

# What We'll Cover Today



1. Background on Paid Family Leave
2. Details of the NY Paid Family Leave Law
3. Implications for Your Business
4. Questions

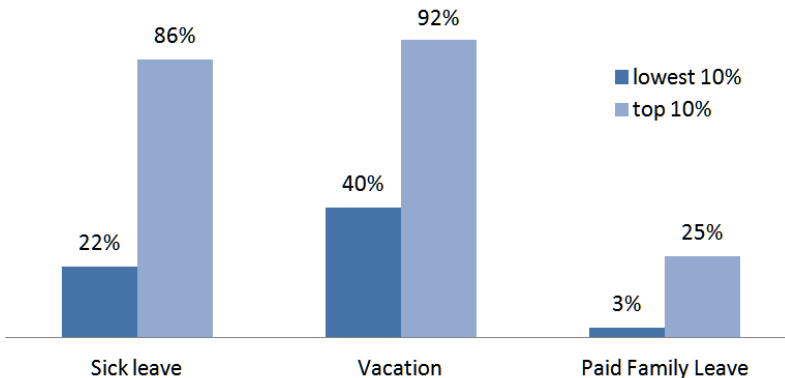


# The Need for Paid Family Leave

Most working Americans have no paid leave benefits ...



ACCESS TO PAID LEAVE AMONG U.S. PRIVATE SECTOR WORKERS BY INCOME, 2015



... but large gaps exist  
by income level

Source: U.S. Bureau of Labor Statistics, National Compensation Survey 2015

# The Benefits of Paid Family Leave

- Allows Time for Parent-Child Bonding
- Helps Women Stay in the Labor Force
- Leads to Better Outcomes for Parents & Children
- Increases Worker Morale/Retention



# State Paid Family Leave Programs

## States with paid family leave

**Washington**.....

**PENDING** NEXT  
LEGISLATIVE SESSION  
BEGINS JANUARY 2017

**California**.....

ENACTED 2002  
EFFECTIVE 2004  
EXPANDED 2016  
EFFECTIVE 2018



**Rhode Island**

ENACTED 2013; EFFECTIVE 2014

**New York**

ENACTED 2016; EFFECTIVE 2018

**New Jersey**

ENACTED 2008; EFFECTIVE 2009

**Washington DC**

EFFECTIVE 2020

*Also Pending ... Connecticut and Maryland*

# NY Paid Family Leave (NYPFL)

*Effective 1/1/2018*



The longest and most comprehensive paid family leave program in the nation\*



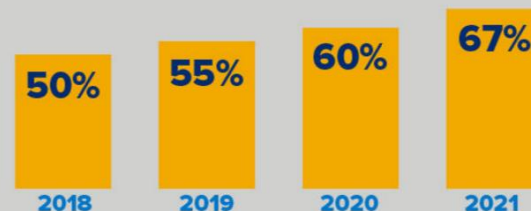
Phased benefits in 2018 will be capped at 67% of the statewide\*\* average weekly wage by 2021



**Paid Family Leave**  
starts January 1, 2018 and  
phases in over four years



**Benefits** provide the employee  
a percentage of their  
average weekly wage



\*Source: <https://www.ny.gov/programs/new-york-state-paid-family-leave>

\*\*The New York State Department of Labor's Research and Statistics Division has computed the New York State Average Weekly Wage (NYSAWW) for calendar year 2016 to be \$1,305.92.

# Reasons for Leave Under NYPFL



- **Serious Health Condition**

*Includes a child, parent, parent-in-law, grandparent, grandchild, spouse or domestic partner*



- **Parent-Child Bonding**

*Includes employee's newborn or newly placed or pre-placement for adoptive or foster child*



- **Military Duty**

*Includes any qualifying exigency related to a spouse, domestic partner, child or parent on active military duty.*



# NYPFL & Maternity/Paternity



- **Births/Adoptions/Foster Placement**

*Occurrences in 2017 are eligible for NYPFL in 2018, if within one-year of birth or placement.*



- **Maternity**

*PFL does not cover pre-birth activity, so a mother can begin her leave on DBL and transition to NYPFL after her baby is born. DBL and PFL benefits cannot overlap.*



- **Short-Term Disability**

*Employers with additional STD policies should consider reviewing how NYPFL benefits impact maternity disability.*



# NYPFL – Employee Eligibility

- **Employee Works 20+ Hours a Week**
  - *Work at least **26 consecutive weeks** preceding first full day leave begins*
- **Employee Works Less than 20 Hours a Week**
  - *Eligible after **175 workdays** preceding first full day leave begins*
- **Sole Proprietors**
  - *Eligible for **voluntary coverage for themselves***
  - *Must obtain coverage effective January 1, 2018, or within 26 weeks of forming sole proprietorship, to avoid a two-year waiting period for NYPFL.*





