



FMLA New York

Federal vs. New York Family & Medical Leave Laws

	FEDERAL ELEMENTS	STATE ELEMENTS
Employers Covered	<p>Private employers with 50 or more employees in at least 20 weeks of the current or preceding year.</p> <p>Public agencies, including state, local and federal employers.</p> <p>Local education agencies covered under special provisions.</p>	<p>In addition to the federal FMLA, New York has laws requiring (1) paid family leave, (2) sick leave, (3) pregnancy leave, (4) adoptive parents leave, (5) domestic violence leave, (6) blood donation leave, (7) bone marrow donation leave, and (8) military spouse leave.</p> <p>Paid family leave: All employers. Paid family coverage is typically added to the employer's existing disability insurance policy.</p> <p>Sick leave: All private employers. Employers with at least five employees or more than \$1 million in annual net income must provide the leave as paid. Government employers are not covered.</p> <p>Pregnancy leave: Employers with four or more employees.</p> <p>Adoptive parents leave: All employers.</p> <p>Domestic violence leave: All employers, unless the employer can show providing the leave will cause undue hardship, taking into account the</p>

		<p>size and type of the employer’s business and enterprise.</p> <p>Blood donation leave: Employers with at least 20 employees at one or more worksites.</p> <p>Bone marrow donation leave: Employers with at least 20 employees at one or more worksites.</p> <p>Military spouse leave: Employers with at least 20 employees at one or more worksites.</p>
<p>Employees Eligible</p>	<p>Worked for employer for at least 12 months (which need not be consecutive); worked at least 1,250 hours for employer during 12 months preceding leave; and employed at a worksite with 50 or more employees within 75 miles of worksite.</p>	<p>Paid family leave: An employee who works 20 or more hours per week is eligible for paid family leave benefits if the employee works for a covered employer for 26 or more consecutive weeks. A part-time employee (an employee who works fewer than 20 hours per week) is eligible for paid family leave after he or she has worked for a covered employer for 175 days.</p> <p>The law also covers personal or domestic employees in a private home who work for a minimum of 20 hours per week 30 days per year for their employer.</p> <p>Sick leave: All private-sector workers in New York, regardless of immigration status. Domestic workers are covered. Employees who telecommute are covered for the hours they physically work in New York, even if the employee is physically located outside the state. Government employees are not covered.</p> <p>Pregnancy leave: Pregnant employees.</p> <p>Adoptive parents leave: Employees who are adoptive parents following the commencement of the parent-child relationship (unless the child has reached school age or, in the case of a hard-to-place or handicapped child, has reached age 18).</p> <p>Domestic violence leave: Employees whom the employer knows are victims of domestic violence.</p>

		<p>Blood donation leave: Employees who work an average of 20 or more hours per week. Excludes independent contractors.</p> <p>Bone marrow donation leave: Employees who work an average of 20 or more hours per week. Excludes independent contractors.</p> <p>Military spouse leave: Employees who work an average of 20 or more hours per week and are the spouse of a member of the U.S. Armed Forces, National Guard or Reserves deployed during a period of military conflict to a combat theater or combat zone of operations. Excludes independent contractors.</p>
<p>Leave Amount</p>	<p>Generally, up to a total of 12 weeks during a 12-month period.</p> <p>Up to 26 weeks during a single 12-month period to care for spouse, child, parent or next of kin who is a covered service member with a serious injury or illness.</p> <p>However, leave for birth, adoption, foster care, care for a parent with a serious health condition or care for a covered service member with a serious injury or illness must be shared by spouses working for same employer.</p>	<p>Paid family leave: Eligible employees may receive up to 12 weeks of paid family leave at 67% of their average weekly wages, up to a cap of 67% of the state average weekly wage.</p> <p>Sick leave: Employees accrue one hour of sick leave for every 30 hours worked, up to a yearly maximum that depends on employer size and income:</p> <ul style="list-style-type: none"> • Fewer than 5 employees and annual net income of \$1 million or less: Up to 40 unpaid hours per year • Fewer than 5 employees and annual net income over \$1 million: Up to 40 paid hours per year • 5-99 employees: Up to 40 paid hours per year • 100 or more employees: Up to 56 paid hours per year <p>Front-loading and carry-over provisions apply.</p> <p>Pregnancy leave: Employers cannot discriminate on the basis of sex and must treat disability arising from pregnancy in the same manner as other disabilities.</p> <p>Adoptive parents leave: Employers that permit employees to take leaves of absence upon the birth of a child must</p>

