



Dec. 8, 2017

N.Y. Paid Family Leave takes effect Jan. 1, 2018: Are you ready?

New York state's paid family leave regulation goes into effect on Jan. 1, 2018. PFL entitles employees of covered employers to a protected, paid leave to bond with a child after birth, placement or adoption; to take care of a qualified family member during their serious illness; and for a qualified military exigency. It is important that you, as an employer, are prepared for PFL in your office when the rules take effect.

Below are some key points from the regulation:

Eligibility:

- A covered employer is any private employer with one or more employees.
- All covered employers are required to provide PFL benefits for an eligible employee beginning Jan. 1, 2018. (Public employers may opt in to provide PFL benefits). Eligible employees are able to take leave at that time, regardless of if the employer's disability income insurance policy has been updated to include PFL.
- Employees of a covered employer, regardless of their full- or part-time status, become eligible after they have worked the requisite number of days or weeks: An employee who works 20 or more hours a week becomes eligible for benefits after 26 consecutive weeks of employment. Any employee who regularly works less than 20 hours a week becomes eligible for benefits after the 175th day of employment. **Employers should be aware of any employee who may be able to utilize leave in January, so they can plan their staffing and notice periods accordingly.**

Employer obligations:

- A covered employer is obligated to purchase and provide PFL coverage to their eligible employees. Starting Jan. 1, 2018, all disability benefits law policies automatically will include PFL coverage, regardless if the employer has paid a premium for it.
- A covered employer must collect employee contributions and use these contributions to provide PFL benefits to employees. While an employee is receiving PFL benefits, a covered employer may continue to deduct the employee contributions. The best way to collect this is determined by the employer's payroll provider, through automatic deductions or payments submitted to the employer from the employee.
- An employer who provides health insurance to its employees must maintain the group health-insurance coverage of an eligible employee, while the employee is receiving PFL benefits on the same terms, as if they had continued to work **so long as the employee continues to make any normal contributions to the cost of the health insurance premiums.** Any share of health plan premiums which is normally paid by the employee must continue to be paid by the employee during the paid family leave period. If the premiums are raised or lowered, the employee is required to pay the new premium rates.

- Employers that qualify for the federal Family Medical Leave Act are required to notify an employee of his or her eligibility under FMLA or PFL if their leave request under one qualifies for leave under the other. **If an employer fails to provide proper notice of the qualified FMLA leave, they waive FMLA leave occurring concurrently with PFL.** An employer also may encounter a situation in which an employee's FMLA request also qualifies for PFL leave, yet the employee does not wish to use PFL benefits. In this case, the employer and the disability carrier may charge the leave against the maximum duration of PFL benefits, so long as the employer has notified the employee of his or her eligibility under both FMLA and PFL.

Employee contributions:

- PFL is designed to be funded completely by the employees; however employers may choose to pay the premium themselves as opposed to collecting the employee contributions. A covered employer purchases PFL coverage through their DBL carrier, and collects employee contributions up to the maximum allowed by law from the employees to pay the PFL portion of the DBL/PFL premium.
- For 2018, the weekly employee contribution is .126 percent of an employee's weekly wage, capped at New York state average weekly wage, which was \$1,305.92 in 2016. This means the maximum contribution that can be deducted from an employee in 2018 is \$1.65 per week. An employee's contribution is based on his or her own personal salary, not the payroll as a whole. Therefore, no two employees will have the same employee contribution, unless they have the same exact salary.
- Employers should contact their DBL carrier and their payroll provider to determine how contributions are to be calculated and how the employer should proceed collecting them.
- If a DBL/PFL policy is cancelled for nonpayment, the employer must refund employee contributions for the period without coverage.
- An employer must refund any surplus contributions collected above that which is necessary to pay the PFL portion of the DBL/PFL premium.

PFL benefits:

- Beginning Jan. 1, 2018, eligible employees are entitled to eight weeks of paid leave at 50 percent of the employee's average weekly wage, or the New York state average weekly wage, whichever is lower.
- On Jan. 1, 2019, eligible employees are entitled to 10 weeks, paid at 55 percent of the employee's average weekly wage or the New York state average weekly wage, whichever is lower.
- On Jan. 1, 2020, eligible employees are entitled to 10 weeks, paid at 60 percent of the employee's average weekly wage or the New York state average weekly wage, whichever is lower.
- On Jan. 1, 2021, eligible employees are entitled to 12 weeks, paid at 67 percent of the employee's average weekly wage or the New York state average weekly wage, whichever is lower.
- All benefits are paid by the DBL carrier.

Qualified leave:

- PFL allows an employee to take leave to care for or bond with a child within the first 12 months after birth, placement or adoption; care for a family member who has a serious health condition; or for a qualified exigency due to a family member being called to active duty in the military.

- A qualified family member is the employee's spouse, domestic partner, child, parent, parent-in-law, grandparent or grandchild.
- An employee cannot take PFL for his or her own health condition.
- If an employee takes a designated FMLA leave for his or her own serious health condition, it does not reduce the amount of paid family leave for which an employee is eligible.
- PFL is effective on a "look-back" calculation. This means that an employee who had a child born, placed or adopted sometime in 2017, may take leave on Jan. 1, 2018, up until the 12-month period after the child's date of birth, placement or adoption.

This is just scratching the surface on the PFL regulation and how it could impact your business and your clients' businesses. For more information, visit the [New York Paid Family Leave section](#) of PIANY's [HR Info Central](#) tool kit.

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Think PIA first