You can't take DBL and PFL at the same time, i.e, receive benefits for both concurrently. They have to be taken in sequence. And if you qualify for both DBL and PFL, the combined duration cannot exceed 26 weeks in a consecutive 52-week period (whether using those benefits for the same or different qualifying event).
6. Your employer **cannot require you to use up your accumulated paid time off** (such as sick/vacation days) before letting you go out on paid family leave.
7. You have, however, the option to use accrued vacation days during your Paid Family Leave, thereby receiving your full salary as opposed to the percentage provided for by PFL. However, if you do this:
 - a. you will not be able to collect both paid time off (such as vacation pay) and monetary Paid Family Leave benefits simultaneously.
 - b. In this case, PFL provides only the job protection aspect.
8. If the business you work for has 50 or more employees, it has to honor Family Medical Leave Act (FMLA) – this also means your PFL benefits must be coordinated and used concurrently with FMLA benefits.
9. Paid Family Leave provides more than just a monetary benefit – it provides job security similar to unpaid leave under FMLA, but regardless of the size of the employer.
 - a. When returning from PFL, you are entitled to return to your same or comparable position
 - b. If your employer declines to reinstate you when returning from PFL, you have the right to report this to NY State
10. If you have health insurance through your employer, it's continued at your usual coverage level and contribution amount as if you weren't on leave.



Paid Family Leave for providing care

The person you provide care to must be a family member with a serious health condition.

Qualified types of care include:

Physical care, emotional support, visitation, assistance in treatment, transportation, arranging for a change in care, assistance with essential daily living matters, personal attendant services, traveling to pick up medication.

Who counts as a care-receiving person (family member) for PFL purposes?

Spouse, domestic partner, child, parent, grandparent, grandchild.

The definition of parent is very generous under PFL and includes:

Biological, foster, or adoptive parent, a legal guardian (or other person who stood in *loco parentis* to the employee when the employee was a child) as well as step parents and in-laws.

What counts as a serious health condition?

The family member you care for must be incapacitated for at least 4 consecutive days with either

- at least 2 doctor treatments or
- 1 doctor treatment and a doctor-supervised regimen thereafter
- PFL regulations provide **specific examples of serious health conditions**, including: Chronic serious health condition (such as asthma, diabetes, and epilepsy); long-term illness, injury, impairment, or physical or mental condition (such as such as Alzheimer's, a severe stroke, or the terminal stages of a disease); treatments for cancer (e.g., chemotherapy and radiation), severe arthritis (physicaltherapy), or kidney disease (dialysis)

What does not qualify as treatment for a serious health condition:

- Regimen or treatment that can be and is initiated without a visit to a health care provider (such as taking of over-the-counter medications, bed-rest)
- Conditions such as the common cold, the flu, ear aches, upset stomach, minor ulcers, headaches other than migraine, routine dental or orthodontia problems – unless complications arise
- Routine exams; cosmetic treatments (such as most treatments for acne or plastic surgery)

Paid Family Leave for bonding

During what time can you take paid leave to bond with your new baby?

Your bonding window under paid family leave for a birth expires at the end of the consecutive 52-week period beginning on the date of your baby's birth – this goes for dads, too!

Depending on what's best in your situation, you may start with statutory disability benefits from your DBL policy during the immediate post-partum period first and then transition into paid leave benefits. DBL and PFL, however, cannot be taken together and cannot exceed 26 weeks total within the consecutive 52-week period beginning on the date of your baby's birth.

How does it work for adoptions or foster care?

Your entitlement to paid family leave for adoption or foster care expires at the end of the consecutive 52-week period beginning on the date of the placement or first day of leave you took.

Do any events related to the adoption or foster placement qualify?

Yes, you can take paid family leave before the actual placement or adoption of a child if an absence from work is required as part of the process, such as counseling sessions, appearing in court, consulting with attorneys or doctors representing the birth parent, physical examinations, or traveling to another country to complete an adoption.



