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For employees of a certain generation, the concept of parental leave, let alone paid parental leave, simply did not exist. Sweden became the first country in the world to enact gender-neutral parental leave (in 1974), and now Swedes are entitled to a generous 480 days of parental leave for a birth or adoption of a child.¹ The United States was a little slower—California became the first state to enact paid family and medical leave in 2002.² So where does New York stand in the mix?

In New York State, parental leave is governed by a veritable alphabet soup of laws, each with its own unique attributes: the federal Family and Medical Leave Act (“FMLA”),³ New York Paid Family Leave (“PFL”),⁴ New York Paid Sick Leave (“PSL”),⁵ and, effective as of January 1, 2025, New York Paid Prenatal Leave (“PPL”) (each as may be in effect and amended from time to time).

Parental leave is an increasingly important portion of an overall benefits package (especially for people who expect to become parents), but New York’s fractured, piecemeal approach seems to be a work in progress.

FMLA

The FMLA applies to “covered employees.”⁷ A covered employee must: work for a covered employer; have worked 1,250 hours during the 12 months prior to the start of leave; work at a location where the employer has 50 or more employees within 75 miles; and have worked for the employer for 12 months (which need not be consecutive).

A “covered employer” for these purposes is any public agency employer or any private sector employer employing 50 or more employees for at least 20 workweeks in the current or preceding calendar year.

Becoming a Parent in New York: The Current State of Parental Leave

The FMLA provides 12 weeks of unpaid leave per year; requires group health benefits to be maintained during the leave as if the employee continued to work instead of taking leave; and entitles employees to return to the same or an equivalent job at the end of the leave period. For parental leave specifically, the FMLA allows a mother or father to use the FMLA leave for the birth, adoption or placement (of a foster) child at any time concluding within 12 months after the birth or adoption/placement. A mother can use FMLA leave for prenatal care as well. As the FMLA is unpaid, neither the employer nor the employee is subject to U.S. federal income tax.

PFL

The PFL generally covers most private sector employees in New York as well as public sector employees if the public sector employer has opted in to the program. To be eligible, employees must work at least 20 hours per week after 26 consecutive weeks of employment (full-time employees) or employees must work less than 20 hours per week after working 175 non-consecutive days (part-time employees).⁸

Like the FMLA, the PFL provides 12 weeks of leave per year; requires group health benefits to be maintained during the leave as if the employee continued to work instead of taking leave; and entitles employees to return to the same or an equivalent job at the end of the leave period. For parental leave specifically, the PFL allows a mother or father to use the PFL leave for the birth, adoption or placement (of a foster) child at any time concluding within 12 months after the birth or adoption/placement.⁹ PFL is expressly not available for prenatal care.¹⁰

Unlike the FMLA, the PFL provides paid leave. The amount of paid leave is equal to 67% of the employee’s average weekly wage, capped at \$1,177.32 (in 2025) for earners above a certain threshold. The program is generally funded by

employee payroll deductions of .388% of gross wages per pay period.¹¹

Employees must submit a claim to the insurance company, as the benefit is paid out by the insurance company, not by the employer.

Any PFL benefits received by an employee are taxable and shall be included in the employee’s federal gross income as non-wages.¹² Since benefits are paid by the insurance carrier rather than the employer, the insurance company will issue a Form 1099-G to the employee to report the income. Taxes will not automatically be withheld from benefits, but employees may request voluntary tax withholding.¹³ There is no tax consequence to employers apart from appropriately reporting employee contributions on their respective W-2 forms.

PSL

The PSL covers all private sector employees (including employees of charter schools, private schools and not-for-profit corporations) in New York State and expressly excludes public sector employees.¹⁴ Employers are required to provide leave according to the following chart:

Number of Employees	PSL Requirements
0-4	Up to 40 hours of unpaid leave per calendar year (if the previous tax year net income is less than or equal to \$1,000,000)
0-4	Up to 40 hours of paid leave per calendar year (if the previous tax year net income is greater than \$1,000,000)
5-99	Up to 40 hours of paid leave per calendar year
100 or more	Up to 56 hours of paid leave per calendar year

PSL can be used (1) “for a mental or physical illness, injury, or health condition of such employee or such employee’s family member” and (2) “for the diagnosis, care, or treatment of a mental or physical illness, injury or health condition of, or need for medical

diagnosis of, or preventive care for, such employee or such employee’s family member.”¹⁵ Although not expressly drafted for parental leave, a mother or father can ostensibly rely on either prong to take parental leave, including prenatal leave.

As in the FMLA and the PFL, the PSL entitles employees to return to the same or an equivalent job at the end of the leave period. Under the PSL, the employer pays the employee at the employee’s regular pay (or minimum wage, if higher).¹⁶ Accordingly, income and payroll taxes are required.

PSL payments received by an employee are treated as regular wages for both federal and state tax purposes. As such, they are subject to regular income tax withholding, Social Security, and Medicare taxes. Employers must include these payments in regular payroll reporting and W-2 forms. Like wages, PSL payments are deductible by employers as a business expense.

