



# Understanding Paid Leave Requirements to Ensure Compliance

Jennifer Barry, J.D.  
Senior HR Consultant  
Assistant HR Practice Leader

# Today's Presenter



Jennifer Barry, J.D.  
Senior HR Consultant  
Assistant HR Practice  
Leader



# MANAGING FEDERAL LEAVE REQUIREMENTS

---

# Family and Medical Leave Act

## Covered employers include:

- Private-sector employers with 50 or more employees in at least 20 weeks of the current or preceding year
- Public agencies, including state, local, and federal employers – no matter how many employees
- Local education agencies, including elementary and secondary schools (public and private) – no matter how many employees

## Eligible employees must:

- Have worked for the covered employer for at least 12 months (which need not be consecutive)
- Have at least 1,250 hours of service for the employer during the 12 months immediately before the leave
- Work at a location within 75 miles of which the employer has 50 or more employees



# FMLA - Types of Leave

## **Eligible reasons for FMLA leave include:**

- The birth of the employee's newborn child;
- The placement of a child with the employee for adoption or foster care;
- A serious health condition that makes the employee unable to perform the functions of his or her job;
- Care for the employee's spouse, child, or parent who has a serious health condition;
- Any qualifying exigency arising out of the fact that the employee's spouse, child, or parent is a military member on covered active duty (or call to covered active duty status)
- Care for a spouse, child, parent, or next of kin who is a covered service member with a serious injury or illness.

# FMLA - Balancing Laws and Policies

- Is the employee eligible for one or more leaves/benefits? If so, what is the timing behind certifying those leaves and getting employee paid?
- What is the difference between the “leave” versus the “benefit”?
- When/How do leaves/benefits run concurrently? When do they not?
- How do you coordinate payment with carriers or via payroll?
- How do you continue certain benefits if not being paid?
- When does use of paid time off come into play?
- How do you track the leave to have documentation that you were compliant with state and federal law?

# How to Certify FMLA Leave

- All covered employers must have an FMLA poster and must provide employees with the General Notice of FMLA Rights
- If an employee “asks” for leave, an employer must first determine employee eligibility
- Next, the employer must certify leave (with oral or written notice) within 5 days of learning of need for initial leave (if not eligible, must state at least 1 reason not eligible for leave)
- Employer must provide Rights and Responsibilities Notice to each eligible employee within 5 days (can be part of same notice) – Form WH-381

# FMLA - Leave Amounts

- Employees may take up to 12 weeks of FMLA leave during a 12-month period
- Employees may take up to 26 weeks of leave during a single 12-month period to care for a spouse, child, parent, or next of kin who is a covered service member with a serious injury or illness.
- Spouses who work for the same employer are limited to a combined total of 12 weeks of leave to care for a parent with a serious health condition or following the birth, adoption or placement of a child.
- Spouses who work for the same employer are limited to a combined total of 26 weeks of leave to care for a covered service member with a serious injury or illness if each spouse is a parent, spouse, son or daughter, or next of kin of the service member.



# FMLA - Intermittent Leave

- Employees are entitled to take FMLA leave on an intermittent or reduced schedule basis:
  - when there is a medical need for this type of leave for an employee's own serious health condition;
  - to care for a spouse, parent, or child with a serious health condition; or
  - to care for a covered service member with a serious injury or illness.
- An employee is also entitled to use intermittent or reduced schedule leave for qualifying exigencies.
- An employee is not entitled to take intermittent leave for the birth and care of a newborn child or the placement with the employee of a child for adoption or foster care unless the employer agrees to the arrangement.

# FMLA - Reinstatement

- Following FMLA leave, an employee must be restored to the same position or one equivalent to it in all benefits and other terms and conditions of employment.
- There is a limited exception to the FMLA's reinstatement requirement for salaried employees if they are among the highest paid 10 percent of all employees within 75 miles of the employee's worksite, restoration would lead to grievous economic harm to the employer and other conditions are met.



