

# ARE YOUR EMPLOYEE HANDBOOKS READY?

## New York Paid Family Leave

### What is New York Paid Family Leave?

New York Paid Family Leave (PFL) is a new statutory employee benefit provided under the New York Workers' Compensation Law. These benefits become mandatory as of January 1, 2018, and include job-protected paid leave. Specifically, eligible employees will be entitled to job-protected paid time off from work, with continued health benefits and a right to reinstatement, to bond with a new child, care for a family member with a serious health condition and address qualifying situations that arise as a result of a family member's military service.

In 2018, employees may take up to eight weeks of PFL for qualifying reasons and receive 50% of their average weekly wage for such weeks of leave, but the benefits will increase in stages until it reaches 12 weeks of leave and 67% of their average weekly wage in 2021. PFL is an insured benefit that is community-rated and paid for through employee contributions. For 2018, that contribution is set to 0.126% of an employee's weekly wage.\*

Employers must update their employee handbooks to include information about employee rights and obligations under PFL. Moreover, because PFL may interact with other types of employee benefits, as described in further detail below, employers should include information as to how PFL will coordinate with other types of statutory leaves and company policies.

### How does New York PFL interact with Family Medical Leave?

In many instances, an employee's request for leave may qualify under New York PFL but not the federal Family and Medical Leave Act (FMLA) – meaning an employee who exhausts their PFL entitlement may still have job-protected leave remaining under the FMLA. This is because the eligibility requirements under PFL are less onerous than they are for FMLA, as there is no minimum hours worked requirement, no worksite size requirement, and employees are covered after 26 weeks of consecutive employment for employees who work 20 hours or more per week or 175 days worked for employees who work less than 20 hours per week. Additionally, PFL can be taken to care for a broader number of family members than the FMLA permits, such as a parent-in-law, a grandparent, or a grandchild, and there are no restrictions around leave taken to care for an adult child.

However, in certain circumstances, an employee's request for leave may qualify under both PFL and the FMLA. If an employee's request for PFL leave is FMLA-qualifying, then an employer may designate the leave to run concurrently under both PFL and FMLA. However, in order to run the leave concurrently, the employer must be sure to notify the employee of such concurrent designation and provide any required notices under the FMLA.

If an employer fails to provide such notice, then the employer will be deemed to have permitted the employee to receive PFL benefits without concurrently using FMLA benefits – meaning the employee can stack the leaves and take eight weeks of paid PFL while preserving his 12 weeks of FMLA entitlement. Conversely, if an employee requests FMLA leave for a reason that is PFL-qualifying, and the employer informs the employee of their eligibility for PFL for that time period, the employer and its insurance carrier may run the leave concurrently under both FMLA and PFL.

Notably, while FMLA benefits may be taken in increments as small as one minute, PFL benefits must be taken in increments of at least one full day. Therefore, if an employee utilizes FMLA leave in increments of less than one day, that leave is not eligible for PFL. However, an employer may elect to track the FMLA time that is taken in increments of less than full day and when such time reaches the number of hours in an employee's usual work day, one day of PFL may be deducted from the employee's total PFL entitlement.

### **How are paid company leave policies impacted by PFL?**

Both the PFL statute and the regulations indicate that an employer may offer an employee who has accrued but unused vacation time or personal leave a choice as to whether to charge all or a part of the PFL time to unused vacation time or personal leave. If an employee elects to receive full salary instead of PFL benefits, and the employer pays full salary during a period of PFL, the employer may request reimbursement of the PFL benefit by filing a claim with the carrier prior to the carrier's payment of PFL benefits to the employee.

Importantly, however, the employer's ability to pay full salary and request reimbursement for the PFL benefit from the insurance carrier is a function of employee choice. Therefore, an employer may not require an employee to use accrued vacation or other personal paid time off for a period of family leave. However, to the extent an employer develops a company leave policy that provides full salary for reasons that align with PFL, it may consider designing the program so that it runs concurrently with the statutory leave entitlement; it ultimately pays the differential between the statutory benefit and the employee's full base pay; and benefits under the employer program are only payable upon the employee's application for PFL or other relevant statutory benefits.

### **What changes should be made to employee handbooks?**

If an employer maintains written guidance for employees for benefits and leave rights, such as an employee handbook, PFL information must be included in that handbook. If the employer doesn't maintain a handbook, they must prepare a standalone written document concerning employee rights and obligations under PFL, including how to file a claim, for distribution to all employees. Additionally, every covered employer must display New York State's employee notice concerning PFL once that notice is released. The notice must be posted in plain view, in an area where all employees would readily see it.

Employers should also determine whether, and to what extent, they will require PFL benefits to run concurrently with FMLA leave or company leave policies. If the employer wishes to prevent stacking of leaves wherever possible, they should include language in the handbook that PFL, FMLA, and company leaves will run concurrently where applicable, and that any request for leave will trigger all applicable leave programs. Moreover, employers should determine whether they will add up FMLA time that is taken in less than full-day increments in order to deduct a day of PFL leave. To the extent an employer intends to utilize this option, they should advise employees within their handbook.

In sum, PFL is coming soon. Employers must ensure they can provide written guidance on PFL to their employees, including how to file a claim. Employers should also determine how they want to coordinate PFL benefits with other types of statutory leaves and company programs. Information concerning the interaction between PFL and other types of leave should be included in employee handbooks to help avoid employee surprise and confusion down the line. And finally, make sure your HR and/or benefits employees are trained with respect to this new mandatory benefit in time for January 1, 2018.

**Are you ready? Cigna will be.**

With new PFL laws comes new absence management challenges for employers – we're here to help. To continue to serve the needs of our current and future clients, Cigna is planning to offer a new PFL solution for New York by the end of the year as a foundation for future market needs.

For more information, contact  
your Cigna account manager  
or broker today.



\*Weekly benefits are capped at the corresponding percentage of the New York State Average Weekly Wage, which is \$1305.92 for 2018.

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