



# New York Paid Family Leave: **A Self-Employed Worker's Guide**

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# New York Paid Family Leave

## A Self-Employed Worker's Guide: What Self-Employed Workers Should Know About Taking Leave and Accessing Benefits

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### This Resource

This manual is a comprehensive guide to everything self-employed workers need to know about New York's paid family leave law. It provides detailed information on how the law works and how to access coverage. This manual also offers guidance and sample language for how to address conflicts that may arise in the process of taking leave. 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.



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## Table of Contents

<b>I.</b>	<b>What is Paid Family Leave?</b>	4
<b>II.</b>	<b>How to Apply</b>	7
<b>III.</b>	<b>Frequently Asked Questions</b>	9
	A. Overview	10
	B. Coverage and eligibility	11
	C. Parental leave	13
	D. Leave to care for a family member	15
	E. Military family leave	18
	F. Applying for and taking paid family leave	20
	G. Temporary Disability Insurance (TDI)	21
<b>IV.</b>	<b>What to Say: Tips for Common Situations</b>	23



## **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're self-employed, you are not automatically covered, but you can voluntarily choose to be covered by purchasing a paid family leave insurance plan. However, if you want to opt in, you should do so *within the first 26 weeks of becoming self-employed*; if you wait, you'll need to pay for insurance for *two years* before you can use your paid family leave benefits.

### **What does it mean to be self-employed?**

If you are an independent contractor, freelancer, own your own business (including an LLC, LLP, or sole proprietorship), or otherwise work for yourself rather than an employer, you may be considered "self-employed" under the law.

### **How can I get coverage?**

To get paid family leave coverage, you'll need to buy an insurance policy from a paid family leave insurance carrier. This policy will include both disability and paid family leave coverage. You can decide whether to get state minimum disability coverage or a more robust disability plan. For more information on disability insurance, see Section III.G.

### **Where can I buy paid family leave insurance?**

The New York State Insurance Fund is offering policies for self-employed workers. Other carriers may also be offering policies. For a full list of approved paid family leave carriers, visit [https://dfs.ny.gov/apps\\_and\\_licensing/health\\_insurers/pfl\\_carriers](https://dfs.ny.gov/apps_and_licensing/health_insurers/pfl_carriers).

### **How much paid family leave can I take?**

In 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 income can I get while I am on paid family leave?**

In 2020, you can receive 60% of your average pay, up to a cap of \$840.70 per week. In 2021 you can receive 67% of your average pay, up to a cap of \$971.61 per week.

**When can I begin taking paid family leave?**

If you do not opt in within the first 26 weeks of becoming self-employed, you will need to pay for insurance for two years before you can use your paid family leave benefits. If you opt in within 26 weeks of becoming self-employed, you can start receiving benefits sooner.



**How to Apply**

## II. How to Apply

### **Step 1: Buy a paid family leave insurance plan.**

To get paid family leave coverage, you'll need to buy an insurance policy from a paid family leave insurance carrier. This policy will include both disability and paid family leave coverage. If you want to opt in, you should do so *within the first 26 weeks of becoming self-employed*; if you wait, you'll need to pay for insurance for *two years* before you can use your paid family leave benefits.

### **Step 2: Let your insurance carrier know that you will be taking leave.**

Let your insurance carrier 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 carrier know as soon as possible.

### **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 paid family leave insurance carrier should be able to provide these forms or you can download them from the state website at [paidfamilyleave.ny.gov](http://paidfamilyleave.ny.gov).

### **Step 4: Fill out the claim form and get documentation of the need for leave.**

Fill out the claim form and make a copy for your records. 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 5: Submit application to paid family leave insurance carrier.**

Once you have completed these steps, submit your application to your 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're self-employed, you are not automatically covered, but you can voluntarily choose to be covered by purchasing a paid family leave insurance plan. However, if you want to opt in, you should do so *within the first 26 weeks of becoming self-employed*; if you wait, you'll need to pay for insurance for *two years* before you can use your paid family leave benefits.

##### 3. Where can I buy paid family leave insurance?

The New York State Insurance Fund is offering policies for self-employed workers. Other carriers may also be offering policies. For a full list of approved paid family leave carriers, visit [https://dfs.ny.gov/apps\\_and\\_licensing/health\\_insurers/pfl\\_carriers](https://dfs.ny.gov/apps_and_licensing/health_insurers/pfl_carriers).

##### 4. How much will insurance cost?

The cost of paid family leave insurance is determined by a formula based on your income, which for self-employed workers will usually be calculated based on what you reported on your last tax return. At most, paid family leave coverage will cost about \$196.72 per year in 2020 (or about \$3.78 per week) and \$385.34 per year in 2021 (or about \$7.41 per week). Because insurance rates are set by the state, the cost of paid family leave coverage will be the same no matter which insurance carrier you use. Temporary disability insurance will be a small additional cost.

##### 5. How do I figure out my average weekly wage?

Your average weekly is the average amount you made over the 52 weeks before you started your leave.

##### 6. How do I determine my income?

Your income means all of your earnings that are subject to federal self-employment tax.

##### 7. When can I begin taking paid family leave?

If you do not opt in within the first 26 weeks of becoming self-employed, you will need to pay for insurance for two years before you can use your paid family leave benefits. If



you opt in within 26 weeks of becoming self-employed, you can start receiving benefits sooner.

**8. Does the 2-year waiting policy apply to TDI disability benefits?**

If you buy a paid family leave and disability insurance plan after being self-employed for 26 weeks, you'll need to pay for insurance for two years before you can use your paid family leave benefits, but you should be able to use your TDI disability benefits without this waiting period.

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

In 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. 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.

**11. How much is the weekly paid family leave benefit?**

In 2020, you can receive 60% of your average pay, up to a cap of \$840.70 per week. In 2021, you can receive 67% of your average pay, up to a cap of \$971.61 per week.

