

PAID FAMILY LEAVE NEW YORK

Guide for Employers

ABCs of PFL

Paid Family Leave Benefits Law

Your in-depth, go-to guide for all things PFL:

PFL Basics

Eligibility

Claims

Benefits

Premium

Employer Responsibilities

Tips from your PFL Experts

...and more!

Information updated for 2021

PAID FAMILY LEAVE NEW YORK

NY PFL (New York State Paid Family Leave Benefits Law)

What's in This Guide

Have you tried reading through the NY Paid Family Leave regulations? Then chances are, you'll have gotten at least one or two headaches trying to decipher the language – and more importantly – what it really means for you. Paid Family Leave may seem complicated, but don't worry – we're here to help!

In this guide we break down all the important things to know about Paid Family Leave, how it may impact you, and put it all in one spot so you don't have to go digging through a mountain of information.

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PFL Expert Tip:

Be on the look-out for these through-out this guide. These are special tips from your PFL Experts at ShelterPoint!

Paid Family Leave Basics

Here's what you need to know

What is Paid Family Leave (PFL):

In January 2018, Paid Family Leave (PFL) became a mandatory benefit in New York providing paid time off to employees to bond with a new child, care for a seriously sick family member, or address family matters due to a qualifying military exigency while their job is protected. PFL is a rider to your statutory short-term disability (DBL) policy – unless you self-fund or your business is exempt. Here's the top things to know about this mandate:

- PFL provides more than just a monetary benefit – it provides **job security** for employees out on paid leave, similar to unpaid leave under FMLA, but regardless of the size of the employer.
- Paid leave can be taken in **full-day** increments and – unlike DBL – in **intermittent** intervals, such as every other Monday. You can **not** use PFL in hourly or partial day increments.
- There is **no “waiting period.”**
- **30 days advanced employer notice** is required **for foreseeable leave**. If this is not possible due to the circumstances (such as an accident or heart attack), then the notification needs to be given as soon as practicable (possible).
- If a qualifying event stretches over more than 52 consecutive weeks, a new request must be submitted before the next 52-week period begins.
- If the gap between leave dates is more than 3 months, a new claim package will need to be completed and submitted to your insurance carrier.
- The benefit amount that is in effect at the time the leave began applies to the full duration of the paid leave for that event, even if a new calendar year with increased benefit levels falls within that period.
- An employee **can't take DBL and PFL at the same time**, i.e., receive benefits for both concurrently. They have to be taken in sequence, and if the employee qualifies for both, the combined duration may not exceed 26 weeks in a consecutive 52-week period.
- An employer cannot require employees to exhaust their accumulated PTO before letting them go out on paid family leave (unless it's an approved FMLA leave).

What PFL Can be Used for

While DBL is for your employee's own nonoccupational injury or illness, **Paid Family Leave is taken to care for/bond with someone else**. There are 3 main categories of qualifying events for which employees may take paid leave:



To provide care for a family member with a qualifying health condition



To bond with a child after birth, adoption, or to welcome a child into foster care



To cope with a military exigency leave event

Let's look at each of these leave types in more detail:



Providing Care

The person receiving care must be a qualified family member with a serious health condition.

Qualified types of care include:

Physical care, emotional support, visitation, assistance in treatment, transportation, arranging for a change in care, assistance with essential daily living matters, personal attendant services, and traveling to pick up medication.

The **employee must be** in close and continuing proximity to the person they're caring for, i.e., the same location.

Who counts as a care-receiving person (family member) for PFL purposes?

- spouse
- domestic partner
- child
- parent
- grandparent
- grandchild

Parent is defined very generously under PFL as:

Biological, foster, or adoptive parent, a legal guardian (or other person who stood in loco parentis to the employee when the employee was a child) as well as **step-parents and in-laws**.

PFL does not cover: brother/sisters, aunts/uncles or friends.

What qualifies as a serious health condition under PFL?

“Serious health condition” means that the person receiving care is unable to work, attend school, perform regular daily activities, or is otherwise incapacitated for at least 4 consecutive days with either:

- at least 2 doctor treatments or
- 1 doctor treatment and a doctor-supervised regimen thereafter

PFL regulations provide specific examples of serious health conditions, including:

- an illness, injury, impairment, or physical or mental condition that involves: inpatient care in a hospital, hospice, or residential health care facility; or continuing treatment or supervision by a health care provider.
- a chronic serious health condition that requires periodic visits for treatment by a health care provider and continues over an extended period of time, including conditions that cause episodic incapacity, such as asthma, diabetes, and epilepsy.
- long-term illness, injury, impairment, or physical or mental condition for which treatment may not be effective and requires continuous supervision of the family member you're caring for, such as Alzheimer's, a severe stroke, or the terminal stages of a disease.
- receiving treatment (including any period of recovery therefrom) by a health care provider for restorative surgery.
- a condition that would incapacitate the family member within 3 days of interrupting treatment, such as cancer (e.g., chemotherapy and radiation), severe arthritis (physical therapy), or kidney disease (dialysis).
- Restorative dental or plastic surgery after an injury or removal of cancerous growths.
- Transplant preparation and recovery from surgery related to organ and tissue donation.

What does not qualify as treatment for a serious health condition under PFL?

- Routine examinations are not considered treatment.
- A regimen or treatment that can be and is initiated without a visit to a health care provider does not qualify for paid leave, such as taking of over-the-counter medications (e.g., aspirin, antihistamines, or salves), bed-rest, drinking fluids, exercise, etc.
- the common cold, the flu, ear aches, upset stomach, minor ulcers, headaches other than migraine, routine dental or orthodontia problems, periodontal disease, etc. (unless complications arise).
- cosmetic treatments, such as most treatments for acne or plastic surgery.



PFL Expert Tip:

What if 2 or more family members work for the same employer and need to care for the same person?

Here are some examples of how that works under PFL:

- 2 brothers Jeff & John can each take 12 weeks to take care of their sick mom
- Art and Mel can each take 12 weeks to take care of their sick child
- Dustin and Alice can each take 12 weeks to take care of dad/dad-in-law

– *But in all cases it's up to the employer whether they can do this at the same time or at different times.*



Bonding Leave for Parents

During what time can employees take paid leave to bond with their new baby?

An employee's entitlement to paid family leave for a birth expires at the end of the consecutive 52-week period beginning on the date of the birth – this applies to dads, too!

- The employee may elect to start with statutory disability benefits from their DBL policy during the immediate post-partum period first and then transition into paid leave benefits.
- DBL and PFL, however, **cannot** be taken for the same time period, and cannot exceed 26 weeks total within a consecutive 52-week period.

How does it work for adoptions or foster care?

The employee's entitlement to paid family leave for adoption or foster care expires at the end of the consecutive 52-week period beginning on the date of the placement or first day of leave taken.

Do any events related to the adoption or foster placement qualify?

Yes, the employee may take paid family leave before the actual placement or adoption of a child if an absence from work is required as part of the process, such as counseling sessions, appearing in court, consulting with attorneys or doctors representing the birth parent, physical examinations, or traveling to another country to complete an adoption.



PFL Expert Tip:

Employees might assume that by submitting their forms ahead of time, it saves time and will help them get paid quicker once they are out on leave, but it actually has the opposite effect! Your insurance carrier can't give a determination on a claim until the employee's leave actually starts - even if they provide everything necessary and their forms are filled out perfectly. There are many factors (such as actual date of leave starting, actual wage information, or required documents such as a birth certificate.) that go into making a determination on an employee's claim, and it's possible that some of these factors could change if they submit their forms too early.

Qualifying Military Exigency

The employee may take paid time off to attend to family matters if a family member is on active duty, called to active duty status, or has been notified of an impending call to active duty in the armed forces of the United States:

- For members of the **Regular Armed Forces**, this means duty with the armed forces of the United States during deployment to a foreign country.
- For members of the **Reserve and National Guard**, this means duty with the armed forces of the United States during deployment to a foreign country under a call or order to active duty in support of a contingency operation, which includes national emergencies.

Who counts as a qualified family member under a military exigency for PFL purposes?

- Spouse
- Domestic partner
- Child
- Parent

The above are defined the same as they are under “Providing Care”.



PFL Expert Tip:

Familiar with FMLA and looking for “Military Caregiver” details? Unlike FMLA, where military-related leave events are grouped in the military section, caring for a wounded or otherwise severely ill service member is implicitly covered by the “Providing Care” section for PFL purposes – along with its applicable definitions of family members and serious health conditions. The military-specific section in PFL regulations, only refers to paid leave triggered by qualifying military exigency events.

PFL Regulations don’t say much about military leave. Am I overlooking anything?

