
NEW YORK PAID FAMILY LEAVE (NY PFL) BENEFITS LAW

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Key: DBL – NY Disability Benefits Law; PFL – NY Paid Family Leave Benefits Law; NY WCB – NY Workers' Compensation Board; NY DFS – NY Department of Financial Services
The Guardian Life Insurance Company of America®(Guardian), Guardian's Group Short Term Disability Insurance is underwritten and issued by The Guardian Life Insurance Company of America, New York, NY. Products are not available in all states. Policy limitations and exclusions apply. Optional riders and/or features may incur additional costs. This policy provides disability income insurance only. It does NOT provide basic hospital, basic medical or major medical insurance as defined by the New York State Department of Financial Services. Plan documents are the final arbiter of coverage. Policy Form #GP-1-STD07-1.0, et al.



Covered Employers

WHAT EMPLOYERS ARE SUBJECT TO NY PFL?

All New York private employers with at least one employee (not counting the owner) on each of 30 days in any calendar year are covered employers under the NY PFL law. PFL is administered through an employer's existing statutory short-term disability insurance (DBL) or through the NY State Insurance Fund (SIF). Each employer must determine if it is a "covered employer" under the NY Workers' Compensation law (12 NYCRR 355.4).

Generally, public employees are not covered for NY PFL; however, their employer may opt into the program. Public employees represented by a union may be covered if PFL is collectively bargained.

A Covered Employer with excluded classes of employees can extend DBL/PFL coverage to the excluded class(es) on a voluntary basis, as long as the voluntary coverage is extended to at least an entire class.

IS A RELIGIOUS NON-PROFIT ORGANIZATION SUBJECT TO NY PFL?

No.

IF A PUBLIC ENTITY CURRENTLY PROVIDES NY DBL ON A VOLUNTARY BASIS, MUST IT COVER PFL?

No, an entity that offers DBL on a voluntary basis is not obligated to offer PFL.

ARE CHARTER SCHOOLS INCLUDED OR EXCLUDED FROM PFL?

Although charter schools are public schools, charter schools may be operated by private for-profit companies, which could potentially impact their status as a public employer.

WHAT HAPPENS IF ONE COMPANY PURCHASES ANOTHER?

An employer who by operation of law becomes successor to a covered employer, or who acquires by purchase or otherwise the trade or business of a covered employer, immediately becomes a covered employer and must maintain PFL benefits to their employees.

WHAT ABOUT SOLE PROPRIETORS, LLPs/LLCs, SELF-EMPLOYED PERSONS?

Sole proprietors, member of a limited liability company (LLC), member of a limited liability partnership (LLP), and other self-employed persons are considered "individual business owners," so long as they are entitled to keep all the profits after taxes, are liable for all losses and do not have any employees. If they have one employee or more, they must obtain PFL coverage for their employees, but they would need to do so for themselves on a voluntary basis. Sole Proprietors, members of LLPs/LLCs, and self-employed persons can obtain voluntary coverage for themselves effective January 1, 2018, or within 26 weeks of forming their business or of becoming a member of an LLC/LLP. If the person misses those dates, he/she can still obtain voluntary coverage for themselves and be endorsed onto the same PFL rider as their employees. They would, however, be subject to a 2-year waiting period for PFL benefits, during which the regular community rate for PFL must be paid. Any employees of a Sole Proprietor or LLC/LLP would not be subject to the 2-year waiting period if their employer is a late PFL entrant.

IS A SOLE PROPRIETOR REQUIRED TO COVER A WORKING SPOUSE?

Spouses of sole proprietors and legal partnerships may be excluded from disability benefits coverage. Notice of Election to Voluntarily OC-923 (9-16) – 3 – Exclude Spouse from Coverage (Form DB-212.5) must be filed with the appropriate entity. The same rule would apply respecting PFL, but it's unclear what, if any, form would need to be completed.

IF AN EMPLOYER IS HEADQUARTERED IN NY BUT HAS LOCATIONS IN OTHER STATES, IS THE EMPLOYER OBLIGATED TO COVER THESE LOCATIONS FOR NY PFL?

NY DBL and NY PFL are mandated benefits for employees who work in New York, technically whose "employment" is in New York. Employers should refer Section 201(6) of the [New York Workers' Compensation Law](#) to determine if any of their employees are not considered "employed" in NY and therefore are out-of-state not covered employees.

Scenarios: New York Employee or Out-of-State Employee:

- An employee who works from their home in New York is considered a New York employee even if the employer is located outside of New York State.
- An employee who lives in New York but works outside of New York is not considered a New York employee if the employer is located outside of New York.
- An employee that is required to travel occasionally into New York to perform duties, such as a salesperson, will not be considered a New York employee unless the employer is based in New York.

MUST OUT-OF-STATE EMPLOYERS WITH EMPLOYEES WORKING IN NEW YORK PROVIDE NY PFL?

Yes, as with NY DBL, an out-of-state employer needs to provide PFL coverage if the employer employs one or more individuals on each of at least 30 days in a calendar year in New York. Each employer must determine if it is a “covered employer” under the NY Workers’ Compensation law (12 NYCRR 355.4) and if its employees meet the definition of “employment” under NY WCL (12 NYCRR 201(6)). Guardian cannot make this assessment for employers, employers are advised to confer with legal counsel.

IF NYDBL IS SELF-FUNDED, MUST NY PFL BE AS WELL OR CAN IT BE FULLY INSURED?

An employer self-funded for DBL is not required to self-fund PFL. The employer may purchase PFL coverage from a private insurer or be covered through NY’s State Insurance Fund (SIF).

WHAT MUST EMPLOYERS DO TO SELF-INSURE NY PFL? CAN EMPLOYERS THAT SELF-INSURE PFL PARTICIPATE IN NY’S RISK ADJUSTMENT MECHANISM? ARE THEY SUBJECT TO THE SAME REPORTING REQUIREMENTS AS FULLY INSURED POLICYHOLDERS?

Guardian provides the background below, but, reminds employers that these FAQ are intended to provide guidance based on Guardian’s interpretation of NY law and regulations, but this guidance is not legal advice, and employers should consult with their own legal counsel.

In order to self-insure NY PFL, the employer must self-insure its NY DBL and must furnish satisfactory proof to NY WCB Chair of its financial ability to pay the PFL benefits.

To self-insure DBL, the employer must submit the following as part of the application process:

- DB-150 Application for Self-Insurance – Disability Benefits Law;
- Foundation documents (i.e. certificate of incorporation; partnership agreements; etc.);
- An original copy of the applicant’s most recent independently audited financial statement;
- Security deposit – the amount is determined based upon the number of employees that the self-insurer (determined in accordance with Regulation Part 376.1).

Risk Adjustment – not subject to the risk adjustment mechanism nor part of the risk adjustment pool. For this reason, there was talk of self-insured employers possibly adding an additional employer fee.

Reporting to NY DFS – subject to the same data reporting requirements as all other employers.

WHAT HAPPENS IF COVERED EMPLOYERS DON’T COMPLY WITH PAID FAMILY LEAVE?

Failure to carry DBL and PFL is a misdemeanor punishable by a fine of not less than \$100 nor more than \$500 or imprisonment for not more than one year, or both, with increased monetary penalties for second and third or subsequent violations (NY WCL Section 220). Fines for non-compliant businesses will be based on the amount of the employer’s payroll during the time the employer did not have required coverage (0.5% of payroll, and a further sum not more than \$500). The NY Workers’ Compensation Board (WCB) may audit an employer for any purpose related to the administration of NY PFL, including but not limited to, claim filing, dates of leave, return to work, payroll information, and written guidance to employees concerning employee benefits or leave rights, employer use of employee contributions to provide PFL, and employer compliance with posting requirements.

CAN A GROUP BE COVERED FOR PFL WITH GUARDIAN WITHOUT USING ITS ABSENCE MANAGEMENT SOLUTION? DO THEY WORK IN CONJUNCTION IF A GROUP HAS BOTH?

Yes, a group can be insured with Guardian PFL without using our Absence Management Solution. And yes, Guardian’s Absence Management Solution would work in conjunction with PFL. The service helps businesses actively track and administer absences due to short-term disability, long-term disability, state and federal family and medical leaves, and company leaves.

WILL GUARDIAN BE OFFERING NY PFL ON A STANDALONE BASIS?

No, at least not effective 1/1/18.





Employee Eligibility/Out-of-state Employee Coverage

WHO ARE COVERED EMPLOYEES FOR NY PFL?

Full-time or part-time private employees of covered employers (or employers who opt in for voluntary PFL coverage) in New York State will be eligible for Paid Family Leave. A private employee is someone who does not work for the state, any political subdivision of the state, a public authority or any governmental agency or instrumentality. Participation in the program is not optional for employees.

WHICH EMPLOYEES ARE INELIGIBLE FOR NY PFL?

- An employee seeking leave due to his or her own serious health condition.
- Employees who have filed a waiver of leave benefits.
- Any employee already receiving total disability benefits, such as under a claim for workers' compensation, volunteer firefighters or volunteer ambulance workers' benefits. An employee may, however, supplement partial disability benefits with PFL benefits, up to the family leave benefit maximum, when combined with the partial disability benefit.
- Employees on administrative leave.
- Employees who work for an exempt employer.
- Employees who are excluded from coverage under Article 9 of the Disability Benefits Law (DBL) and the Paid Family Leave (PFL) Law, e.g. independent contractor; government, railroad, maritime or farm laborers; ministers, priests, rabbis, members of religious orders, sextons, Christian Science readers; and individuals that volunteer their services for nonprofit organizations and receive no compensation.
- An employee collecting unemployment benefits due to their job termination would not be able to collect PFL benefits, even if they were eligible for PFL at the time of termination.

CAN AN EMPLOYEE OPT OUT OF PFL OR IT IS MANDATORY?

PFL coverage is not optional. An employee can only opt out of coverage if they will not meet the eligibility criteria and file a PFL waiver.

HOW IS EMPLOYEE ELIGIBILITY DETERMINED?

Employee whose Regular Employment is 20 hrs or More Per Week

Employees whose regular employment schedule is 20 or more hours per week are eligible to take PFL from that employment after working at least 26 consecutive work weeks preceding the first full day family leave begins.

This means a new employee with an employment start date of 10/1/17 is not eligible for their first day of leave until they have worked for 26 consecutive weeks, so not prior to 4/1/18.

If day-to-day hiring is the usual employment practice of a trade or business, then an employee regularly employed by the employer is eligible when he or she is employed during the work period usual to and available to the trade/business during the entirety of the 26 consecutive weeks preceding the first full day of the leave.

The consecutive week period requirement may be tolled during periods of absence that are due to the nature of the employee's employment, such as semester breaks, and when employment is not terminated during those periods of absence. For example, if the employee worked 22 weeks up until the May 15 – August 15 semester break, the weeks when the employee isn't working during the period of 5/15 to 8/15 would not count as a break in the consecutive nature of employment, and rather the consecutive 23rd week would start up 8/16.

