

New York Adopts Paid Family Leave

On April 4, New York enacted the nation's most comprehensive paid family leave law as part of the 2016-2017 state budget bill. Paid family leave benefits will be phased in over three years, starting in 2018. When fully implemented, covered employees will be eligible for up to 12 weeks of paid leave annually. Wholly funded by employee contributions, benefits will be paid through the state's existing temporary disability insurance program. Employers will want to consider how best to integrate the new entitlement into their leave programs and payroll practices as further details emerge.

Background

Three states — California, New Jersey and Rhode Island — already require employers to provide paid family leave to eligible employees through programs administered through the states' disability insurance programs. Although Washington passed a paid family leave law in 2007, it was never implemented due to a lack of funding.

On April 4, New York became the latest state to require employers to provide paid family leave to eligible employees as part of its temporary disability insurance program. Included in the state's budget bill for fiscal year 2016-2017 ([S. 6406-C](#)), New York's paid family leave program is the nation's most comprehensive to date, offering more generous benefits than any other state.

Paid Family Leave

Beginning in 2018, employers will be required to provide job-protected, paid family leave to all eligible employees. When fully implemented in 2021, covered employees will be eligible for up to 12 weeks of paid family leave in a 52-week period.

Covered Employers and Eligible Employees

Unlike the federal Family and Medical Leave Act ([FMLA](#)), which applies to businesses with 50 or more employees, New York's paid family leave law will apply to all private employers, regardless of size. While public employers are not covered by the new state law, they will be able to opt into the paid family leave program if they so choose.



Also unlike under the FMLA, all full- and part-time employees who have worked for a covered employer for at least six consecutive months — rather than 12 months in total — will be eligible for the new benefit, regardless of how many hours they have worked or whether they work at a location where the employer has 50 or more employees within 75 miles.

Permitted Leave

Unpaid leave under the FMLA and paid leave under the New York law may be used for many of the same purposes, but the state law permits leave for a narrower set of circumstances. As under the FMLA, eligible employees will be able to use paid family leave for any of the following reasons:

- To bond with the employee’s child during the first 12 months after birth or placement for adoption or foster care with the employee
- To care for the employee’s “family member” with a “serious health condition”
- For any “qualifying exigency” (as defined by the FMLA) arising out of the active military service or call to active duty of the employee’s spouse, domestic partner, child or parent.

However, the state law does not cover time off for an employee’s own serious health condition or for military caregiver leave.

Comment. Although the FMLA and state law employ similar definitions of “family member” and “serious health condition,” they contain notable differences. Employers will want to review their PTO/leave policies and consider how best to integrate paid family leave into existing benefit programs.

Paid Family Leave Benefits

The paid family leave program will be phased in over three years, starting in 2018. Funded exclusively through employee contributions, benefits will gradually increase on the following schedule.

Date	Maximum Leave Within 52-Week Calendar Period	Benefit Amount
January 1, 2018	8 weeks	50% of employee’s average weekly wage, up to 50% of the state average weekly wage
January 1, 2019	10 weeks	55% of employee’s average weekly wage, up to 55% of the state average weekly wage
January 1, 2020	10 weeks	60% of employee’s average weekly wage, up to 60% of the state average weekly wage
January 1, 2021	12 weeks	67% of employee’s average weekly wage, up to 67% of the state average weekly wage

While there is a waiting period before employees can start receiving New York state disability benefits, there is no waiting period under the paid family leave law. Rather, family leave benefits will be payable on the first full day leave is required. Employees may take paid family leave intermittently, but only in full day increments. In such circumstances, each day will be paid at the rate of one-fifth of the weekly benefit. Employers may require paid leave provided under the New York program to run concurrently with any unpaid leave provided to an eligible employee under the FMLA.

Importantly, the FMLA requires employers that provide healthcare benefits to continue employees' healthcare benefits during periods of qualifying leave. Employers will also need to continue employees' healthcare benefits during periods of paid family leave.

In Closing

New York's paid family leave benefits will be funded entirely through mandatory payroll deductions and paid through the state's existing temporary disability insurance program. Although employers will not contribute directly to funding the benefit, they will still have a role to play. As further details emerge and guidance becomes available, employers will want to consider how best to integrate the new entitlement into their leave programs and payroll processes.

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