



New York Paid Family Leave:
**A Domestic
Worker's Guide**

a better
balance

the work and family legal center

New York Paid Family Leave

A Domestic Worker's Guide: What Domestic Workers Should Know About Taking Leave and Accessing Benefits

Published by A Better Balance (c)
December 2019

Prepared by Madeleine Gyory and Molly Weston Williamson



This Resource

This manual is a comprehensive guide to everything domestic workers need to know about New York's paid family leave law. It provides detailed information on how the law works, who the law covers, and how to apply for benefits. This manual also presents conflicts that may arise in the process of taking paid family leave and offers guidance and sample language for how workers might address those conflicts. Workers should use this guide to answer any questions they have about the law and to help determine next steps should a conflict arise.

Who We Are

A Better Balance is a national legal advocacy organization dedicated to promoting fairness in the workplace. We help workers across the economic spectrum care for themselves and their families without risking their economic security. Through legislative advocacy, litigation, and public education, A Better Balance leverages the power of the law to ensure that no workers have to make the impossible choice between their job and their family. We believe that when all working parents and caregivers have a fair shot in the workplace, our families, our communities, and our nation are healthier and stronger.



<http://www.abetterbalance.org>



[@ABetterBalance](https://twitter.com/ABetterBalance)



<https://www.facebook.com/ABetterBalance/>



https://www.instagram.com/a_better_balance/

Table of Contents

| | | |
|-------------|--|----|
| I. | What is Paid Family Leave? | 4 |
| II. | How to Apply | 7 |
| III. | Frequently Asked Questions | 10 |
| | A. Overview..... | 11 |
| | B. Who is covered?..... | 13 |
| | C. Parental leave..... | 15 |
| | D. Leave to care for a family member..... | 17 |
| | E. Military family leave..... | 20 |
| | F. Applying for and taking paid family leave..... | 21 |
| | G. Things that can go wrong..... | 24 |
| | H. Interaction with other laws and programs..... | 25 |
| IV. | What to Say: Tips for Common Situations | 31 |



What is Paid Family Leave?

I. What is Paid Family Leave?

New York's paid family leave law guarantees covered workers time off to bond with a new child (including adopted and foster children); care for a seriously ill family member (child, parent, parent-in-law, spouse, domestic partner, grandchild, or grandparent); or take care of certain military family needs.

Am I covered?

If you work in a private home, for example as a housekeeper, home health aide, or nanny, you may be considered a domestic worker under the law.

If you were hired by an individual to work in their home, they are required to cover you if you work at least 40 hours per week for them. If you do not work 40 hours per week for a single employer—for example, if you work 20 hours per week in one home and 20 hours per week in another home—you are not automatically covered. However, your employer can always choose to cover you.

If you work through an agency that places you with different clients, such as a cleaning service agency or home care agency, you're probably covered under the law, *regardless of how many hours you work per week.*

How much paid family leave can I take?

In 2019 and 2020 you can take up to ten weeks of paid family leave. In 2021 you can take up to twelve weeks. The number of weeks you are entitled to will be based on the year in which you begin taking your leave.

How much of my paycheck can I get while I am on paid family leave?

In 2019 you can receive 55% of your average weekly pay, up to a cap of \$746.41 per week. In 2020 you can receive 60% of your average pay, up to a cap of \$840.70. In 2021 you can receive 67% of your average pay, up to a cap that will be determined each year.

Will my job be protected while I am on leave and can I keep my health insurance while on leave?

Yes. You have the right to return to work. If you receive healthcare coverage through your employer, you also have the right to keep your healthcare coverage under its current conditions.

When can I begin taking paid family leave?

If you work for an individual for at least 40 hours per week, you can start receiving benefits 26 weeks (about six months) after your start date.

If you work for an agency for 20 or more hours per week, you can start receiving benefits 26 weeks (about six months) after your start date. If you work for an agency for less than 20 hours per week, you may need to work for slightly longer (175 days) to qualify.



How to Apply

II. How to Apply

Step 1: Let your employer know that you will be taking leave.

Let your employer know you plan to take paid family leave at least 30 days before you intend to start your leave. If 30 days advance notice is not possible, for example in the case of a family member's medical emergency, let your employer know as soon as possible.

Let your boss know:

1. Your reason for requesting leave, for example to bond with a new child;
2. When you expect to start your leave;
3. How long you expect to be on leave; and
4. How you intend to schedule your leave (all at once or broken up into weeks or days).

Listen carefully and take careful notes after your conversation, especially about anything that sounded strange or wrong to you. For more information about how to have this conversation with your boss, see Section IV of this Manual.

Step 2: Find out who your employer's paid family leave insurance carrier is.

Next, ask your employer who their paid family leave insurance carrier is. You can ask your boss or, if applicable, your employer's Human Resources or payroll department. If you still cannot identify the insurance carrier, call the New York State Paid Family Leave hotline at (844) 337-6303.

Step 3: Get a claim form.

To apply, you will need a paid family leave claim form for the type of leave you will be taking: bonding leave (parental leave), family care leave (leave to care for a seriously ill family member), or military family leave. Your employer or their insurance carrier should be able to provide these forms or you can download them from the state website at paidfamilyleave.ny.gov.

Step 4: Fill out the employee section of the claim form.

Fill out the section of the claim form for employees (PFL 1-Part A) and make a copy for your records.

Step 5: Give the form to your employer.

Give the form to your employer. They will have to provide information relevant to your claim, such as how long you have been employed and how much you earn. Your employer is required to complete the employer information and return the form to you *within three business days*.

Step 6: Get documentation of the need for leave.

As part of your application to your paid family leave insurance carrier, you will need to submit documentation of your need for leave. The application will have instructions for the right type of documentation to provide.

For example, if you are taking leave to bond with a new child, you will need to fill out the relevant part of the form and submit documentation of the birth, adoption, or foster placement. If you are taking leave to care for a seriously ill or injured family member, you will need to fill out the relevant part of the form and your family member's health provider will need to fill out the rest of the form. Your family member will also need to sign a release form authorizing the health provider to provide this information.