Employee whose Regular Employment is Less than 20 hrs Per Week

Employees of a covered employer whose regular employment schedule is less than 20 hours per week are eligible to take PFL from that employment after working 175 workdays preceding the first full day of the leave.

No waiting period. Once an employee meets the eligibility requirements above, there is no waiting period to take PFL (unlike DBL, which has a one week waiting period).

Rules for Determining Eligibility

In order to determine eligibility for family leave, the use of scheduled vacation time; the use of 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, will 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.

Periods of temporary disability (DBL) will not be counted as weeks of employment or days worked for determining eligibility for paid family leave.

EMPLOYEES WORKING 20 HOURS OR MORE PER WEEK MUST WORK FOR 26 CONSECUTIVE WEEKS TO MEET ELIGIBILITY REQUIREMENTS. DOES THIS MEAN IF THEY TAKE A 2-WEEK MEDICAL LEAVE PRIOR TO COMPLETING 26 WEEKS THAT THEY MUST START OVER? EVEN IF WITH THE SAME COMPANY?

In order to determine eligibility for family leave, the use of scheduled vacation time; the use of 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, shall be counted as consecutive weeks or consecutive work weeks, or days worked, as long as the contributions to the cost of family leave benefits, pursuant to section 209 of the Workers' Compensation Law and required by the employer of like employees, have been paid for such periods of time. Periods of temporary disability taken pursuant to Article 9 of the Workers' Compensation Law shall not be counted as weeks of employment or days worked for determining eligibility for paid family leave.

FOR PART-TIME EMPLOYEES, IS THE 175 WORKDAYS WITHIN A 1 YEAR PERIOD?

The 175 days need to take place prior to the first day of any leave.

IF WE HAVE AN EMPLOYEE THAT WORKS MORE THAN 175 DAYS PER YEAR BUT ONLY WORKS ONE HOUR IN EACH OF THOSE DAYS, DOES HE/SHE HAVE THE DEDUCTIONS TAKEN FROM THEIR PAYCHECK?

Yes. For employees who work less than 20 hours per week, as long as the 175 days requirement is met, deductions are required to be taken, regardless of the number of hours worked per day.

175 "WORKED" DAYS OR DAYS EMPLOYED? OUR COMPANY BEGAN TAKING DEDUCTIONS, POST TAX FOR PFL AS OF 07/01/2017. IS THE ELIGIBILITY DETERMINED ANNUALLY, OR IS IT CALCULATED FROM THE DATE OF HIRE? FOR EXAMPLE, WE HAVE EMPLOYEES THAT AVERAGE 168 DAYS PER YEAR. IF IT IS ANNUALLY, THEN THEY DO NOT QUALIFY. PLEASE CLARIFY.

An employee whose regular employment schedule is less than 20 hours per week will become eligible to take PFL from such employment after working 175 days preceding the first full day the leave begins. Although the WCB Regulation says "after working", the WCB advised that it is not impermissible under the regulations to treat the employee as eligible after being employed, versus having worked, 175 days.

HOW DO THE ELIGIBILITY RULES APPLY TO PER DIEM WORKERS?

The same eligibility rules apply. If the per diem employee works 20 or more hours per week, the employee is eligible for leave after 26 consecutive weeks of employment. If the per diem employee works less than 20 hours per week, then the employee is eligible after working 175 days in such employment.

IS A WAIVER OF PFL ALLOWED IF THE EMPLOYEE WILL NOT MEET ELIGIBILITY IN A 52-WEEK PERIOD? WHAT HAPPENS IF THE EMPLOYEE LATER MEETS THE PFL ELIGIBILITY REQUIREMENTS?

Yes. The NY WCB should soon be publishing the waiver form to be used. If the employee later meets the PFL eligibility requirements, the employee must begin their premium contributions.

IF YOU HAVE A SEASONAL BUSINESS THAT IS NOT OPEN 6 MONTHS OF THE YEAR, DO THE EMPLOYEES HAVE TO FILL OUT THE WAIVER OF COVERAGE FORM?

Yes. If you are a covered employer and have employees who are not going to meet the eligibility requirements, a waiver must be provided to employees, completed and submitted.

WE ARE A CONTRACT LABOR COMPANY AND HAVE SOME EMPLOYEES ON SHORT TERM ASSIGNMENTS WHO WILL NOT CONTINUE TO 1/1/18. SHOULD WE WAIT TO WITHHOLD PREMIUMS UNTIL 1/1/18 AND SET UP TO BE BILLED QUARTERLY IN ARREARS?

If an employer knows a certain employee (or group of employees) will no longer be employed with the employer as of the PFL effective date of 1/1/18, the employer should not be withholding premiums from these employees.

IS THIS IN ADDITION TO THE CURRENT SDI/SUI \$.60?

State Disability Insurance and State Unemployment Insurance are state-levied fees used to provide benefits for unemployed employees, or employees who otherwise are unable to work. Employees collecting unemployment benefits are not eligible for NY PFL.

ARE HIGH SCHOOL STUDENTS EXEMPT?

Daytime students in elementary or secondary school, who work part-time during the school year or their regular vacation period are exempt from PFL.

WHAT ABOUT SEASONAL BUSINESSES WHERE EMPLOYEES MAY MEET THE 26 CONSECUTIVE WEEKS WORK PERIOD REQUIREMENT BUT ARE LAID OFF BETWEEN SEASONS?

Where a full-time employee works for a covered employer for more than 26 weeks (thereby acquiring eligibility), but is then laid off by the covered employer due to the seasonal nature of the employer's work, but is then rehired by the same employer a month or a couple of months later, the law would not require the employee to work for the same covered employer for another 26 weeks prior to regaining eligibility.

IF AN EMPLOYER PAYS FOR WORK DONE BY A SELF-EMPLOYED CONTRACTOR WHO RECEIVES 1099 REPORTING, MUST THE EMPLOYER COVER THIS PERSON FOR PFL?

Self-employed contractors are not covered employees for PFL purposes. Independent contractors are not eligible unless they purchase coverage for themselves. If they choose to purchase coverage, they must do so within 26 weeks of forming their business or becoming a member of an LLC/LLP. If they miss the window, they are subject to a 2-year waiting period. Independent contractors must still provide coverage for their employees and must be under the same policy if they choose coverage for themselves.

HOW DOES THE WAIVER WORK? WOULD THE EMPLOYER NEED TO FILE THE WAIVER OR DOES THE EMPLOYEE?

The employee would file the waiver of PFL. An employee of a covered employer must be provided the option to file a waiver of PFL when his or her regular employment schedule is 20 hours or more per week but the employee will not work 26 consecutive week, or when his or her regular employment schedule is less than 20 hours per week and the employee will not work 175 days in a 52 consecutive week period.

Within eight weeks of any change in the regular work schedule of an employee that requires the employee to continue working for 26 consecutive weeks or 175 days in a 52 consecutive week period, the PFL waiver filed would be deemed revoked, and the employee will be obligated to begin making PFL contributions, including any retroactive amounts due from date of hire as soon as the employee is notified by the covered employer of such obligation.

The covered employer must keep a copy of the fully executed waiver on file to be produced at the request of the Workers' Compensation Board Chair, for as long as the employee remains in employment with the covered employer.

An employee who does not elect to file a waiver must make regular family leave benefit contributions for the full duration of his or her employment with the covered employer, and the covered employer must provide family leave benefits for such employee when he or she is eligible.

IS THERE ANY FURTHER GUIDANCE REGARDING FULL-TIME EMPLOYEES WHO COLLECT OR ARE ELIGIBLE TO COLLECT SOCIAL SECURITY BENEFITS? THEY DON'T HAVE TO PAY INTO THE BENEFIT? HOW DO THEY FILE A "WAIVER" FOR THIS? DO YOU KNOW WHAT THE REASON FOR THIS IS?

Guardian doesn't recall there being rule or guidance providing that employees "eligible" for Social Security retirement benefits shouldn't be making PFL premium contributions and that they should be filing a waiver of PFL benefits.

WHAT HAPPENS IF AN EMPLOYEE TERMINATES EMPLOYMENT WITH THEIR COVERED EMPLOYER AND MOVES TO ANOTHER COVERED EMPLOYER?

The employee is required to requalify and meet eligibility again with their new employer.

WHAT HAPPENS IF AN EMPLOYEE MOVES FROM WORKING LESS THAN 20 HOURS PER WEEK TO WORKING 20 OR MORE HOURS PER WEEK, DOES THE EMPLOYEE GET CREDIT FOR THE DAYS WORKED UNDER 20 HOURS PER WEEK?

An employer may either convert the days already worked to a number of weeks or it can continue counting the days worked until the employee reaches eligibility.

ARE OUT OF STATE EMPLOYEES WORKING IN NY COVERED BY NY PFL?

Yes, employees that reside outside NY, but work in NY are covered employees for NYDBL and NY PFL.

WILL GUARDIAN EXTEND PFL COVERAGE TO OUT-OF-STATE EMPLOYEES THAT ARE CURRENTLY COVERED ON A DBL PLAN?

No, Guardian cannot extend PFL coverage to out-of-state employees who are currently covered under an employer's DBL policy. Despite the history of the NY Department of Financial Services permitting employers to cover out-of-state employees for DBL, DFS declared that the PFL Program is intended to insure only employees working in NY.

NY DBL and NY PFL are mandated benefits for employees who work in New York, technically whose "employment" is in New York. Employers should refer Section 201(6) of the New York Workers' Compensation Law (<https://www.nysenate.gov/legislation/laws/WKC/201>) to determine if any of their employees are not considered "employed" in NY and therefore are out-of-state not covered employees. Guardian will continue to cover out-of-state employees for DBL, if elected by the employer.

Scenarios -- New York Employee or Out-of-State Employee?:

- An employee who works from their home in New York is considered a New York employee even if the employer is located outside of New York State.
- An employee who lives in New York but works outside of New York is not considered a New York employee if the employer is located outside of New York.
- An employee that is required to travel occasionally into New York to perform duties, such as a salesperson, will not be considered a New York employee unless the employer is based in New York.



Broker Compensation/Commissions

WILL COMMISSIONS BE PAID?

ARE BROKER COMMISSIONS INCLUDED IN THE RATE? WILL BROKER COMMISSIONS BE AVAILABLE?

IS GUARDIAN PAYING COMMISSION ON PFL? IS THIS PRODUCT COMMISSIONABLE AND AT WHAT RATE?

Guardian is currently reviewing the pricing that the State has set to determine if the pricing allows for compensation to be payable on the NY PFL.

