



NEW YORK PAID FAMILY LEAVE LAW

Summary: In 2016, New York passed the Paid Family Leave (PFL) law as a part of its existing state disability law, requiring employers with one or more employees to obtain insurance that covers paid family leave. The paid family leave benefits will be phased in over time beginning on January 1, 2018. The law initially offers up to 8 weeks of paid leave to care for a covered family member with a serious health condition, to bond with a child within the first 12 months after birth or placement, or in situations where a covered family member is called to active duty in the military. The benefits will be increased in 2019 and 2020, at which point eligible employees will be able to take up to 12 weeks of paid family leave in the above situations.



Employers Covered

All private sector employers in New York that have one or more employees are covered. In other words, any employer covered by the New York Workers' Compensation Law must permit eligible employees to take paid family leave.

Public employers are not covered unless the particular public employer has elected to opt in to provide PFL benefits. PFL does not cover employees outside the state of New York, except as defined below.



Employees Eligible

The following employees are eligible for PFL:

- An employee whose regular employment schedule is 20 or more hours per week for at least 26 consecutive work weeks preceding the first full day family leave begins; or
- An employee whose regular employment schedule is less than 20 hours per week but who works 175 days within 52 consecutive weeks.

See **INSIGHTS for Employers** for a list of exempt employees.

The 26 consecutive week requirement may be tolled during periods of absence that are due to the nature of that employment, such as semester breaks, and when employment is not terminated during those periods of absence.

The use of scheduled vacation or personal, sick or other time away from work that has been approved by the employer; or other periods where the employee is away from work but is still considered to be an employee by the employer, should be counted as consecutive weeks or consecutive work weeks, or days worked, as long as the contributions to the cost of family leave benefits have been paid for such periods of time. However, periods of temporary disability taken pursuant to Article 9 of the New York Workers' Compensation Law are not counted as weeks of employment or days worked for determining eligibility for PFL.

As to the question of what a "regular" schedule is, the regulations leave this question generally unanswered. The Workers' Compensation Board notes that an employee's regular employment schedule "depends on the facts and circumstances of the employment setting." As such, employers should take a broad reading of this provision to the employee's benefit until the Board provides additional guidance in the future.

Out of state employees: If an employee works for a New York employer, but works in another state and only incidentally works in New York, the employee is not covered by PFL. If an employee does not perform his or her work in any other single state, he or she is covered by PFL if some of his or her work is performed in New York and the employee is either: (1) based in New York; (2) controlled from New York; or (3) the employee lives in New York.



Amount of Leave

PFL benefits are phased in over a four-year period:

- Effective January 1, 2018, an eligible employee will be entitled to receive 8 weeks of leave paid at a rate of either 50% of the employee's average weekly wage or 50% of New York State's average weekly wage, whichever is less.
- Effective January 1, 2019, an eligible employee will be entitled to receive 10 weeks of leave paid at a rate of either 55% of the employee's average weekly wage or 55% of New York State's average weekly wage, whichever is less.
- Effective January 1, 2020, an eligible employee will be entitled to receive 10 weeks of leave paid at a rate of either 60% of the employee's average weekly wage or 60% of New York State's average weekly wage, whichever is less.
- Effective January 1, 2021, an eligible employee will be entitled to receive 12 weeks of leave paid at a rate of either 67% of the employee's average weekly wage or 67% of New York State's average weekly wage, whichever is less.

The NY average weekly wage is currently \$1,305.92. On March 31 of each calendar year, the New York State Department of Labor will calculate the State's average weekly wage based on statewide data from the prior calendar year.

To illustrate, in 2018, an employee who earns \$1,000 per week would receive a benefit of \$500 per week (50% of \$1,000). Another employee who makes \$2,000 a week would receive a benefit of \$652.96, because this employee is capped at one-half of State's average weekly wage of \$1,305.92.

Use of PTO: Under PFL, employees cannot be required to take accrued paid time off concurrently with PFL. However, employers and employees can agree to allow the employee to use PTO during PFL, which would allow the employee to receive their full wages. This time still would count against the employee's PFL entitlement.

If the employer offers and an employee chooses to use PTO during PFL, the employer may request reimbursement of PFL benefits in the same manner as if it were seeking reimbursement for workers' compensation benefits.



Calculating Leave

Weekly leave: Any employee taking PFL in weekly increments will be eligible for the maximum number of weeks of leave in any 52 consecutive week period. The 52 weeks are calculated on a rolling basis.