Step 7: Submit application to paid family leave insurance carrier.

Once you have completed these steps, submit your application to your employer's paid family leave insurance provider. The insurance carrier must either pay or deny your claim within 18 days of receiving your application and must notify you if there are problems with your application. You do *not* need to wait for your claim to be approved before starting your leave.



Frequently Asked Questions

III. Frequently Asked Questions

A. Overview

1. What can I take paid family leave for?

You can take paid family leave to bond with a new child (including adopted and foster children); care for a seriously ill family member (child, parent, parent-in-law, spouse, domestic partner, grandchild, or grandparent); or take care of certain military family needs.

2. Am I covered?

If you were hired by an individual to work in their home, they are required to cover you if you work at least 40 hours per week for them. If you do not work 40 hours per week for a single employer—for example, if you work 20 hours per week in one home and 20 hours per week in another home—you are not automatically covered. However, your employer can always choose to cover you.

If you work through an agency that places you with different clients, such as a cleaning service agency or home care agency, you're probably covered under the law, *regardless of how many hours you work per week*.

3. Will my job be protected while I am on leave?

Yes. You have the right to return to work, either to the same job you had before you took leave or to a similar job with similar pay, benefits, and status.

4. Will my health insurance be protected while I am on leave?

Yes. If you receive healthcare coverage through your employer, you have the right to keep your healthcare coverage under its current conditions. If you pay a portion of your insurance premium, you must continue to pay your portion while you are on leave. If your employer pays a portion of your premium, your employer must continue to pay their portion.

5. Can my employer punish me for using paid family leave?

No. It is against the law for your employer to punish, penalize, or fire you for requesting or taking paid family leave.

6. Do I have to take my paid family leave all at once?

No. You can take paid family leave in units as small as one day. For example, if you are caring for a loved one who needs chemotherapy treatments once a week, you could take one day of paid family leave per week to bring your loved one to treatment.

7. Can I take paid family leave for my own serious illness or injury?

No. You can take paid family leave to care for a covered family member with a serious health condition, but you may not use it to recover from your own serious health condition. However, you may have rights under other laws. If you are unable to work due to an illness or injury that occurred off the job, you may be eligible for Temporary Disability Insurance (TDI) benefits. See Section III.H.i for more information. You may also have rights under the Family and Medical Leave Act (FMLA). See Section III.H.ii for more information.

8. When can I begin taking paid family leave?

If you work 20 or more hours per week for your employer, you can start receiving benefits six months after your start date (26 weeks) for any paid family leave purpose. If you work less than 20 hours per week, you can start receiving benefits after working 175 days.

Note that some domestic workers who work fewer than 40 hours per week may not be covered. See Question B.1.

9. How many weeks of paid family leave can I take?

In 2019 and 2020 you can take up to ten weeks of paid family leave. In 2021 you can take up to twelve weeks. The number of weeks you are entitled to will be based on the year in which you begin taking your leave.

10. How much is the weekly paid family leave benefit?

In 2019 you can receive 55% of your average weekly pay, up to \$746.41 per week. In 2020 you can receive 60% of your average pay, up to \$840.70 per week. In 2021 you can receive 67% of your average pay, up to a cap that will be determined each year.

11. How do I figure out my average weekly wage?

If you make the same amount of money each week (for example, if you receive a salary), your average weekly wage is the amount you make each week.

If the amount of money you make changes from week to week (for example, if you sometimes work fewer hours), your average weekly wage is the *average* amount you made over the eight weeks before you started your leave.

12. What if my income fluctuates?

If your income changes from week to week (for example, if you sometimes work fewer hours), your average weekly wage is the *average* amount you made over the eight weeks before you started your leave.

13. Who pays for paid family leave?

Covered workers pay for paid family leave through small payroll deductions. In 2019, these deductions are 0.153% of your paycheck, up to an average of \$2.08 per week, though many workers pay less than that. For example, if you make \$600 per week, you will pay 92 cents per week for paid family leave in 2019. In 2020, deductions will be 0.270% of your paycheck, up to an average of \$3.78 per week, though many workers will pay less than that.

14. Can I take paid family leave for multiple reasons in one year?

Yes, you can take paid family leave for multiple reasons in one year but you cannot exceed the maximum number of weeks allowed for that year (a total of ten weeks in 2019 and 2020 and twelve weeks in 2021). For example, in 2019, if you take three weeks of paid family leave to care for a seriously ill loved one, you would have an additional seven weeks of leave to use for any other reason.

B. Who is covered?

1. Am I covered by the paid family leave law?

Maybe. If you are a domestic worker and you were hired by an individual to work in their home, they are required to cover you if you work at least 40 hours per week for them. If you do not work 40 hours per week for a single employer—for example, if you work 20 hours per week in one home and 20 hours per week in another home—you are not automatically covered. However, your employer can always choose to cover you.

If you work through an agency that places you with different clients, such as a cleaning service agency or home care agency, you're probably covered under the law, *regardless of how many hours you work per week.*

2. What does it mean to be a “domestic worker?”

If you work in a private home, for example as a housekeeper, home health aide, nanny, cleaning person, butler, gardener, or chauffer, you may be considered a domestic worker under the law.

3. I work part-time, am I covered?

Possibly. If you work through an agency that places you with different clients, you are probably covered under the law, *regardless of how many hours you work per week.*

If you work for an individual rather than an agency, the individual must cover you if you work at least 40 hours per week for them. If you do not work 40 hours per week for a single employer—for example, if you work 20 hours per week in one home and 20 hours per week in another home—you are not automatically covered. However, your employer can always choose to cover you.

4. Does it matter how many employees work for my employer?

No, the law applies regardless of how many employees work for your employer.

5. I'm not a U.S. citizen. Am I covered?

The paid family leave law applies regardless of citizenship or immigration status.

6. I'm undocumented. Am I covered?

The paid family leave law applies regardless of citizenship or immigration status.