No, that’s correct. PFL regulations don’t provide their own definition, they merely state that PFL benefits “*are based upon a qualifying exigency as interpreted under the Family and Medical Leave Act, 29 U.S.C.S 2612(a)(1)(e) and 29 C.F.R. 825.126(b)(1)–(9).*” In other words, PFL uses FMLA as the chassis for military exigency-related leaves. Therefore, if FMLA rules and definitions change, the same changes apply to PFL.

My group has less than 50 lives – do I still need to study up on FMLA?

That may be a wise decision if you have employees with family members in the military. While you won’t have to coordinate with FMLA, definitions and exigency-specific maximum leave lengths are still defined by the corresponding FMLA section.

How much paid time off may employees take for a qualifying military exigency under PFL?

While overall the same maximum benefit length and amount as for other PFL-qualifying events, some specific exigencies have their own specific maximum durations based on underlying FMLA definitions.





What is considered a “qualifying exigency”?

The current FMLA definition of a “qualifying military exigency” includes*:

Qualifying Exigency	Definition and Examples
Deployments with short notice of 7 days or less	To address issues arising from the short notice. Maximum duration: Up to 7 calendar days (beginning on the day the military member receives the notice).
Financial and legal arrangements	For example, preparing and executing financial and healthcare powers of attorney, enrolling in the Defense Enrollment Eligibility Reporting System (DEERS), obtaining military identification cards, act as the service member’s representative with regards to military benefits, etc.
Counseling	To cope with the psychological stress of the family member’s deployment (for counseling services provided by someone other than a health care provider).
Military events and related activities	For example, ceremonies, events, family support programs, information briefings related to active duty or a call to active duty, etc.
Childcare and school activities	For the military member’s child, such as arranging for alternative childcare ; providing non-routine, urgent/immediate childcare; school or day care enrollment/transfer; and attending pertinent school or day care meetings, etc. It does not cover taking leave to perform ongoing every-day childcare (i.e., becoming the primary caregiver during the deployment) or routine school events (such as parties or plays). <i>The employee taking paid leave does not need to be directly related to the military member’s child – children of the employee’s spouse, child, and parent called to/on active duty qualify.</i>
Parental care	For the military member’s parent who is incapable of self-care, such as arranging for alternative parental care; providing non-routine, urgent/immediate care; care facility admittance/transfer; and attending certain meetings at a care facility or with hospice staff. <i>The employee taking paid leave does not need to be directly related to the military member’s parent – parents of the employee’s spouse, child, and parent called to/on active duty qualify.</i>
Rest and Recuperation	To spend time with the family member who is on Rest and Recuperation leave during covered active duty. Maximum duration: Up to 15 calendar days
Post-deployment activities	For example, reintegration events (such as arrival ceremonies, reintegration briefings/events, and other official ceremonies or programs by the military) that occur up to 90-days after deployment ends or dealing with the death of the family member (including issues arising from the death and attending funeral services).
Additional service related activities	Any other event that the employer accepts as a qualifying exigency and agrees to the timing and duration of the leave.

*29 C.F.R. § 825.126

PFL Benefits

How they're calculated & other requirements

How the PFL Benefit Works

Employees may take paid leave in weekly increments or in daily increments (intermittent leave).

- The maximum length for all PFL-qualifying events from the first day of paid leave and regardless of re-qualifying at a new employer during that period is: 12 weeks (capped at 60 days for intermittent leave) in a consecutive 52-week period.
 - It is based on the calendar year, **not** your policy year.
 - The 52-week period starts with the first day of either DBL taken or paid leave.
- Maximum length for DBL and PFL benefits can't exceed 26 weeks in any consecutive 52-week period.
- Employees may take paid leave for multiple Paid Family Leave events in a consecutive 52-week period as long as the overall leave doesn't exceed the maximum length they may take. For example: bonding and caring. Caring for mom and then for dad. Taking rest and recuperation leave (under military exigency) and then bonding, etc.
- The benefit amount that is in effect at the time the leave begins applies to the full duration of the paid leave event – even if a new calendar year with increased benefit levels falls within that period.
- If the gap between leave dates is more than 3 months, a new claim package will need to be completed and submitted to your insurance carrier.
- Benefits are paid from the insurance carrier to the employee within 18 days of filing a completed claim.
- Benefits paid may be offset by child support deductions.
- Benefits paid to employees are considered taxable non-wage income that **must** be included in federal gross income for tax reporting purposes. (Assuming they receive \$600 or more in a calendar year.)

More on PFL Benefits

Are there circumstances where an employee who's eligible for PFL coverage may not be eligible to receive PFL benefits?

Yes, if the employee is:

- on administrative leave
- receiving sick pay or PTO
- working part of a day: they can't claim that day for PFL to take paid leave (i.e., PFL must be taken in daily increments)
- receiving total disability benefits from a Workers' Compensation claim, voluntary fire fighters or voluntary ambulance worker's benefits that meet/exceed the benefit amount the employee would be entitled to under PFL. If those benefits are less than the PFL benefits they can still file, but the PFL claim will be offset by the other benefits they're receiving.

Weekly Leave

Benefit chart for employees taking paid leave in weekly increments (regardless of full-time or part-time).

Benefit effective date**	Maximum length of Paid Leave	Maximum benefit amount*		
		Payable % of employee's Average Weekly Wage (AWW)	To the maximum % of NY Average Weekly Wage (NYSAWW)	Benefit maximum based on current NYSAWW of \$1,450.17*
January 1, 2021	12 weeks	67%	67%	\$971.61

* NY Department of Labor releases the updated NYSAWW on or about every March 31st of the prior applicable calendar year. The NYSAWW applicable to 2021 is \$1,450.17 = \$75,408.84 per year.

**Please note: Benefits for claims with start dates prior to 2021 are subject to lower benefit levels.

Intermittent Leave

The benefit for employees who take paid leave in daily increments is based on their average number of days worked per week during the last 8 weeks before taking paid leave.

- Number of hours worked during those days has no influence on the maximum benefit.
- The total number of intermittent days is capped at 60 days, even if someone works more than 5 days/week on average.

Benefit stage effective date**	Maximum length of Paid Leave	Maximum average # of days worked/week	Maximum # of intermittent days	Employee's daily benefit	To the Maximum % of NYSAWW	\$ Max based on current NYSAWW of \$1,450.17*
01/01/2021	12 weeks	7	60 days	AWW / days worked	67%	\$971.61

* NY Department of Labor releases the updated NYSAWW on or about March 31st of the prior applicable calendar year. The NYSAWW applicable to 2021 is \$1,450.17 = \$75,408.84 per year.

**Please note: Benefits for claims with start dates prior to 2021 are subject to lower benefit levels.

Here are a few examples to illustrate how intermittent leave is anticipated to work:

Example employee (EE)	EE's AWW	2021 maximum length of Paid Leave	Average # of days worked/week	Maximum # of intermittent days	Average daily wage = AWW / days worked	67% of daily wage	2021 max benefit: 67% of NY's AWW = \$971.61 / days worked	Daily benefit per intermittent leave day
John	\$300	12 weeks*	3 days	36 days	\$100	\$67.00	\$323.87	\$67.00
Jenna	\$1000		5 days	60 days	\$200	\$134.00	\$194.32	\$134.00
Jeff	\$1750		7 days	60 days	\$250	\$167.50	\$138.80	\$138.80

* Assumes that they accumulated at least 20+ hours per week

Concurrent Employers

PFL withholdings are collected from employees at each job - assuming they work for a Covered Employer.

Employees who work for more than one employer may choose to take leave from just one of the employers or all. If taking leave from both/all employers for the same leave event, it must be during the same time period, not consecutively. The total duration of leave cannot exceed 12 weeks in 2021. For example: An employee could take 12 weeks of bonding leave from multiple jobs at the same time. What an employee **can't** take is 12 weeks of bonding at one employer, then another 12 weeks for the same bonding leave at another.

The PFL benefits through each employer are capped at the standard PFL maximum benefit at each job individually. For 2021, this is set at 67% of the employee's average weekly wage (AWW), capped at \$971.61 (67% of 2021 NYSAWW of \$1,450.17). The benefits are not "pooled" towards the cap.

So, while the combined duration can't exceed the maximum of 12 weeks, the combined benefit amount can be higher than the maximum of \$971.61.

Let's look at an example - Janet works 2 jobs and will need to care for her seriously ill Dad (starting in 2021):

Job #1 - Receptionist

Mon-Fri
8:30am-4:30pm
Earns \$900 per week

+

Job #2 - Waitress

Thurs, Fri, Sat.
6:00-11:00pm
Earns \$300 per week

Example scenario	PFL benefit through job #1	PFL benefit through job #2	Total weekly PFL benefit*	Explanation
Needs to care for her seriously ill Dad during the day. Janet's sister cares for him during evening hours.	✓ \$603 per week	✗ \$0 per week	\$603	Since her sister is caring for their dad at night, Janet would be entitled to take PFL from just Job #1.
Needs to care for her seriously ill Dad around-the-clock.	✓ \$603 per week	✓ \$201 per week	\$804	Janet would be entitled to take PFL from both jobs, receiving 67% of her salary at each job.