		<p>permit an adoptive parent, following commencement of a parent-child relationship, the same leave on the same terms (unless the child has reached school age or, in the case of a hard-to-place or handicapped child, has reached age 18).</p> <p>Domestic violence leave: A reasonable amount of time for permitted purposes.</p> <p>Blood donation leave: At the employer’s option, either:</p> <ul style="list-style-type: none"> • Three hours of leave in any 12-month period for an employee to donate blood; or • Blood donation during work hours, without use of accumulated leave time, at least twice per year at a convenient time and place set by the employer, including allowing the employee to participate in a blood drive at the employer’s site. <p>Bone marrow donation leave: The total length of each leave is determined by the employee's physician, but may not exceed 24 work hours for each bone marrow donation, unless the employer agrees otherwise. There is no limit to how frequently an employee may take bone marrow donation leave.</p> <p>Military spouse leave: Up to 10 days of leave.</p>
<p>Type of Leave</p>	<p>Unpaid leave for:</p> <ul style="list-style-type: none"> • Birth of employee’s newborn child; • Placement of child with employee for adoption or foster care; • Providing care for employee's parent, child or spouse with serious health condition; • Employee’s own serious health condition; • Any qualifying exigency when employee’s spouse, child or 	<p>Paid family leave: An employee may receive paid family leave benefits for the following reasons:</p> <ul style="list-style-type: none"> • To provide care to a family member with a serious health condition; • To 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; or • For any qualifying exigency as interpreted under the federal FMLA arising out of the fact that the

	<p>parent is on active duty or is notified of impending call or order to active duty in Armed Forces; or</p> <ul style="list-style-type: none"> • Caring for a spouse, child, parent or next of kin who is a covered service member with a serious injury or illness. 	<p>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.</p> <p>Paid family leave benefits are funded through employee paycheck deductions. Employers are not responsible for contributing to or funding paid family leave benefits, but may choose to do so.</p> <p>Sick leave: Employees may use sick leave for the following reasons:</p> <ul style="list-style-type: none"> • An employee’s or employee’s family member’s mental or physical illness, injury or health condition (regardless of whether the illness, injury or health condition has been diagnosed or requires medical care at the time the employee requests leave); or • 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, an employee or an employee’s family member. <p>Employees may use sick leave for doctor, dentist, eye doctor or other routine appointments when they require treatment for a condition or for preventive medical care.</p> <p>According to guidance from the state department of labor, whether employees may use sick leave when their employer has been ordered to close temporarily due to a public health emergency depends on the type of health emergency involved, taking into account the risk of contagion and other health considerations. Sick leave under the paid sick leave law is separate and additional to quarantine leave for employees subject to a quarantine or isolation order related to COVID-19, and use of COVID-19 leave does not impact an employee’s paid sick leave accruals or usage.</p> <p>Employees may also use accrued sick leave for any of the following reasons when the employee or a family member</p>
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		<p>of the employee is the victim of domestic violence (as defined by state law), a family offense, sexual offense, stalking or human trafficking:</p> <ul style="list-style-type: none"> • To obtain services from a domestic violence shelter, rape crisis center or other services program; • To participate in safety planning, temporarily or permanently relocate, or take other actions to increase the safety of the employee or employee's family members; • To meet with an attorney or other social services provider to obtain information and advice on, and prepare for or participate in, any criminal or civil proceeding; • To file a complaint or domestic incident report with law enforcement; • To meet with a district attorney's office; • To enroll children in a new school; or • To take any other actions necessary to ensure the health or safety of the employee or the employee's family member or to protect those who associate or work with the employee. <p>Leave may be used even if the police have not been contacted or the perpetrator convicted.</p> <p>"Family Member" means an employee's child, spouse, domestic partner, parent, sibling, grandchild or grandparent, or the child or parent of an employee's spouse or domestic partner. "Parent" means a biological, foster, step- or adoptive parent, a legal guardian of an employee, or a person who stood in loco parentis when the employee was a minor child.</p> <p>"Child" means a biological, adopted or foster child, a legal ward or a child of an employee standing in loco parentis.</p> <p>Pregnancy leave: Employers cannot discriminate on the basis of sex and must treat disability arising from pregnancy in the same manner as other disabilities. New York has a temporary</p>
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<p>Serious Health Condition/Serious Injury or Illness</p>	<p>Serious Health Condition:</p> <p>Illness, injury, impairment, or physical or mental condition involving incapacity or treatment connected with inpatient care in hospital, hospice, or residential medical-care facility, or continuing treatment by a health care provider involving a period of incapacity due to:</p> <ul style="list-style-type: none"> • A health condition lasting more than three consecutive full calendar days and involving a certain level of treatment; • A chronic serious health condition or a permanent or long-term condition for which treatment may be ineffective; • Absences to receive multiple treatments (including recovery periods) for a restorative surgery or for a condition that if left untreated likely would result in incapacity of more than three days; or • Any incapacity related to pregnancy or for prenatal care. <p>Serious Injury or Illness:</p> <p>In the case of a member of the Armed Forces, including a member of the National Guard or Reserves, an injury or illness incurred by the member in line of duty on active duty in the Armed Forces (or which existed before the beginning of active duty and was aggravated by service in the line of duty on active duty) that may render the member medically unfit to perform the duties of the member’s office, grade, rank or rating.</p> <p>For a veteran of the Armed Forces, including a veteran of the National Guard or Reserves, an injury or illness incurred by the member in the line of duty on active duty in the Armed</p>	<p>Paid family leave: Serious health condition means an illness, injury, impairment, or physical or mental condition, including transplantation preparation and recovery from surgery related to organ or tissue donation, that involves inpatient care in a hospital, hospice or residential health care facility, continuing treatment or continuing supervision by a health care provider.</p>