# NYPFL – Employee Eligibility (Cont'd)

- Most full-time or part-time, private employees in New York State will be eligible for NYPFL
- Employee Participation is Not Optional
  - Public employers may opt into the program; however, public employees represented by a union may be covered if NYPFL is collectively bargained.
- Waiver of Family Leave
  - May be allowed if an employee will not meet eligibility in a 52-week period



# NYPFL – Employee Eligibility (Cont'd)



- **Who is not eligible for Paid Family Leave?**

Following are not considered a “covered employee” in NYS  
**(pending final regulations)**

- Already receive total disability or workers compensation
- On administrative leave or work for an exempt employer
- Excluded under NY DBL, Article 9



- **Spouses Working for Same Employer (pending)**
  - *Spouses working for the same employer and requesting leave at the same time to care for the same family member, or to bond with a child, may be denied for one of the spouses.*
- **Changing Employers**
  - *When an eligible employee terminates employment and moves to another covered employer, they must re-qualify for NYPFL.*
- **Intermittent NYPFL**
  - *Employees may have multiple NYPFL claims open at the same time for intermittent PFL (e.g., care for ill child and ill parent).*
- **Workers Compensation**
  - *Employees receiving partial WC benefits may qualify for NYPFL; however, if they aren't working and collecting WC, they can't use NYPFL at the same time.*

# NYPFL -- Funding

- NY's Department of Financial Services (DFS) sets NYPFL rates released on 6/1/17
- Employee contributions for 2018
  - Rates are based on an employee's salary
  - Weekly contribution rate for 2018 is **0.126%** of an employee's weekly wage\*
  - **Maximum contribution is \$1.65 per week/per employee** (\$85.56 annually), based on the average weekly wage, regardless of gender, age or other factors.



\*Capped at NY state is determined every July 1 (estimate is \$1,305.92 (\$67,907.84 annual salary))

# NYPFL – Payroll Deduction

- Employers may begin payroll deductions July 1, 2017
- NYPFL is funded through payroll deduction
  - *A maximum rate for individual employee contributions will be established each year.*
- Employers may elect to fund the program
- Employee contributions begin as of the first date of hire – even if the employee is not eligible for benefits



# NYPFL -- FMLA & Paid Time Off (PTO)

- NYPFL covers employees who may not be protected under FMLA
- Employers may require employees to choose between using NYPFL benefits or PTO
  - Unlike FMLA, an employer cannot compel an employee to use PTO time toward the NYPFL benefit.
  - Employers that pay full salary during NYPFL may request reimbursement from their insurance carrier for advance benefit payments.
  - Employees are entitled to be reinstated to the same or similar position, regardless of which pay option they choose.

**FMLA**  
FAMILY MEDICAL LEAVE ACT



# NYPFL & NYDBL Benefits

- **Benefits are limited to a total of 26 weeks in a 52-week period for both NYDBL and NYPFL**
  - *Entitlement to NYPFL and NYDBL benefits are dependent on each other; therefore, tracking of time taken for each is critical to minimize overpayment.*
- **Unlike NYDBL, intermittent NYPFL is allowed in full-day increments**



# Employee Reinstatement Rights

- **Job Protection under NYPFL**

- *Following a NYPFL leave, a covered employee should be reinstated to his or her employment and need not take any action.*

- **Same or Similar Position**

- *Under NYPFL, employees have a right to return to the **same or comparable position** as when leave commenced and with comparable pay and benefits.*





# NYPFL & Group Health Insurance



- **Continuation of Health Coverage**

- *If provided by the employer, group health insurance benefits continue under NYPFL as long as the employee continues making premium payments.*

- **Changes to Group Health Benefits While on Leave**

- *An employee on NYPFL is entitled to any new group health plans benefits that become available while he/she is on leave.*

- **Suspension of Health Benefits While on Leave**

- *An employee may choose to waive group health coverage while on NYPFL, but is entitled to be reinstated to the plan upon return to work.*



# Highlights of DFS Final Regulations



## Department of Financial Services (DFS) – as of 5/31/17

- **Community Rated**

- *Ensures employees are charged fairly and not subject to cost variations based on age, gender, geography, or other demographic factor.*

- **Rates**

- *Received June 1, 2017, and expected annually by September 1. Community rate will be the maximum employee contribution regardless of whether NYPFL is provided by an insurance carrier or a self-funded employer.*

- **Insurance Carrier Risk Adjustment Mechanism**

- *Helps issuers avoid disproportionate losses due to high utilization of benefits and eliminates disincentives for issuing policies to high utilization groups.*

- **Self-Insured Plans**

- *Employers may elect to self-insure NYPFL coverage if the DBL benefit is self-insured. DBL can be self-insured with NYPFL insured (if carriers offer it).*

