

# San Francisco and New York Pass New Paid Family Leave Laws, While California Increases Benefits Under Its Leave Programs

## San Francisco Passes 6-Week Paid Parental Leave Ordinance Effective January 1, 2017

On April 5, 2016, the San Francisco Board of Supervisors unanimously passed an ordinance granting new parents 6 weeks of paid leave to bond or care for a new child (by birth, adoption or fostering). The new San Francisco law (SF PPL) is intended to supplement the California Paid Family Leave (CA PFL) which currently pays workers 55% of their normal wages to take time off to care for a new child.

### When is SF PPL effective?

Beginning January 1, 2017, the SF PPL will require a covered employer with 50 or more employees (regardless of location) to pay the remaining 45% of a covered employee's wages in order to provide 100% of an employee's normal gross weekly wage (subject to a weekly maximum) for the duration of the 6-week leave. Note that the SF PPL portion depends on the CA PFL portion, thus the SF percentage will decrease as the CA percentage increases. The employee headcount threshold will begin phasing down and will apply to smaller companies according to the following time table:

### Effective dates for covered employers with:

- 50 or more workers → January 1, 2017
- 35 or more workers → July 1, 2017
- 20 or more workers → January 1, 2018

### Which employees are covered?

The new law applies to employees who meet the eligibility requirements below. Note that it does not apply to employees covered by a current bona fide collective bargaining agreement (or one that has expressly and clearly waived this leave requirement).

### A covered employee is someone who:

- Commenced employment with the employer at least 180 days prior to the start of the leave period;
- Performs at least 8 hours of work per week within San Francisco;
- At least 40% of the total weekly hours worked (for that employer) are within San Francisco, and
- Is eligible to receive paid family leave compensation under the CA PFL law for bonding with a new child.
  - This includes employers that have received State approval to pay CA PFL through a voluntary disability insurance plan in accordance with the CA UI Code.

### How much will employees be entitled to?

As explained above, companies will be responsible for paying the remaining percentage of the employee's gross weekly wages that is not covered by the CA PFL. However, these amounts are subject to a weekly maximum that is based on an annual salary of \$106,740 for 2016 (which comes to approximately \$2,053/week).

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**Maximum weekly benefit divided as follows:**

- CA PFL 55% → \$1,129
- SF PPL 45% → \$924

Employers may require employees to use up to 2 weeks of accrued vacation leave to help satisfy the employer's obligation to pay SF PPL prior to receiving paid parental leave. This means that the 2 weeks of vacation leave could count towards the 6-week PPL period. Employers may also be able to receive reimbursement from employees who terminate their employment within 90 days after the end of the leave period if certain formalities are followed.

**Other administrative and enforcement requirements?**

Covered employers will be required to post a workplace notice and retain records relating to SF PPL for a period of 3 years that must be available to the Office of Labor Standards Enforcement (OLSE) upon request. The SF PPL has an anti-retaliation provision and the OLSE will scrutinize whether a violation has occurred when there are (1) wage reductions and/or (2) terminations during the leave period or within 90 days of the employee's request for CA PFL.

The full text of the SF PPL (showing amendments and revisions) can be found here: [http://wsandco.com/wp-content/uploads/2016/04/Text\\_of\\_SF\\_Board\\_Ordinance\\_No\\_160065.pdf](http://wsandco.com/wp-content/uploads/2016/04/Text_of_SF_Board_Ordinance_No_160065.pdf)

**California Increases Benefits for Paid Family Leave Effective January 1, 2018**

On April 11, 2016, Governor Jerry Brown signed a law which will increase the benefits provided to individuals in the Paid Family Leave (PFL) and State Disability Insurance (SDI) programs. The new law will increase the level of benefits from the current level of 55% to either 60% or 70% depending on income level.

CA PFL provides up to 6 weeks of wage replacement benefits to workers who take time off work (1) to bond with a new child (biological, adopted or fostered) or (2) to care for a seriously ill or injured family member. The SDI program provides benefits to individuals who are unable to work because of their own illness or injury.

**What's New?**

The revised law makes two important changes (1) eliminates the 7-day waiting period effective January 1, 2018 and (2) uses a new formula for calculating the weekly wage replacement rate for disabilities commencing January 1, 2018 through December 31, 2021 as follows:

Highest Quarterly Wage†	Weekly Benefit Amount
Is > \$929	\$50
Is \$929 or more, but less than 1/3 of CA's average quarterly wage	70% of employee's highest quarterly wage† ÷ 13
Is equal to or greater than 1/3 of CA's average quarterly wage	Greater of 60% of employee's highest quarterly wage† ÷ 13 or 23.3% of CA's average weekly rate

†The quarter of the individual's disability base period in which these wages were highest.

The legislative summary for the CA PFL amendment can be found here: [http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201520160AB908](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB908)

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## New York Passes 12-Week Paid Family Leave Policy Effective January 1, 2018

On April 4, 2016, New York passed a new law granting 8 to 12 weeks of paid family leave benefits to eligible employees on a staggered effective date basis. This leave program will be funded entirely through employee payroll deductions (about \$1 per employee per week) and relieves employers of any obligation to contribute.

### When is NY PFL effective?

The NY PFL will have phased-in effective dates and gradually increasing benefit amounts as illustrated in the chart below. Starting January 1, 2018, employees will be eligible for 8 weeks of paid family leave to (1) care for a new child (biological, adopted or fostered), (2) care for a family member with a serious health condition or (3) handle family matters when someone is called to active military service. The duration of leave will gradually increase to 12 weeks by 2021.

### Who is eligible and how much will they receive?

Employees are eligible to participate after having worked for their employer for 6 months and must provide the employer with at least 30 days of prior notice (if the leave is foreseeable).

The benefits will start at 50% of an employee's average weekly wage (subject to a max of 50% of the statewide average weekly wage) in 2018 and will gradually increase to 67% by 2021.

Effective Date	Duration	Weekly Benefit Amount	Capped Weekly %
Jan 1, 2018	8 weeks	50% of EE's avg wage	50% of NY's avg wage
Jan 1, 2019	10 weeks	55% of EE's avg wage	55% of NY's avg wage
Jan 1, 2020	10 weeks	60% of EE's avg wage	60% of NY's avg wage
Jan 1, 2021	12 weeks	67% of EE's avg wage	67% of NY's avg wage

### Other administrative and enforcement requirements?

The NY PFL imposes restrictions/requirements on both the employee and the employer as follows:

### Employees:

- Employees will not be able to collect full disability benefits and paid family leave benefits at the same time.
- Benefits available to employees under FMLA must be used concurrently with the NY PFL (unless otherwise permitted by the employer).
- Employees must provide written notice and proof of the need for family leave from the care recipient's healthcare provider.
- In addition, the care recipient may be required to undergo a physical exam by a qualified healthcare provider for additional verification.

### Employers:

- Employers must reinstate employees who take PFL to the same (or comparable) position held immediately prior to taking leave.
- Employers are not required to permit more than one person to use the same period for the same family member. This means that if both parents are employed with one company, that employer does not have to allow both parents to use the same period of leave to bond with the new child.
- Employers must (1) post a notice in a conspicuous area at the workplace and (2) provide written notice to an employee who takes PFL for more than 7 consecutive days.
- Employers may be subject to penalties for noncompliance that range from \$100 to \$2,000, including potential imprisonment.

The text of the NY PFL can be found here under Part SS, within the recently passed New York State Budget link:

[http://assembly.state.ny.us/leg/?default\\_fld=&bn=A09006&Summary=Y&Text=Y](http://assembly.state.ny.us/leg/?default_fld=&bn=A09006&Summary=Y&Text=Y)

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