New York State Paid Family Leave – Frequently Asked Questions
(Updated July 11, 2017)

Q: What is New York Paid Family Leave?

A: Passed by the state legislature, and signed by Governor Cuomo in April 2016, New York’s Paid Family Leave Law will be administered through the state’s disability insurance program. Paid Family Leave, or PFL, is designed to provide wage replacement for employees who take time away from work for qualifying family-related reasons, such as bonding with a child, caring for a close relative with a serious health condition, or helping with family responsibilities when a family member is called to active military service.

Q: How will Paid Family Leave benefits be implemented?

A: PFL benefits are effective January 1, 2018, and will be fully implemented by January 1, 2021, as follows:

<table>
<thead>
<tr>
<th>Effective Date</th>
<th>Maximum Weeks of Leave</th>
<th>Weekly Income Replacement</th>
</tr>
</thead>
<tbody>
<tr>
<td>January 1, 2018</td>
<td>Up to 8 weeks of leave</td>
<td>50% of the employees AWW*, up to 50% of the NYS AWW</td>
</tr>
<tr>
<td>January 1, 2019</td>
<td>Up to 10 weeks of leave</td>
<td>55% of the employees AWW, up to 55% of the NYS AWW</td>
</tr>
<tr>
<td>January 1, 2020</td>
<td>Up to 10 weeks of leave</td>
<td>60% of the employees AWW, up to 60% of the NYS AWW</td>
</tr>
<tr>
<td>January 1, 2021</td>
<td>Up to 12 weeks of leave</td>
<td>67% of the employees AWW, up to 67% of the NYS AWW</td>
</tr>
</tbody>
</table>

*AWW = Average Weekly Wage

Q: Which employers are required to provide Paid Family Leave benefits?

A: Private-sector employers with one (1) or more employees are required to provide PFL benefits. Public-sector employers, such as municipalities, may opt-in to the program.

Q: How will Paid Family Leave benefits be funded?

A: New York’s Paid Family Leave program will be funded entirely through employee payroll deductions. No employer contributions or funding is required.
**Q: How much will the payroll deduction be for my employees?**

**A:** The payroll deduction rate (referred to as the “contribution” rate) is currently set at 0.126% of an employee’s weekly wages, up to a maximum equal to the New York State Average Weekly Wage (“NYSAWW”). The NYSAWW as of July 1, 2017 is $1,305.92. Therefore, the maximum weekly payroll deduction for the initial benefit period will be $1.65 ($1,305.92 x 0.126%), rounded to the nearest penny.

**Q: When should Paid Family Leave payroll deductions begin?**

**A:** Employers may begin PFL payroll deductions as soon as July 1, 2017, with deductions required to begin no later than January 1, 2018, the date PFL benefits become effective and available to eligible employees. Although it does not appear to be required, we recommend employers notify employees in advance of their intention to begin PFL payroll deductions prior to January 1, 2018.

*NOTE: driven HR has prepared a sample notice for employers to review. Contact your USA Payroll, Inc. payroll specialist, or driven HR, info@drivenhr.com, for a copy of this sample notice.*

**Q: Which employees are eligible for Paid Family Leave benefits?**

**A:** Generally, an employee becomes eligible for PFL benefits in one of two ways:

i) An employee regularly scheduled to work 20 or more hours per week will be eligible to take PFL after working 26 consecutive weeks; or

ii) An employee regularly scheduled to work less than 20 hours per week will be eligible to take PFL after working 175 days in a 52-consecutive week period.

**Q: Are employees required to participate in the Paid Family Leave program?**

**A:** Although there are a couple of very narrow exceptions, PFL is not an optional benefit.

**Q: What are the requirements for an employee to waive Paid Family Leave benefits?**

**A:** Certain employees are not eligible for PFL benefits:

i) An employee enrolled as a student in an elementary or secondary school who works part-time during all or any part of the school year or regular vacation periods;

ii) An employee regularly scheduled to work 20 or more hours per week, and will not work at least 26 consecutive weeks; or

iii) An employee regularly scheduled to work less than 20 hours per week, and will not work at least 175 days in a 52-consecutive week period.
**Q: How does an eligible employee waive Paid Family Leave benefits?**

**A:** As is the case with disability insurance coverage, it appears students are automatically excluded from PFL benefits. However, other non-student employees who meet the criteria for a waiver of PFL benefits will be required to complete a waiver form. Once a waiver is filed with the employer, no PFL deductions should be made from the employee’s wages. However, if the employee’s schedule changes, and they become eligible for PFL benefits, the waiver will be automatically revoked.