Taxability

Federal taxability of Paid Family Leave is unclear when it is paid from a private insurance plan, as opposed to a State plan, as the IRS has not ruled or provided guidance on its treatment. The New York State Department of Taxation and Finance ("NYS Tax Department") did, however, release guidance related to the taxation of PFL premium contributions and benefits on August 25, 2017. While Guardian is very pleased the NYS Tax Department released this rather unexpected guidance, some critical items are in question. Until we receive the clarification we are currently seeking, we will not be able to provide specific direction on how taxability will be handled. Once resolved, we will communicate the necessary information to our brokers and clients. Employers are advised in the interim, as they always should, to consult with their own independent legal and/or tax counsel.



Premium Payments/Employee Contributions

HOW IS THE PFL PREMIUM PAYMENT FUNDED?

The PFL coverage is to be entirely funded by employee payroll deductions. No employer contribution is required. Employers are, however, able to voluntarily cover the premium expense themselves.

IS THE PFL EMPLOYEE CONTRIBUTION A SEPARATE AND DIFFERENT AMOUNT FROM DBL EMPLOYEE CONTRIBUTION?

Yes. The maximum DBL employee contribution remains unchanged. A new and separate PFL contribution will be required.

SHOULD AN EMPLOYER COLLECT PFL CONTRIBUTIONS WHILE AN EMPLOYEE IS RECEIVING DBL?

WCB advised that this is at the employer's option, but it seems administratively easiest to continue doing so. While employers can choose to collect DBL and PFL employee contributions from an employee who is out on DBL or PFL, employers cannot collect PFL contributions from an employee who is not yet eligible for PFL while that employee is out on DBL.

WHEN DO WE NEED TO START DEDUCTING THIS FROM OUR EMPLOYEES CHECKS?

By 1/1/18, but deductions could begin as early at 7/1/17.

A PAYROLL VENDOR RECENTLY SENT AN EMAIL TO ITS CLIENTS STATING THAT THEY WILL BEGIN DEDUCTING FOR PFL ON 7/1 UNLESS DIRECTED NOT TO. CAN THEY DO THAT?

It is the planholder's decision whether to take early deductions or not. The State is allowing planholders to take deductions any time after 7/1/17. Guardian will not be prepared to accept premiums prior to the 4th quarter 2017. Planholders should be advised to seek the services of competent legal and/or tax professionals to determine their obligations.

WHAT IF AN EMPLOYER FORGETS TO START EMPLOYEE DEDUCTIONS? HOW MUCH CAN THEY GO BACK AND CHARGE THE EMPLOYEE AND TAKE FROM THEIR CHECK?

As indicated in the WCB regulations, an employer's failure to withhold may not be recovered by withholding larger than the maximum employee contribution at a later date.

WHAT ADVANTAGE IS THERE, IF ANY, TO BEGINNING DEDUCTIONS JULY 2017 OR ANY TIME PRIOR TO 2018?

The State is allowing employers to take early deductions to fund the NY PFL premium that is due for 2018. Many of Guardian's planholders are billed on an annual in advance basis. Since these planholders will be receiving a bill for NY PFL for premiums in advance of the 1/1/18 effective date, they may want to consider taking early deductions to fund the premium due.

WHAT IF THE EMPLOYER DOES NOT START EARLY DEDUCTIONS IN 2017? IF THEY START THE DEDUCTIONS ON 1/1/18, CAN THOSE EMPLOYEES STILL BE ELIGIBLE FOR PFL ON 1/1/18?

Yes, employees covered by the law are eligible effective 1/1/18, irrespective of when the deductions are made by the employer.

WHO IS FUNDING THIS IF AN EMPLOYER IS TRYING TO COLLECT IN 2018 AND THERE IS NOT ENOUGH MONEY COLLECTED YET FROM EMPLOYEES?

The employer.

IF AN EMPLOYER COLLECTS PREMIUMS IN ADVANCE, DO THEY NEED TO HOLD THE FUNDS IN A TRUST OR A SEPARATE ACCOUNT?

Guardian will not be maintaining a separate account to hold premium contributions received in advance of the first billing date for the coverage effective date of 1/1/18. Planholders are advised to seek the services of competent legal and/or tax professionals to determine their obligations.

FOR PART TIME EMPLOYEES WHERE PAYROLL FLUCTUATES, HOW SHOULD I CALCULATE THEIR DEDUCTION? BY QUARTERLY WAGE?

Some employees may earn wages on an irregular schedule, such as where commissions or bonuses are part of an employee's wages. To ensure a stable and functioning PFL market, insurers must collect the correct premium based on the total annual wages earned by employees. Each insurer must collect premiums equal to 0.126% of the employee's annual wages for the calendar year up to and not exceeding 0.126% of the annualized statewide average weekly wage. For the calendar year 2018, the annualized statewide average weekly wage is \$67,904.84, which means the maximum annual premium to be charged to an employee for paid family leave benefits coverage for 2018 is \$85.56.

IF AN EMPLOYER STARTS TO TAKE DEDUCTIONS ON 7/1/2017 AND AN EMPLOYEE LEAVES PRIOR TO 12/31/2017, WILL THAT EMPLOYEE BE ENTITLED TO RECEIVE A REFUND OF THE PREMIUMS THEY PAID?

No, employers are not required to reimburse employees for contributions paid prior to their termination.

ARE THE RATES ON OUR QUARTERLY NY DBL INVOICES GOING TO INCREASE? RIGHT NOW IT IS \$2.30/MALE AND \$5.00/FEMALE?

Your DBL rates will not increase. However, there is a separate rate for PFL coverage. The DBL and PFL premium will be reported in one invoice, but separate rates will apply to DBL and PFL.

WILL GUARDIAN PROVIDE ITS STAKEHOLDERS WITH THE ANNUAL RATE CHANGE?

It is anticipated that NY Department of Financial Services (DFS) will publish the paid family leave rate by September 1 for the following calendar year. The NY Department of Labor will publish the Statewide Average Weekly Wage every July 1, Guardian will post the rate on its Guardian Anytime website.

I UNDERSTAND THAT THE RATES ARE BASED ON AN EMPLOYEE'S SALARY BUT HOW ARE "EARNINGS" DEFINED? DOES IT INCLUDE PTO, ONLY WORKED EARNINGS?

The maximum employee contribution in 2018 shall be 0.126% of an employee's weekly wage, up to the annualized New York State Average Weekly Wage. "Wages" (as defined in 11 NYCRR 363.3(o) and 12 NYCRR 357.1) includes every form of remuneration for employment paid by the employer to his employee, whether paid directly or indirectly, including salaries, commissions, bonuses and the reasonable money value of board, rent, housing, lodging or similar advantage received.

ARE THE PREMIUMS BASED ON BASE WAGES, BASE PLUS COMMISSION, BONUS, OVERTIME, ETC.?

Yes, the total reported wages for employees would include all of the above that apply.

HOW WILL GUARDIAN OBTAIN THE EMPLOYEE INCOME DATA OF A GROUP TO DETERMINE THE CASE PREMIUM?

NY PFL will be billed on a self-reported basis. The employer will be responsible for submitting the total average weekly wages for the employees. At claim time, this information would be submitted on the claim form and verified.

ARE EMPLOYERS REQUIRED TO SEND NOTIFICATIONS OF SOME KIND TO EMPLOYEES BEFORE THEY TAKE DEDUCTIONS, ESPECIALLY IF DOING SO PRIOR TO 1/1/18? IS ANY TEMPLATE OR MODEL NOTICE AVAILABLE YET?

No rule or guidance has been issued on this subject. Guardian is not aware of an employee advance notification of contribution deduction requirement. Planholders should be advised to seek the services of competent legal and/or tax professionals to determine their obligations.

IF AN EMPLOYEE WAS RECENTLY HIRED BY AN EMPLOYER, WILL THE EMPLOYER BEGIN TO DEDUCT EMPLOYEE CONTRIBUTIONS PRIOR TO THE EMPLOYEE HAVING WORKED FOR 6 CONSECUTIVE MONTHS?

With the exception of any employees eligible for a PFL waiver because they will not be able to attain eligibility, yes, employers may begin deducting PFL contributions from employees as of the first day of their employment.

HOW DO YOU DETERMINE THE RATE TO DEDUCT FOR A NEW HIRE IF YOU DO NOT HAVE AN 8 WEEK LOOK BACK?

If the employee hasn't been working for the employer for 8 weeks, the employer is to determine the average weekly wage based on the wages for time the employee has worked thus far. This rate would be applicable for the entire calendar year unless the employee's wage rate, average numbers of work hours per week, or salary changes, in which case, the employee's average weekly wage shall be recalculated on a quarterly basis to accommodate salary changes on January 1, April 1, July 1, and October 1.

In the case of a self-employed person, the average weekly wage for such person shall be the greater of the person's self-employment income (as defined in 26 U.S.C. §1402(b)), for the previous full calendar year divided by 52 weeks, or the statewide average weekly wage. If there is not 52 weeks of self-employment income for the previous full calendar year, then the person's average weekly wage shall be the greater of the sum of the person's wages for the previous calendar year plus the person's self-employment income (as defined in 26 U.S.C. §1402(b)), divided by 52 weeks, or the statewide average weekly wage. A self-employed person's average weekly wage shall be applicable for the remainder of the calendar year.

WE HAVE PER DIEM EMPLOYEES WHO WORK OCCASIONALLY, DO WE TAKE THE DEDUCTIONS OUT FOR THEM UPON HIRE ALSO?

Yes, if the per diem employee is expected to meet the eligibility requirements. With per diem employees, chances are they will not meet the eligibility requirements for PFL. If eligibility requirements will not be met, a waiver of PFL benefits is required to be completed by the employee. Deductions are not required and should not be taken for an employee the employer knows will not meet the eligibility requirements.

WE HAVE EMPLOYEES WHOSE PAY RATES CHANGE 2-3 TIMES PER YEAR. HOW WILL THIS WORK FOR THE DEDUCTIONS?

An employer, or their payroll vendor, will need to keep track of any pay changes during the year and deduct employee contributions accordingly. Should an employee's wage rate, average number of work hours per week, or salary change, the employee's average weekly wage shall be recalculated on a quarterly basis to accommodate salary changes on January 1, April 1, July 1, and October 1.

EMPLOYEES CONTRIBUTE TO THIS PLAN, BUT IF UNUSED, IS THERE ANY BANK OR DEDUCTION FOR PAYMENTS NOT USED?

Whether benefits are used or not, employee deductions are still required to be taken.

IS THERE A 30 DAY GRACE PERIOD ON AN EMPLOYER TAKING DEDUCTIONS?

The WCB regulations do not provide a 30-day grace period for employee deductions.

WILL VARIABLE PAY EMPLOYEE RATES BE SET? FOR EXAMPLE, SERVERS?

Not for 2018. The rate released for 2018 will be the same rate for all eligible employees.

