

New York Paid Family Leave Update

Basic Requirements and Recent Developments

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Benefits

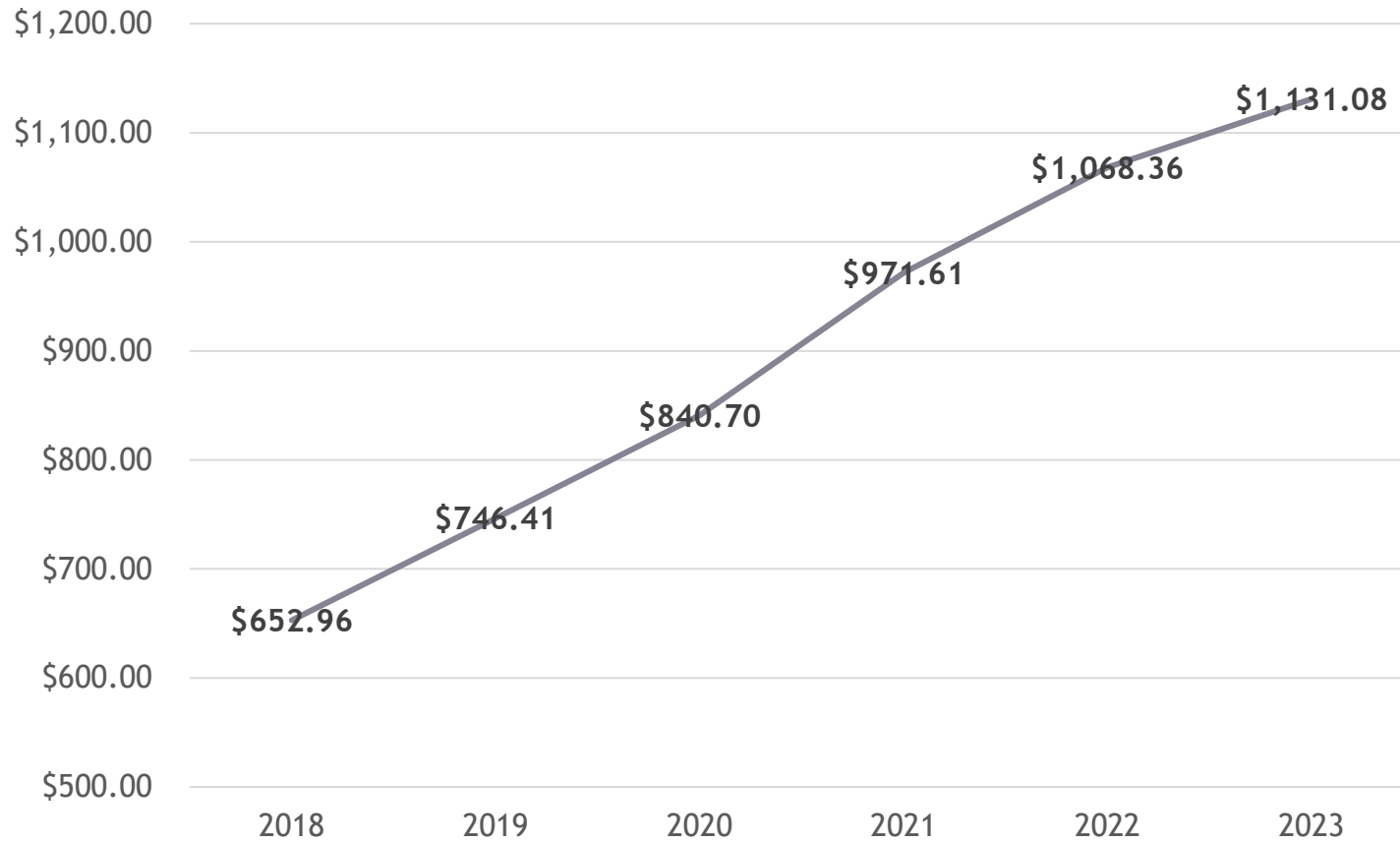
What does NY PFL provide?