PPL

The PPL is an amendment to the PSL rules and is the first of its kind in the nation. The PPL covers all private sector employees, regardless of employer size.¹⁷ Employees are entitled

to 20 hours of paid prenatal leave per year (in addition to any other available leave options). Employees can use PPL for “health care services received by an employee during their pregnancy or related to such pregnancy, including physical examinations, medical

procedures, monitoring and testing, and discussions with a health care provider related to the pregnancy;¹⁸ employees can also use it for fertility treatment and end-of-pregnancy appointments, but cannot use it for postnatal or postpartum care.¹⁸

Under the PSL, the employer pays the employee at the employee's regular pay (or minimum wage, if higher).¹⁹ Accordingly, income and payroll taxes are required. The tax treatment of PPL payments mirrors that of PSL payments—they are considered regular wages subject to all normal payroll taxes and withholding requirements. PSL payments must be included in regular payroll reporting and W-2 forms, and are deductible by employers as a business expense.

Supplemental Leave

Of course, employers may, but are never required to, voluntarily provide supplemental parental leave benefits. An employer that provides paid leave that exceeds the state-required minimums may receive a tax credit pursuant to Section 45S of the Internal Revenue Code of 1986 ("IRC"), as may be amended and in effect from time to time. To qualify, the employer must have an active written policy providing eligible employees access to at least two weeks of paid family and medical leave annually, paid at 50% or more of normal wages.²⁰

The IRC § 45S tax credit is not available to cover the costs of benefits required by state or local law or benefits paid by state or local government. In order to qualify for the credit, the employer must meet the minimum tax credit eligibility requirements on top of any leave benefit required by state or local law.

For example, to qualify for the tax credit, a New York employer with more than five employees would have to provide eligible employees with three weeks of annual paid sick leave

at 100% wage replacement. The first 40 hours of paid sick leave benefits merely comply with PSL regulations. The employer could claim the credit on the supplemental benefit because it satisfies the requirements of IRC § 45S.

Coordination of Leave Benefits

Understanding how the various leave programs interact is crucial for both employers and employees. Notably, employers typically have a written policy stating which leave types must be used first and/or which leave types run concurrently. Regardless of whether leaves are taken consecutively or concurrently, each program maintains its distinct characteristics and requirements. For example, an employee giving birth might simultaneously qualify for FMLA and PFL leave, effectively using their 12 weeks of each program during the same period. However, the financial implications differ significantly—while the FMLA provides job protection without pay, the employee would receive PFL benefits during this overlapping period.

The new PPL adds another wrinkle in the coordination of benefits. An expectant mother might use PPL for prenatal appointments while saving FMLA leave for post-birth bonding time. Similarly, PSL can be strategically utilized for pregnancy-related medical appointments once PPL's 20 hours are exhausted. Employers should note that they cannot require employees to use one type of leave before another, nor can they mandate that employees exhaust other paid time off program benefits before accessing PSL or PPL.²¹

Provided an employee meets the eligibility requirements for each program, the choice of which leave program to use, and when, generally remains with the employee, subject to the FMLA rules and employer policies regarding concurrent use. This flexibility, while beneficial to

employees, requires careful tracking and administration by employers to ensure compliance with the varying requirements of each program.

Path Forward

As demonstrated above, the legal framework for parental leave in New York is governed by different laws that may result in varied outcomes and can be confusing to individuals and businesses alike. It is important to note that these laws are minimum standards, and many employers offer longer paid or unpaid parental leave periods.

Enactment of the PPL is a positive sign that Albany is aware of flaws in the system and is a willing partner in an effort to expand coverage. But the PPL merely plugs a specific hole and doesn't address other gaps in the programs.

New York has made significant strides in mandating parental leave since the enactment of the PFL, but it remains to be seen whether New York will continue with a piecemeal approach that enacts small-scale changes or whether New York will take a deep dive into the various laws and create a single, unified parental leave law that provides the most coverage to the most people—something along the lines of a minimum of 12 weeks of fully-paid leave funded by the employer; no employee contributions; open to all employees of public, private or nonprofit employers of any size; use for pre- or postnatal care; continuation of health care benefits; and job protection.

Expanding parental leave is widely popular among most employees,²² and the New York State legislature has taken notice; so maybe more change is in the air. 🗳️

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4. 12 NYCRR § 380-7.1 (2025).
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18. *Id.*
19. N.Y. State, *Paid Prenatal Leave Information for Employees*, <https://www.ny.gov/new-york-state-paid-prenatal-leave/information-employees> (last visited Jan. 23, 2025).
20. I.R.C. § 45S(c)(1)(A)-(B).
21. N.Y. State, *supra* note 17.
22. Juliana Menasce Horowitz et al., *Americans Widely Support Paid Family and Medical Leave, but Differ Over Specific Policies*, Pew Rsch. Ctr. (Mar. 23, 2017), <https://www.pewresearch.org/social-trends/2017/03/23/americans-widely-support-paid-family-and-medical-leave-but-differ-over-specific-policies/> (finding 82% of Americans support paid maternity leave and 69% support paid paternity leave).



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