UNLIKE CA PFL, WHERE CONTRIBUTIONS GET PAID THROUGH SDI AND DIRECTLY TO THE STATE OF CA, IS NY PFL TAKEN OUT OF AN EMPLOYEE'S PAYCHECK AND THE EMPLOYER PAYS THE PREMIUM?

Correct – contributions for PFL are deducted from employee paychecks, and the employer pays Guardian. Despite the provision that PFL is to be entirely funded by employee contributions, an employer may choose to pay the entire cost of the PFL premium and not take employee deductions.

WILL EACH EMPLOYER HAVE A FUND THAT PREMIUMS GO INTO AND NY PFL WILL BE PAID OUT OF? NOT SURE I UNDERSTAND WHY YOU ARE NOT ACCEPTING THE DEDUCTIONS AS OF NOW IN ORDER TO FUND EMPLOYEES ACCOUNTS?

No, separate funds will not be maintained by Guardian for employer groups. Employers are instructed to consult with their tax advisors and payroll vendors to determine if it should be setting up some separate account to accept employee deductions prior to 1/1/18.

IF THE BENEFITS ARE NOT BEING CLAIMED FOR ANYONE IN A PARTICULAR YEAR, WHAT HAPPENS TO THE DEDUCTIONS TAKEN (DOES THIS WORKS LIKE INSURANCE?)?

Yes, NY PFL operates like insurance. The premium is retained by the carrier. It counts towards the carrier's annual loss ratio calculation provided to the NY Department of Financial Services in operating its risk adjustment equalization process across NY PFL carriers.

WHAT ARE THE MAJOR THINGS I SHOULD KNOW ABOUT EMPLOYEE CONTRIBUTIONS?

- Employee deductions don't need to start before 1/1/18. Just note that if you start later than 1/1/18, you can't retroactively collect payroll deductions for PFL (for example, if you miss implementing withholdings for January 2018, you can't take a catch-up contribution in February).
- While PFL is frequently referred to as an employee-funded benefit in the law, an employer can choose to pay the cost for their employees.
- If an employer chooses to take employee deductions before 1/1/18, they don't have to refund those PFL deductions if the employee leaves the company before 1/1/18.
- After 1/1/18, PFL deductions apply from time of hire.
- An employer must pay the premium for the entire group of eligible employees whether deductions are taken from employees or not.
- The contribution rate may change every year.
- While an employer can choose to collect DBL and PFL employee contributions from an employee who is out on DBL or PFL, an employer cannot collect PFL contributions for an employee who is not yet eligible for PFL while that employee is out on DBL.
 - A covered employer shall use his or her employees' contributions to provide PFL benefits to employees and shall promptly return to employees any surplus in employee contributions that exceed the annual premium.
 - A covered employer may continue to deduct the employee contributions set forth in Workers' Compensation Law section 209 when an employee is receiving benefits pursuant to Workers' Compensation Law section 204. A covered employer may not collect employee contributions for an employee who has not yet acquired eligibility for PFL under Workers' Compensation Law section 203 and section 380-2.5, while that employee is taking disability leave.
- The contribution amount of 0.126% of an employees' weekly wages up to the annualized New York State Average Weekly Wage is the maximum amount that can be withheld. An employer's failure to withhold may not be recovered by withholding larger than the maximum employee contribution at a later date.
- An employer cannot collect more than the maximum allowable contribution for PFL through payroll deductions. If it does, the employer must return the excess amount to the employee(s).



Billing

WILL THE PREMIUM BILL SHOW PFL AS A SEPARATE LINE ITEM?

Yes. Both PFL and DBL will appear on the same bill but in separate sections. Carriers covering employers for DBL and PFL must apply any amount received to both the DBL and PFL coverages equally. Likewise, any cancellation resulting from unpaid premium would apply to both DBL and PFL.

IF A PLANHOLDER IS SET UP TO PAY PREMIUM ANNUALLY IN ADVANCE FOR DBL, CAN IT ELECT TO BE BILLED MONTHLY INSTEAD FOR PFL?

No, Guardian's approach to billing is that the same billing mode (annually, quarterly or monthly) used for DBL will also be used for PFL.

IF A CLIENT CURRENTLY PAYS THEIR GUARDIAN DBL QUARTERLY IN ARREARS, CAN THEY ASSUME THAT BILLING SCHEDULE FOR NY PFL?

Yes. Billing mode (quarterly in arrears, monthly in advance or annually in advance) will be the same for DBL and PFL.

WILL GUARDIAN CHARGE AN ADMINISTRATIVE FEE FOR NY PFL ABOVE AND BEYOND THE STANDARD EMPLOYEE DEDUCTION?

No with respect to the requisite PFL coverage itself. The inclusion of absence management or other administrative services separate from the actual payment and administration of the PFL benefit may entail additional costs. Self-insured employers, on the other hand, may be permitted to charge an additional fee for the underlying PFL benefit itself, due to the fact that they are not subject to the risk adjustment mechanism and cannot participate in the risk pool.



Claims/Leave Requests/Benefits

WHO ARE BENEFITS PAID TO, EMPLOYEE OR EMPLOYER?

Benefits are paid to the employee directly unless the employer asks the carrier to reimburse them because they paid the employee through accrued PTO.

WHO PAYS THE EMPLOYEE THE BENEFIT? THE EMPLOYER OR GUARDIAN?

The employer's PFL insurer pays the PFL benefit to the employees.

WHEN ARE COVERED EMPLOYEES ABLE TO FILE CLAIMS AND WILL THE CLAIM FORMS BE AVAILABLE ON GUARDIAN'S WEBSITE FOR OUR GUARDIAN GROUPS?

Claims can be filed as of 1/1/18. Once the final forms are provided by the Workers' Compensation Board, Guardian will make the claim and all related forms (i.e. medical authorization release) available.

WHAT TYPE OF CERTIFICATIONS WILL BE REQUIRED TO SUBMIT FOR ELIGIBILITY DETERMINATION?

There are certifications and/or documentation of proof requirements applicable to each of the three types of leave, i.e. provider medical certification of a family member's serious medical condition, certification for leave taken for a qualifying military exigency, birth certificate or other acceptable evidence of a child's birth and the employee's parental filiation. Once the NY PFL Request for Leave and accompanying certification forms have not been finalized, Guardian will provide them to their policyholders and also post them to the Guardian Anytime website.

WHO SUBMITS THE CLAIM? EMPLOYEE OR EMPLOYER?

The employee submits the request for paid family leave (on the WCB form PFL-1 or in another acceptable format), but there is an employer section to be completed and returned to the employee within three days for the employee's submission to its employer's PFL insurance carrier.

Carriers have three days to send acknowledgment of a completed claim, and 18 days to pay or deny the claim, which runs from receipt of the completed claim. If a carrier receives a completed claim request more than 18 days prior to the PFL qualifying event (a pre-filed claim), the carrier has 5 days (not 5 business days) to pay or deny the claim.

WHAT HAPPENS IF THE REQUEST FOR PAID FAMILY LEAVE FORM IS INCOMPLETE?

If the carrier or self-insured employer determines the request is incomplete, it must provide the employee within five (5) business days a list of the information missing with the corresponding data field (except if the claim is submitted telephonically, as permitted) and information regarding arbitration should the employee have any disputes.

HOW LONG DO YOU ANTICIPATE IT WILL TAKE FOR A EMPLOYEE TO RECEIVE PAYMENT FROM YOU?

Once the carrier receives a completed request for PFL with the necessary certifications and/or proof of claim documentation, as applicable, the carrier 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 must send payment to the employee within five days following the qualifying event.

WHEN WILL AN EMPLOYEE BE PAID?

Within 18 days of filing a complete claim for benefits, the Paid Family Leave insurance carrier (or the employer if the employer self-insures) must pay or deny the employee claim and provide an explanation of the denial.

IF AN EMPLOYER DOES NOT COMPLETE OR FULLY COMPLETE THE EMPLOYER SECTION ON THE REQUEST FOR PAID FAMILY LEAVE, CAN AN EMPLOYEE'S CLAIM BE DENIED?

No. An employee's claim may not be denied because the employer section of the Request for Paid Family Leave is incomplete, but it may be pended for the receipt of the completed employer section.

CAN EMPLOYEES TAKE PAID FAMILY LEAVE ON AN HOURLY BASIS?

No, NY PFL is only available in full day increments, but it can be taken intermittently, i.e. not all consecutive days for the PFL period.

IS AN EMPLOYEE REQUIRED TO PROVIDE ITS EMPLOYER ADVANCE NOTICE OF A LEAVE CLAIM?

Yes. When leave is foreseeable, an employee must provide an employer with at least 30 days notice before the date the leave is to begin of the employee's intention to take leave. If 30 days notice is not possible, the employee must provide notice as soon as practicable.

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. Foreseeable qualifying events include 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 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.

An individual business owner who has purchased PFL coverage must give 30 days notice to his carrier.

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

"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. When an employee becomes aware of a qualifying event less than 30 days in advance, it should be practicable for the employee to provide notice of the need for leave either the same day or the next business day.

Intermittent leave. When an employee takes intermittent family leave, the employer may require the employee to provide notice as soon as is practicable before each day of intermittent leave.

Employer Waiver of Notice. An employer may waive the notice requirements.

WHAT IS NEEDED WHEN SUBMITTING A CLAIM FOR BONDING WITH A NEWBORN CHILD? BIRTH CERTIFICATE?

The employee will need to complete the Request for Paid Family Leave form in addition must also provide documentation for the leave. Documentation for the birth mother would be a birth certificate or documentation of pregnancy or birth from a health care provider. Documentation for a second parent would be a birth certificate or a voluntary acknowledgment of paternity or court order of filiation or a copy of the documentation of pregnancy or birth from a health care provider and a second document verifying the parent's relationship with the birth mother or child. The Workers' Compensation Board has drafted sample leave request and certification forms for each type of covered leave.

CAN AN EMPLOYER REQUIRE THE EMPLOYEE TO RETURN ALL FORMS TO THE EMPLOYER AND THE EMPLOYER SUBMIT THE FORMS?

No. Once the employer receives a request for family leave from an employee, the employer must complete the employer information contained in Part B of the Request for Paid Family Leave (currently form PFL-1), or any other carrier or self-insured employer designated format, and return it to the employee within three business days. The employee then submits the request for PFL with the information supplied by the employer and with any necessary certifications or proof of claim documentation, medical or otherwise, to the carrier or designated third-party administrator.

JUST TO CLARIFY, CARING FOR MOTHER-IN-LAW OR FATHER-IN-LAW QUALIFIES FOR PFL? IS THERE A SPECIFICATION FOR WHO IS COVERED AND WHO IS NOT?

PFL provides for leave to care for a “family member” with a serious health condition. “Family member” is limited to spouses, domestic partners, children, parents, parents in-law, grandparents, and grandchildren.

Child: means a biological, 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.

Grandparent: means a parent of the employee’s parent.

