

The Latest On State And Federal Paid Family Leave Programs

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Paid family leave is an important issue at both the state and federal level in the U.S. given that it is the only developed nation that does not require paid family leave for new mothers and caregivers. As demonstrated in the state and federal family leave law survey in this article, not only is there is no federally mandated paid leave, currently only a handful of states provide for paid family leave at the state level. Given the lack of paid family leave, studies demonstrate that there has been a negative impact on employee morale and company productivity in the U.S.



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Commencing on Jan. 1, 2018, many New York employees became eligible to take paid family leave for the care of their family members. The New York paid family leave, or NY PFL, program currently provides for up to eight weeks of family leave for qualifying employees for caretaking responsibilities at home with annual increases in the leave amount starting in the new year and continuing annually until 2021.[1] Full-time employees who work a regular schedule of 20 or more hours per week are eligible for benefits from their New York employer after working 26 consecutive weeks.[2] Part-time employees in New York are also eligible, even if they work a regular schedule of less than 20 hours per week, after working 175 days, which are not required to be consecutive days.[3] Once employees meet the eligibility requirements set forth in the NY PFL, they remain eligible until terminated.[4]

Employees who meet the work schedule requirements for paid family leave must also meet the definition of “care” which includes bonding with a newly born, adopted or fostered child; caring for a family member with a serious health condition; or assisting loved ones when a family member is deployed abroad on active military service.[5] A serious health condition includes an illness, injury, impairment, or physical or mental condition requiring inpatient care or continuing treatment.[6] On Nov. 5, 2018, Gov. Andrew Cuomo signed a bill to include employees who care for a covered family member who donates or is preparing to donate an organ under the definition of serious health condition.[7] New York employees are eligible for paid family leave regardless of their citizenship and/or immigration status.[8]

NY PFL is funded by contributions from an employee’s paycheck. The employee payroll deduction is small — employers may deduct up to 0.126 percent of each employee’s weekly wage until the employee hits the annual cap which, in 2018, was \$85.56.[9] New York employees are required to participate in the program, unless the employee has a waiver because they will not meet the eligibility requirements.

Since Jan. 1, 2018, New York employees have been eligible for up to eight weeks of paid leave within a consecutive 52-week period. For 2018, the weekly benefit amount is 50 percent of the employee’s average weekly wage, or 50 percent of the state average weekly wage (whichever is less) with a maximum weekly benefit of \$652.[10] Beginning on Jan. 1, 2019, the first of several increases will take place under the NY PFL program. In 2019, New York employees will become eligible for a maximum of 10 weeks of benefits with an

increase to 55 percent of an employee's average weekly wage, or 55 percent of the state average weekly wage (whichever is less) with a new maximum weekly benefit of \$746.41.[11] The next increase will occur on Jan. 1, 2020, with New York employees being eligible for a maximum of 10 weeks and an increase to 60 percent of an employee's average weekly wage, or 60 percent of the state average weekly wage (whichever is less). On Jan. 1, 2021, the final of the annual increases will occur, with an increase to 12 weeks benefits payable based with an increase to 67 percent of an employee's average weekly wage, or 67 percent of the state average weekly wage (whichever is less).[12]

Currently, only four states require paid family leave programs including New York. Thus, private employers in the majority of states are left with the decision of whether to provide paid family medical leave to their employees. The first states to pass laws regarding paid family leave were California in 2004[13] and New Jersey in 2009,[14] both of which provide up to six weeks of paid leave in a 12-month period. California employees can earn between \$50 to a maximum of \$1,216 per week, which amounts to "approximately 60 to 70 percent (depending on [their] income) of wages earned 5 to 18 months prior to [their] claim start date" up to the maximum weekly benefit amount.[15] In New Jersey, employees can receive up to two-thirds of their "average weekly wage, up to a maximum set at the beginning of each calendar year," which for 2018 was set at \$637.[16] Rhode Island's paid family leave law, enacted in 2014, currently provides for four weeks of paid family leave with the benefit "equal to 4.62 percent of the wages paid to [an employee] in the highest quarter of [their] Base Period" with a maximum weekly benefit rate of \$817.[17] As with New York's paid family leave program, these states fund paid family leave through employee payroll deductions.