This example assumes Janet has met all eligibility and qualification period requirements for both jobs.



How to calculate how much time employees can take:

To calculate how many weeks, or intermittent days an employee takes off, you need to look at the average number of days the employee worked in the prior 8 weeks before Paid Family Leave begins:

Average # of days worked per week	Benefit maximum (in weeks)	Maximum number of intermittent days
1	12	12
2	12	24
3	12	36
4	12	48
5	12	60
6	12	60
7	12	60

How to calculate the average weekly wage for benefit/claims purposes:

To calculate the average weekly wage for an employee in order to determine what benefit amount they can expect, look to the previous 8 weeks with the same employer that has been collecting the employee's PFL contribution (or if less than 8 weeks with that employer, the portion thereof):

1. Add up total wages from all 8 weeks (or portion) immediately preceding paid family leave
 - a. To the last day worked prior to the first day of paid family leave; or
 - b. excluding the week in which the paid family leave began, whichever is the higher amount will be used for PFL benefit calculation purposes
2. Divide by 8 (or portion)

How does PFL work for business owners and self-employed people with voluntary coverage?

- **Business owners:**

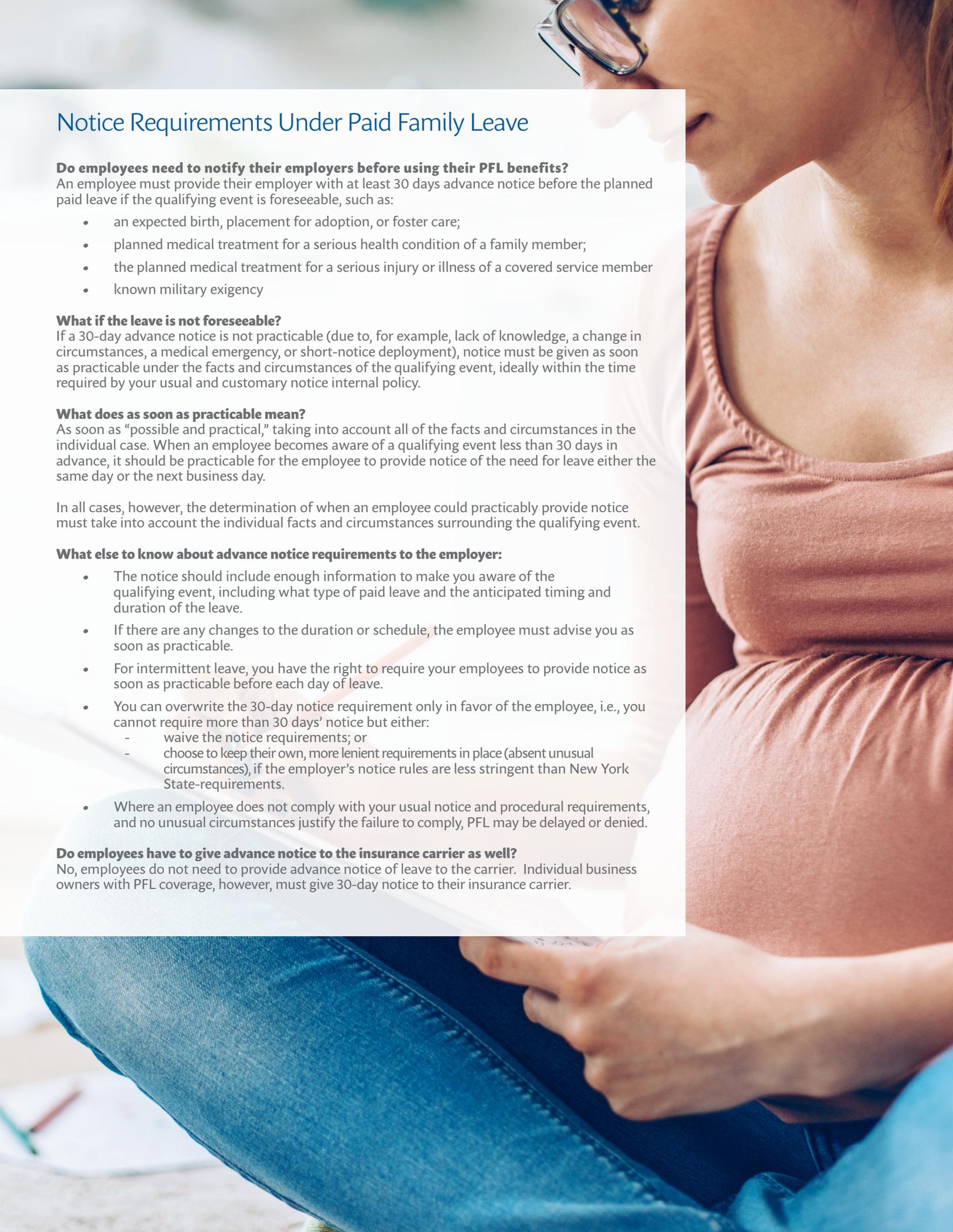
- For individual business owners without employees but who have voluntary coverage, their average weekly wage is determined as follows:
 - Take the total net income in the 52-week period immediately preceding paid family leave and divide those total wages by 52

- **Self-employed people:**

- Take the person's earnings subject to federal self-employment tax for the previous full calendar year and divide by 52
- If there is not 52 weeks of self-employment income for the previous full calendar year, use the following calculation:
 - Add the person's wages and self-employment income for the previous calendar year and divide by 52

What forms of wages count for the calculation?

All reported wages including commissions, bonuses, overtime, tips, etc.

A pregnant woman wearing a white lab coat and glasses is looking down at a document she is holding. She is wearing a reddish-brown top. The background is a soft-focus office setting.

Notice Requirements Under Paid Family Leave

Do employees need to notify their employers before using their PFL benefits?

An employee must provide their employer with at least 30 days advance notice before the planned paid leave if the qualifying event is foreseeable, such as:

- 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
- known military exigency

What if the leave is not foreseeable?

If a 30-day advance notice is not practicable (due to, for example, lack of knowledge, a change in circumstances, a medical emergency, or short-notice deployment), notice must be given as soon as practicable under the facts and circumstances of the qualifying event, ideally within the time required by your usual and customary notice internal policy.

What does as soon as practicable mean?

As soon as “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.

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.

What else to know about advance notice requirements to the employer:

- The notice should include enough information to make you aware of the qualifying event, including what type of paid leave and the anticipated timing and duration of the leave.
- If there are any changes to the duration or schedule, the employee must advise you as soon as practicable.
- For intermittent leave, you have the right to require your employees to provide notice as soon as practicable before each day of leave.
- You can overwrite the 30-day notice requirement only in favor of the employee, i.e., you cannot require more than 30 days' notice but either:
 - waive the notice requirements; or
 - choose to keep their own, more lenient requirements in place (absent unusual circumstances), if the employer's notice rules are less stringent than New York State-requirements.
- Where an employee does not comply with your usual notice and procedural requirements, and no unusual circumstances justify the failure to comply, PFL may be delayed or denied.

Do employees have to give advance notice to the insurance carrier as well?

No, employees do not need to provide advance notice of leave to the carrier. Individual business owners with PFL coverage, however, must give 30-day notice to their insurance carrier.



PFL Premium

Rate structure & withholding

Rate

The PFL rate is set by NY State and can be adjusted on an annual basis effective January 1. Updated rates are set and announced by New York State on or about September 1 of each year for the following calendar year.

Employee's 2021 maximum contribution
as a % of their annualized AWW*:

0.511%

Capped at **\$385.34** per year.*

Rating Mechanism:

Community rate as a percent of salary regardless of gender, age, or other factors.

Rate: There is no fixed rate as it is a percent of the employee's salary. The 2021 maximum contribution rate for Paid Family Leave is 0.511% of the employee's annualized wages capped at the annualized New York State Average Weekly Wage (NYSAWW) of \$75,408.84 per year,* which means the maximum annual contribution from any employee for Paid Family Leave is **\$385.34 per year.**

Withholding

Do I have to withhold from employees? And how much can I withhold?

You must pay the premium for your entire group whether you withhold from employees or not. While PFL is considered an employee-funded coverage, you do not have to collect weekly employee contributions.

However, if you choose to,

- you may not collect more than the allowable maximum contribution for PFL through payroll deductions. If you do, you must return the excess amount to the employee – see the chart on the next page for sample maximum contribution calculations.
- You can't retroactively collect payroll deductions for Paid Family Leave.
- Withholdings are post-tax, i.e., deducted from an employee's after-tax wages.



PFL Expert Tip:

PFL Expert Tip: Even if you recoup PFL premiums via PFL contributions from your employees, you're the one remitting the actual PFL premium to your insurance carrier.