7. How does paid family leave work if I have two jobs?

If you have two jobs and you qualify for paid family leave with only one of your jobs, you can take paid family leave from that job, while continuing to work at your other job. If you qualify for paid family leave with both jobs, you can take leave from one job or from both jobs. If you take paid family leave from both jobs, you must take leave at the same time.

For example, if you have a day job and a night job and qualify for leave with both jobs, you can take ten weeks of paid family leave in 2019 from both jobs at the same time. Or, you can take paid family leave from your day job and continue working at your night job (or vice versa). You may not take ten weeks of leave from your day job and *then* take another ten weeks of leave from your night job.

8. What happens if I switch jobs?

In order to qualify for paid family leave, you must work for your current employer for 26 consecutive weeks (or 175 days, if you work less than 20 hours per week). If you switch jobs, you must meet this requirement with your new job before you qualify. For example, if you worked at your last job for three years and you switch jobs, you must work for 26 consecutive weeks at your new job before you can take paid family leave.

Note that some domestic workers who work fewer than 40 hours per week may not be covered. See Question B.1.

9. I'm unemployed. Am I covered?

No, you must be currently employed in order to be covered.

10. What if I work for an agency that is based in another state?

In order to qualify for paid family leave coverage, you must work in New York State. It does not matter where your agency is based.

11. I live in New Jersey, but work in New York. Am I covered?

Probably. In order to qualify for paid family leave coverage, you must work in New York State; it does not matter where you live.

12. I live in New York, but work in another state. Am I covered?

Probably not. In order to qualify for paid family leave coverage, you must work in New York State; it does not matter where you live. If you work in New Jersey, you may be covered by New Jersey's paid family leave law.

13. I work for myself. Am I covered?

If you perform domestic work and can accept or reject individual jobs, you may be considered self-employed. For example, if you're a house cleaner who rejects or accepts individual cleaning assignments and you do not work for an agency, you may be considered self-employed under the law. If you're self-employed, you are not automatically covered by the paid family leave law, but you can choose to be covered by purchasing a paid family leave insurance plan. For more information, see our *Self-Employed Worker's Guide to New York Paid Family Leave*.

14. I'm an independent contractor. Am I covered?

See Question B.13.

C. Parental leave

Parental leave may also be called bonding leave, maternity leave, or paternity leave.

1. When can I take paid family leave to bond with a new child?

You can take paid family leave at any point within the first twelve months following a child's birth or placement for adoption or foster care. If a child has two parents, *each* parent (of any gender) has the right to take up to ten weeks of paid family leave in 2019 and 2020 and twelve weeks in 2021.

2. Can dads take parental leave?

Yes. If they are covered, dads can take parental leave at any point within the first twelve months following a child's birth or placement for adoption or foster care. If a child has two parents, *each* parent (of any gender) can take up to ten weeks of paid family leave in 2019 and 2020 and twelve weeks in 2021.

3. Can adoptive and foster parents take parental leave?

Yes. If they are covered, adoptive and foster parents can take parental leave at any point within the first twelve months following a child's placement for adoption or foster care. Adoptive and foster parents may also be able to take paid family leave *prior* to a child's formal placement to facilitate the adoption, such as to meet with an attorney or social worker or travel to another country to complete the adoption.

4. If a child has two parents, can both parents take paid family leave?

Yes. If a child has two parents, *each* covered parent (of any gender) has the right to take up to ten weeks of paid family leave in 2019 and 2020 and the appropriate time in

subsequent years. Parents can choose to take paid family leave at the same time or at different times.

For example, in 2019 and 2020, if two parents welcome a new child and both parents are covered, one parent could take ten weeks of leave following the birth or placement and the other could take the following ten weeks for a combined total of 20 weeks. Alternatively, parents could take their ten weeks at the same time or overlap for part of the time.

5. Can I take parental leave while I am pregnant?

No, you may only take paid family leave to bond with your child after your child is born. However, if you are unable to work due to a pregnancy-related disability, you may be eligible for Temporary Disability Insurance (TDI) benefits. For more information on TDI disability benefits, see Section III.H.i.

6. If I'm a parent who gives birth, can I take both TDI disability and paid family leave?

Temporary Disability Insurance (TDI), sometimes called short-term disability, gives you the right to receive a portion of your paycheck while you are unable to work due to an off-the-job illness or injury, including pregnancy-related disabilities and recovery from childbirth.

If you are a parent who gives birth, you may be eligible for both TDI disability and paid family leave, but you cannot receive these benefits at the same time. However, you can choose how to combine these benefits. For example, you can receive TDI disability benefits during your recovery from childbirth, and then take paid family leave to bond with your new child. Alternatively, you can skip TDI and start paid family leave immediately after giving birth. Different choices may make sense for different families. Note that you cannot take more than 26 weeks of TDI disability and paid family leave in a 52-week period. For more information on TDI disability benefits, see Section III.H.i.

7. Can spouses or domestic partners take paid family leave at the same time?

In general, yes. However, if you and your spouse or partner work for the same employer, your employer can require you to take your leave at different times.

8. Can I take parental leave if I'm not married to my child's mother?

Yes. You do not have to be married to your child's mother in order to take parental leave. For information on what documentation to submit with your claim, see Question C.12.

9. Can I take parental leave if I'm in a same-sex relationship?

Yes. Parental leave is available to all parents.

10. What types of child-parent relationships are covered under the law?

Under the law, your child includes your biological, adoptive, or foster child, as well as your legal ward, your stepchild, the child of your domestic partner, or a child to whom you stand *in loco parentis* (a phrase that means you have taken on the role and responsibilities of a parent, even if you do not have a biological or legal relationship with the child).

11. Do I have to use parental leave all at once?

No. You can take paid family leave in units as small as one day. Keep in mind that you may only use parental leave within the first twelve months after your child's birth or placement.