Paid Family Leave for military exigencies

You can take paid time off to attend to family matters if a family member is on active duty, called to active duty status, or has been notified of an impending call to active duty in the armed forces of the United States:

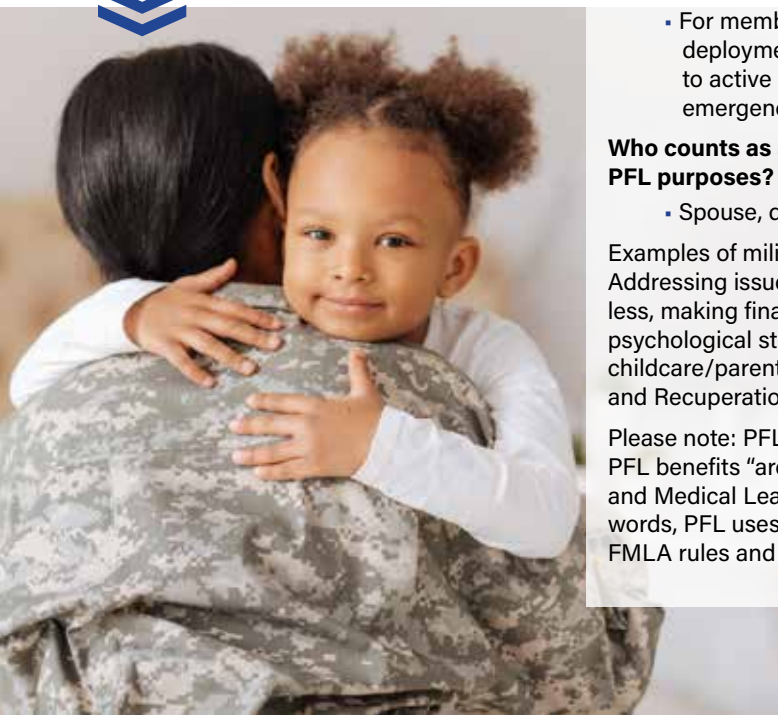
- For members of the **Regular Armed Forces**, this means duty during deployment with the Armed Forces to a foreign country.
- For members of the **Reserve and National Guard**, this means duty during deployment with the Armed Forces to a foreign country under a call or order to active duty in support of a contingency operation, which includes national emergencies.

Who counts as a qualified family member under a military exigency for PFL purposes?

- Spouse, domestic partner, child, parent.

Examples of military exigencies that qualify for Paid Family Leave: Addressing issues that arise from the short-notice deployments of 7 days or less, making financial and legal arrangements, counseling to cope with the psychological stress, attending military events, arranging for alternative childcare/parental care; spending time with the family member who is on Rest and Recuperation leave during covered active duty.

Please note: PFL regulations don't provide their own definition, they merely state that PFL benefits "are based upon a qualifying exigency as interpreted under the Family and Medical Leave Act, 29 U.S.C.S 2612(a)(1)(e) and 29 C.F.R. 825.126(b)(1)-(9)." In other words, PFL uses FMLA as the chassis for military exigency-related leaves. Therefore, if FMLA rules and definitions change, the same changes apply to PFL.



How much does it cost?

Paid Family Leave is typically referred to as an employee-funded benefit, but it is up to your employer to decide if and how much to deduct from you. If your employer takes contributions from you, here are a few key things to know:

Based on the law and regulations that govern Paid Family Leave, employers . . .

- can start taking deductions from you as soon as you start a new job, even during your qualification period.
- **cannot exceed your specific maximum contribution.** If they do, they will have to **return the excess** amount to you.

Here's how the maximum contribution is calculated:

Your maximum contribution is 0.511%* of your weekly wage capped at New York's average weekly wage (NYSAWW), which is currently \$1,450.17 = \$74,08.84 per year**

This translates into a 2021 maximum annual contribution of \$385.34 for employees earning the current NYSAWW or above.

The PFL rate is set by NY State and can be adjusted on an annual basis effective every January 1st.

*Determined each year by September 30th by the NYS Department of Financial Services - starting 2018

**NY Department of Labor releases the updated NYSAWW every March 31st.

***Information in this document is general in nature and not intended to replace legal advice in any particular manner.

Contact HR with any questions.