*NOTE:* driven HR has prepared a sample PFL waiver form for employers to review. Contact your USA Payroll, Inc. payroll specialist, or driven HR, info@drivenhr.com, for a copy of this sample form.

**Q: What happens if an employee’s Paid Family Leave waiver is revoked?**

**A:** When an employee becomes eligible for PFL benefits due to a change in their work schedule, and the waiver they filed with the employer is automatically revoked, the employee is obligated to begin making contributions to the cost of family leave benefits, *including any retroactive amounts due from date of hire*, as soon as they are notified by the employer.

**Q: When can employees begin taking Paid Family Leave?**

**A:** PFL benefits are available to eligible employees beginning January 1, 2018. For example, if an employee welcomed a new child into their family sometime during 2017, the employee may be eligible for PFL.

**Q: How is Paid Family Leave related to Disability Leave insurance?**

**A:** The PFL law was an update to the state’s Disability Leave (“DBL”) laws. Therefore, any DBL insurance carrier providing coverage in NY will be required to issue a PFL policy rider. The insurance carrier will also administer PFL, approve/deny claims, etc.

**Q: When is Paid Family Leave effective and become available to employees?**

**A:** Eligible employees may begin taking PFL for one or more qualifying events beginning January 1, 2018.
**Q:** What are the qualifying events for Paid Family Leave?  
**A:** Eligible employees may use PFL for the following:  
   i) Parents can use PFL for bonding with their child during the first year after a child's birth, adoption, or foster placement;  
   ii) PFL may be taken to provide care—including physical or psychological care—to a family member with a serious health condition; and  
   iii) PFL may also be taken because of any qualifying exigency—as interpreted under the federal Family and Medical Leave Act (“FMLA”)—because 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.  

**Q:** What is the definition of “family member” as it applies to Paid Family Leave?  
**A:** A family member is defined as a child, parent, grandparent, grandchild, spouse, or domestic partner as each is defined by the PFL law.  

**Q:** What is the definition of a “serious health condition” as it applies to Paid Family Leave?  
**A:** A serious health condition is defined as 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.  

**Q:** Is an employee allowed to use both Disability Leave and Paid Family Leave?  
**A:** Because PFL is not available for the employee’s own medical conditions, it cannot be used concurrently with DBL benefits. However, there may be scenarios where a single event will result in leave benefits under both programs. For example, an employee may collect DBL benefits due to pregnancy and the birth of a child. Then, the employee could transition directly into PFL benefits for an additional period of paid, job-protected leave.  

**Q:** Please explain the use of accrued vacation time, or PTO to supplement Paid Family Leave.  
**A:** If an employee uses accrued paid leave to supplement their PFL benefits, the employer should deduct the paid leave in full-day increments, and also request reimbursement from the PFL insurance carrier for the percentage of the employee’s wages covered by PFL. For example, for an employee, Ellie, to receive her full wages of $130.00 for a day away from work for a PFL-qualifying reason, she submits a request for PTO. Her employer approves the request and pays Ellie her PTO of $130.00 for the day. Because Ellie’s time away from work was covered by PFL, her employer should request a reimbursement from the PFL insurance carrier for Ellie’s PFL benefit of $65.00 ($130.00 x 50%).
**Q: Can the employer designate Paid Family Leave to run concurrent with leave under the Family and Medical Leave Act (“FMLA”)?**

**A:** The regulations do allow PFL and FMLA leave to run concurrently. However, for the leave to be designated as such, there are a few important points to cover:

i) The employer must be covered by the FMLA (i.e., private-sector employer with 50 or more employees in 20 or more workweeks in the current or preceding calendar year);

ii) The employee must meet the eligibility requirements for both PFL and FMLA leave;

iii) The reason for the leave must qualify under both the PFL and FMLA regulations; and

iv) The employer must provide the employee with the required written FMLA designation notice. Remember, acceptance of a claim for PFL benefits by the insurance carrier does not automatically mean the leave qualifies under the FMLA, or that the leaves run concurrently.