12. What kind of documentation do I need in order to apply for parental leave?

To apply for parental leave, you will need to submit a legal document establishing you as the child's parent, such as a copy of the birth certificate, an acknowledgment of paternity, or adoption papers. If these documents do not name you as a parent, you will need to submit additional documentation demonstrating your relationship to the child's mother, such as a marriage certificate or domestic partner document.

If you are taking leave prior to adopting a child, you can submit a document stating that the adoption process is underway, for example a signed statement from an attorney or adoption agency.

D. Leave to care for a family member

1. When can I take paid family leave to care for a family member?

You can take paid family leave to care for a family member when he or she has a serious illness or injury or a serious health need.

2. What family members can I take leave to care for?

You can take paid family leave to care for your child, parent, parent-in-law, spouse (including a same-sex spouse), domestic partner, grandchild, or grandparent when that person has a serious health need.

3. What kinds of health needs are covered?

The law covers leave to care for a family member with a mental or physical illness or condition that requires either hospital care or ongoing treatment by a health provider.

Here are some examples of covered health needs:

- Chronic conditions like asthma or diabetes
- Serious mental health conditions like schizophrenia, post-traumatic stress disorder, or bipolar disorder
- Alzheimer's, cancer, or severe stroke
- Recovery from surgery
- Substance use disorders

4. What kinds of health needs are *not* covered?

Ordinary illnesses, like the flu, a cold, an upset stomach, or an earache are not covered unless complications develop or hospital care is needed.

5. Are mental health conditions covered?

Yes. The law covers mental health conditions that involve either hospital care or ongoing treatment by a health provider. For example, psychosis, schizophrenia, bipolar disorder, and post-traumatic stress disorder (PTSD) are mental health conditions that may qualify.

6. Are substance use disorders covered?

The law covers substance use disorders that involve either hospital care or ongoing treatment by a health provider. The law does not cover care for someone who is currently using and is not receiving treatment.

7. Can I use paid family leave to recover from my own serious health condition?

No. You can take paid family leave to care for a covered family member with a serious health condition, but you may not use it to recover from your own serious health condition. However, you may have rights under other laws. If you are unable to work due to an illness or injury that occurred off the job, you may be eligible for TDI disability benefits. See Section III.H.i for more information. You may also have rights under the Family and Medical Leave Act (FMLA). See Section III.H.ii for more information.

8. What does it mean to provide care?

Care for a loved one includes physical care, emotional support, visiting your loved one, helping with their treatment or daily needs, or arranging for a change in care.

For example, you can use this leave to drive your loved one to receive treatment, visit them in the hospital, pick up medications for them, or transport them from one care facility to another.

9. Do I need to be the primary caregiver to my loved one in order to take paid family leave?

No, you do not need to be the primary caregiver to your loved one in order to take paid family leave. See Question D.8 for what it means to provide care.

10. Can I take paid family leave if my loved one is receiving round-the-clock care?

Yes, you can take paid family leave if your loved one is receiving round-the-clock care. Providing care does not mean only medical and physical care. Care can include emotional support, visitation, picking up medications, or arranging for a change in your loved one's care.

11. What types of child-parent relationships are covered under the law?

Under the law, your child includes your biological, adoptive, or foster child, as well as your legal ward, your stepchild, the child of your domestic partner, or a child to whom

you stand *in loco parentis* (a phrase that means you have taken on the role and responsibilities of a parent, even if you do not have a biological or legal relationship with the child).

12. Who is a domestic partner?

Under the law, many types of couples, regardless of gender, can qualify as domestic partners. You do not have to be married or registered under a domestic partnership law or registry. Instead, you can qualify by showing that you depend upon each other—based on factors including but not limited to: living together, sharing finances, owning property together, having a child in common, or other factors showing the close, personal nature of your relationship. In addition, if you are registered as domestic partners in *any* state or local registry (including outside the state of New York), you and your partner qualify as domestic partners under the paid family leave law.

13. Can spouses or domestic partners take paid family leave at the same time?

In general, yes. However, if you and your spouse or partner work for the same employer and you both want to take leave to care for the same family member, your employer can require you to take your leave at different times.

14. Can I use paid family leave to care for someone outside of New York?

Yes. You can take paid family leave to care for a loved one who lives in another state or another country. Providing care can include traveling to your family member and travel to bring them to New York, secure their medication, or make arrangements for their care.

15. Can my spouse or domestic partner use paid family leave to care for me during my pregnancy and accompany me to prenatal appointments?

Probably yes. Your spouse or domestic partner can take paid family leave to care for you when you have a serious health need that requires either hospital care or ongoing treatment by a health provider. Pregnancy-related health needs qualify.

16. Can I use paid family leave to care for my daughter after she gives birth?

Yes. You can take paid family leave to care for your child (as well as your parent, parent-in-law, spouse, domestic partner, grandchild, or grandparent) when that person has a serious health need that requires either hospital care or ongoing treatment by a health provider. Pregnancy-related health needs and recovery from childbirth qualify as serious health conditions.

17. Is transgender-related healthcare covered?

It depends on the type of care. The law covers leave to care for a family member with a serious health need that requires either in-patient care or ongoing treatment by a health provider. Transgender-related health needs, including but not limited to gender-confirming surgery,

that involve an inpatient treatment, such as in a hospital, or continuing treatment by a health provider likely qualify.

18. When do I need to tell my employer I am taking paid family leave to care for a family member?

Let your employer know you plan to take paid family leave at least 30 days before you intend to start your leave. If this is not possible, for example in the case of a family member's medical emergency, let your employer know as soon as possible.

19. What proof or documentation do I need of my family member's health condition?

Your family member's health provider will need to fill out part of the paid family leave application form (Form PFL-4) certifying that your family member has a serious health condition. Your family member will also need to sign a release form authorizing the health provider to provide his or her medical information (Form PFL-3).

If your family member is unable to complete a release of information form, an authorized representative must attach a copy of legal documentation, such as a health care proxy or power of attorney, permitting the representative to sign on behalf of your family member.

E. Military family leave

1. What can I take military family leave for?

You can take military family leave before, during, or after your family member's deployment abroad in order to address certain needs arising out of your family member's military service.