# FMLA - Maintenance of Health Benefits

- Health insurance must be continued under the same conditions as prior to leave.
- If applicable, arrangements must be made for employees to pay their share of health insurance premiums while on leave.
- In some instances, the employer may recover premiums it paid to maintain health coverage for an employee who fails to return to work from FMLA leave





# MANAGING STATE PAID LEAVE REQUIREMENTS

---

# NYS Paid Family Leave

- Requires private sector employers to provide paid family leave benefits
- Funded through employee paycheck deductions (or paid fully by employer)
- Typically added as a rider on an employer's existing disability insurance policy
- NYS employees of out-of-state employers are covered
- No waiting period once eligible
  - FT (20+ hours/week): after 26 weeks
  - PT (<20 hours/week): after 175 days
- PFL benefits are taxable non-wage income that employees must include in their gross income
- Taxes won't automatically be withheld from PFL benefits; employees may request
- Employee waivers available, but rare



# Reasons for NYS Paid Family Leave

- Participate in providing care, including physical or psychological care, to a family member with a serious health condition
- Bond with the employee's child during the first 12 months after the child's birth or after the placement of the child for adoption or foster care with the employee
- Any qualifying exigency as interpreted under FMLA arising out of the fact that the spouse, domestic partner, child or parent of the employee is on active duty (or has been notified of an impending call or order to active duty) in the U.S. Armed Forces
- Help a family member prepare for, and recover from, surgery related to organ or tissue donation

# NYS Paid Family Leave

Amount of Leave	PFL Pay Rate	PFL Cap	Max Weekly Benefit	Employee Contribution Rate	Annual Employee Contribution Cap
12 Weeks	67% of average weekly wage	67% of the current statewide average weekly wage (NYSAWW)	\$1,177.32 (for 2025)	0.388%	\$354.53

# NYS Disability Insurance



- NYS requires employers to provide disability benefits coverage to employees for an off-the-job injury or illness.
- Coverage for disability benefits can be obtained through a disability benefits insurance carrier.
- The Disability Benefits Law provides weekly cash-only benefits to replace, in part, wages lost due to injuries or illnesses that do not arise out of or in the course of employment.
- Payments for a maximum of 26 weeks in a 52-week period.
- Medical care is the employee's responsibility and is not paid for by the employer or insurance carrier.



# NYS Disability Insurance

- All workers who are considered employees working in NY must be provided NYS Disability Insurance, with a few exceptions (clergy, teachers in non-profit, those receiving charitable aid)
- Seven-day waiting period for benefits; benefits begin on the eighth day
- If unemployed for four weeks and collecting unemployment, the state will pay disability benefits
- If unemployed for less than 4 weeks, previous employer is liable for disability benefits



# Workers' Compensation Insurance

- NYS law requires all employers with at least one employee to have continuous workers' compensation insurance
- The insurance typically provides reimbursement for medical care, weekly benefits, and/or vocational rehabilitation for workers who become ill or injured while on the job
- Benefits are calculated based on the worker's average weekly wage, degree of disability, and duration of disability
- NYS Workers' Compensation Board ultimately has jurisdiction over all workers' comp cases and determinations



# NYS Paid Sick Leave

- Requires employers to provide their employees with leave for reasons relating to the health and safety of the employee or the employee's family
- How much leave is required, and whether the leave must be paid, depends on employer size
- Employees accrue one hour of sick leave for every 30 hours worked
- Employers may front-load the total amount of sick leave to employees at the beginning of the year
- Employees may carry over unused sick leave to the following calendar year



# Reasons for NYS Paid Sick Leave

- An employee's or employee's family member's mental or physical illness, injury, or health condition
- Diagnosis, care, or treatment of a mental or physical illness, injury, or health condition of, or need for medical diagnosis of, or preventative care for, an employee or an employee's family member
- An employee or employee's family member has been the victim of domestic violence (as defined by state law), a family offense, sexual offense, stalking, or human trafficking