Other states have also passed legislation for paid family leave programs in the future, including Massachusetts, which provides for arguably one of the most expansive state paid leave policies yet to be enacted in the U.S. Massachusetts paid leave will begin in 2021 and will provide employees with up to 12 weeks family leave to care for a family member or bond with a child and up to 20 weeks of paid medical leave for the worker's own serious health condition per benefit year.[18] The benefit is up to 26 weeks of paid family leave per benefit year for an employee required to care for a family member who is a covered service member.[19]

The maximum weekly benefit amount will be \$850 in Massachusetts starting in 2021 with annual increases thereafter.[20]

Washington state and the District of Columbia have also enacted legislation for paid family leave benefits to begin in 2020. In D.C., the length of the benefit is dependent on the leave requested with up to eight weeks to bond with a new child, up to six weeks for the care of a family member with a serious health condition, and up to two weeks of medical leave to care for one's own serious health condition.[21] In Washington state, benefits for family leave and medical leave are generally available for 12 weeks, but if employees require both types of leave, the benefit can be a combined total of 16 weeks. [22] Also, pregnant employees with a serious health condition that leave them incapacitated may receive 14 weeks for medical leave or 18 weeks for combined family and medical leave.[23] The maximum weekly benefit for family and medical leave in Washington state and in D.C. will be \$1,000.[24]

Case studies from states like California, New Jersey and Rhode Island, which have had paid family leave for a number of years, have published statistics that demonstrate a positive impact for both families and their employers.[25] Between 2004 and November 2017, California received 2.8 million paid family leave claims, the majority of which were to care for newborns.[26] A report in California stated that 87 percent of businesses experienced no increased costs for implementing the program. [27] Additionally, the implementation of the program increased the labor force participation in both the short term (8 percent increase) and the long term (14 percent increase).[28] New Jersey reported similar statistics, with “about six in 10 medium and large-sized businesses” experiencing no increased costs.[29] Also, a survey of employers and employees with paid family leave found that 80 percent of businesses implementing these plans reported increased employee morale.[30]

Small businesses are the most impacted by state paid family leave laws since they must learn how to cope with family leave requirements when they previously did not need to do so.

Due to the state paid family leave requirements, some small businesses have felt the administrative and workplace impact of the new requirements. Many small businesses are now required to hire an expert in human resources to deal with the legal requirements of the paid family leave such as managing employee qualifications for leave, protecting employees from retaliation for requesting this new type of leave, and managing the documents associated with the leave requests and payroll requirements. In addition to the administrative requirements for smaller businesses, the impact of dealing with the replacement of an employee who has taken paid family leave or requiring other workers to cover for that employee may also have a greater impact on smaller companies.

At the federal level, both sides of the aisle have expressed concern over the lack of a federal program providing for paid family leave in the U.S. The current federal Family and Medical Leave Act, passed in 1993, only requires that employers with 50-plus employees provide for unpaid and job-protected family leave for specified family and medical reasons but does not provide for paid family leave.[31] In addition to the 50-plus employee requirement another obstacle to family leave under the FMLA, is that employees must have completed 12 months of employment and are required to have worked 1,250 hours of service during the 12-month period immediately preceding the commencement of the leave.[32] Some interesting statistics include the fact that, without the state paid family leave laws, only “15 percent of workers across the country” are able to elect paid family leave through their employers.[33] Also, given the requirements of FMLA “roughly 40 percent” of employees “don’t even have access to job-protected unpaid leave through the federal FMLA.”[34]