2. What kinds of military service qualify?

You can take paid family leave when your loved one is on active service in a foreign country or has been notified of an impending call or order of active service to a foreign country.

3. What kinds of activities can I take this leave to do?

You can use this leave for needs that arise from your family member's deployment. For example, you can use this leave to:

- Make financial or legal arrangements for your family member
- Make arrangements for the care or education of your family member's child or the care of their parent
- Attend official military events or support programs
- Spend time with your family member for up to 15 days during a short-term, temporary rest and recuperation leave

4. Does this leave cover National Guard and Reserves members?

Yes. You can take paid family leave when a covered family member is on active duty abroad or has been notified of an impending call or order to active duty abroad in the Armed Forces, which includes the National Guard and Reserves.

5. Is this leave just for spouses?

No, you can take paid family leave in connection with your child, parent, parent-in-law, spouse, or domestic partner's deployment.

6. Can I take this leave to provide childcare for my family member's child when they are deployed?

You cannot use military family leave to provide routine, ongoing childcare. However, you can use this leave to help arrange for a change in childcare, provide urgent immediate childcare, enroll the child in school, or attend a school meeting.

7. Can I take this leave when my family member is deployed within the United States?

No, you can take military family leave when a covered family member is deployed abroad—outside the United States—on active military service.

8. What documentation do I need in order to apply for military family leave?

To apply for military family leave, you will need to submit a copy of your family member's covered active service orders or impending order to covered service, or documentation of your family member's military leave.

If you are using leave to attend a meeting or appointment, you will need to submit documentation of the meeting. For example, if you are meeting with a school official or financial advisor, you could submit an appointment confirmation or a bill.

F. Applying for and taking paid family leave

1. How do I apply for paid family leave?

In order to apply for paid family leave, you will have to submit an application to your employer's paid family leave insurance carrier. For a step-by-step guide on how to apply, see Part II of this Manual.

2. Do I submit my paid family leave application to my employer or to the paid family leave insurance carrier?

You should submit your paid family leave application to your employer's paid family leave insurance carrier. For more information on how to apply, see Part II of this Manual.

3. How do I find out who my employer's paid family leave insurance carrier is?

If you are unsure who your employer's paid family leave insurance carrier is, you can ask your employer or call the New York State Paid family leave hotline at (844) 337-6303.

4. What do I have to tell my employer and when?

Let your employer know you plan to take paid family leave at least 30 days before you intend to start your leave. If this is not possible, for example in the case of a family member's medical emergency, let your employer know as soon as possible.

Let your employer know:

1. Your reason for requesting leave, for example to bond with a new child;
2. When you expect to start your leave;
3. How long you expect to be on leave; and
4. How you intend to schedule your leave (all at once or broken up into weeks or days).

Listen carefully and take careful notes after your conversation, especially about anything that sounded strange or wrong to you. For more information about how to have this conversation with your employer, see Part IV of this Manual.

5. When will I receive my paid family leave benefits?

The paid family leave insurance carrier must pay or deny your claim within 18 days of receiving your completed application. If you submitted your application more than 18 days before starting your leave, the carrier can wait until you begin your leave to pay your claim. In that case, they should pay it within five days of you starting your leave.

6. How long do I have to submit my paid family leave application once I start my leave?

You must submit your application within 30 days of starting your leave in order to receive full benefits.

7. Can I submit my paid family leave application before I go on leave, even if I don't yet have all of the documentation I'll need?

It is up to the paid family leave insurance carrier whether to let people apply for paid family leave before they have all their documentation, also called "pre-filing." Check with your paid family leave insurance carrier if they accept pre-filing.

8. What if my leave is scheduled to begin before I've received a decision on my claim?

The insurance carrier must pay or deny your claim within 18 days of receiving your completed application. You do *not* need to wait for your claim to be approved before starting your leave.

If the insurance carrier denies your claim, your time away from work may not be considered paid family leave and your employer may treat it as they would any other absence from work. However, if the insurance carrier denies your claim and you think it was the wrong decision, you have ways to challenge that. See Question G.6. It's a good idea to check on the status of your claim with the insurance company if you do not hear from them.

9. Do I have to take paid family leave all at once or can I break it up into weeks or days?

You can take paid family leave in units as small as one day. For example, if you are caring for your loved one who needs chemotherapy treatments once a week, you could take one day of paid family leave per week to bring your loved one to treatment. You may not take paid family leave in hourly units.

10. How much money do I get if I take leave in days, not weeks?

If you take paid family leave in days rather than weeks, your benefit amount in 2019 will be 55% of your average weekly wage, up to the cap, divided by the average number of days you worked per week in the eight weeks before you started your leave. For example, in 2019, if your average weekly wage is \$1000 and you worked on average four days per week, you will receive \$137.50 per day.

If you take paid family leave in days rather than weeks, your benefit amount in 2020 will be 60% of your average weekly wage, up to the cap, divided by the average number of days you worked per week in the eight weeks before you started your leave. For example, In 2020, if your average weekly wage is \$1000 and you worked on average four days per week, you will receive \$150.00 per day. For more information on how to calculate your average weekly wage, see Question A.11.

11. Does my employer have to hold my job for me while I'm on paid family leave?

Yes. You have the right to return to work, either to the same job you had before you took leave or to a similar job with similar pay, benefits, and status.

12. Can I work from home or otherwise do any work on days I am receiving paid family leave benefits?

No, you may not work on days you receive paid family leave benefits.

13. What if I choose not to go back to my job after taking paid family leave?

If you choose not to go back to your job after taking paid family leave, you cannot be required to return the benefits you received while on leave. If your leave was covered by the FMLA and your employer paid part of your health insurance costs, you may be required to return your employer's health insurance payments.

Keep in mind that you can receive paid family leave benefits only while you are currently employed. If you terminate your employment while you are on leave, make sure to

clarify with your employer your effective end date, so that you do not lose out on benefits.