# NYS Paid Sick Leave

Employer Size	Annual Sick Leave Requirement
Fewer than 5 employees Annual net income of \$1M or less	Up to 40 <b>unpaid</b> hours
Fewer than 5 employees Annual net income of more than \$1M	Up to 40 <b>paid</b> hours
5-99 employees	Up to 40 <b>paid</b> hours
100 or more employees	Up to 56 <b>paid</b> hours

# NEW!! NYS Paid Prenatal Care Leave

- As of January 1, 2025, NYS became the first state in the country to allow paid leave for pre-natal or pregnancy-related care
- All employees of private employers in NYS are eligible for up to an additional 20 hours of paid time off in a 52-week period for pre-natal care – this is in addition to all other paid time offered by law or by policy!!
- No minimum number of employees; no time of service requirement to be eligible
- Covers health care services related to pregnancy, including physical examinations, medical procedures, monitoring and testing, and discussions with a health care provider related to the pregnancy (includes in vitro counseling and end of pregnancy appointments)



# NYS Paid Leave for COVID-19

- NYS provides job-protected leave if an employee or his/her family member contracts COVID-19.
- It's meant to be a combination of benefits, including employer-provided paid sick leave, Paid Family Leave, and NYS disability benefits.
- Paid leave and amount of leave benefit depend on the employer's size and revenues.
- NYS COVID-19 Leave was supposed to sunset in the summer of 2024 but was recently extended until July 31, 2025.
- New York is one of the only states that has continued this type of benefit.

# NYS COVID-19 Leave

Employer Size	Annual Sick Leave Requirement
1-10 Employees Annual net income of \$1M or less	Unpaid leave supplemented with PFL and DBL
1-10 Employees Annual net income of more than \$1M	At least 5 paid COVID-19 sick days
11-99 employees	At least 5 paid COVID-19 sick days
100 or more employees	At least 14 paid COVID-19 sick days



# Interactions of Paid Leave

- If an employee has an event that qualifies for leave under both NYS Paid Family Leave and FMLA, an employer may require the employee to take the leaves concurrently.
- If an employee uses FMLA for an event that doesn't qualify for NYS Paid Family Leave, then the employee will still have NYS Paid Family Leave available.
- Employees can't collect short-term disability (DBL) and NYS Paid Family Leave benefits at the same time.
- Employees can't collect NYS Paid Family Leave benefits while collecting workers' compensation for a total disability.



# Other Mandated Leaves in NYS

- Lactation Leave (**started June 19, 2024**)
- Victim and Witness Leave
- Emergency Responder Leave
- Military Leave
- Blood Donation Leave
- Bone Marrow Donor Leave
- Voting Leave
- Jury Duty Leave
- Military Spouse Leave (unpaid)





# GTM'S HR CONSULTING SERVICES

---

# Leave Management Service

- Plan, track, and handle employee leaves, including administration, claims management, return-to-work support, and reporting
- Delivered via a secure, cloud-based solution and backed by a dedicated team of specialists
- Control your costs, alleviate administrative burdens, mitigate risk, reduce absenteeism, and streamline leave processes



# HR Audit

- Risk management tool
- Comprehensive review of HR policies, practices, and procedures
- Conducted by a certified HR consultant
- Fully assess whether your HR processes and policies comply with federal and state laws
- Identify areas of improvement
- Ensure compliance and mitigate risks





# QUESTIONS

---

# Continue the Conversation...



## **Questions about paid leave compliance**

Jennifer Barry, Sr. HR Consultant & Assistant HR  
Practice Leader

[j.barry@gtm.com](mailto:j.barry@gtm.com) | (518) 836-2521



## **Info on Leave Management Service & HR Audits**

Kaleena Castiglione, HR Sales Executive

[k.castiglione@gtm.com](mailto:k.castiglione@gtm.com)

(518) 836-2534