Employers should also remember that there are differing eligibility standards for PFL and FMLA. This may create a situation where a new employee is eligible for, and takes job-protected PFL after 26 weeks. Then, after returning to work and reaching the FMLA threshold of working 1,250 hours in a 12-month period, the employee will be eligible for another 12 weeks of job-protected FMLA leave.

**Q: Can I require employees to use accrued vacation, or other Paid Time Off (“PTO”) along with Paid Family Leave?**

**A:** The short answer is, maybe. Most employers can allow—but not require—employees to use accrued vacation time or PTO in order to receive their full salary during some, or all, of their PFL. Otherwise, the employee may choose to keep their accrued vacation time or PTO for use before and/or after PFL, in some cases extending the total time they are out.

_However, when an employer covered by the federal Family Medical Leave Act (“FMLA”) designates a period of PFL and FMLA to run concurrently, the employer may require the employee use accrued paid time off to cover some, or all of the FMLA leave taken._ There are three important points to remember; first, only employers covered by the FMLA (i.e., private-sector employer with 50 or more employees in 20 or more workweeks in the current or preceding calendar year) are permitted to require the use of accrued but unused time off. Secondly, the employer should have written policies stating that employees must exhaust all available accrued and unused paid leave before taking unpaid FMLA leave. Lastly, the leave must be designated as running concurrently, and taken for a reason that qualifies under both PFL and FMLA regulations.
Q: What are an employer’s obligations under the Paid Family Leave law?

A: This is somewhat of an open-ended question, because the final PFL regulations have not been issued. However, there are a few things we are confident of:

i) Employers will be required to hold the employee’s position until they return to work, or offer a comparable position with equivalent seniority, status, employment benefits, pay, and other terms and conditions;

ii) Employers will be required to maintain the employee’s existing health benefits for the duration of PFL as if the employee had continued to work;

iii) As with other laws providing job-protected leave, the PFL law will require the employer to reinstate an employee to their same position, or to a similar position with comparable pay, benefits, and other terms and conditions of employment;

iv) Employers cannot discriminate or retaliate against an employee because they file a claim for, or receive PFL benefits;

v) Although employers will not be allowed to require an employee to use accrued leave benefits while out on PFL, the PFL law does not appear to require employers to continue the accrual of benefits, such as PTO, or seniority rights while an employee is out on PFL;

vi) Employers will be required to notify employees and applicants about their rights under the PFL law; and

vii) Employee handbook policies will need to be revised to include information about PFL, or, if an employer does not have an employee handbook, separate written guidance must be provided to employees about their rights and obligations under the PFL law.

Q: Can employees take intermittent Paid Family Leave?

A: Intermittent PFL will be allowed in full day increments only.

Q: Since an employee isn’t eligible for Paid Family Leave benefits when they are hired, when should we begin the employee’s payroll deductions?

A: Deductions should begin immediately at the time the employee is hired.
Q: If both spouses work for the same employer, are they allowed to take Paid Family Leave at the same time?

A: No. If both spouses work for the same employer, the employer may deny PFL to more than one employee at the same time, to care for the same family member, or to bond with a child.

Q: If an employee takes 12-weeks of Family and Medical Leave Act leave at the end of 2017 (for example, to bond with a newborn child), are they then eligible to take eight-weeks of Paid Family Leave beginning January 1, 2018?

A: Yes, an employee eligible for PFL on January 1, 2018 may take the leave, regardless of whether they’ve taken any other type of leave prior to January 1, 2018.

Q: Is there a penalty associated with non-compliance with the Paid Family Leave Law?

A: Yes, under the proposed regulations, employers failing to provide coverage for PFL benefits will be subject to a penalty not to exceed 0.5% of their weekly payroll, plus an additional amount of up to $500.

Thank you for taking the time to review, New York State Paid Family Leave, Frequently Asked Questions, provided by driven HR – A USA Payroll Company.

If you have additional questions, or a question you believe would be helpful to add to the list, please contact Frank Cania, president of driven HR, at frank@drivenhr.com, or 585-672-4142 (toll free 855-682-4142).