In July 2018, Democrats and Republicans met for a hearing to push forward for a national paid parental leave program at the federal level. Sen. Kirsten Gillibrand, D-N.Y., advocated for a Family and Medical Insurance Leave Act, the FAMILY Act, which she initially introduced in the Senate in February 2017. The FAMILY Act proposes a similar type of benefit structure as in the NY PFL program, with employees eligible for up to 12 weeks in a year of leave and a wage benefit structure with up to 66 percent of a weekly wage up to a capped amount.[35] As with many of the state paid family leave programs, the FAMILY Act would apply to businesses regardless of the employers’ size and apply to both full and part-

time workers. The funding for this proposed federal program would be similar to many of the state programs because it would be funded through payroll contributions.[36]

There is some bipartisan support for paid family leave with Ivanka Trump participating in the July 2018 hearing and advocating for federal paid family leave as well as Republican senators. Republican senators argued for a different approach to paid family leave at the hearing with new parents taking from their Social Security and delaying these benefits to pay for family leave. Democrats argued against this plan because it could force a worker to choose between paid leave and cutting retirement benefits.

With the majority of states without a paid family leave program, both parties should join together in order to pass a federal paid family leave program to assist employees in the U.S. with their current predicament of facing emergency family leave situations without compensation while they care for their loved ones.

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[1] 12 NYCRR § 380 et seq.

[2] Section 380-2.5 of Title 12 of the NYCRR; 12 NYCRR § 380-2.5

[3] Id.

[4] Id.

[5] Id.at §§ 380-2.1, 380- 2.2 and 380-2.3

[6] NYS Paid Family Leave, FAQ Patients with a Serious Health Condition

[7] Senate Bill 2496

[8] NYS Paid Family Leave, Information for Employers
at <https://paidfamilyleave.ny.gov/paid-family-leave-information-employers>

[9] Id. Weekly Payroll Deduction

[10] Id.at § 358-3.1 (e)

[11] Id.

[12] Id.

[13] California Paid Family Leave 22 CCR § 3301et. seq,

[14] New Jersey Family Leave Act, N.J. Stat. Ann §34-11B-1et. seq.

[15] California Employment Development Department, Paid Family Leave Benefits, https://www.edd.ca.gov/Disability/Calculating_PFL_Benefit_Payment_Amounts.htm

[16] New Jersey Department of Labor and Workforce Development Division of Temporary Disability and Family Leave Insurance <https://myleavebenefits.nj.gov/worker/fli/>

[17] Rhode Island Department of Labor and Training, Temporary Caregiver Insurance Program; <http://www.dlt.ri.gov/tdi/tdifaqs.htm>

[18] Massachusetts Act Relative to Minimum Wage, Paid Family Medical Leave, and the Sales Tax Holiday -- Chapter 175M, Family and Medical Leave, 2018

[19] Id. Section 3 (b) (1)

[20] Id. Section 3 (b) (2)

[21] D.C. Act 21-682, Universal Paid Leave Amendment Act of 2016; see also <https://does.dc.gov/page/district-columbia-paid-family-leave>

[22] Rev. Code Wash. (ARCW) §50A.04.020 at 3 (a)

[23] Id.

[24] RCW50A.04.020 at 5 (a); and D.C. Act 21-682 at Section 104 (5)

[25] National Partnership for Women & Families, “Paid Leave Works in California, New Jersey and Rhode Island” - (Sept. 26, 2018) <http://www.nationalpartnership.org/research-library/work-family/paid-leave/family-act-fact-sheet.pdf>

[26] Id.

[27] Id.

[28] Id.

[29] Id.

[30] Id.

[31] 29 CFR 825.104

[32] 29 CFR 825.110

[33] “Millennials Struggling to Care for Aging Baby Boomer Parents Call for Better Paid Leave,” Time Magazine (March 23, 2018)

[34] Id.

[35] National Partnership for Women and Families FAMILY Act Factsheet

[36] S. 337 — 115th Congress