- ▶ Paid time off
- ▶ Job protection
- ▶ Health insurance continuation

PFL Benefits

- ▶ 67% of average weekly wage
- ▶ Capped at 67% of the current New York State Average Weekly Wage (NYSAWW)
- ▶ 2023 NYSAWW: \$1,688.19
- ▶ 2023 max. weekly benefit: \$1,131.08
- ▶ Up to 12 weeks per year (across all employers)

Max Weekly Benefit



Coverage

Covered Employers

- ▶ All private companies
- ▶ Public (government) entities could opt in

Covered Employees

- ▶ Full-time employees who work a regular schedule of 20 or more hours per week are eligible after 26 consecutive weeks of employment
- ▶ Part-time employees who work a regular schedule of less than 20 hours per week are eligible after 175 days, which do not need to be consecutive
- ▶ Some employees of non-profit organization may be excluded

Non-Profit Exclusions

- ▶ Clergy and members of religious orders that are performing religious duties
- ▶ People engaged in a professional or teaching capacity in or for a nonprofit institution designated under the IRS tax code as a religious, charitable, or educational organization
- ▶ Compensated executive officers of a not-for-profit corporation or unincorporated association, if designated under the IRS tax code as a religious, charitable, or educational organization
- ▶ Persons receiving charitable aid from a religious or charitable institution who perform work in return for such aid and who are not under any express contract of hire, and certain persons receiving rehabilitation services in a sheltered workshop

Out-of-State Employers & Employees

- ▶ Employers with one or more employees in employment in NYS for 30 or more days in a calendar year must obtain disability and PFL coverage for those employees
- ▶ An employee who usually works outside NYS but occasionally comes into NYS for work is likely exempt from NYPFL
- ▶ An employer located outside of NYS does not need to cover employees who live in NYS but work outside of NYS

Domestic Workers

- ▶ As of January 1, 2022, domestic workers who are hired directly by a private homeowner and work 20 or more hours a week for the private homeowner are required to be covered for PFL and are eligible after 26 consecutive weeks of employment
- ▶ Examples: nannies, house cleaners, caretakers



Coverage Waivers

- ▶ Employers must offer employees who will not meet the minimum eligibility requirements opportunity to waive PFL coverage
- ▶ Coverage can only be waived if the employee **will not meet** the minimum time requirements
- ▶ If an employee waives coverage, they will not make contributions and will not be eligible for PFL benefits

Waiver Revocation

- ▶ If an employee's schedule changes such that they will meet the minimum eligibility requirements, the previous waiver will automatically be revoked
- ▶ Qualified employees may revoke a waiver at any time
- ▶ If a waiver is revoked, the employer may begin taking payroll deductions, including retroactive deductions from date of hire

Circumstances

Qualifying Circumstances

- ▶ Bonding for birth, adoption, and foster care within 12 months of child's birth, adoption, or foster placement
- ▶ To care for a family member with a serious health condition
- ▶ To assist loved ones when a family member is deployed abroad
- ▶ In some situations when an employee or their minor dependent child is under an order of quarantine or isolation due to COVID-19

Covered Family Members

- ▶ Spouse
- ▶ Domestic Partner
- ▶ Child/Stepchild
- ▶ Parent/Stepparent
- ▶ Parent-in-law
- ▶ Grandparent
- ▶ Grandchild
- ▶ **Siblings (new in 2023)**



Serious Health Condition

Illness, injury, impairment, or physical or mental condition that involves

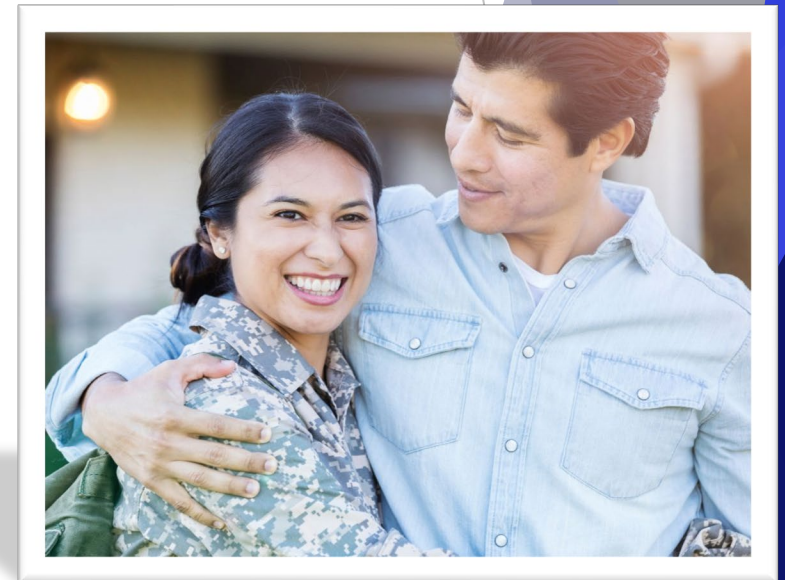
- ▶ **Inpatient care** in a hospital, hospice, or residential health care facility; or
- ▶ **Continuing treatment** or continuing supervision by a health care provider.

