



New York State Enacts 12-Week Paid Family Leave Law

Syracuse, New York

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Governor Cuomo signed legislation on April 4, 2016, enacting a 12-week paid family leave law for employees in New York (the "**Paid Family Leave Law**"). The Paid Family Leave Law will phase in over four years beginning in 2018 and will require employers to allow eligible employees up to 12 weeks of paid time off from work per year for certain family leave reasons.

NY's Paid Family Leave Law applies to **all employers** without regard to the employer's number of employees. This is a significant expansion in applicability from the federal Family Medical Leave Act (the "**FMLA**"), which only applies to employers with 50 or more employees. An employee is eligible for Paid Family Leave Law benefits (an "**Eligible Employee**") if the employee is currently employed and had been employed by their employer for at least 26 or more consecutive weeks preceding the beginning of leave. An Eligible Employee is entitled to Paid Family Leave Law benefits for the following reasons:

- caring for the Eligible Employee's family member with a serious health condition;
- bonding with the Eligible Employee's new child by birth, adoption, or foster care; and
- relieving family pressures when the Eligible Employee's family member is called to active military service (known as "Qualifying Exigency Leave" under the FMLA).

The Paid Family Leave Law defines "serious health condition" as "an illness, injury, impairment, or physical or mental condition that involves inpatient care in a hospital, hospice, or residential health care facility, continuing treatment, or continuing supervision by a health care provider." Notably, Eligible Employees are not entitled to Paid Family Leave Law benefits to care for their own serious health condition.

The Paid Family Leave Law's benefits are **funded through employee payroll deductions** and not through any employer contribution. Upon implementation, the payroll deductions to employee wages are mandatory. An employee's maximum weekly payroll deduction is limited to 60 cents. Employers are obligated to collect employees' contributions and pay a carrier, such as the NY State Insurance Fund, that will administer and pay Paid Family Leave Law benefits.

Although employers are not obligated to fund Paid Family Leave Law benefits directly, employers are nevertheless obligated under the Paid Family Leave Law to continue to pay for an Eligible Employee's existing health benefits as though the employee had continued to work after commencing paid family leave. As with the FMLA, employees remain responsible for their portion of health benefit costs throughout their leave under the Paid Family Leave Law.

The Paid Family Leave Law requires Eligible Employees to use eligibility for FMLA leave time concurrently with leave under the Paid Family Leave Law, but employers may waive this requirement. A notable diversion from the FMLA is the Paid Family Leave Law's treatment of an employee's accrued paid vacation, sick, or other leave. Under the FMLA, employers may require employees use accrued paid leave at the same time as FMLA leave. The Paid Family Leave Law, however, states that an employer "may offer" an employee the choice of using accrued paid leave and receiving "full salary" or using the Paid Family Leave Law benefit and receiving only the benefit due thereunder.

At the conclusion of leave under the Paid Family Leave Law, employers must reinstate Eligible Employees to their position of employment held when the leave commenced or a comparable position with comparable pay, benefits, and other terms of employment. In addition, employers are prohibited from retaliating against Eligible Employees who exercise their rights under the Paid Family Leave Law.

Continued on next page...



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The Paid Family Leave Law's benefits will phase-in as follows:

- Beginning **January 1, 2018**, Eligible Employees are entitled to eight weeks of paid leave equal to 50% of their average weekly wage, which amount may not exceed 50% of the NYS Average Weekly Wage (the "NYSAWW"). In 2015, 50% of the NYSAWW was \$648.24, according to the NYS Department of Labor's Research and Statistics Division.
- Beginning **January 1, 2019**, the permitted period of paid leave increases to 10 weeks and the amount of pay increases to 55% of an Eligible Employee's average weekly wage, which amount may not exceed 55% of the NYSAWW.
- Beginning January 1, 2020, the amount of pay increases to 60% of an Eligible Employee's average weekly wage, which amount may not exceed 60% of the NYSAWW.
- Finally, beginning **January 1, 2021**, the period of permitted paid leave increases to 12 weeks and the amount of pay increases to 67% of an Eligible Employee's average weekly wage, which amount may not exceed 67% of the NYSAWW.

The Paid Family Leave Law calls for the Chair of the NYS Workers' Compensation Board and the Superintendent of the NYS Department of Financial Services to adopt regulations implementing the Paid Family Leave Law's obligations and benefits.

Employers should prepare for the beginning of the Paid Family Leave Law's benefits and the forthcoming regulations by reviewing their internal policies concerning leave, payroll deductions, and maintenance of health benefits. Beginning in 2018, all NYS employers' internal policies must conform to the Paid Family Leave Law's requirements.

Bousquet Holstein PLLC works with employers in reviewing, revising, and adopting employment policies, as well providing answers to employment-related questions. Please contact Joshua S. Werbeck for more information.

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