G. Things that can go wrong

1. What should I do if my employer says I can't take paid family leave?

If your employer incorrectly tells you that you're not covered, explain why you believe you are covered. For more details on how to have this conversation, see Section IV of this Manual.

It is against the law for your employer to punish, penalize, or fire you for requesting or taking paid family leave.

2. What if my employer fires me while I'm on paid family leave?

It is against the law for your employer to punish, penalize, or fire you for requesting or taking paid family leave. If your employment is terminated while you are on paid family leave, try to resolve the situation with your employer if you feel comfortable doing so. If you are unable to resolve the situation informally, you can file an official request for your job back—a request for reinstatement—with your employer and with the Workers' Compensation Board.

If your employer does not give you your job back in 30 days, you have the right to a hearing with the Workers' Compensation Board.

3. What should I do if my employer is not carrying paid family leave insurance?

All employers covered by the law must carry paid family leave insurance or self-insure. If your employer is not carrying paid family leave insurance and does not self-insure, you have a right to receive benefits through something called the Special Fund. To apply, you can submit your paid family leave application directly to the Workers' Compensation Board.

Keep in mind that applying to the Special Fund may subject your employer to investigation and fines.

4. I took unpaid leave earlier this year, can I apply for paid family leave benefits now?

Employers must notify their employees about the New York paid family leave law by posting a sign in the workplace and through written guidance. If your employer never told you about paid family leave and you took leave that would have qualified for paid family leave benefits, your employer violated your rights. If this happened to you, you can apply for paid family leave even if more than 30 days have passed since you began your leave.

You should include a note with your application explaining that it is late because your employer did not inform you of your rights. If the insurance carrier denies your claim

because it is late, you may dispute their decision in an arbitration proceeding. See Question G.6.

5. What if my employer assigns me to a different job when I go back to work after paid family leave?

You have the right to return to the same job you had before you took leave or to a similar job with similar pay, benefits, and status.

If you return from leave and your employer gives you a job with less pay, lower benefits, or less responsibility, you can file an official request for your job back—a request for reinstatement—with your employer and with the Workers’ Compensation Board. If your employer does not give you your job back in 30 days, you have the right to a hearing with the Workers’ Compensation Board.

6. What if the insurance company denies my claim?

If the paid family leave insurance carrier denies your claim, they should provide you with a reason for the denial. If the carrier wrongly denies your claim, you should try to resolve the situation informally by calling and explaining the error to them; hopefully they can resolve the situation without further action.

If you are unable to resolve the situation informally, you can request to have the denial reviewed by a neutral arbitrator (an independent third-party who will make a final decision about your paid family leave request). All paid family leave claim disputes will go through National Arbitration and Mediation (NAM). There is a \$25 filing fee to request arbitration. If you prevail on your claim, this fee will be refunded to you.

H. Interaction with other laws and programs

i. Temporary Disability Insurance (TDI)

1. What are TDI disability benefits?

Temporary Disability Insurance (TDI), sometimes called short-term disability, gives you the right to receive a portion of your paycheck while you are unable to work due to an off-the-job illness or injury, including pregnancy-related disabilities and recovery from childbirth.

2. Who is covered by TDI disability benefits?

As with paid family leave, if you are a domestic worker and you were hired by an individual to work in their home, they are required to cover you for TDI disability benefits if you work at least 40 hours per week for them. If you do not work 40 hours per week for a single employer—for example, if you work 20 hours per week in one home and 20 hours per week in another home—you are not automatically covered. However, your employer can always choose to cover you.

If you work through an agency that places you with different clients, such as a cleaning service agency or home care agency, you're probably covered under the law, *regardless of how many hours you work per week.*

3. What's the difference between TDI disability benefits and paid family leave?

While the two programs are very similar in many ways, they also have some key differences.

- You can receive TDI disability benefits while you are away from work due to your *own* serious health needs, while you can take paid family leave to bond with a new child, care for a seriously ill or injured family member, or address certain military family needs.
- Unlike paid family leave, TDI disability does *not* provide job protection (though workers may still have rights under other laws like the FMLA).
- Unlike paid family leave, TDI disability benefits are capped at a maximum of \$170 per week.

4. Can I receive TDI disability and paid family leave benefits at the same time?

You cannot receive TDI disability benefits and paid family leave benefits at the same time. However, if you are eligible for both TDI disability and paid family leave benefits, you can choose how to combine these benefits. For example, you can receive TDI disability benefits for recovery from childbirth and then take paid family leave to bond with your new child.

ii. Family and Medical Leave Act (FMLA)

1. What is the FMLA?

The Family and Medical Leave Act (FMLA) is a federal law that gives covered workers the right to up to twelve weeks of *unpaid*, job-protected time off to address their own serious health needs, bond with a new child (including an adopted or foster child), care for a seriously ill or injured family member, or address certain military family needs.

2. How is New York paid family leave different from the FMLA?

Although the two laws are similar in many ways, they have some key differences. Most importantly, New York's law gives covered workers the right to be paid while they are on leave, while the FMLA only gives the right to *unpaid* time. Both laws give workers the right to return to work after taking leave.

3. Do the paid family leave law and the FMLA cover the same people?

Though many workers are covered by both laws, some workers covered by New York's paid family leave law are not covered by the FMLA and vice versa. In order to be covered by the FMLA, you must:

- Have worked for your employer for at least one year,
- Have worked 1250 hours in the past year, *and*

- Work for an employer with 50 or more employees within 75 miles of your workplace.

4. Can I take leave under New York's paid family leave law and the FMLA for the same reasons?

If you are covered, you can take leave under *both* New York's paid family leave law *and* the FMLA to bond with a new child, care for a seriously ill or injured family member, or address certain military family needs. New York's paid family leave law, unlike the FMLA, does not cover time off for a worker's own serious health needs; however, workers taking time off for their own serious health needs may be covered by New York's TDI disability law. For more information on TDI, see Section III.H.i.