# FMLA & NYPFL – Key Differences

	FMLA	NYPFL
Employer Size	<ul style="list-style-type: none"> <li>• 50 or more employee</li> </ul>	<ul style="list-style-type: none"> <li>• 1 or more employees</li> </ul>
Work Requirements (at Same Employer)	<ul style="list-style-type: none"> <li>• 12 months</li> <li>• 1,250 hours in 12 months from date of leave</li> <li>• Within 75 miles of site with 50+ employees</li> </ul>	<ul style="list-style-type: none"> <li>• Full-time: 6 consecutive months</li> <li>• Part-time: 175 days</li> </ul>
Coverage for Employee's Own Serious Health Condition	<ul style="list-style-type: none"> <li>• Covered (including maternity)</li> </ul>	<ul style="list-style-type: none"> <li>• Not covered (exceptions for maternity)</li> </ul>
Grandchildren, Grandparents, Domestic Partners	<ul style="list-style-type: none"> <li>• Not covered</li> </ul>	<ul style="list-style-type: none"> <li>• Covered</li> </ul>
Intermittent Leave	<ul style="list-style-type: none"> <li>• One hour increments</li> </ul>	<ul style="list-style-type: none"> <li>• Must be taken in full-day increments</li> </ul>
Pay/Job Protection	<ul style="list-style-type: none"> <li>• Unpaid, protected</li> </ul>	<ul style="list-style-type: none"> <li>• Paid, protected</li> </ul>
Key Employee Coverage	<ul style="list-style-type: none"> <li>• Limited job restoration</li> </ul>	<ul style="list-style-type: none"> <li>• No key employee provision</li> </ul>
Injured Military Service Member	<ul style="list-style-type: none"> <li>• Next of kin provision</li> </ul>	<ul style="list-style-type: none"> <li>• No next of kin provision</li> </ul>
Spouses Working for Same Employer	<ul style="list-style-type: none"> <li>• Combined 12 weeks for child/parent care</li> <li>• 26 weeks for military caregiver leave</li> </ul>	<ul style="list-style-type: none"> <li>• Leave must be taken at different times for same care recipient</li> </ul>
Use of Paid Time Off	<ul style="list-style-type: none"> <li>• Employer may require employee to use PTO for paid leave vs. unpaid leave</li> </ul>	<ul style="list-style-type: none"> <li>• Employer cannot require employee to use PTO; the employee has the option</li> </ul>

# NY Paid Family Leave FAQs



- **Can I have multiple Intermittent Paid Family Leave claims at the same time?**
  - Yes, an employee may need to care for multiple qualified family members but cannot exceed the maximum combined benefit in a 52 week period.
- **Which employees are not eligible for NYPFL?**
  - Not considered a “covered employee” in NY State
  - Receiving total disability or workers compensation
  - On administrative leave or who work for an exempt employer
  - Excluded from coverage under Article 9 of the DBL and NYPFL

# NY Paid Family Leave FAQs (Cont'd)



- **I work outside of NY State; am I covered for NYPFL?**
  - Employees are considered eligible for NYPFL if they:
    - Physically work in NY State
    - Do not have a worksite in a specific state (e.g., remote/ telecommuter) but reside and work from their home in NY State, or,
    - Do not have a worksite in NY State (including out of state employees) but their employer is within NY State
- **I worked for an employer who began to deduct my employee contributions in July, 2017 and I quit on 12/31/2017. Can I get reimbursed?**
  - An employer is not obligated to reimburse for contributions collected prior to the NYPFL effective date of 1/1/18.

# What Should Employers Do to Prepare?

- ✓ Determine how NYPFL will **interact with current leave policies**, including adding language regarding NYPFL.
- ✓ If current company leaves are considered “paid”, **review durations** and potential impact of NYPFL.
- ✓ **Review your FMLA policy** to determine method for calculating available leave.
- ✓ Prepare to comply with NYPFL **posting requirements** (pending DFS instructions).



# What Should Employers Do to Prepare?



Determine when your company should **begin deductions**.



Prepare your **payroll department** for NYPFL employee deduction.



Determine if your NY state **disability insurance carrier plans** to add NYPFL.



**Train managers and HR** representatives on employer obligations under NYPFL.



Review **collective bargaining agreements** to determine any impact from NYPFL.



# What is Guardian Doing to Prepare?



- **Project Team** — Assigned to review regulations and financial impacts
- **Risk Avoidance** — Project and actuarial teams to assess regulations and determine Guardian strategy
- **Claim Process Review** — NYPFL requests will be verified with a state-provided claim form, similar to DBL
- **Reduce Abuse** — System build to avoid overpaying NYPFL & DBL claims
- **Reporting** — Updating system to meet mandated reporting guidelines
- **Existing DBL Customers** — Updating policies to be in compliance





# What is Guardian Doing to Prepare?



- **Customer Communication and Awareness Activities**

- **Plan Sponsor mailing** – Postcard notification with address about informational page on *GuardianAnytime*
- **Plan Sponsor webinar** – In July, education on legislation, impact on their disability plans/leave policies, and upcoming conversion activities
- **Periodic Updates**



# Questions?