Daily leave: Leave may be taken in one-day increments. Partial-day increments are not allowed. When an employee takes PFL in daily increments, the employee's maximum period of paid family leave is calculated based on the average number of days worked per week with a maximum of 60 days per year for employees working at least five days per week.

The final regulations give the following example of the PFL an employee would receive where the employee works three days per week:

- On January 1, 2018, the equivalent of three days per week for eight weeks, or a maximum of 24 days in any 52 consecutive week period.
- On January 1, 2019, the equivalent of three days per week for ten weeks, or a maximum of 30 days in any 52 consecutive week period.
- On January 1, 2021, the equivalent of three days per week for twelve weeks, or a maximum of 36 days in any 52 consecutive week period.

Computing the average daily rate for daily leave:

When an employee requests family leave in daily increments (e.g., every Monday for six weeks), rather than as a weekly benefit, the daily benefit is calculated based on the employee's average weekly wage divided by the average number of days the employee worked per week.

In arriving at the average number of days the employee worked per week for the purpose of determining the employee's wage for one day, the employer should average the number of days the employee worked per week over the same eight weeks used in calculating the employee's average weekly wage. The average number of days worked may be fractional in order to accurately convert the average weekly wage to an equivalent daily wage.

Payment to the employee must be completed as soon as possible, but no more than 18 days from the date of the request. If a request for PFL was previously unspecified, payment must be made within 30 days.



Funding

Paid family leave is 100% employee-funded. Employees are required to contribute, by payroll deductions, to either the premium cost associated with the employer's attainment of PFL insurance or to the employer's cost for self-insuring.

Currently, 0.126% of the employee's weekly wage up to a maximum of 0.126% of the New York State average weekly wage can be deducted from an employee's paycheck for PFL purposes. For example, if an employee earns \$1,000 per week, (which is less than the State's average weekly wage currently set at \$1,305.92), the maximum PFL deduction for the employee is 0.126% of the \$1,000 weekly earnings, or \$1.26 per week.

If the employee earns more than the State's average weekly wage, the maximum PFL deduction for the employee is 0.126% of the State average, or \$1.65 per week, which is the maximum deduction.

As confirmed by the final regulations, employers may, but are not required to, begin deductions as of July 1, 2017.



Opting Out

All employees are required to contribute to the cost of PFL, even if they have not yet been employed long enough to be entitled to PFL.

One exception: Employees, such as seasonal and temporary employees, who are hired for short periods of time than is necessary for them to be eligible to receive PFL benefits, may waive PFL.

However, there are very specific requirements for doing so. For example, an employee is only hired for a two-month period of time, the employee can waive or opt out of making payroll deductions towards the cost of PFL by filing a PFL waiver with the employer. If the employee's term of employment then changes so that now the employee is employed for longer than the 26-week/175-day eligibility threshold, a previously filed opt-out waiver will be deemed revoked within eight weeks of the change. At that point, the employee must make PFL premiums and make a retroactive payment for the period back to the employee's date of hire. However, the final regulations do not address how the employer is allowed to collect the back premiums.



Type of Leave

Employees can take PFL for the following reasons:

- To provide care, including physical or psychological care, to their family members due to a family member's serious health condition
- To bond with their newborn children during the first year of the child's life, or, in the case of adoption or foster care placement, for the first year after the placement of a child with the employee
- For any qualifying reason as provided for under the federal Family and Medical Leave Act arising from the employee's spouse, domestic partner, child, or parent being on active military duty, or, alternatively, being notified of an impending call or order to active military duty.

If two parents working for the same employer wish to take bonding leave for a newborn or newly placed child or to care for a family member, each employee is entitled to the maximum amount of PFL. However, the employer may limit the employees from taking leave at the same time for the same family member.

PFL can be taken continuously or intermittently, even for bonding leave.



Definition of Family Members

A Family Member is a:

- Spouse or domestic partner
- Child
- Parent or parent-in-law
- Grandparent or grandchild

"Child" means a biological, adult, adopted, or foster son or daughter, a stepson or stepdaughter, a legal ward, a son or daughter of a domestic partner, or the person to whom the employee stands in loco parentis.

"Parent" means a biological, foster, or adoptive parent, a parent-in-law, a stepparent, a legal guardian, or other person who stood in loco parentis to the employee when the employee was a child. Sons-in-law and daughters-in-law are not covered.

Exigency leave is not available for leave necessitated by the military service of a grandchild or grandparent.



Overlap with Disability Pay

An employee who is eligible for both state disability benefits and PFL during the same period of 52 consecutive calendar weeks shall not receive more than 26 total weeks of disability and family leave benefits during that period of time.