In addition, the FMLA only gives covered workers the right to take time off to care for a parent, spouse, or a child, while New York's paid family leave law gives you the right to take time off to care for a longer list of family members: a child, parent, parent-in-law, spouse, domestic partner, grandchild, or grandparent.

5. Do I have to take New York paid family leave and FMLA leave at the same time?

In general, yes. If you are covered by both the FMLA and New York's paid family leave law and are taking time off for a purpose covered by both laws, you can be required to take leave under both laws at the same time (concurrently).

iii. Sick time

1. Can I use my sick time during paid family leave if I want to?

You may wish to use your sick time during paid family leave to receive your full pay. Generally, you can do this if you and your employer agree. This time will count against the full time you get for paid family leave, but you will still get the protections of paid family leave, like the right to get your job back.

If you work in New York City, you may have additional rights under the NYC Earned Safe and Sick Time Act (ESSTA). See Question H.iii.3.

2. Can my employer make me use my sick time during paid family leave?

It depends.

- If you are taking New York paid family leave and your leave is *not* covered by the FMLA, your employer *cannot* require you to use your sick time while on leave.
- If you are taking leave to bond with a new child, your employer *cannot* require you to use sick time, even if your leave is covered by the FMLA.
- If you are taking leave to care for a seriously ill loved one *and* your leave is covered by both the FMLA and the New York paid family leave law, your employer can require you to use your sick time during your leave.

3. What is the New York City Earned Safe and Sick Time Act (ESSTA)?

If you work in New York City, you may be covered by the NYC Earned Safe and Sick Time Act (ESSTA). This law gives covered domestic workers the right to earn 1 hour of paid sick and safe time for every 30 hours worked. This time can be used to care for yourself or for a sick family member or to address nonmedical needs that may arise if you or a family member is a victim of domestic violence or a sexual offense. You cannot be fired or punished for using sick time under ESSTA.

4. How is sick time under ESSTA different from paid family leave?

Here are some of the key differences between sick time under ESSTA and paid family leave:

- You can use ESSTA when you are sick, injured, or getting medical treatment. You cannot use paid family leave to address your own health needs.
- You can use ESSTA for any health-related issue, i.e. if you have the flu or you need to take your child to a routine doctor's appointment. You can use paid family leave to care for a family member but only if he or she has a serious health condition.
- ESSTA is usually paid at 100% of your regular wages. In 2020 paid family leave is paid at 60% of your average weekly wage, up to a cap; even when fully phased in in 2021, the program will not replace your full wages.
- ESSTA gives you the right to use up to 40 hours of sick time per year; paid family leave gives you the right to take up to ten weeks of leave in 2020 and twelve weeks in 2021.

iv. Vacation time, personal time, and other paid time off

1. Can I use vacation time and other paid time off during paid family leave to receive my full paycheck?

If your employer permits, you can use vacation or other accrued paid time off during your paid family leave to receive your full paycheck.

2. Can my employer make me use up all my accrued vacation and other paid time off during paid family leave?

It depends.

- If you are taking New York paid family leave and your leave is not covered by the FMLA, your employer may *not* require you to use up your accrued paid time off while on leave.
- If you are taking New York paid family leave that is also FMLA-covered, your employer may be allowed to require you to use your accrued paid time off during your leave. This includes any paid vacation leave, personal leave, or family leave.

3. Will I continue to earn vacation and other paid time off while I'm on paid family leave?

It is up to your employer whether to allow employees to accrue vacation or other paid time off while on paid family leave.

v. My employer's maternity, paternity, or family leave policy

1. Can my employer provide his or her own maternity or paternity leave policy?

Yes, employers can provide their own maternity or paternity leave policy as long as it meets the law's requirements. Employers may provide more generous benefits if they wish.

2. How does paid family leave work with my employer's maternity or paternity leave policy?

If your employer provides parental leave benefits that meet the law's requirements, they can require that your New York paid family leave run at the same time as their policy.

For example, if your employer provides ten weeks of parental leave at 100% of your pay, they can require that this leave run at the same time as your paid family leave. If your employer provides six weeks of parental leave at 100% of your pay, they can require that this leave run at the same time as the first six weeks of your paid family leave. In 2019, you would then be entitled to an additional four weeks of paid family leave at 55% of your pay, up to the cap. In 2020, you would then be entitled to an additional four weeks of paid family leave at 60% of your pay, up to the cap.

3. If I'm a parent who gives birth, how does my employer's maternity leave policy overlap with my TDI disability benefits and paid family leave?

If you are eligible for both TDI disability and paid family leave benefits, you can choose how to combine these benefits but you may not take them at the same time. For example, you can receive TDI disability benefits for recovery from childbirth and then take paid family leave to bond with your new child.

If your employer provides his or her own parental leave benefits, it is up to your employer how to integrate that policy with your existing leave. For example, if your employer provides six weeks of parental leave at 100% of your pay, they may require that this leave run at the same time as your disability or paid family leave.

4. Can my employer require me to take paid family leave at a certain time?

No, your employer may not require you to take paid family leave at a certain time.

i. Other workplace protections

As a domestic worker, you may have additional rights under the New York Domestic Workers' Bill of Rights, such as three paid days of rest per year, one full day of rest each



week, and protections against harassment. For more information on the New York Domestic Workers' Bill of Rights, visit abetterbalance.org or <https://www.labor.ny.gov/legal/domestic-workers-bill-of-rights.shtm>.



What to Say: Tips for Common Situations

IV. What to Say: Tips for Common Situations

Here are some common scenarios that might come up in the process of taking paid family leave and some tips on how to approach them.

Paid Family Leave and Your Employer

Scenario 1: You are talking to your employer about paid family leave for the first time.

Let your employer know you plan to take paid family leave at least 30 days before you intend to start your leave. If this is not possible, for example in the case of a family member's medical emergency, let your employer know as soon as possible.

Let your employer know:

1. Your reason for requesting leave;
2. When you expect to start your leave;
3. How long you expect to be on leave; and
4. How you intend to schedule your leave (all at once or broken up into weeks or days).