Grandchild: means a child of the employee’s child.

Domestic Partner: financial interdependence of the parties is required. Includes both unilateral dependency and mutual interdependence, which may be evidenced by a nexus of factors, such as common ownership of property, common householding, shared budgeting or length of relationship. The registration of a domestic partnership, such as is authorized in New York City, New York City Ad. Code § 3-240 et seq. (1999), would constitute strong evidence of mutual interdependence.

SIBLINGS ARE NOT COVERED (EVEN IF THEY DO NOT HAVE OTHER FAMILY, I.E. SPOUSE OR CHILDREN)?

Siblings are not considered a covered family member for the employee to take leave to care for.

IS THE FIRST WEEK TAKEN OFF UNPAID LIKE IT IS FOR DISABILITY BENEFITS?

There is no waiting or elimination period for family leave benefits. Benefits are payable if the employee is eligible the first full day when leave is required.

IS 8 WEEKS PER EVENT/REASON OR PER YEAR?

For 2018, the 8 weeks is the maximum length of paid leave for the entire year. The maximum length of paid leave will be 10 weeks in 2019 and 12 weeks from 2020 on.

DBL WILL NOT RUN CONCURRENT WITH PFL, CORRECT? WHEN DBL EXPIRES, WILL PFL KICK IN?

Correct – DBL and PFL will not run concurrently. PFL won’t automatically kick in after DBL expires. If an employee’s DBL benefits are exhausted and they want to take PFL for a qualifying reason, a leave request will need to be submitted to Guardian. There is no strict order in the leave taken, i.e. an employee may take DBL, then PFL, and then DBL again if their circumstances require, as long as the maximum leave entitlement for both DBL and PFL do not exceed 26 weeks in a 52-week look back period.

HOW DO PERIODS OF LEAVE WORK BETWEEN DBL AND PFL?

Note – a key differentiator between PFL and DBL is that DBL is taken for employees’ OWN non-occupational injury or illness, while PFL is taken to care for someone else.

An employee may only take a maximum of 26 weeks per 52 consecutive week period for family leave and disability leave combined (i.e. if an employee has maxed out their 26 week disability leave entitlement, the employee may not take family leave during that same 52 week period). An employee may not collect benefits concurrently for disability leave and family leave. As with disability, successive periods of family leave caused by the same or related injury or sickness will be deemed a single period of family leave only if separated by less than three months.

- DBL and PFL benefits cannot be collected at the same time.
- Combined, DBL and PFL must not amount to more than the 26-week benefit max during any 52 consecutive calendar weeks.

As with disability (DBL), successive periods of family leave caused by the same or related injury or sickness will be deemed a single period of family leave only if separated by less than three months.

How Leave May be Taken. Leave may be continuous, intermittent, or reduced schedule, in increments of one full day or 1/5 of the weekly benefit.

- a. Maximum family leave for all employees.
 1. Weekly leave. Any employee taking family leave in weekly increments will be eligible for the maximum number of weeks of leave in any 52 consecutive week period. Weekly benefits are payable in accordance with subdivision 2 of section 204 of the Workers' Compensation Law.
 2. Daily leave. When any employee takes family leave 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. Thus, for example, an employee that works three days per week, will receive:
 - i. 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.
 - ii. 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.
 - iii. 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
 3. Computing the average daily rate for daily leave.
 - i. When an employee requests family leave in daily increments (*eg. every Monday for six weeks*), rather than as a weekly benefit, the daily benefit shall be calculated based on the employee's average weekly wage (*computed as set forth in section 355.9*) divided by the average number of days the employee worked per week.
 - ii. 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 shall average the number of days the employee worked per week over the same eight weeks used in calculating the employee's average weekly wage under section 355.9(2). The average number of days worked may be fractional in order to accurately convert the average weekly wage to an equivalent daily wage.

ARE EMPLOYEES COVERED FOR ANY SELF INJURIES? WHAT ABOUT SURGERIES OR STROKES?

No, family leave is not available to care for an employee's own injury or illness. The leave basis is to provide care for a family member with a serious health condition.

A MALE EMPLOYEE'S WIFE IS HAVING A BABY IN SEPTEMBER 2017 AND IS INELIGIBLE TO TAKE PATERNITY LEAVE THEN. WITH THIS NEW MANDATE WILL HE BE ELIGIBLE FOR PFL COME JANUARY?

Come January 1, 2018, the male employee would be permitted to take PFL, as long as the leave is requested and the period taken is within one year of the birth and he has met eligibility for NY PFL.

PARENTS AT THE SAME EMPLOYER CAN TAKE PFL BACK TO BACK FOR THE BIRTH OF CHILD, YES? AT THE SAME OR DIFFERENT TIMES?

Yes, but the employer may not allow the employees' leave to be at the same time. An employer is not required to allow more than one employee to use the same period of family leave to care for the same family member or to bond with a child – newborn or newly adopted/fostered child.

IF AN EMPLOYEE TAKES LEAVE FOR BONDING WITH A NEW BORN, CAN THEY TAKE THE LEAVE INTERMITTENTLY, AND SAY THEY COME BACK PART TIME AND TAKE MONDAY AND FRIDAY OFF?

Yes, intermittent leave in daily increments is allowable for bonding with a newborn and all NY paid family leave benefits.

IS PATERNITY LEAVE COVERED UNDER PFL?

Yes, fathers of a newborn, adopted or foster child can take PFL if they meet all eligibility requirements.

IS FAMILY LEAVE FOR PRE-ADOPTION TIME, I.E. TRAVEL FOR AN ADOPTION UNDER PFL?

Yes, as long as the proper documentation is provided at the time of claim.

MUST THE EMPLOYEE'S ILL PARENT RESIDE IN THE USA?

No, an ill parent (or other covered family member) does not need to reside in the US. However, the illness must meet the definition of a serious health condition and leave meet all the requirements of the law. 12 NYCRR Section 380-2.1 states "the employee must be in close and continuing proximity" to the care recipient. This means present at the same location as the family member during the majority of the employment period from which leave has been taken." Employment period is a broad term, not necessarily restricted to a 40 hour week.

IF I NEED TO CARE FOR A SICK FAMILY MEMBER WHO HAS CHEMOTHERAPY 2 DAYS A WEEK, CAN I WORK 3 DAYS AND TAKE 2 DAYS PFL?

Yes, as long as it's an approved leave and the employee has met the eligibility requirements.

I HAVE SEVERAL EMPLOYEES THAT ARE SINGLE AND IN THEIR LATE 50'S. THEY HAVE NO FAMILY. WHAT IS THE BENEFIT TO THEM?

Not every employee will have a situation in which a PFL leave is necessary. The law was passed for those situations in which an employee needs to take time away from work in order to care for a family member.

IF YOU MAKE LESS THAN THE AVERAGE WEEKLY WAGE, YOU WOULD GET A LESSOR BENEFIT?

An employee's paid family leave benefits are capped at the state average weekly wage. For example, effective January 1, 2018, eligible employees may receive up to 50 percent of their average weekly wage during family leave, not to exceed 50 percent of the state average weekly wage (which is \$1,305.92 for 2016). If an employee's average weekly wage is less than \$1,305.92, say \$1,000/week, the employee's PFL benefit would fall below the weekly benefit cap, and the benefit would be \$500/week (50% of \$1,000), subject to a de minimum benefit payment of \$100/week. The minimum benefit amount payable is the lesser of the percentage of the employee's wage, or \$100.00.

HOW WILL GUARDIAN KNOW WHEN THE EMPLOYEE IS TAKING INTERMITTENT PFL?

From the claim/leave request form and the employer validation of the leave. PFL benefits may be received on an intermittent basis (less than a full workweek) or in increments of one full day.

DO YOU HAVE SUGGESTIONS ON THE BEST WAY TO TRACK INTERMITTENT LEAVES?

You may consider Guardian's Absence Management Solution Program to assist with the tracking of your employees leaves, amongst many other program services.

As with disability, successive periods of family leave caused by the same or related injury or sickness will be deemed a single period of family leave only if separated by less than three months.

CAN AN EMPLOYEE HAVE MULTIPLE INTERMITTENT PAID FAMILY LEAVE CLAIMS AT THE SAME TIME?

Yes, an employee may potentially need to care for multiple qualified family members but may not exceed the maximum combined benefit in a 52 week period.

ARE PFL BENEFITS CALCULATED ON 5 WORK DAYS, 7 WORK DAYS OR THE ACTUAL WORK DAYS AN EMPLOYEE WORKS? FOR EXAMPLE – IF AN EMPLOYEE WORKS MON, TUES, WED EACH WEEK AND TAKES OFF EACH MONDAY, DOES SHE GET 1/5 OF HER WEEKLY PAY OR 1/3 OF HER WEEKLY PAY?

If daily increments are taken, the average daily rate is calculated per 380-2.5(c)(3) by dividing the AWW by the average number of days the employee worked per week over the last eight weeks worked.

IF BENEFITS ARE CALCULATED ON THE ACTUAL DAYS WORKED PER WEEK, HOW IS IT CALCULATED FOR EMPLOYEES WHO WORK VARIABLE WORK WEEKS AND A DIFFERENT NUMBER OF DAYS PER WEEK? FOR EXAMPLE ONE WEEK THEY WORK 3 DAYS, THE NEXT WEEK 6 DAYS AND THE NEXT WEEK BACK TO 3?

If daily increments are taken, the average daily rate is calculated per 380-2.5(c)(3) by dividing the AWW by the average number of days the employee worked per week over the last eight weeks worked.

HOW ARE TIME TAKEN AND BENEFITS PRORATED WHEN AN EMPLOYEE WHO WORKS A VARIABLE WORK WEEK SCHEDULE FOR THE SAME NUMBER OF DAYS PER WEEK IS OUT FOR A PARTIAL WEEK? FOR EXAMPLE, EMPLOYEE WORKS MONDAY, TUESDAY , THURSDAY, SAT AND SUN AND IS REQUESTING TUE, THUR AND FRI FOR PFL?

For all employees the time taken is calculated according to 380-2.5(c) depending on whether weekly or daily increments are to be taken. If daily increments are taken, the average daily rate is calculated per 380-2.5(c)(3) by dividing the AWW by the average number of days the employee worked per week over the last eight weeks worked.

HOW ARE TIME TAKEN AND BENEFITS PRORATED WHEN AN EMPLOYEE WHO WORKS A VARIABLE WORK WEEK SCHEDULE FOR A VARIABLE NUMBER OF DAYS EACH WEEK OUT FOR A PARTIAL WEEK? DO THE CALCULATIONS CHANGE IF A PERSON IS FULLTIME VERSUS PART TIME?

For all employees the time taken is calculated according to 380-2.5(c) depending on whether weekly or daily increments are to be taken. If daily increments are taken, the average daily rate is calculated per 380-2.5(c)(3) by dividing the AWW by the average number of days the employee worked per week over the last eight weeks worked.