Note: In the case of leave taken for the purpose of bonding with a child, on or after January 1, 2018, an employee may seek PFL benefits during the first twelve months after the child's birth, or during the first twelve months after the placement of the child for adoption or foster care with the employee, even in the event the child was born or placed prior to January 1, 2018. As a result, the employee will be entitled to up to eight weeks of PFL in 2018. For example, an employee who takes and exhausts FMLA leave for a newly placed child beginning on October 1, 2017, could then take bonding leave under NY PFL for another eight weeks from January 1, 2018 through September 30, 2018.

Other situations in which PFL benefits may not be payable include when the employee is:

- Receiving total disability payments pursuant to a claim for workers' compensation, volunteer firefighters' benefits, or volunteer ambulance workers' benefits
- Not employed or is on administrative leave from his or her employment
- Collecting sick pay or paid time off from the employer
- Works at least part of that day with pay for the employer or for any other employer; and/or
- As noted above, using the same time for the same family member in question if spouses are employed by same employer.

In the event that a period of PFL benefits received also constitutes leave under the FMLA, the employer must notify the eligible employee of such designation and shall also provide the employee with the notice required under the FMLA. The final regulations warn that, if an employer fails to provide the requisite FMLA notice, the employer cannot exhaust FMLA leave.

If an employer designates a period of family leave to be covered by the FMLA for a reason also covered under section 201 of the Workers' Compensation Law, and if the employer informs the employee of their eligibility for family leave benefits and the employee declines to apply for payment under PFL, the employer and its insurance carrier may count the leave against the employee's maximum duration of PFL in a 52-week period.

The employer may elect to track hours taken for FMLA for any day in which the employee is paid, works at least part of the day, and is thus not eligible for PFL pursuant to the New York Workers' Compensation Law. When the total hours taken for FMLA in less than full day increments reaches the number of hours in an employee's usual work day, the employer may deduct one day of PFL benefits from an employee's annual available PFL benefit. The employer is not be entitled to reimbursement from its carrier for such paid FMLA hours.

The 52-week period is computed retroactively from each day leave is requested. Therefore, during the first year PFL is in effect, employers will look back into a period which may include disability benefits taken in 2017.



Employee Notice Requirements

PFL notice requirements are similar to that required under the federal FMLA.

Foreseeable leave: An employee must provide the employer with at least 30 days' advance notice before leave is to begin if the qualifying event is foreseeable.

The final regulations provide examples of foreseeable qualifying events: an expected birth, placement for adoption or foster care; planned medical treatment for a serious health condition of a family member; the planned medical treatment for a serious injury or illness of a covered service member; or other known military exigency.

If 30 days' advance notice is not practicable for reasons such as a lack of knowledge of approximately when leave will be required to begin, a change in circumstances, or a medical emergency, notice must be given as soon as practicable. The employee must advise the employer as soon as practicable if dates of scheduled leave change or are extended, or were initially unknown.

When the need for family leave is foreseeable and an employee fails to give 30 days' advance notice, the self-insured employer or the carrier may file a partial denial of the family leave claim for a period of up to 30 days from the date notice is provided.

Unforeseeable leave: When the approximate timing of the qualifying event and need for leave is not foreseeable, an employee must provide notice to the employer as soon as practicable under the facts and circumstances of the qualifying event.

“As soon as practicable” means as soon as both possible and practical, taking into account all of the facts and circumstances in the individual case. In all cases, however, the determination of when an employee could practicably provide notice must take into account the individual facts and circumstances surrounding the qualifying event.

The final regulations confirm that it generally should be practicable for the employee to provide notice of leave that is unforeseeable within the time prescribed by the employer’s usual and customary notice requirements applicable to such leave. Moreover, the regulations state that, as to intermittent leave, the employer may require the employee to provide notice as soon as is practicable before each day of intermittent leave.

Where an employee does not comply with the employer’s usual notice and procedural requirements, and no unusual circumstances justify the failure to comply, PFL may be delayed or denied.



Employer Notice Requirements

The employer has two specific notice obligations under PFL:

- Employers must display or post a typewritten or printed notice concerning PFL in a form prescribed by the State. The notice must be displayed in plain view where all employees and applicants can see it.
- If an employer maintains written guidance for employees concerning employee benefits or leave rights, such as in an employee handbook, information concerning PFL and employee obligations under PFL shall be included in the handbook or other written guidance.