Want to see about how much PFL will cost your business? Estimate your PFL premium at www.shelterpoint.com/pfl

*NY Department of Labor releases the updated NY Average Weekly Wage (NYSAWW) on or about March 31. The current NYSAWW applicable to 2021 is \$1,450.17 = \$75,408.84 per year.



Here are a few examples of how the withholdings are intended to work (for illustration purposes only):

Example Employee	Annual Income	Typical Weekly Income <i>(not including bonus)</i>	2021 Maximum Contribution Rate	Annual Contribution	Typical Weekly Contribution	Bonus Week Contribution	Last Contribution Week in 2021
John	\$50,000	\$961.54	0.511% of annual income, capped at \$385.34	\$255.50	\$4.91	N/A	52
Jenna	\$80,000	\$1,538.46		\$385.34	\$7.86	N/A	50
Jeff	\$80,000 + \$50,000 bonus in February	\$1,538.46		\$385.34	\$7.86	\$263.36	17

Let's look at a further break-down of how the withholding works specifically for Jeff in 2021:

Week	Wages	Weekly Contribution	Cumulative Contribution
1	\$1,538.46	\$7.86	\$7.86
2	\$1,538.46	\$7.86	\$15.72
3	\$1,538.46	\$7.86	\$23.58
4	\$1,538.46	\$7.86	\$31.44
5	\$1,538.46	\$7.86	\$39.3
6	\$1,538.46	\$7.86	\$47.16
7	\$1,538.46	\$7.86	\$55.02
8	\$51,538.46	\$263.36	\$318.38
9	\$1,538.46	\$7.86	\$326.24
10	\$1,538.46	\$7.86	\$334.96
11	\$1,538.46	\$7.86	\$341.96
12	\$1,538.46	\$7.86	\$349.82
13	\$1,538.46	\$7.86	\$357.68
14	\$1,538.46	\$7.86	\$365.54
15	\$1,538.46	\$7.86	\$373.40
16	\$1,538.46	\$7.86	\$381.26
17	\$1,538.46	\$4.08	\$385.34
18	\$1,538.46	\$0.00	\$385.34

Jeff has a base salary of \$80,000. Jeff's typical weekly income is based on his base salary (not his total annual income) to calculate his typical weekly contribution: $\$1,538.46 \times 0.511\% = \7.86 . Without a bonus, he would meet his annual maximum contribution in the Fall, and not have any further withholdings for the rest of the year.

But Jeff landed a big international account in February, worth a \$50,000 bonus. This changes things! His contribution in the bonus week now jumps to \$263.36 (bonus plus typical weekly income times 0.511%). Due to the contribution spike in this week, he now pays his maximum contribution much sooner, in spring, and thereby doesn't need to render any further PFL contributions for the remainder of the year, no matter how many additional deals (bonuses) he lands. See chart for details.

In summary:

PFL withholding can be a challenge, especially for employees whose compensation varies from week to week. The main thing to keep in mind is: if you decide to take deductions from your employees, by the end of 2021, you want to have collected 0.511% of annual wages capped at 0.511% of the annualized NYSAWW of \$75,408.84, or **\$385.34**.

Other things to know about withholding and contributions:

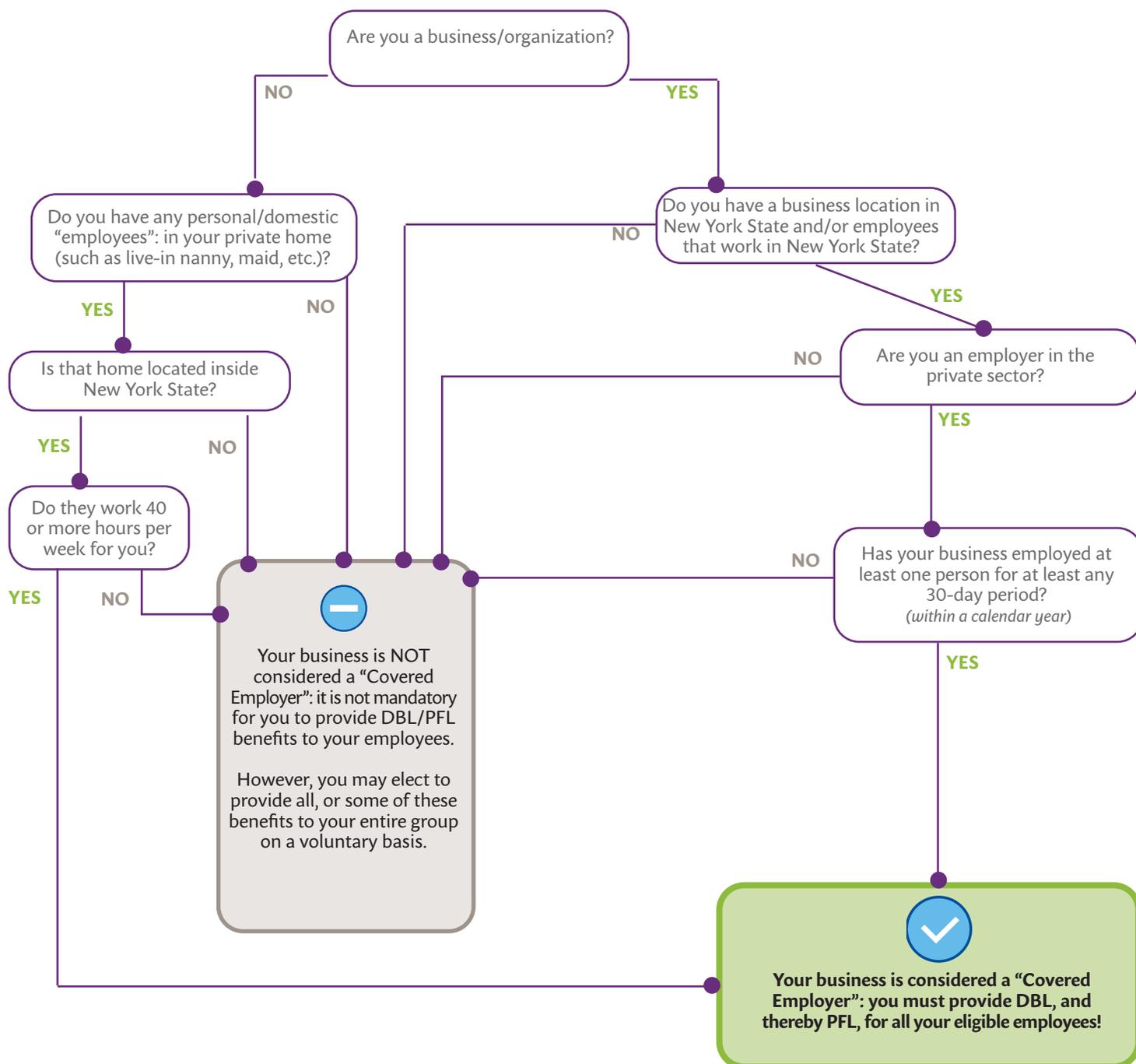
- Since PFL is a part of DBL, both coverages will typically be billed together. If you only submit a partial premium payment to your insurance carrier, your amount paid will be split between both the DBL policy and the PFL rider and any cancellation resulting from unpaid premium balances will apply to both as well.
- You can't retroactively collect payroll deductions for Paid Family Leave. (Except when a waiver is revoked.)
- If you don't provide a Paid Family Leave policy but collect payroll deductions from employees, you must refund those payroll deductions taken from employees.
- You as the employer may seek reimbursement for PFL while your employee is out on salary continuation – just like with DBL.
- You can choose to collect DBL and PFL employee contributions from an employee who is out on DBL or PFL.
- You cannot collect PFL contributions for an employee who is not yet eligible for PFL while that employee is out on DBL.



PFL Eligibility

Covered Employers, exemptions, & voluntary coverage

Is your Business Considered a “Covered Employer”?



Who do I Have to Cover? Who is Eligible for Coverage?

Any person providing services to a private sector business may be deemed an employee and must be covered under DBL and PFL – even part-timers and college students meeting the following criteria:

- **Full-time employees** (*persons working 20+ hours/week*): employed at least 26 consecutive weeks at your business.
- **Part-time employees** (*persons working less than 20 hours/week*): completed at least 175 work days for you.
- **Personal or domestic employees**: work at least 40 hours a week (if they work 30 or more days in a calendar year for you).

Who is considered a personal/domestic employee?

Chauffeurs, nannies, home health aides, nurses, babysitters, maids/live-in maids, cooks, housekeepers, laundry workers, butlers, companions, and gardeners who work in a private household.

Are There any Exclusions?