What to say: *I want to let you know I will be taking paid family leave because _____ . I am going to take _____ weeks/days of leave. I plan to start my leave on _____ .*

Examples:

- a. I want to let you know I will be taking leave next month because I am adopting a child. I am going to take ten weeks of paid family leave starting May 3rd to bond with my child.*
- b. I want to let you know I will be taking paid family leave in February and March to bring my mother to medical treatments. I am planning to take one day per week for six weeks starting on February 6th.*
- c. I need to take paid family leave starting tomorrow because my child needs an emergency medical procedure. I think I will need three weeks of leave.*

Listen carefully and take careful notes after your conversation, especially if anything sounded strange or wrong to you.

Scenario 2: Your employer says something that doesn't sound right to you.

A. Your employer says you're not covered.

If your employer wrongly says you are not covered, explain to him or her why you believe you are covered.

What to say:

Employer: *You're not covered because _____.*

You: *It's my understanding that under the paid family leave law, (explanation of why you are entitled to coverage).*

Examples:

a. **Employer:** *You're not covered by paid family leave because domestic workers are not covered.*

You: *It's my understanding that domestic workers are covered by paid family leave when they work 40 hours per week for one employer.*

b. **Employer:** *You're not covered by paid family leave because you have worked here for less than one year.*

You: *It's my understanding that I'm eligible after working 26 weeks for my employer, and I have worked here for more than 26 weeks.*

B. Your employer says they can't hold your job if you go on leave.

After you take paid family leave, you have the right to return to the same job you had before you took leave or to a similar job with similar pay, benefits, and status. It is against the law for your employer to punish, penalize, or fire you for requesting or taking paid family leave.

If your employer is threatening to fire you for taking paid family leave, you must use your judgment about how you want to approach the situation. If you feel comfortable speaking to your employer, here are some ways you might phrase it:

What to say:

- *It is my understanding that under New York's paid family leave law, my job must be protected while I am on leave.*
- *I did some research, and it's my understanding that I have the right to my job back after I take paid family leave.*

It may be helpful to bring resources with you to give to your employer. You can find resources at FamilyLeaveWorks.org or at paidfamilyleave.ny.gov.

Scenario 3: Your employer won't return the paid family leave claim form to you.

To apply for paid family leave, you must fill out the section of the paid family leave claim form for employees (PFL 1-Part A) and then give this form to your employer. Your employer is required to complete the employer information and return the form to you *within **three** business days*.

If your employer has not returned the form to you within three business days, ask your employer for the completed form. Here are some ways you might phrase this:

What to say:

- *I submitted my paid family leave claim form ___ days ago and have not gotten it back. Do you know when I can expect to receive it?*
- *I am waiting to get my paid family leave claim form back so I can submit it to the insurance carrier. I think the law requires that I get the form back three days after submitting it to you. Do you know when I can expect to receive it?*

If your employer still does not return the form to you, you can submit your application without your employer's section completed. The paid family leave insurance carrier will reach out to your employer to have them supply the information they need. The insurance carrier cannot deny your claim just because your employer failed to complete their portion of the claim form.

Scenario 4: Your employer fires you for taking paid family leave.

It is against the law for your employer to punish, penalize, or fire you for requesting or taking paid family leave. If your employment is terminated while you are on paid family leave, try to resolve the situation with your employer if you feel comfortable doing so.

What to say:

- *It is my understanding that under New York's paid family leave law, my job must be protected while I am on leave.*
- *I did some research, and it's my understanding that I have the right to my job back after I take paid family leave.*

If you are unable to resolve the situation informally, you can file an official request for your job back—a request for reinstatement—with your employer and with the Workers' Compensation Board. If your employer does not give you your job back in 30 days, you have the right to a hearing with the Workers' Compensation Board.

If you have been fired for taking paid family leave, give us a call at 1-833-NEED-ABB.

Paid Family Leave and Your Insurance Carrier

Scenario 1: You don't hear back from the paid family leave insurance carrier.

Your paid family leave insurance carrier must pay or deny your claim within 18 days of receiving your completed application. If you submitted your application more than 18 days before you started your leave, the carrier can wait until you begin your leave to pay your claim. In that case, they should pay it within five days of you starting your leave.

If you submitted your claim more than 18 days ago and have not heard from your insurance carrier, you should call your carrier and ask about the status of your claim.

What to say: *I would like to check on my paid family leave claim. I sent in my application ___ days ago and have not heard back and I believe under the law I am supposed to get a response within 18 days of sending in my application.*

Scenario 2: The paid family leave insurance carrier denies your claim.

If the paid family leave insurance carrier denies your claim, they should provide you with a reason for the denial. If the carrier wrongly denied your claim, you should try to resolve the situation informally by calling and explaining the error to them. Here are some ways you might phrase this:

What to say: *Hi, my paid family leave claim was denied, but I think there has been a mistake. (Explanation of why your claim should not have been denied).*

Examples:

- a. *Hi, my paid family leave claim was denied, but I think there has been a mistake. I was told my claim was denied because I haven't worked for my employer long enough, but I have worked for my employer for nine months.*
- b. *Hi, my paid family leave claim was denied because my certification documents were not received. But I sent my documents in two weeks ago. Was something missing?*

If you are unable to resolve the situation with the carrier informally, you can request to have the denial reviewed by a neutral arbitrator. For more information, see Question G.6.

How to Get Additional Help

For more information on New York's paid family leave law or the other laws covered in this guide, visit us online at FamilyLeaveWorks.org or call our free and confidential hotline at **1-833-NEED-ABB**.

If you're an employer and have questions about paid family leave, call the New York State Paid Family Leave helpline at 844-337-6303.



a better
balance
the work and family legal center

A Better Balance is a legal advocacy organization dedicated to promoting fairness in the workplace and helping workers care for their families without risking their economic security.

40 Worth Street 10th Floor New York, NY 10013 | Helpline: 1.833.NEED.ABB | info@abetterbalance.org

abetterbalance.org