If an employer does not have written policies, manuals, or handbooks describing employee benefits and leave provisions, the employer must provide written guidance to each employee concerning all of the employee’s rights and obligations under PFL, including information on how to file a claim for paid family leave.



Making a Claim to be Paid

An employee requesting PFL must complete the Request for Paid Family Leave in the format prescribed by the State or give notice of a claim in another format designated by the carrier or self-insured employer. A carrier or self-insured employer that designates another format for filing a request for family leave must continue

to accept the Request for Paid Family Leave in the format prescribed by the State.

Once an employee requests PFL, the employer or insurance carrier must complete the employer information contained in Part B of the PFL-1 form and return it to the employee within three business days.

The employee must submit the request for PFL together with the information supplied by the employer, and with any necessary certifications or proof of claim documentation, to the carrier or designated third-party administrator.

The carrier or self-insured employer must accept certification and proof of claim forms in the format prescribed by the State, but may also accept certifications in another format that complies with the requirements of PFL. No benefits are required to be paid until the completed request for paid family leave, together with any necessary certifications or proof of claim documentation, has been submitted.



Medical Certification

For a family member: When leave is taken because of the serious health condition of a family member, the employee must obtain a medical certification from a health care provider that sets forth the following information:

- Name, address, telephone number, email address (if available), license number and state of license of the health care provider, and the type of medical practice/specialization;
- Approximate date on which the serious health condition commenced, and its probable duration;
- Certification regarding the patient’s health condition for which PFL is requested. The certification must be sufficient to support the need for leave; and
- An estimate of the frequency and duration of the leave required to care for the family member, including whether the need for care is continuing or on an intermittent basis.

Bonding time: An employee requesting PFL to bond with a newborn child or newly placement child may be required to provide the following:

- A birth mother’s claim for paid family leave to bond with a child must be supported by

documentation in the form of (1) If available, a birth certificate; or (2) If a birth certificate is unavailable, documentation of pregnancy or birth from a health care provider that includes the mother's name and the child's due or birth date.

- A parent's (other than a birth mother) claim for paid family leave to bond with a child must be supported by documentation in the form of: (1) If available, a birth certificate; (2) If no birth certificate is available, a voluntary acknowledgment of paternity or court order of filiation; (3) If the documents in (1) and (2) are not available, then the employee must provide (A) a copy of documentation of pregnancy or birth from a health care provider that includes the mother's name and the child's due or birth date (see section (a)(2) above), and (B) a second document verifying the parent's relationship with the birth mother or child (i.e., marriage certificate, civil union documents, or domestic partner documents); (4) If the documents in (B) of subparagraph (3) above are not available a parent may submit other documentary evidence of parental relationship for evaluation on a case-by-case basis.
- An adoptive parent's claim for paid family leave to bond with a child must be supported by documentation in the form of: (1) A court document indicating that an adoption is in process or is being finalized; or (2) When leave is taken prior to completion of the adoption, a document evidencing that the adoption process is underway, including but not limited to, a signed statement from an attorney, adoption agency, or adoption-related social service provider that the employee is in the process of adopting a child; (3) If the second parent is not named in the document(s) in (1) or (2) herein, the employee must provide (A) a copy of the document evidencing the adoption, and (B) a second document verifying the relationship to the parent named in the document (i.e. marriage certificate, civil union documents, or domestic partnership documents).
- A foster parent's claim for paid family leave to bond with a child must be supported by documentation in the form of: (1) A letter of placement issued by the county or city department of social services or local volunteer agency; (2) If the employee is not named in the placement document, submit (A) a copy of the document evidencing the placement, and (B) a second document verifying the relationship to the parent named in the document (i.e. marriage certificate, civil union documents, or domestic partnership documents).

Due to a qualifying exigency: The first time an employee requests leave because of a qualifying exigency arising out of the covered active duty or call to covered active duty status (or notification of an impending call or order to covered active duty) of a military member, a carrier or self-insured employer may require the employee to provide a copy of the military member's active duty orders or other documentation issued by the military which indicates that the military member is on covered active duty or call to covered active duty status, and the dates of the military member's covered active duty service. This information need only be provided to the carrier or self-insured employer once. A copy of new active duty orders or other documentation issued by the military may be required by the carrier or self-insured employer if the need for leave because of a qualifying exigency arises out of a different covered active duty or call to covered active duty status (or notification of an impending call or order to covered active duty) of the same or a different military member.