Since Paid Family Leave is added to the DBL policy as a rider, it applies to any entity currently considered a “Covered Employer” under DBL (typically, private sector organizations with at least 1 employee who works in NY for at least 30 days in a year). On the flipside, the same exemptions and exclusions apply as for DBL:

- **DBL-exempt employers are exempt from PFL as well.** This means they are exempt altogether from providing coverage to their employees – but they can choose to provide voluntary coverage.
- **Employee classes excluded from DBL are excluded from PFL as well.** Some Covered Employers may have workers who are excluded classes/occupations. In such cases, all other eligible employees must still be covered under DBL/PFL while the employer can choose to cover specific classes of excluded employees by applying for voluntary coverage.
- In either situation, voluntary coverage is not on the individual level but must be extended to at least an entire class.

Even though the Covered Employer must have DBL/PFL coverage in place, certain classes aren’t automatically included under the DBL/PFL policy because they are excluded under the law. These classes may become covered under a Covered Employer’s policy, if the employer so chooses.

Excluded Occupations/Classes of Employees:

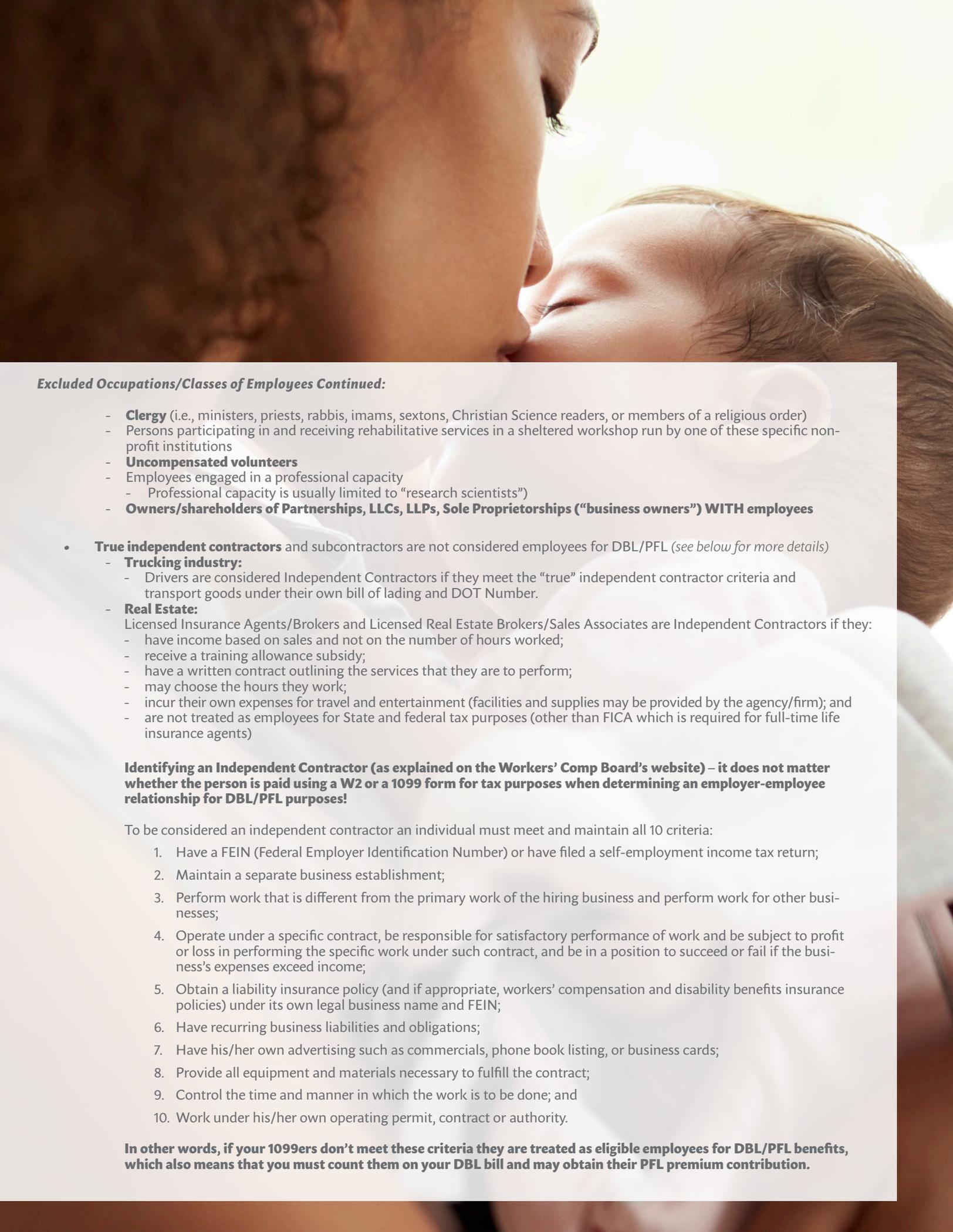
- **Daytime students** in an elementary or secondary school who work part-time
 - High School Students: employees in regular attendance during the day as a student in an elementary or secondary school who work **part-time** during all or any part of the school year or regular vacation periods.
 - If the high school student is a full-time employee, he/she is automatically covered under the Covered Employer’s policy.
- Minor children of the employer
- **“Extra Employees”** (so identified because they are normally not in the labor market but are hired to do work for a limited, special period of time; after 45 days, however, they become eligible for DBL).
- “Casual Employees” (so-called because they normally work in a different occupation and are hired for a day or less)
- Government, railroad and maritime workers
- Golf caddies
- Black car operators covered by the Black Car Operator’s Fund
- Livery drivers covered by the Independent Livery Disability Benefits Fund
- Jockeys (including apprentice jockeys, exercise persons, or other employees of a licensed horse trainer/owner) who are covered by the NY Jockey Injury Fund
- **Certain classes of employees at incorporated non-profit 501(c)3 religious, charitable or educational institutions**, such as day care centers, church preschools, charities, etc.:
 - **Executive officers**
 - Employees in a **teaching capacity** (meaning creating lesson plans, classroom instruction)
Ex: Teacher Aids are not usually classified as working in a teaching capacity, so they’d be covered, but a head teacher in a day care setting at a non-profit would be excluded because they likely are providing classroom instruction, and drafting lesson plans

Please Note: “Service as farm laborers” is **no longer excluded** from statutory disability (DBL) and Paid Family Leave (PFL) coverage effective January 1, 2020. This includes employees or crew who cultivate the soil, raise or harvest agricultural commodities, as well as shearing, caring for and management of livestock, poultry or dairy.



PFL Expert Tip:

In a for-profit business, teachers are covered!



Excluded Occupations/Classes of Employees Continued:

- **Clergy** (i.e., ministers, priests, rabbis, imams, sextons, Christian Science readers, or members of a religious order)
 - Persons participating in and receiving rehabilitative services in a sheltered workshop run by one of these specific non-profit institutions
 - **Uncompensated volunteers**
 - Employees engaged in a professional capacity
 - Professional capacity is usually limited to “research scientists”
 - **Owners/shareholders of Partnerships, LLCs, LLPs, Sole Proprietorships (“business owners”) WITH employees**
- **True independent contractors** and subcontractors are not considered employees for DBL/PFL (*see below for more details*)
 - **Trucking industry:**
 - Drivers are considered Independent Contractors if they meet the “true” independent contractor criteria and transport goods under their own bill of lading and DOT Number.
 - **Real Estate:**
Licensed Insurance Agents/Brokers and Licensed Real Estate Brokers/Sales Associates are Independent Contractors if they:
 - have income based on sales and not on the number of hours worked;
 - receive a training allowance subsidy;
 - have a written contract outlining the services that they are to perform;
 - may choose the hours they work;
 - incur their own expenses for travel and entertainment (facilities and supplies may be provided by the agency/firm); and
 - are not treated as employees for State and federal tax purposes (other than FICA which is required for full-time life insurance agents)

Identifying an Independent Contractor (as explained on the Workers’ Comp Board’s website) – it does not matter whether the person is paid using a W2 or a 1099 form for tax purposes when determining an employer-employee relationship for DBL/PFL purposes!

To be considered an independent contractor an individual must meet and maintain all 10 criteria:

1. Have a FEIN (Federal Employer Identification Number) or have filed a self-employment income tax return;
2. Maintain a separate business establishment;
3. Perform work that is different from the primary work of the hiring business and perform work for other businesses;
4. Operate under a specific contract, be responsible for satisfactory performance of work and be subject to profit or loss in performing the specific work under such contract, and be in a position to succeed or fail if the business’s expenses exceed income;
5. Obtain a liability insurance policy (and if appropriate, workers’ compensation and disability benefits insurance policies) under its own legal business name and FEIN;
6. Have recurring business liabilities and obligations;
7. Have his/her own advertising such as commercials, phone book listing, or business cards;
8. Provide all equipment and materials necessary to fulfill the contract;
9. Control the time and manner in which the work is to be done; and
10. Work under his/her own operating permit, contract or authority.