HOW DO PFL BENEFITS WORK FOR PEOPLE WHO WORK LESS THAN 20 HOURS PER WEEK?

Benefits are essentially pro-rated based on a 5 day work week. For example, if an employee who normally works 2 days/week has an approved PFL claim for the 8 weeks, she will be entitled to benefits for up to 16 days (8 x 2), if she works 3 days/week, then she will be entitled up to 24 days (8 x 3).

IT'S UNDERSTOOD AN EMPLOYEE WHO WORKS LESS THAN 20 HOURS PER WEEK BUT WORKS 175 DAYS TO BE COVERED, BUT IF THE EMPLOYEE WORKS 4 DAYS AT 6 HOURS OR 3 DAYS AT 8 HOURS, THE EMPLOYEE IS WORKING SAME HOURS, WOULD THE EMPLOYEE STILL BE COVERED FOR THE 4 DAYS?

Yes, the WCB regulations does not make a distinction based on the number of hours per day an employee works. While logical to make a distinction, it would be too cumbersome to administer.

IF AN EMPLOYEE CURRENTLY HAS CHILD SUPPORT PAYMENT OBLIGATIONS DEDUCTED FROM HIS/HER PAYCHECK, IF THE EMPLOYEE FILES FOR PFL, WILL CHILD SUPPORT ALSO BE DEDUCTED FROM THE PFL BENEFIT?

Yes, the carrier should deduct child support from the benefit check if notified by the employer.

IF AN EMPLOYEE WORKS FOR TWO EMPLOYERS IN NYS, WHO DOES THE EMPLOYEE FILE WITH FOR PFL?

An employee with multiple covered employers is not required to take paid family leave from each covered employer during a single period of family leave. An employee with multiple covered employers may not take paid family leave for a single qualifying event from different covered employers at separate intervals, but must take family leave from all covered employers during the same family leave period.

CAN AN EMPLOYEE RECEIVE SOME PFL BENEFIT EVEN IF THEY ARE RECEIVING PARTIAL OR REDUCED EARNINGS UNDER WORKERS' COMPENSATION, VOLUNTEER FIREFIGHTER OR VOLUNTEER AMBULANCE WORKER BENEFITS?

Yes, if the employee is working at reduced wages, the employee may still be eligible for PFL.

HOW WILL CARRIERS BE ABLE TO FIND OUT IF AN EMPLOYEE TOOK LEAVE FROM A PREVIOUS EMPLOYER, AS THE LAW LIMITS THE AMOUNT OF LEAVE AN EMPLOYEE MAY TAKE WITHIN A 52-WEEK PERIOD?

The law permits carriers to coordinate efforts to create an electronic portal in order to file and administer claims for PFL in order to coordinate benefits. While it is unlikely this will be done in the very near future, keep in mind because the 26 continuous weeks or 175 days of work eligibility periods, it will be difficult for an employee to intentionally take leave from one employer, quit, begin work for a second employer, establish eligibility, and then take leave for another qualifying event.

IF AN EMPLOYER PROVIDED FULL SALARY CONTINUATION TO AN EMPLOYEE FOR A LEAVE PERIOD, CAN THE EMPLOYER SEEK REIMBURSEMENT DIRECTLY FROM THE CARRIER? IS THIS ADDRESSED ON THE CLAIM FORM?

Yes, if an employer pays the employee their full salary out of available PTO or an employer leave program, the employer can request reimbursement from the carrier up to the PFL benefit level, e.g. 50% in 2018, 55% in 2019, 60% in 2020, 67% in 2021 and beyond. There will be a question to this effect on the Leave Request Form from the State.

HOW WILL IT BE DEALT WITH FROM A HIPAA STAND POINT? I UNDERSTAND A MEDICAL PROVIDER'S NOTE IS NEEDED BUT SOMEONE MAY NOT WANT OTHERS TO KNOW OF HIS/HER ILLNESS.

The Workers Comp Board has developed a form called the Release of Personal Health Information Under the Paid Family Leave Law to be completed, signed and returned to the care recipient's (family member's) health care provider. Like FMLA, without adequate certification from the family member's health care provider, the leave could potentially be denied for lack of proof of a serious health condition.

IF AN EMPLOYEE HAS MULTIPLE PFL CLAIMS WITHIN THE YEAR, THE MAXIMUM PFL TIME ALLOWED IS 26 WEEKS WITHIN A 52 WEEK PERIOD? IS THAT A ROLLING 52 WEEKS?

The 52-consecutive week period for calculating an employee's maximum paid family leave duration is computed retroactively for each day leave is claimed.

WHEN IS AN EMPLOYEE ELIGIBLE FOR THEIR SECOND PFL PERIOD? IS IT 52 WEEKS FROM THE FIRST DAY OF THE INITIAL LEAVE? OR DOES THE EMPLOYER DESIGNATE THE 52 WEEK PERIOD SUCH AS CALENDAR YEAR?

It is 52 weeks from the first day of the initial leave. The 52 week period is not based on the calendar year or the planholder's policy year, it is calculated based on the employee's initial DBL or PFL claim date. An employee is eligible for benefits in a retroactive 52 week period, the 52 weeks are computed "retroactively with respect to each day for which benefits are currently being claimed" (12 NYCRR Sec 355.9(8)). This means an employee would "earn time back" at the end of a 52 week period such that the employee can start getting a week here and there on the rolling back of the 52 week period.

Maternity Claims Specifically

IF AN EMPLOYEE ALREADY TOOK FMLA LEAVE IN 2017 FOR MATERNITY LEAVE CAN THEY TAKE PFL IN JANUARY 2018?

Yes, as long as the leave is within the first twelve months of the birth of the child.

AN EMPLOYEE WILL BE GOING OUT ON PFL LEAVE FOR BONDING WITH THEIR CHILD. CAN THE EMPLOYEE USE THEIR PTO SINCE THE AMOUNT MAY BE HIGHER THAN THE PFL BENEFIT AMOUNT?



Yes, an employee may elect to use their PTO time in lieu of paid the family leave benefits, but the leave time taken will count toward the maximum leave period allowed.

IF A MOTHER GIVES BIRTH CAN SHE OPT TO THEN GO ON NY PFL DAY ONE SO THEY ARE PAID MORE?

Yes, PFL can be used instead of DBL after the birth of the child. It's important to remember that PFL cannot be used before the birth takes place.

HOW WOULD THE DISABILITY KICK IN FIRST ON THE BIRTH AND THEN THE NY PFL IF THE CHILD IS SICK? CAN EMPLOYEE COLLECT BENEFITS FOR BOTH AT THE SAME TIME?

DBL and PFL benefits cannot be collected at the same time, but they can be collected consecutively. After the birth, an employee can take DBL, which would be typically paid for 6 weeks for a standard delivery and 8 weeks for a C-section. If the child is sick, an employee could then take 8 weeks of PFL after the DBL benefits were exhausted.

CAN A MOTHER WHO GIVES BIRTH DENY STATUTORY DBL AND JUST COLLECT PFL?

Yes, the mother does not need to make a claim for disability coverage.

ARE MEMBERS THAT HAVE ALREADY COLLECTED DBL FOR MATERNITY LEAVE ABLE TO UTILIZE THIS BENEFIT FOR ADDITIONAL TIME WITH THEIR NEWBORN?

Yes, if the employee has not exceeded the combined DBL/PFL 26 week benefit in a 52 week period.

CAN YOU WALK THROUGH HOW A MATERNITY CLAIM WOULD WORK WHEN THE MOTHER NEEDS TO GO ON BEDREST? WOULD THEY TAKE DBL FOR THE BEDREST AND POSTPARTUM PERIOD, THEN ANY ADDITIONAL TIME BEYOND THE 6/8 WEEKS POSTPARTUM AS PFL?

Periods of disability prior to the mother giving birth would be covered under NYDBL, which would include periods of bed rest. Once she has given birth she has two options:

- a. Continue her DBL through her 6-8 weeks of her disability recovery, which may run concurrent with FMLA as well, and, once her disability has ended, she can then transition onto PFL for the full 8 weeks, which must be taken within the first 12 months of birth.
- b. Once she has given birth she can discontinue DBL and transition onto PFL for the full 8 weeks.

IF A COVERED EMPLOYEE HAD A BABY ON 1/7/2017, WOULD SHE ONLY BE ELIGIBLE FOR ONE WEEK OF LEAVE IN 2018? OR THE ENTIRE 8 WEEKS?

If she gave birth on 1/7/2017, she would be required to take her PFL leave within the first 12 months of the birth. Therefore, her leave period for bonding would expire as of 1/7/2018. If she is eligible for leave, she would only be entitled to PFL bonding leave from 1/1/18 – 1/6/18.

HOW DOES IT WORK IF AN EMPLOYER EMPLOYS MULTIPLE MEMBERS OF THE SAME FAMILY?

An employer is not required to allow more than one employee to use the same period of family leave to care of the same family member.

PFL and FMLA

WHAT ARE THE IMPORTANT POINTS I SHOULD KNOW ABOUT PFL INTERACTING WITH FMLA?

An employee is not able to receive both full disability benefits and paid family leave benefits at the same time. However, an employee may be able to supplement partial disability benefits with paid family leave benefits, up to the family leave benefit maximum, when combined with the partial disability benefit. No employee is entitled to more than 26 weeks of combined disability and family leave benefits during a 52-consecutive calendar week period. In addition, any paid family leave benefit must run concurrently with an employee's available entitlement under the federal FMLA, unless an employer chooses to permit otherwise. No employee is entitled to more than 12 weeks (in 2020 and beyond) of paid family leave benefits within a 52-week calendar period.



An employee may choose to use accrued and available vacation, or other paid time off, to receive a full salary while on family leave (in lieu of the paid family leave benefit). When paid family leave runs concurrently with an employee's FMLA leave entitlement, an employer may charge an employee's accrued paid leave in accordance with the provisions of the FMLA. However, under the FMLA, an employer may not require use of available paid leave when an employee's FMLA leave is not unpaid.

WHAT HAPPENS IF THE EMPLOYEE ALREADY EXHAUSTED FMLA?

Typically, NY PFL and FMLA will run concurrently. However, if the employee has already exhausted their FMLA entitlements as of 1/1/18, the employee would still be entitled to their full NY PFL entitlement effective 1/1/2018.

CAN AN EMPLOYEE WHO QUALIFIES FOR A 60 DAY FMLA TAKE THAT LEAVE FIRST FOLLOWED BY NY PFL? I ASSUME ONE CAN TAKE A NY PFL AND NOT FMLA IF QUALIFIED FOR BOTH?

Typically, FMLA and NY PFL will run concurrently if the leave reasons allow. However, if the reason for taking FMLA leave is not a covered reason for NY PFL, then in these cases, yes, the employee could potentially take FMLA leave prior to a NY PFL event. For example, a pregnant employee may qualify for both FMLA and NY PFL; however, she cannot begin her NY PFL until the birth of the baby.