A request for paid family leave for any qualifying exigency must be supported by a certification from the employee that sets forth the following information: (1) Statement or description, signed by the employee, of appropriate facts regarding the qualifying exigency for which paid family leave is requested. The facts must be sufficient to support the need for leave. Such facts include information on the type of qualifying exigency for which leave is requested and any available written documentation which supports the request for leave; such documentation, for example, may include a copy of a meeting announcement for informational briefings sponsored by the military, a document confirming an appointment with a counselor or school official, or a copy of a bill for services for the handling of legal or financial affairs; (2) Approximate date on which the qualifying exigency commenced or will commence; (3) If an employee requests leave because of a qualifying exigency for a single, continuous period of time, the beginning and end dates for such absence; (4) If an employee requests leave because of a qualifying exigency on an intermittent basis, an estimate of the frequency and duration of the qualifying exigency; (5) If the qualifying exigency involves meeting with a third party, appropriate contact information for the individual or entity with whom the employee is meeting (such as the name, title, organization, address, telephone number, fax number, and email address [if available]) and a brief description of the purpose of the meeting; and (6) If the qualifying exigency involves rest and recuperation leave, a copy of the military member's rest and recuperation orders, or other documentation issued by the military which indicates that the military member has been granted rest and recuperation leave, and the dates of the military member's rest and recuperation leave.



Acceptance or Denial of a Claim

Once the carrier or self-insured employer receives a completed request for paid family leave with the necessary certification, the carrier or self-insured employer must pay the claim or deny the claim within 18 days. In the event a completed request is received more than 18 days before the occurrence of a qualifying event, the carrier or self-insured employer shall send payment to the employee within five days following the qualifying event.

The carrier or self-insured employer may deny the claim without prejudice because of an incomplete claim package or insufficient certification or proof of eligibility. If the claim is denied without prejudice due to an incomplete claim package, the carrier or self-insured employer must notify the employee within five business days of each piece of required information that is missing from the employee's request for paid family leave.

The carrier or self-insured employer also must provide the employee with an explanation of how to properly complete the request for paid family leave (and information regarding arbitration should the employee have any disputes). If the claim is not refiled within 30 days from when leave was first taken, the carrier or self-insured employer may deny the claim.

A PFL denial must state the reason, repeat any relevant information filed in the Request for PFL, and include any other information considered by the carrier in making the decision.

Unless the employee requests to receive correspondence by regular mail, the carrier or self-insured employer may send the denial and accompanying information by email.

The carrier or self-insured employer may deny the claim with prejudice for the following reasons:

- Employee has not been employed by the employer for a sufficient length of time to be eligible for benefits.
- Employee is not an employee of the employer.
- Employee is not an employee of a covered employer.
- The family member that the employee is seeking leave to care for is not a covered family member under subdivision (20) of section 201 of the Workers' Compensation Law.
- The amount of leave requested exceeds the statutory maximum benefit period for family leave or disability benefits under Article 9 of the Workers' Compensation Law.
- The amount of family leave requested exceeds the

statutory maximum or the family leave needed as stated in the medical certification of the employee or the qualifying event was foreseeable and the employee failed to provide the employer with notice as required. In such a case, the carrier may issue a partial denial of any excess leave or a partial denial for 30 days when the qualifying event was foreseeable and the employee failed to provide the employer with notice. All benefits requested that have not been denied must be paid within the statutory time frame.

- The employee requesting leave is the perpetrator of domestic violence or child abuse against the care recipient.
- The claim was not timely made.
- The employer did not have coverage on the date family leave began.



Reinstatement Rights

A covered employee who has received PFL must be reinstated to his or her employment upon conclusion of his or her leave in accordance with section 203-b of the Workers' Compensation Law. The final regulations do not clarify how "reinstated to his or her employment" is defined, so employers should follow the requirements of the FMLA until we receive more guidance from the State.

PFL contains a unique requirement for an employee not reinstated to his or her employment. In the event the employer declines to reinstate the eligible employee, the employee must file with the employer and the State a formal request on a form prescribed by the State that the employer come into compliance with the provisions of sections 203-b and 120 of the Workers' Compensation Law.

Within 30 days of the date of this request, the employer must either take corrective action or file a formal response to the employee, any attorney or representative who the employee may have retained, and the State, explaining the reason that corrective action will or will not need to be taken. The failure of the employer to fully complete the formal response in a timely fashion may result in adverse findings and conclusions.

The employee must file a complaint under section 120 of the Workers' Compensation Law within two years after the employer's response above.