In other words, if your 1099ers don’t meet these criteria they are treated as eligible employees for DBL/PFL benefits, which also means that you must count them on your DBL bill and may obtain their PFL premium contribution.

Exempt Employers:

There are employers who do NOT meet the definition of “Covered Employers” and thus are not required to have a DBL/PFL policy in place. This type of employer is not considered a Covered Employer and coverage is not required for any employees, but the employer may choose to obtain coverage for a specific class or classes of employees.

- Exempt employers can choose to extend voluntary coverage to all employees or select classes.
- Covered Employers with workers who fall into excluded classes (as listed above) can choose to provide voluntary coverage to some or all classes of excluded employees.

In either case, voluntary coverage is not on the individual level but must be extended to an entire class.

- **Public Employers:** New York State, any political subdivision of NY State, a public authority or any other governmental agency or instrumentality thereof. This is the **ONLY** type of employer that can opt to provide DBL only, PFL only, or a combined DBL/PFL policy. **Examples of public employers:**
 - School District
 - Water District
 - Fire District
 - Municipality
 - Public Authority
 - Public Library (excluding association libraries)
 - Town of XYZ
 - Village of XYZ
 - City of XYZ
 - State of New York
- **Owners/Shareholders of Partnerships, LLCs, LLPs, Sole Proprietorships (“business owners”) without employees**
 - They can apply to become a Covered Employer and be endorsed onto the DBL/PFL policy through voluntary coverage.
 - If an employee is hired, the employer becomes a “Covered Employer” 4 weeks after the 30th day of such employment, and a policy must be in place by this deadline to ensure compliance.
- **Owners/shareholders of a Corporation with 1 or 2 officers** who own all the stock of the corporation and have no employees
- **Domestic Employer** whose only employees are domestic workers that work less than **40 hours** per week for the household and do not live on premise
 - A domestic employee/worker is a chauffeur, nanny, home health aid, nurse, babysitter, maid, cook, housekeeper, laundry worker, butler, companion, and/or gardener that works in a private household.
- **Native American Enterprises**
 - Disability benefits insurance coverage is not required for Native American enterprises owned by the Native American tribe itself (i.e., Casinos) -- (the Native Americans and non-Native Americans working at the enterprise may be covered voluntarily). If, however, the enterprise is not owned by the tribe, but instead is owned by an individual, partnership, corporation etc., then the enterprise must abide by the regular New York State coverage requirements for disability benefits insurance.



Voluntary Coverage

Sole Proprietors and members of an LLC/LLP (or any other self-employed people) **may obtain voluntary DBL/PFL coverage for themselves** effective January 1, 2018, or within 26 weeks of forming the above type of business or becoming a member of an LLC/LLP.

- If they miss those dates, they may still obtain voluntary coverage for themselves and be endorsed onto the policy. They are, however, subject to a 2-year waiting period for PFL benefits, during which the regular community rate for PFL must be paid.
- If their business is considered a Covered Employer, owners must still provide coverage for their employees – even if they don’t want coverage for themselves.
- Any employees of a Sole Proprietor or LLC/LLP would not be subject to the 2-year waiting period if the owners are late PFL entrants.

What to consider when providing voluntary coverage:

If you provide voluntary coverage you must maintain it for at least one year. If you want to discontinue it, you must provide a written notice to the Chair of the Worker’s Comp Board and to the affected employees within 90 days before coverage will end. This notice must include provisions made for the payment of obligations incurred on and prior to the effective termination date. Public employers must give 12 months notice.



PFL Expert Tip:

Let’s look at a real life example:

John’s amusement park is a Covered Employer who has to provide DBL & PFL. John, the owner wants to extend voluntary coverage to his 15-year old son and 17 year old daughter, who help out at the ticket booth. Since coverage for this class of employees is on a voluntary basis, he can choose whether to cover them for DBL/PFL.

How do we apply for voluntary PFL coverage?

Use one of the following forms provided by New York State depending on whether you will take employee contributions or not:

- **PFL-135:** no contribution from employees (i.e., you pay the entire premium)
- **PFL-136:** fully or partially funded by your employees

Please note: if you take employee contributions on voluntary PFL coverage, you need to certify that **more than 50%** of employees to whom the coverage is extended, have agreed to contribute to the cost of PFL in a written election after a 30-day notice to employees.

How Voluntary Coverage Works for Business Owners

If the owners/shareholders of the following entities are

considered employees:	NOT considered employees:
<ul style="list-style-type: none"> • Corporations with 3 or more officers/shareholders • With or without employees 	<ul style="list-style-type: none"> • Partnerships, LLCs, LLP’s, Sole Proprietors, self-employed people • With or without employees
<ul style="list-style-type: none"> • Corporations with only 1 or 2 officers (each owning at least 1 share) • With employees 	<ul style="list-style-type: none"> • Corporations with only 1 or 2 officers (each owning at least 1 share) • Without employees
<p>Automatically covered under DBL/PFL They do not need to apply for voluntary coverage.</p>	<p>Excluded from DBL/PFL by default They may choose to cover themselves on a voluntary basis. <i>see below for more details.</i></p>



Opting-out of Coverage

Can I choose not to provide DBL as a “Covered Employer”?

No. DBL and PFL are mandatory insurance that you must provide for all your eligible employees. If you fail to put a policy in place, you may be subject to fines and other measures. However, as the owner, you may file a request with the WCB to exclude yourself under the following circumstances:

- If your business is a corporation with no more than 2 corporate officers (each owning at least 1 share of stock) and you have at least 1 employee, you may elect to exclude yourself from DBL/PFL coverage.
- As a sole proprietor or co-owner of a partnership, you may elect to exclude your spouse by filing a spousal exclusion.

Can my employees opt out of PFL?

Paid Family Leave is a mandatory benefit for employees who do not fall into an excluded class and work at a Covered Employer just like DBL.

There are a few limited scenarios under which certain employees may “opt out” by filling out the PFL Waiver form. An employee may file a waiver for paid leave benefits if they:

- work 20+ hours per week but not 26 consecutive weeks
- work less than 20 hours per week and less than 175 days in a consecutive 52-week period

If an employee’s work schedule ceases to fall below this threshold, their PFL waiver is automatically invalid within 8 weeks of the change in their work schedule. At that time you must start counting this employee for premium purposes – and if you are collecting employee contributions for PFL, any employee coming off a waiver will need to start contributing, including any retroactive amounts back to the date the waiver was signed.

One other scenario where an employee may “opt-out” or exempt themselves is if they are receiving, or are eligible to receive, Old Age Social Security benefits. However, in this case the employee would need to opt-out of **both** DBL and PFL by sending written notice to the Chair of the Worker’s Compensation Board.

You will need to keep the waiver on file for as long as they are working for you – whether the waiver is still in force or not.



PFL Expert Tip:

It’s best practice to educate employees who would qualify for the waiver about their options, especially if you withhold PFL premium from employees, and have them confirm in writing even if they don’t want to waive.



Out-of State Coverage

How about employers outside NY with employees working inside New York State?

If you are an out-of-state employer, you need a DBL/PFL policy for your New York employees if you employ one or more individuals for at least 30 days each in a calendar year in New York State.

How about New Yorkers who work outside of New York State?

Coverage is based on where an employee physically works, not where the employee lives.

Can NY-based employers with employees outside of New York State provide coverage for those employees?

No, The Department of Financial Services along with the Workers' Compensation Board have concluded that out-of-state employees may NOT be covered under the PFL Rider. Despite the history on DBL, the PFL program is intended to stand alone, and to insure only in-state workers in New York State.

When is DBL/PFL mandatory, based on location?

If the employer is located...	If the employee physically works ...		
	...in New York State	...outside New York State	
		DBL	PFL
...in New York State	 mandatory* DBL & PFL	optional NJ/RI/CA/PR/HI: n/a <i>(need to be covered under the respective state's statutory coverage).</i> All other states: Employer can opt-in to provide out-of-state coverage on a voluntary basis.**	 n/a
...outside New York State	 mandatory* DBL & PFL	 n/a DBL & PFL	

*If employing at least 1 employee for 30+ days each in a calendar year in New York whether working at a local NY work site or working remotely from NY (for example, telecommuting from home in NY.)

**Optional coverage must be provided to all eligible employees by the employer; it is not on an individual basis.



PFL Claims

Benefit eligibility & claims guide

When is an Employee Eligible to Request PFL Benefits?

Employees must make it through what's called a "qualification period," i.e:

- If they **work 20 or more hours** per week, they must have been employed **at least 26 consecutive weeks** with you.
- If they **work less than 20 hours** a week, they must have completed **at least 175 work days** at your organization.
- If employees change jobs, the time worked at their previous employer does **not** count. In other words they start over with a new qualification period.
- Time out on DBL (statutory disability insurance) does **not** count towards their qualification period.



If an employee is eligible to request PFL, does that mean they're eligible to receive benefits?