CAN FMLA TIME BE DESIGNATED CONCURRENTLY WITH NY PFL?

Yes, FMLA time can be designated concurrently with NY PFL when applicable. There are some covered reasons for PFL which are not considered for FMLA, for example, leave for a parent-in-law or domestic partner. In cases where the employee may not be eligible for FMLA or the leave is not a qualified reason under the FMLA, it could not be designated as FMLA.

If an employee is eligible for leave under both the federal FMLA and NY PFL, but the employee declines to apply for PFL payments under the law, employers may still designate the leave as both FMLA and PFL.

Guardian provides the below rules, albeit technical, to provide employers guidance:

In the event that a period of family leave benefits received by an eligible employee is concurrently designated as leave under FMLA, by an employer subject to FMLA, the employer must notify the eligible employee of such designation and must also provide the employee with certain required notice by sections 29 CFR 825.301 and 825.305.

1. If an employer fails to provide the notice required, the employer will be deemed to have permitted the eligible employee to receive family leave benefits without concurrently using the benefits available under FMLA, as permitted under section 206 of the Workers' Compensation Law.
2. If an employer designates a period of family leave to be covered by the FMLA for a reason also covered under section 201(15) 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 12 NYCRR Section 380-5.1, the employer and its insurance carrier may count the leave against the employee's maximum duration of family leave in a 52 week period under section 204(2)(a).
3. FMLA designated leave taken by an employee due to his or her own serious health condition is not family leave under section 201(15) of the Workers' Compensation Law and does not reduce the amount of paid family leave an employee is eligible for under section 204(2)(a).
4. 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 paid family leave pursuant to Section 206 (d)(3) of the 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 paid family leave benefits from an employee's annual available family leave benefit. The employer shall not be entitled to reimbursement from its carrier for such paid FMLA hours.

BIRTH OF A CHILD – MOTHER IS COVERED FOR DBL FOR 8 WEEKS (C-SECTION). THEN, MOTHER CHOOSES TO TAKE PFL FOR 8 WEEKS AFTER THAT. MOTHER IS OUT FOR 16 WEEKS – THIS EXCEEDS 12 WEEKS OF FMLA. THAT MEANS EMPLOYERS IN NYS WILL BE REQUIRED TO ALLOW EMPLOYEES TO BE ABSENT BEYOND WHAT FMLA REQUIRES?

Yes, that is correct. In the example described, the employee would be entitled to 16 weeks of benefits and job protection.

DOES FMLA AND PFL FOR THE BIRTH OR ADOPTION OF A CHILD HAVE TO BE CONTINUOUS? IN OTHER WORDS, CAN AN EMPLOYEE TAKE 4 WEEKS FMLA COME BACK TO WORK THEN TAKE 8 WEEKS PFL?

NY PFL allows employees to take intermittent bonding with a newborn child or newly adopted child or child placed by foster care with the employee. Unlike FMLA, it is not at the employer's discretion for intermittent bonding to be allowed.

HOW DOES PFL WORK WITH FMLA IF THE EMPLOYER USES A DIFFERENT CALCULATION OF ELIGIBILITY (FOR EXAMPLE, IF THE EMPLOYER GIVES FMLA ON A CALENDAR YER BASIS)?

The two leave entitlements would be managed separately as it relates to their individual calculation methods. Note, there are provisions in the Federal FMLA for multi-state employers to have a different FMLA calculation method where the current chosen method conflicts with a method required for state leave (FMLA § 825.200 d(2) Amount of leave). It is recommended you consult with your legal counsel as to whether this provision would benefit you based on your current leave policies.

IF AN EMPLOYEE IS ELIGIBLE FOR FMLA E.G. BIRTH, CAN THEY ELECT NOT TO COMPLETE THE PFL PAPERWORK? BASICALLY, COULD THEY GO OUT UNDER FMLA AND USE THEIR 12 WEEKS AND THEN ELECT TO TAKE PFL AFTER THEY HAVE USED UP THEIR BENEFITS THROUGH FMLA?

If an employer designates a period of leave to be covered by the FMLA for a reason which the employee is also eligible to NY PFL, and the employee declines to apply for payment under NY PFL, the employer may count the period against the employee's maximum NY PFL leave in a 52 consecutive week period.



Employee Protections – Job, Non-discrimination, and Health Insurance

DOES JOB PROTECTION WORK SIMILARLY TO FMLA FOR EMPLOYERS WITH OVER 50 EMPLOYEES?

Yes, the employer is required to restore the employee to the same or equivalent position the employee held prior to taking leave.

DOES PFL LEAVE REQUIRE THE EMPLOYER TO HOLD THE EMPLOYEE'S JOB?

An employee who takes time off for a permitted paid family leave reason must be reinstated to his or her original position upon return to work, or reinstated to a comparable position with equal pay, benefits and other terms and conditions of employment. In addition, an employer may not retaliate against an employee who takes paid family leave.

WHAT HAPPENS IF AN EMPLOYEE ISN'T REINSTATED TO THE SAME OR COMPARABLE POSITION?

The employee may report that employer to NY State. The employer then has 30 days to either take corrective action or file a formal response to the employee.

DOES AN EMPLOYER HAVE TO MAINTAIN AN EMPLOYEE'S HEALTH INSURANCE WHILE OUT ON PFL?

An employer must also maintain an employee's group health plan benefits for the duration of paid family leave as if the employee had continued to work. If an employer provides a new health plan or benefits, or changes health plans or benefits while an employee is on paid family leave, the employee is entitled to the new or changed plan or benefits. The employee must continue to make any normal contributions to the cost of the health insurance premiums.

An employee may also not lose any benefits accrued during employment prior to taking family leave.

IF A COMPANY PAYS 100% OF HEALTH INSURANCE, AND AN EMPLOYEE GOES OUT ON PFL, IS THE EMPLOYER REQUIRED TO CONTINUE TO PAY 100% OF HEALTH INSURANCE PREMIUMS OR CAN THE ASK THE EMPLOYEE TO COVER PART OF THE COST?

If the employer is paying 100% of the health insurance premiums prior to an employee taking PFL, they are required to continue paying 100% of the premiums while the employee is out on PFL.

HOW DOES FMLA AND NY PFL WORK WITH A BIRTH OF A CHILD WHEN THEY WOULD RUN CONCURRENTLY AND FMLA ALLOWS THE REQUIREMENT OF PTO AND NY PFL DOESN'T?

The use of paid time off accruals during family leave by an employee of an FMLA covered employer is governed by the FMLA. An employer covered by the FMLA (29 U.S. Code Chapter 28) that designates a concurrent period of family leave under section 380-2.5(g) of this Part may charge an employee's accrued paid time off in accordance with the provisions of the FMLA.

WHAT ARE EXAMPLES OF SITUATIONS WHERE AN EMPLOYEE MAY BE PROTECTED BY NY PFL BUT NOT BY FMLA (ASSUMING EMPLOYER IS SUBJECT TO FMLA)?

There are different eligibility criteria between FMLA and NY PFL, which would need to be determined independently of each other, as well as different covered reasons for leave.

IS FMLA NOW IRRELEVANT?

No, there are different reasons for leave covered by FMLA which are not covered by NY PFL and vice versa. There are also separate eligibility criteria as well for each benefit therefore one does not negate the other.

IF AN EMPLOYEE IS TAKING INTERMITTENT FMLA TO CARE FOR AN ELDERLY PARENT, DOES THE EMPLOYEE HAVE TO RECERTIFY TO APPLY FOR NY PFL?

The employee must provide a certification for the NY PFL leave request. Employers cannot require the employee to recertify for FMLA outside of the recertification period as allowed under the FMLA regulation.

YOU STATED THAT THE MEDICAL CAN BE "SUSPENDED" WHILE OUT AND BE REINSTATED UPON RETURN. DOES THE EMPLOYEE HAVE TO PAY FOR COVERAGE ARREARS FOR WHILE THEY WERE OUT?

Employees would not pay back premium for a period of time on family leave, for which the employee opted not to pay its insurance premiums. Premiums would commence when the employee (and its dependents) rejoined the plan.

IF AN EMPLOYEE DOES NOT PAY THEIR PREMIUM WHILE OUT AND THE COVERAGE IS DROPPED, CAN THEY RE-ENROLL ONCE THEY RETURN?

Yes, if health insurance coverage lapses because an employee has not made the required premium payments, upon the employee's return from paid family leave, the employer must restore the employee to coverage/benefits equivalent to those the employee would have had if paid family leave had not been taken and premium payment(s) had not been missed, including family or dependent coverage.

If an employee chooses not to retain health plan coverage during paid family leave, upon the employee's return from paid family leave, the employee shall be reinstated into the health plan on the same terms the employee had prior to taking leave.

IF THE EMPLOYEE OPTS TO USE PTO, WOULD THE NY PFL TIME START BEING TRACKED AT THE BEGINNING OF THE PTO TIME OR AFTER THE PTO RUNS OUT?

An employer may offer an employee the option to use vacation, PTO or personal leave time available, and receive full salary, before initial receipt of family leave benefits. An employer that pays the full salary during the period of family leave may seek reimbursement for the amounts paid. If the employer does so, this time during which the employee takes vacation, PTO, or other personal leave at full salary will count toward the NY PFL benefit period. The employee would be entitled to all PFL protections – job, non-discrimination, and health insurance.

WHAT OTHER PROTECTIONS ARE THERE FOR EMPLOYEES WHO TAKE PAID FAMILY LEAVE?

An employer may not retaliate or discriminate in any way against employees for taking Paid Family Leave.



PFL and Other Employer-sponsored Coverage/Leaves

DOES NYS STATUTORY DBL AND STD GET DEDUCTED FROM THE \$653 EACH WEEK?

NY DBL and NY PFL are separate benefits for separate claims, they may not be claimed at the same time.

Regarding STD, carriers raised the issue of the likely scenario of an employee potentially receiving an excess of the 26 weeks maximum DBL/PFL combined benefit period within the 52-week period, as a result of separate coverage under an employer STD policy or other employer-sponsored leave program. The NY Workers' Compensation Board advised that these are concerns that will not be addressed by State rule, rather employers will need to work out how to address any concerns of this nature themselves and with their carriers, if necessary. For instance, there was discussion that carriers may want to consider re-filing their STD forms nationwide to include an offset provision for PFL.

IF FMLA AND NY PFL ARE RUNNING CONCURRENTLY, CAN YOU REQUIRE THE EMPLOYEE TO USE PTO?