Maintenance of Health Benefits

An employee who is provided health insurance by his or her employer is entitled to the continuation of that group health insurance coverage during PFL on the same terms as if he or she had continued to work. The employee must continue to make any normal contributions to the cost of the health insurance premiums.

PFL's provisions for dropping coverage for the employee's failure to pay premiums is the same as the provisions under FMLA. However, the PFL regulations do not address whether an employee will be required to repay premiums paid by the employer in the event he/she does not return from PFL, as is the case under FMLA.



Application with Collective Bargaining Agreement

Employers with employees or a class or classes of employees subject to a collective bargaining agreement are not required to supply such employees with PFL coverage when the collective bargaining agreement:

- Provides paid family leave benefits at least as favorable as this law;
- Does not permit an eligible employee to waive his or her rights to PFL or otherwise opt-out except as permitted by the law.

With the exception of the requirements set forth above, a collective bargaining agreement may provide rules related to PFL that differ from the requirements set forth under the law.



Effective Date

Employers may begin payroll deductions on July 1, 2017, and employees may begin using PFL benefits on January 1, 2018.



Access the Statute

http://assembly.state.ny.us/leg/?default_fld=&bn=A03870&term=2015&Summary=Y&Memo=Y&Text=Y

INSIGHTS for Employers:

- **As to employee eligibility, the final regulations exclude from the definition of employee the following:**
 - The spouse or a minor child of the employer for whom such person renders services.
 - A duly ordained, commissioned, or licensed minister, priest or rabbi in the exercise of his ministry, a sexton, a Christian Science reader or a member of a religious order in the exercise of duties required by such order.
 - A person engaged in a professional or teaching capacity in or for a religious, charitable or educational institution.
 - A volunteer in or for a religious, charitable or educational institution.
 - A person participating in and receiving rehabilitative services in a sheltered workshop operated by a religious, charitable or educational institution under a certificate issued by the United States Department of Labor.
 - A recipient of charitable aid from a religious or charitable institution who performs work in or for the institution which is incidental to or in return for the aid conferred and not under an express contract of hire.
 - Any individual who is an independent contractor.
 - A livery driver covered for work-related injuries by the Independent Livery Disability Benefits Fund pursuant to Article 6-G of the Executive Law.
 - A black car operator covered by the Black Car Operator's Fund pursuant to Article 6-F of the Executive Law.
 - A jockey, apprentice jockey, exercise person, employee of a trainer or owner licensed under Article two or four of the racing, pari-mutuel wagering and breeding law, covered by the New York Jockey Injury Fund, Inc. pursuant to section 221 of the Racing, Pari-Mutuel Wagering and Breeding Law.
- Paid family leave is 100% employee-funded. Employees are required to contribute, by payroll deductions, to either the premium cost associated with the employer's attainment of PFL insurance or to the employer's cost for self-insuring. That said, the State has indicated that employers may voluntarily choose to fund part or all of the PFL program.
- Employees, such as seasonal and temporary employees, who are hired for short periods of time than is necessary for them to be eligible to receive PFL benefits, may waive PFL. However, as noted above, there are very specific requirements both employees and employers must follow.
- An employee who is eligible for both state disability benefits and PFL during the same period of 52 consecutive calendar weeks shall not receive more than 26 total weeks of disability and family leave benefits during that period of time.
- In the case of leave taken for the purpose of bonding with a child, on or after January 1, 2018, an employee may seek PFL benefits during the first twelve months after the child's birth, or during the first twelve months after the placement of the child for adoption or foster care with the employee, even in the event the child was born or placed prior to January 1, 2018. As a result, the employee will be entitled to up to eight weeks of PFL in 2018. For example, an employee who takes and exhausts FMLA leave for a newly placed child beginning on October 1, 2017, could then take bonding leave under NY PFL for another eight weeks from January 1, 2018 through September 30, 2018.
- PFL calculates the 12-month (or 52 consecutive week) period for benefits using a rolling 12-month period measured backward from any day that leave is taken. This is the same as the FMLA rolling or lookback method. However, employers using a calendar, fiscal, or other method to calculate the 12-month FMLA period may differ. As such, employers should consider aligning their FMLA 12-month period to that provided for under PFL for ease of administration.
- Keep in mind the reinstatement requirements of this law, which employers should treat similar to the FMLA until further guidance is provided.
- If an employer wishes to forgo obtaining insurance to cover PFL and to self-insure instead, the employer must do so by September 30, 2017.
- Employers have quarterly and annual reporting requirements to the State about its PFL program. The State will provide additional information on this requirement later this year.