- Under Paid Family Leave, employees are eligible for benefit payments as of day 1 of their paid time off – there's no waiting period like with statutory short-term disability (DBL). Under DBL, the first 7 days are unpaid.
- Employees can't be out on DBL and PFL at the same time.
- Employees can't take more than 26 weeks combined for DBL and PFL per consecutive 52-week period. So if an employee were out on DBL for 22 weeks due to their own health condition, that would leave the employee with only 4 weeks of Paid Family Leave until they hit the "anniversary date" of that DBL claim.
- If your group has 50 or more employees, your employees are automatically protected under FMLA (Family & Medical Leave Act) once they satisfy eligibility. This comes with additional considerations and coordination, such as:
 - If the employees' leave under Paid Family Leave is also a qualified leave under FMLA and depending your company's established leave practices, your employees may be required to exhaust their accumulated paid time off (vacation/sick/personal) days first before employees can go out on Paid Family Leave.
 - Paid Family Leave provides more than just a monetary benefit – it provides job security for employees out on paid leave, similar to unpaid leave under FMLA, but regardless of the size of the employer.

Paid Family Leave Claims Guide

Before an employee can go out on PFL and can fill out a claim form, they must provide a **30-day notice** to you for any foreseeable leave. If that's not possible (due to, for example, lack of knowledge, a change in circumstances, a medical emergency, or short-notice deployment), notice must be given as soon as practicable – either the same day or the next business day. **This notice should be in writing and identify which of the 3 qualifying events** they will be taking leave for and the **anticipated timing and duration**.

It is the responsibility of the employee taking leave **to file the PFL claim with your PFL insurance carrier**. Depending on the type of leave, there are some parts of the form that you as the employer or other parties will need to fill out before they can send it in. Employees will need to submit their fully completed claim packets (including forms, certifications, and supporting documents) to your PFL insurance carrier **within 30 days of their first day of leave taken**.

There is one claim form packet for each leave type under PFL: Bonding, Caregiver, or Military Exigency. Included with each packet are detailed instructions and checklists for completing and submitting. But the actual forms vary based on the type of leave.

Whether taking leave to bond with a new child, care for an ill family member, or attend to family matters as a result of a military leave event, employees will need to complete and submit the general "Request for Paid Family Leave" form (PFL-1):

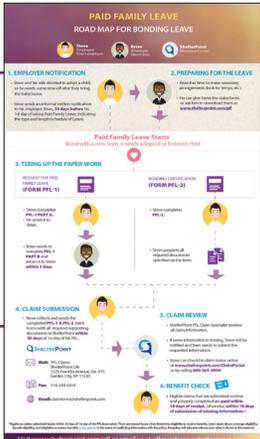
- The employee must complete Part A of the PFL-1 form,
- **You, the employer, need to complete Part B and return it back to your employee within 3 business days.**
- In addition to the completed PFL-1 form, the employee is responsible for obtaining and submitting any necessary certifications and supporting documents to show the need for their leave.

Please reference the chart below for what is required for each type of leave. Claim packets and example claim road maps can be downloaded at: www.shelterpoint.com/pfl

PFL Claim Type	PFL-1 form <i>Request for Paid Family Leave</i>	PFL-2 form <i>Bonding certification</i>	PFL-3 form <i>Release of personal health information</i>	PFL-4 form <i>Certification of care</i>	PFL-5 form <i>Military qualifying event certification</i>	Supporting Documentation
Bonding	✓	✓ completed by you				✓ <i>Proving your relationship with the child. Ex. birth certificate.</i>
Caregiver	✓ Part A: completed by you & Part B: completed by your employer. (within 3 business days.)		✓ completed by the "care recipient" (the family member you're providing care for).*	✓ Completed by you & the health care provider treating your family member		
Military Exigency					✓ Completed by you & if applicable any third party	✓ Documents evidencing the military member's status and the need for leave.

* This is filed with their health care provider, so the provider can complete the PFL-4 form. Do not file form PFL-3 with your PFL insurance carrier.





PFL Expert Tip:
Download visual claim roadmaps to share with your employees at:
www.PaidLeaveNY.com

There's one for each type of leave!



PFL Compliance

New considerations for your business

What are Potential Fines/Consequences if we Don't Provide PFL?

If you don't provide DBL/PFL coverage as required by law, the Workers' Compensation Board may investigate and take action. Sole proprietors, partners of a partnership, as well as the President, Secretary and Treasurer of a corporation may be held personally liable for the failure to obtain required coverage. These possible penalties may include:

- penalty based on the amount of your payroll for the time you don't have required coverage in place (0.5% of your aggregate weekly payroll during that period).
- additional fines with increasing amounts for subsequent violations.
- misdemeanor charge punishable with imprisonment of up to 1 year.

When claims arise during a period of time where you don't provide coverage as a covered employer, New York's Special Fund for Disability Benefits will act as the carrier and provide the benefits your employees are entitled to. You are then liable for the total value of any PFL claims paid by the Special Disability Fund and 1% of your aggregate payroll during the period of noncompliance. The Special Fund for Disability Benefits may also recover any Paid Family Leave payments it makes to your employees, including the costs incurred for dispute resolution.

Additional PFL-specific consequences:

- If you don't provide a Paid Family Leave policy but collect payroll deductions from employees, you must refund those payroll deductions taken from employees.
- If you do not collect employee contributions to provide PFL and fail to provide coverage (whether through a carrier or self-insuring), you will be fully and directly liable to each of your employees for the payment of family leave benefits and waive your employees' contributions for the period(s) where no paid family leave coverage was provided.

What new obligations and compliance considerations does PFL bring to my business?

Here are the top things you, as the employer, need to know:

Administering:

1. You must **include PFL in your written guidance** for employees concerning employee benefits or leave rights, such as in an employee handbook.
2. Just like with DBL, you have to **display and keep posted a printed PFL Posting Notice** concerning PFL as published by New York State.
3. All your employees who are currently covered under DBL are covered under (and thereby have the right to take) PFL (unless they do **not** work in the state of New York).

Employee rights:

1. If you decline to reinstate an employee returning from PFL, your employee may report this to New York State. You then have 30 days to either take corrective action or file a formal response to the employee, explaining the reason that corrective action will or will not need to be taken.
2. If you have an employee whose circumstance would qualify for PFL but then doesn't use PFL, you can still dock that employee's "PFL time bank" (in 1/2 day increments) for time the employee is out.*
3. You **cannot require employees to exhaust their accumulated PTO** before letting them go out on paid family leave.*

Your rights:

1. You can't deny a valid request for PFL, but your employees will need to **give you 30 days' notice** for **foreseeable leave**.
2. You can request reimbursement from the insurance carrier in the amount your employee would be entitled to if they are out of PFL-qualified reasons but receive salary continuation or use accrued sick/vacation time from you instead.



PFL Expert Tip:

If you don't have written policies, manuals, or handbooks describing employee benefits and leave provisions, you still have to provide written guidance to each of your employees concerning all of their rights and obligations under PFL, including information on how to file a claim for Paid Family Leave.

When withholding from your employees here's what you should keep in mind:

1. While Paid Family Leave is frequently referred to as an employee-funded benefit in the law, it doesn't require you to withhold (ie., you may choose to fund the Paid Family Leave premium without recouping some or all of the premium through payroll deductions).
2. If you decide to take deductions from your employees, the deduction **can't exceed each employee's maximum contribution** (if you do, you will have to **return the excess** amount to your employees).
3. You **cannot retroactively collect** payroll deductions for Paid Family Leave.
4. If you fail to provide a Paid Family Leave Rider but collect payroll deductions from employees, you must refund those payroll deductions.
5. While you can choose to collect DBL and PFL employee contributions from an employee who is out on DBL or PFL, **you cannot collect PFL contributions for an employee who is not yet eligible for PFL while that employee is out on DBL.**

*Unless FMLA approved.



Paid Family Leave and Health Insurance

Employees with health insurance remain covered during paid leave (including family or dependent coverage) and continue to pay only their normal contributions to the cost of the health insurance premiums at the same level they did prior to their paid leave. If that amount changes during the time an employee is on paid leave, the employee on leave is required to pay the new amount just like all other employees affected by the change.

During paid leave, the employee must pay their portion of the premium, which is usually deducted from their paycheck via payroll deduction, directly to you, the employer.

If the employee on leave is more than 30 days late with providing the payment to you, you may initiate the following steps to stop their health insurance coverage:

- Send a written notice at least 15 days before intending to end coverage and give your employee the option to remit any outstanding balance within 15 days.
- If you still don't receive the payment within the 15-day window, you may terminate the employee's health insurance coverage.
- If you have any other established policies regarding other forms of unpaid leave that provide for the employer to cease coverage retroactively to the date the unpaid premium payment was due, you may drop the employee retroactively in accordance with that policy, provided the 15-day notice was given.