**12. 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 2020 and twelve weeks in 2021). For example, in 2020, 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.

**13. 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.G for more information.

**B. Coverage and eligibility**

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

If you're self-employed, you are not automatically covered, but you can voluntarily choose to be covered by purchasing a paid family leave insurance plan. However, if you want to opt in, you should do so *within the first 26 weeks of becoming self-employed*; if

you wait, you'll need to pay for insurance for *two years* before you can use your paid family leave benefits.

## **2. How do I know if I'm "self-employed"?**

If you are an independent contractor, freelancer, own your own business (including an LLC, LLP, or sole proprietorship), or otherwise work for yourself rather than an employer, you may be considered "self-employed" under the law. However, businesses sometimes call people independent contractors who are actually employees under the law. If you think this might be your situation, please contact us.

If you work for an employer and are on your employer's payroll, you are likely considered an "employee" under the law. If you are an employee, your employer may be required to cover you. For more information, see Question B.8.

## **3. When can I get coverage?**

Right now. If you want to opt in, you must buy coverage *within the first 26 weeks of becoming self-employed* or face a 2-year waiting period. During the waiting period, you will have to pay for insurance coverage but will not be able to use benefits.

## **4. How can I get coverage?**

If you are self-employed and do not have any employees, you do not have to file any paperwork with the state or get pre-approved in order to opt in to paid family leave coverage. Instead, all you have to do is buy an insurance policy. This policy will include both disability and paid family leave coverage.

If you are self-employed and have employees (for example, you run your own small business), the process is different. As an employer, you are probably required to provide paid family leave and disability coverage for your employees, but you yourself will not automatically be covered by that policy. If you want to get coverage for yourself, you will need to submit a form to the Workers' Compensation Board for approval. Once you have done this, you should notify your insurance carrier.

## **5. I'm an independent contractor, am I covered?**

As an independent contractor, you may be considered "self-employed" under the law. See Question B.2.

## **6. I'm a freelancer, am I covered?**

As a freelancer, you may be considered "self-employed" under the law. See Question B.2. If you work for an employer for wages or a salary, you may be considered an "employee" under the law. See Question B.8 for more information.



**7. I work part-time, am I covered?**

If you are self-employed part-time, the process for getting paid family leave coverage is the same. You will need to buy an insurance policy from a paid family leave insurance carrier. See Question B.4 for more information.

**8. I'm an employee, am I covered?**

If you're an employee, you are probably covered by the law through your employer. For more information, see our *Worker's Guide to New York Paid Family Leave*.

You should know that businesses sometimes call people independent contractors who are actually employees under the law. If you think this might be your situation, give us a call.

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

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

**10. I'm undocumented. Am I covered?**

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

**11. I work for myself but the company or clients I work for are in another state. Am I covered?**

In order to get paid family leave coverage, you must work in New York State. It does not matter where your company or clients are based.

**12. I'm a domestic worker. Am I covered?**

Maybe. If you work in a private home, for example as a housekeeper, home health aide, or nanny, you may be considered a domestic worker. If you work through an agency that places you with different clients, your agency should provide paid family leave coverage for you.

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 individual—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. For more information on coverage of domestic workers, see our *Domestic Worker's Guide to New York Paid Family Leave*.

**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 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 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 2020 and up to twelve weeks of paid family leave in 2021 and subsequent years. Parents can choose to take paid family leave at the same time or at different times.

For example, in 2020, if two parents welcome a new child and both parents are covered (either through their employer or through a paid family leave plan for self-employed individuals), 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.G.

**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.G.

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

In general, yes. However, if you and your spouse are both *employees* of 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.G 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 are both *employees* 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 paid family leave insurance carrier that I am taking paid family leave to care for a family member?**

Let your insurance carrier 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 carrier 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 paid family leave insurance carrier. For a step-by-step guide on how to apply, see Part II of this Manual.

### **2. What do I have to tell my insurance carrier and when?**

Let your insurance carrier 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 carrier know as soon as possible.

### **3. 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.

### **4. 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.

### **5. 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.

### **6. 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.

### **7. 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 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.



If you take paid family leave in days rather than weeks, your benefit amount in 2021 will be 67% 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 2021, if your average weekly wage is \$1000 and you worked on average four days per week, you will receive \$167.50 per day. For more information on how to calculate your average weekly wage, see Questions A.5 & A.6.

**8. What if I buy a policy after being self-employed for 26 weeks?**

If you buy a policy after being self-employed for more than 26 weeks, you will have to pay into the policy for two years before being able to use paid family leave benefits.

**9. 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.

**G. 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. Am I covered for TDI disability benefits?**

If you're self-employed, you are not automatically covered, but you can voluntarily choose to be covered by purchasing a paid family leave and temporary disability insurance plan. You must buy these two plans together.

**3. Does the 2-year waiting policy apply to TDI disability benefits?**

If you buy a paid family leave and disability insurance plan after being self-employed for 26 weeks, you'll need to pay for insurance for two years before you can use your paid family leave benefits, but you should be able to use your TDI disability benefits without this waiting period.

#### **4. 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 unable to 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, there may be multiple plan options for disability benefits. If you buy the minimum disability plan, benefits will be capped at \$170 per week. If you buy a more robust disability plan, you receive more in benefits and pay more in premiums. Check with your carrier about what your disability options are.

#### **5. 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.



## 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 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 yet been self-employed for 26 weeks, but I have been self-employed 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 F.9.

### 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](http://FamilyLeaveWorks.org) or call our free and confidential helpline at **1-833-NEED-ABB**.

If you're an *employee* and have questions about your right to paid family leave, see our *Worker's Guide to New York Paid Family Leave*.

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



*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.*

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