An employer covered by the FMLA that designates a concurrent period of family leave under NY's Paid Family Leave law may charge an employee's accrued paid time off in accordance with the provisions of the FMLA. But note, other than when the FMLA claims runs concurrently with the NY PFL claim, an employer cannot compel an employee to use their available PTO in lieu of filing for NY PFL benefits. Rather, the employer must give the employee the choice (option) to use PTO or NY PFL, and, regardless of whether the employee chooses to use PTO, the employee is only entitled to 8 weeks of NY PFL (in 2018); therefore, the time used and paid for through PTO would count against the employee's 8-week benefit.

IF AN EMPLOYEE WOULD LIKE TO SUPPLEMENT THEIR PAY ON PFL BY USING THEIR PTO TO COVER THE DIFFERENCE, IS AN EMPLOYER REQUIRED TO DO THIS? MUST EMPLOYEES USE PAID TIME OFF FIRST BEFORE PFL KICKS IN OR CAN THEY USE PFL AND SAVE PTO?

IF THE EMPLOYEE OPTS TO USE THEIR PTO, WOULD THE NY PFL TIME START BEING TRACKED AT THE BEGINNING OF THE PTO TIME OR AFTER THE PTO RUNS OUT?

An employee may choose, but cannot be required, to use accrued and available vacation or other paid time off to receive a full salary while on family leave (in lieu of the paid family leave benefit). The employer must give the employee the choice (option) to use accrued PTO or NY PFL. It is important to note that regardless of how the employee chooses to be paid, the employee is only entitled to 8 weeks of NY PFL in a 52- consecutive week period; therefore, the time used and paid for through PTO could count against the employee's 8-week benefit. An employer that pays the full salary during the period of family leave may seek reimbursement from its PFL carrier for the amounts paid. If the employer does so, this time during which the employee takes vacation, PTO, or other personal leave at full salary will count toward the NY PFL benefit period.

CAN AN EMPLOYEE USE A FULL DAY PTO AND COLLECT 50% OF THEIR SALARY THROUGH PFL FOR THE SAME DAY OF WORK?

No. An employer could request reimbursement from their PFL carrier for any amount they have paid the employee for time off that counts toward the PFL leave benefit period up to the maximum benefit amount allowed by NY PFL. The employee would have no claim directly to the carrier for additional monies. Employers should closely monitor employee requests with the carrier if they are currently paying the employee with PTO.

DOES PTO ACCRUE WHILE EMPLOYEES ARE OUT ON PFL?

PTO cannot be accrued while an employee is on PFL leave. Employers may opt to allow accrual.

IF AN EMPLOYEE USES THEIR PTO, SHOULD THEY WAIT TO APPLY FOR PFL UNTIL AFTER PTO IS USED?

No, the employee should submit the request for leave indicating a leave date following the employee's use of their accrued PTO time.

IF OUR ALREADY ESTABLISHED COMPANY POLICY IS MORE COMPREHENSIVE THAN THE NY STATE POLICY AND OFFERS BETTER BENEFITS, WILL A COMPANY BE REQUIRED TO HOLD THIS POLICY/FOLLOW THE NY POLICY?

Covered employers are still required to have PFL coverage. We recommend that employers review all of their existing leave policies to see what impact NY PFL will have.

EMPLOYER HAS A GENEROUS PAID PARENTAL LEAVE POLICY (4 WEEKS @ 100% WITH 60% FOR NEXT 4 WEEKS). WILL EMPLOYER BE REIMBURSED UP TO PFL MAXIMUM IF EMPLOYEE IS 100% PROTECTED?

Yes, the employer could request reimbursement from their PFL carrier for any amount they have paid the employee for time off that counts toward the PFL leave benefit period up to the maximum benefit amount allowed by NY PFL.

CAN AN EMPLOYEE REQUEST NY PFL AFTER THE STD BENEFIT PERIOD ENDS?

Yes. Carriers raised the issue of an employee being able to receive an excess of the 26 weeks maximum DBL/PFL combination benefit within the 52-week period from the commencement of the DBL or PFL benefit, which may result from separate coverage under an employer STD policy or other employer-sponsored leave program. The NY Workers' Compensation Board advised that these are concerns employers will need to work out themselves and with carriers, if necessary. For instance, there was discussion that carriers may need to re-file their STD forms nationwide to include an offset for PFL.

HOW DOES PFL INTERACT WITH AN EMPLOYER COLLECTIVE BARGAINING AGREEMENT?

Nothing in the law may diminish the rights, privileges, or remedies of any employee under any collective bargaining agreement or employment contract. In the case of unionized workplaces, where Collective Bargaining Agreements (CBAs) provide family leave benefits and protections "at least as favorable" as the state-mandated benefit, employers do not have to provide the NY PFL benefit to CBA-covered employees.



Per the PFL Regulations, a CBA may include rules regarding but not limited to the following:

- that employees are permitted to collectively establish their eligibility for PFL benefits through actual time worked at any employer covered by the CBA, so long as the time period for eligibility is not greater than as required by section 203 of the Workers' Compensation Law; and
- that the union may be responsible for all time records and payroll deductions related to the administration of the PFL.

It is recommended employers review CBAs covering persons employed in New York to assess what impact, if any, the NY PFL may have on contractual obligations, and consider whether to address PFL-related terms in contracts to be negotiated going forward.

Policy Language / Poster & Other Employer Notices

WILL GUARDIAN PROVIDE THE REQUIRED CLAIM AND CERTIFICATION FORMS ONCE AVAILABLE?

Guardian will provide all necessary request for leave and certification forms and the PFL poster notice once finalized by the NY Workers' Compensation Board. Guardian will also maintain these items on its Guardian Anytime site.

DO EMPLOYERS HAVE ADDITIONAL NOTICE OBLIGATIONS TO ITS EMPLOYEES? (HANDBOOK, POSTER)

Employer Policies: New York employers and employers with employees in New York should review their existing paid time off, leaves of absence and family and medical leave policies. These policies may need to be revised to comply with the new paid family leave program.

Employee Handbook: If a covered employer maintains written guidance for employees concerning employee benefits or leave rights, such as in an employee handbook, information concerning leave under PFL and employee obligations under PFL must be included in the handbook or other written guidance.

Written notice: Employers must provide employees who take eight or more consecutive days of family leave with a written notice of their rights under the new law. If a covered employer does not have written policies, manuals, or handbooks describing employee benefits and leave provisions, the employer must provide written guidance to each of his or her employees concerning all of the employee's rights and obligations under PFL, including information on how to file a claim for paid family leave.

NY PFL POSTER: Employers will be required to conspicuously post and keep posted a notice in the workplace to indicate their compliance with the PFL requirements.

IS THERE A TEMPLATE OF THE "POSTER" FOR THE POSTING REQUIREMENT?

The PFL poster template is not available yet. As soon as the NY WCB makes it available, we will share it with our customers and post it on our Guardian Anytime website.

WILL GUARDIAN SIMPLY BE ADDING PFL TO ALL OF ITS DBL POLICIES OR LETTING THE INSURED/BROKER DECIDE? HOW IS THAT BEING HANDLED?

Guardian will automatically be adding PFL as a rider to our existing DBL policies.

DO YOU HAVE SAMPLE PFL RIDER LANGUAGE READY FOR REVIEW YET?

The NY DFS released its PFL Rider language template the last week of July, and carriers are required to submit it to DFS for approval by September 15. The DFS' template can be accessed on the DFS website. Guardian will be able to share its Rider once approved by DFS.

WILL THERE BE POSTER EMPLOYERS MUST DISPLAY SIMILAR TO DBL?

Yes. By 1/1/18, employers must post and maintain notices in a conspicuous place or places printed and in a form approved by the Chair of Financial Services stating that the employer provides for the payment of family leave benefits as required by law. Guardian anticipates that the NY DFS or NY WCB will release A Notice of Compliance for PFL (akin to the employer public posting of DBL).



New York has already published explanatory material concerning the NY PFL Law, which can be found at <https://www.ny.gov/programs/new-york-state-paid-family-leave>. During the remainder of 2017, employers should consult the State website for a copy of the requisite State-disseminated notice advising employees of their rights under the NY PFL Law.

ARE THERE ANY ADDITIONAL EMPLOYER NOTICE OBLIGATIONS REGARDING THE AVAILABILITY OF PFL?

Yes. If an employee is absent from work due to family leave for more than eight consecutive days, the employer must provide the employee with a written statement of the employee's rights under this article in a form prescribed by the Chair of Financial Services. The statement shall be provided to the employee within five business days after the employee's seventh consecutive day of absence due to family leave or within five business days after the employer has received notice that the employee's absence is due to family leave, whichever is later.

Miscellaneous

WILL GUARDIAN NOTIFY EXISTING DBL GROUPS OF UPCOMING PFL LAW?

Yes. We're notifying existing DBL groups of PFL via webinars, emails, direct mailings and through our broker partners.

WHAT HAPPENS IF ALL CARRIERS LOSE MONEY?

Impossible to say at this point. As of right now, Guardian's focus is on being able to properly administer PFL as of 1/1/18 and service our customers coverage needs to the best of our ability.

The paid family leave legislation anticipates that an economic downturn may affect the economic feasibility of implementing the law and allows the Superintendent of Financial Services to delay the scheduled increases in the paid leave benefits based upon several factors, including the current cost to employees of the paid leave benefits (because the benefits are financed by deductions from their pay), the availability of insurance policies providing paid leave benefits, and the impact of the benefit increase on employers' businesses.

DO OTHER STATES HAVE PAID FAMILY LEAVE?

New York will now join California, Rhode Island, and New Jersey as the only states in the nation that provide a Paid Family Leave benefit. A few others are, however, considering passing similar laws. When fully implemented, New York will have the longest and most comprehensive Paid Family Leave program in the nation.

IS NEW YORK INCREASING THE DBL COVERAGE AMOUNT FROM \$170 A WEEK?

THE MAXIMUM BENEFIT FOR NYDBL IS WELL BELOW THE POVERTY LEVEL AND HASN'T BEEN UPDATED IN YEARS. IS THE PFL BENEFIT FOR THAN DBL, AND IF SO, WILL NY BE UPDATING THE DBL BENEFIT?

ARE YOU AWARE OF ANY PENDING CHANGES TO DBL BENEFITS IN LIGHT OF THE ADDITION OF PFL?

Carriers have been advised by the NY Department of Financial Services that there is no current plan to increase the weekly DBL benefit, despite the clear likelihood a mother would make a claim for the higher PFL benefit following the birth of a child.

For more information, you can visit the state of New York's Paid Family Leave website at www.ny.gov/paidfamilyleave.

The information presented on this site is a general overview of New York's Paid Family Leave law and its implementing regulations and is not intended to serve, nor should it be used, as legal advice.

Materials will be periodically updated to remain current.

Planholders/employers are advised to consult with appropriate legal and tax counsel to determine the impact on their business and their compliance responsibilities. In the event of any conflict between the information on this site and the relevant insurance policy and NY Law and Regulations, the policy and NY Law and Regulations shall control.

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