Continuing Treatment

- ▶ Chronic serious health condition that continues over an extended period requiring periodic treatment visits, and may cause episodic periods of incapacity
- ▶ Long-term/permanent period of treatment that may not be effective & family member is under continuing supervision
- ▶ Treatment/recovery from restorative surgery after an accident/injury/condition that would likely result in a period of incapacity for more than 3 consecutive full days in the absence of treatment
- ▶ Period of more than 3 consecutive full days involving treatment two or more times by a health care provider or treatment on at least one occasion followed by continuing treatment under supervision

PFL for Military Families

- ▶ Applies to spouse, domestic partner, child, or parent who is on active service in a foreign country or has been notified of an impending call or order of active service
- ▶ No PFL for employee's own qualifying military event
- ▶ Based directly on FMLA qualifying exigencies



Qualifying Military Exigencies

- ▶ Short-notice deployment
- ▶ Military events and related activities
- ▶ Childcare and school activities
- ▶ Financial or legal arrangements
- ▶ Counseling
- ▶ Post-deployment activities
- ▶ Rest and Recuperation
- ▶ Parental care

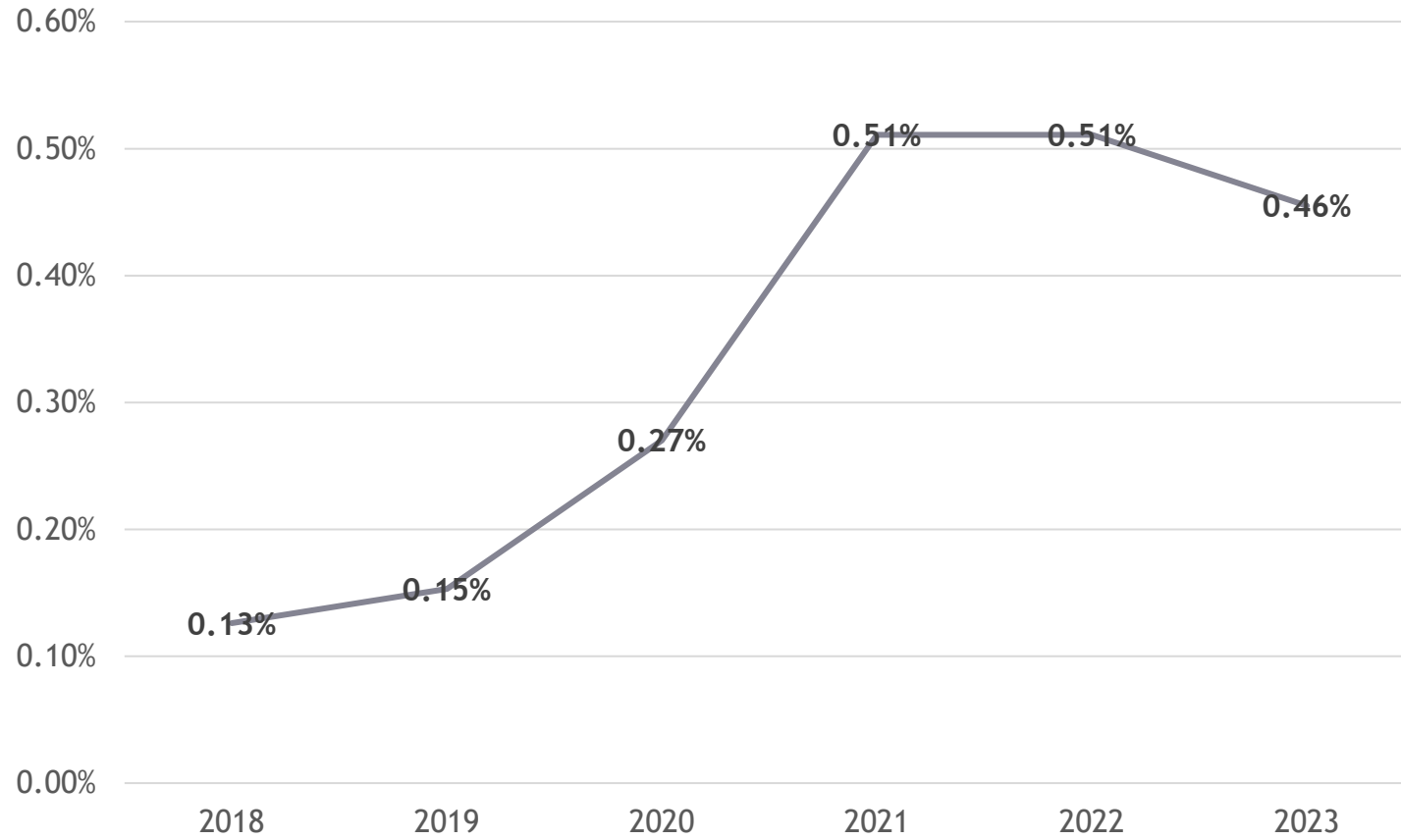


Administration

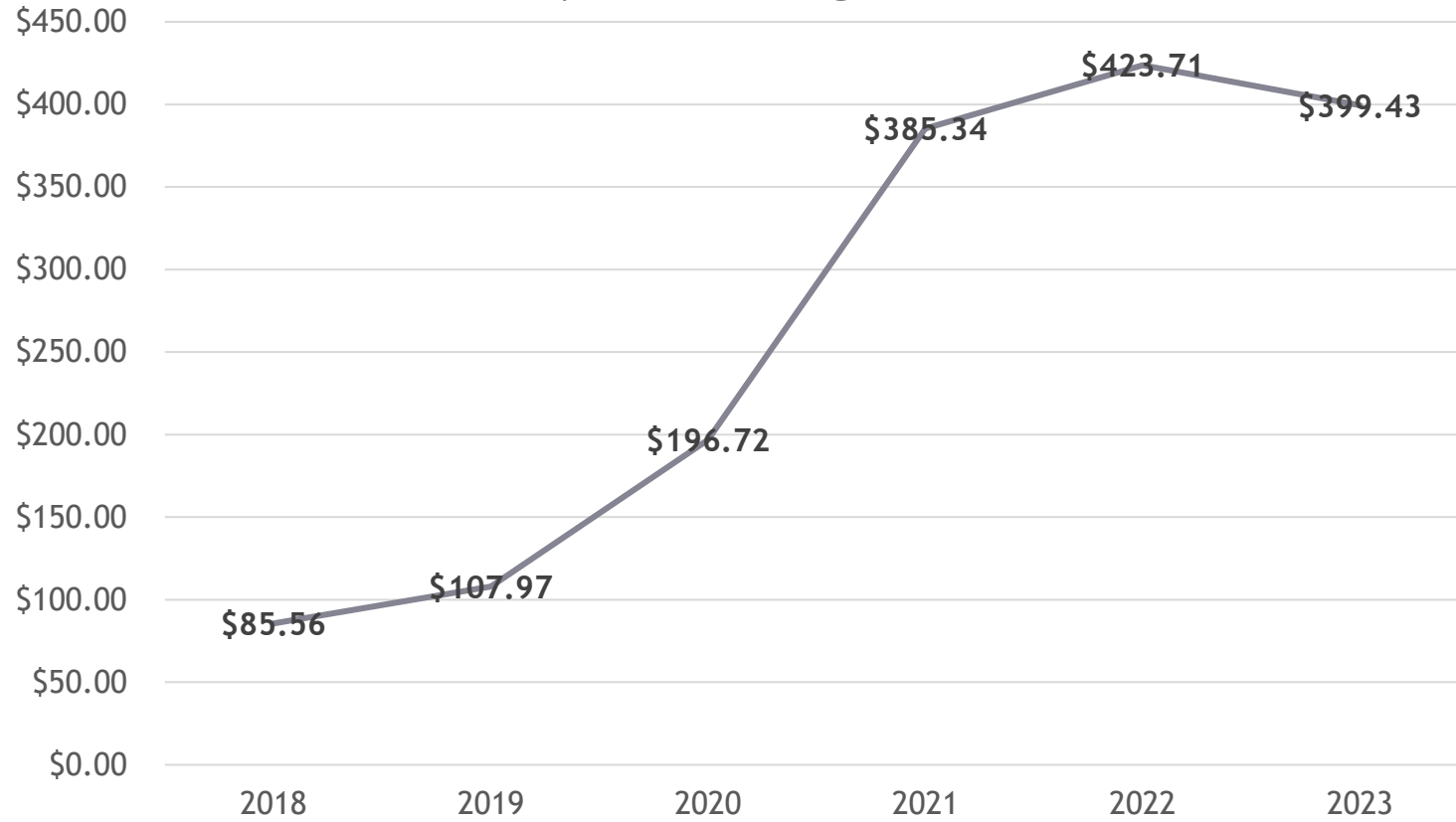
2023 Employee Contributions

- ▶ For 2023, employees will contribute 0.455% of their gross wages per pay period
- ▶ The maximum annual contribution for 2023 is \$399.43