If an employee chooses not to keep health plan coverage (or stops paying their health insurance premium share and you therefore cancel their health insurance coverage) during paid family leave, you must reinstate the employee into the health plan on the same terms the employee had prior to taking leave when the employee returns from paid family leave.

If you provide a new health plan or make changes to existing benefits while an employee is on paid leave, the employee is entitled to the new or changed plan or benefits as if the employee was not on leave.

PFL & Other Benefits

Where it fits with DBL & FMLA

Comparing DBL and PFL

Eligibility requirements are quite different between DBL and PFL:

	DBL	PFL
Full-time definition	Persons working the amount of hours that constitute your company's normal work week	Persons working 20+ hours/week
Full-time employees	Worked at least 4 consecutive weeks for any Covered Employer(s)	Employed at least 26 consecutive weeks at the same Covered Employer
Part-time employees	Completed at least 25 work days at any Covered Employer(s)	Completed at least 175 work days at the same Covered Employer
Personal or domestic employees	Work at least 40 hours a week (if they work 30 or more days in a calendar year for the same Covered Employer)	
Transferability of qualification period	Yes If an employee changes jobs from one Covered Employer to another, their time worked at the previous employer counts. However, if their previous job was at an exempt employer without voluntary coverage, they have to re-satisfy the qualification period at their new covered employer.	No If an employee changes jobs from one Covered Employer to another, their time worked at the previous employer does not count.
What counts towards the qualification period	<ul style="list-style-type: none"> • Approved vacation • Personal time • Sick time • Other time away from work but still considered an employee as long as PFL premium contributions (if required by the employer) have been paid for the time away from work. 	
What does not count towards the qualification period	n/a	Time out on DBL



PFL Expert Tip:

The key differentiator between PFL and DBL is that DBL is taken for one's OWN injury or illness, where Paid Family Leave is taken to care for someone else. (For example: family member like child or parent) or bonding.

Here's how DBL and PFL benefits compare:

	DBL	PFL
Benefit payouts	50% of the employee's average weekly wage (AWW) to maximum of \$170/week	PFL provides 67% of the employee's AWW capped at 67% of NYSAWW in 2021
Waiting period	7 days (no benefit is paid for the first 7 days of your non-occupational illness or disability)	None (benefits kick in on the first day of the qualified leave)
Maximum leave duration	26 weeks in a consecutive 52-week period	12 weeks in 2021 per consecutive 52-week period
	DBL and PFL can't be taken at the same time, i.e. receive benefits for both concurrently. They have to be taken in sequence. And if an employee qualifies for both, the combined duration may not exceed 26 weeks in a consecutive 52-week period.	
Job protection while on leave	None	Yes, even for employers with less than 50 employees. You must provide the same position, (or one comparable in wages and benefits), to employees returning from PFL
Benefit Offsets	Benefits are not reduced by PTO such as vacation time, i.e. DBL benefits can be collected while using paid vacation days	Employees can't receive PFL benefits while out on PTO or using sick/vacation days

Lastly, here are some noteworthy items to compare:

	DBL	PFL
How it's funded	Employer pays the premium to the carrier (unless self-insured) and have option to recoup cost through employee contributions (capped at state-set maximum contribution levels)	
Maximum employee contributions	\$0.60/week	Employee's 2021 maximum contribution as a % of their annualized AWW*: 0.511% capped at \$385.34 per year.*
Employer reimbursement	Yes, if the employee receives salary continuation while out	

DBL and Maternity Leave

Perhaps one of the most common reasons employees will use Paid Family Leave is to welcome a new addition to their family. And since the qualifying events surrounding motherhood often overlap situations covered by both DBL and Paid Family Leave, it's important to outline when one would start and end:

For example, a condition like bed rest for an expecting mother would be covered under DBL, since it's the mother's own "disability." She would be able to file a DBL claim for the time she was on bedrest prior to birth and recovery after birth (typically 6 weeks for normal delivery and 8 weeks for C-section). When her child is born, Mom can choose whether to use DBL for her recovery first or use Paid Family Leave for bonding with her newborn.



PFL Expert Tip:
Postpartum Depression is considered a pregnancy-related complication and is covered under DBL.

*NY Department of Labor releases the updated NY Average Weekly Wage (NYSAWW) on or about March 31. The current NYSAWW applicable to 2021 is \$1,450.17= \$75,408.84 per year.

PFL and FMLA

Until recently, the Family Medical Leave Act (FMLA) has been the only piece of legislation that allowed employees to take protected time off from work for an extended period (12 weeks) without having to fear employer retribution or reduction or discontinuation of health care benefits. It is, however, unpaid leave.

As the benefits of providing protected time off to care for families has become more apparent in recent years, some states like California and New Jersey—and now New York—have taken it upon themselves to expand the protections offered at the federal level by FMLA.

So how do New York's Paid Family Leave and FMLA relate and compare?

If employing 50 or more employees, you must coordinate PFL with FMLA and notify the employee taking leave.



	PFL	FMLA
Where it applies	At the State level (New York)	At the Federal level
Who's eligible	Employees working in NY at a "Covered Employer" with 1+ employees	Employees working at "any" organization in the US with 50+ employees
	<p>Employees working 20+ hours/week must have been employed for at least 26 consecutive weeks by you</p> <p>Employees working less than 20 hours/week must have worked at least 175 days for you</p> <p>No minimum hour requirement</p>	Employees must have been at your business for 12 consecutive months, working at least 1,250 hours in the 12 months preceding FMLA leave
What it provides	Paid time off	Unpaid time off
	Job security	<p>Job security</p> <p><i>Note: A salaried person in the employer's top 10% salary range and within 75 miles of the employer may be denied job restoration after FMLA leave if the restoration (not the absence) of the employee will cause substantial and grievous economic injury for the employer.</i></p>
	12 weeks per 52-week period measured from the first day of leave	<p>12 weeks per 12-month period*</p> <p><i>*Based on the employer's established policy for bonding and care this can be based on:</i></p> <ol style="list-style-type: none"> 1. Calendar year 2. Any fixed 12 months 3. 12-month period measured from the first day of care 4. A rolling 12-month period measured backward from the first day of care <p><i>For military caregiver leave, the 12-month period always begins on the first day the employee takes leave.</i></p>
	Can be taken in 1-day increments	Can be taken in hourly (and in some cases, smaller) increments
What it can be used for	<ul style="list-style-type: none"> • Bonding • Caring for a seriously ill family member • Military exigency 	<ul style="list-style-type: none"> • Bonding • Caring for a seriously ill family member • Military exigency • One's own injury/illness
How it impacts other benefits	Continued at the employee's normal contributions as if they were regularly employed	
	You cannot require employees to use sick/vacation days while on leave.	You have the option to require employees to use sick/vacation days while on leave.
	The employee has the choice to use them if they want. (unless the PFL leave is also an approved FMLA leave).	
Accruing of vacation/sick days during leave happens at your discretion. Key is that all employees are treated equally and that you have a clear policy in place.		



One of the primary differences between FMLA and NY Paid Family Leave is how each law/regulation defines the term “family member,” which varies depending on the type of leave:

Who qualifies as a “family member”?

Care-Giving			Military Care-Giving			Military Exigency		
FMLA		PFL	FMLA		PFL	FMLA		PFL
✓	Spouse	✓	✓	Spouse	✓	✓	Spouse	✓
X	Domestic Partner	✓	X	Domestic Partner	✓	X	Domestic Partner	✓
✓	Child	✓	✓	Child	✓	✓	Child	✓
X	Domestic Partner's Child	✓	X	Domestic Partner's Child	✓	X	Domestic Partner's Child	✓
✓	Parent	✓	✓	Parent	✓	✓	Parent	✓
X	In-laws	✓	X	In-laws	✓	X	In-laws	✓
X	Grandparent	✓	X	Grandparent	✓			
X	Grandchild	✓	X	Grandchild	✓			
			✓	Next of Kin	X			

Noteworthy differences are listed above. Both PFL and FMLA accept biological, adoptive, step, foster parental relationships.



PFL Expert Tip:

For employees who are entitled to both PFL and FMLA, these two benefits will run concurrently – this means that PFL time can't be added to FMLA time to extend the overall leave. Depending on your company's leave policy, these leave periods may not line up directly.

For example: An employee has a baby in August of one year, and then the employee's mom falls seriously ill in February of the following year and needs care:

	Under FMLA 12-month definition 1 <i>(i.e., calendar year reset, see previous chart for details).</i>		Under FMLA 12-month definition 2-4	
	Bonding leave year 1	Caregiver leave year 2	Bonding leave year 1	Caregiver leave year 2
PFL	✓	✗	✓	✗
FMLA	✓	✓	✓	✗



For more information, please contact:

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www.shelterpoint.com

pflquestions@shelterpoint.com | 800.365.4999 (516.829.8100)