Contribution Rate



Max Annual Contribution



Employer Notice Requirements

- ▶ Include PFL policy in your written materials distributed to your employees, such as employee handbooks
- ▶ If there is no handbook, provide written PFL guidance to employees, including how to request PFL leave and benefits
- ▶ Post notice of compliance

Employee Notice Requirements

- ▶ 30 days' advance notice of intent to use PFL if foreseeable
- ▶ If not foreseeable, must notify as soon as possible
- ▶ Employees are responsible for submitting their requests directly to the insurer

Approval Process

- ▶ Insurance carrier, not employer, determines benefit eligibility
- ▶ Must pay or deny the employee's request within 18 calendar days of receiving the completed request for PFL or the employee's first day of leave, whichever is later
- ▶ Employees can appeal insurer determinations to arbitration
- ▶ Employer's role???

Other Leaves

NYPFL & FMLA

- ▶ Federal Family and Medical Leave Act (FMLA) provides job-protected, unpaid leave for employees for qualified medical and family reasons
- ▶ With proper designation, employers can run an eligible employee's qualifying FMLA leave and NYS PFL concurrently
- ▶ If an eligible employee declines to apply for PFL while on FMLA, the time may be deducted from PFL eligibility anyway

How are Paid Family Leave (PFL) and the federal Family and Medical Leave Act (FMLA) different?

	PFL	FMLA
Benefits	PAID	UNPAID
Coverage	<ul style="list-style-type: none"> • Most private employers • Public employers may opt in • One or more employees 	<ul style="list-style-type: none"> • Public and private employers • 50 or more employees in a 75-mile radius
Eligibility	<ul style="list-style-type: none"> • After 26 consecutive weeks of employment if regularly working 20 or more hours per week • After 175 days worked if regularly working less than 20 hours per week 	<ul style="list-style-type: none"> • 12 months of employment • 1,250 hours of work in the 12-month period preceding leave
Reason for Leave	<ul style="list-style-type: none"> • Employees cannot use for own serious health condition • Can be used to care for a child of any age 	<ul style="list-style-type: none"> • Employee can use for own serious health condition • Can only be used to care for a child if the child is under 18 years old, or “incapable of self-care because of a mental or physical disability”
Length of Leave	<ul style="list-style-type: none"> • Only in full-day increments 	<ul style="list-style-type: none"> • Hourly basis
Paid Time Off	<ul style="list-style-type: none"> • Employers cannot require employees use paid time off while on PFL 	<ul style="list-style-type: none"> • Employers can compel an employee to use paid time off while on FMLA

NYPFL & Short-term Disability

- ▶ Employees with a non-work injury or illness may be eligible for short-term disability benefits
- ▶ PFL does not replace disability benefits coverage
- ▶ After giving birth, a worker may be eligible for both short-term disability benefits and Paid Family Leave.
 - ▶ cannot be taken at the same time
 - ▶ eligible employees can choose what to use
- ▶ Employees cannot take more than 26 weeks of combined DBL and PFL benefits in a 52-week period

NYPFL & Workers' Compensation

- ▶ Workers' Compensation insurance provides cash benefits and/or medical care for workers who are injured or become ill as a direct result of their job
- ▶ Employees collecting workers' compensation for a total disability cannot take PFL at the same time
- ▶ Employees on a reduced earnings schedule, may still be eligible for PFL

Parental Leave

- ▶ Employers have some discretion in how PFL works with company parental leave policies
- ▶ If employee & spouse have different employers, they are both eligible to take PFL at the same time
- ▶ If both spouses work for the same company, the employer can decline to let them both take PFL at the same time
- ▶ Employers cannot prohibit an spouses from taking PFL at different times

Other Leaves

- ▶ Employers can permit employees to supplement PFL with other forms of paid time off
- ▶ Employee cannot receive more than full wages while receiving PFL benefits
- ▶ Use of NY Paid Sick Leave while on PFL is possible, but unlikely



New York Employment Law for HR Professionals

Week 1: Hiring & Classification
February 3, 2023, 1:00-3:00 p.m.

Week 2: Compensation & Benefits
February 10, 2023, 1:00-3:00 p.m.

Week 3: Accommodation & Discrimination
February 17, 2023, 1:00-3:00 p.m.

Week 4: Discipline & Termination
February 24, 2023, 1:00-3:00 p.m.

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Questions?



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