	<p>Forces (or which existed before the beginning of active duty and was aggravated by service in the line of duty on active duty) and that manifested itself either before or after the member became a veteran.</p>	
<p>Health Care Provider</p>	<p>Doctors of medicine or osteopathy authorized to practice medicine or surgery; podiatrists, dentists, clinical psychologists, clinical social workers, physician assistants, optometrists, chiropractors (limited to manual manipulation of spine to correct subluxation shown to exist by x-ray), nurse practitioners, and nurse-midwives, if authorized to practice under state law and consistent with the scope of their authorization; Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, MA; any provider so recognized by the employer or its group health plan's benefits manager; and any health provider listed above who practices and is authorized to practice in a country other than the United States.</p>	<p>Paid family leave: An individual who satisfies the state licensure requirements under the paid family leave law.</p>
<p>Intermittent Leave</p>	<p>Permitted for serious health condition, for care of covered service member when medically necessary and for active duty leave.</p> <p>Not permitted for care of newborn or new placement by adoption or foster care, unless employer agrees.</p>	<p>Paid family leave: Paid family leave benefits may be received on an intermittent basis (less than a full workweek), in increments of one full day (that is, one-fifth of the weekly benefit).</p> <p>Sick leave: Employers may set a reasonable minimum increment for the use of leave, but it may not be more than four hours.</p> <p>Pregnancy leave: Employers must treat disability arising from pregnancy in the same manner as other disabilities.</p> <p>Adoptive parents leave: Employers that permit employees to take leaves of absence upon the birth of a child must permit an adoptive parent, following commencement of a parent-child relationship, the same leave upon the same terms (unless the child has</p>

		<p>reached school age or, in the case of a hard-to-place or handicapped child, has reached age 18).</p> <p>Domestic violence leave: No provision</p> <p>Blood donation leave: No provision</p> <p>Bone marrow donation leave: No provision</p> <p>Military spouse leave: No provision</p>
<p>Substitution of Paid Leave</p>	<p>Employees may elect, or employers may require, accrued paid leave to be substituted in some cases. Employee must follow terms and conditions of employer’s normal paid leave policies.</p>	<p>Paid family leave: If permitted by the employer, employees may use their paid sick or vacation time in order to receive their full salary during a leave.</p> <p>Pregnancy leave: Employers must treat disability arising from pregnancy in the same manner as other disabilities. Leave may be paid under the temporary disability insurance program.</p> <p>Adoptive parents leave: Employers that permit employees to take leaves of absence upon the birth of a child must permit an adoptive parent, following commencement of parent-child relationship, the same leave upon the same terms (unless the child has reached school age or, in the case of a hard-to-place or handicapped child, has reached age 18).</p> <p>Domestic violence leave: Employers may require employees to take the leave as ordinary paid leave, where available, and as unpaid leave where paid leave is not available.</p> <p>Blood donation leave: If the employer chooses to allow employees to donate blood during work hours, it must be without use of accumulated leave time.</p> <p>Bone marrow donation leave: No provision</p> <p>Military spouse leave: No provision</p>
<p>Reinstatement Rights</p>	<p>Must be restored to same position or one equivalent to it in all benefits and</p>	<p>Paid family leave: An employee who takes paid family leave must be reinstated to his or her original position</p>

	<p>other terms and conditions of employment.</p>	<p>upon return to work, or reinstated to a comparable position with equal pay, benefits, and other terms and conditions of employment.</p> <p>Sick leave: Employees must be restored to their position of employment as it had been prior to any sick leave taken.</p> <p>Pregnancy leave: Employers cannot discriminate on the basis of sex and must treat disability arising from pregnancy in the same manner as other disabilities.</p> <p>Adoptive parents leave: Employers that permit employees to take leaves of absence upon the birth of a child must permit an adoptive parent, following commencement of parent-child relationship, the same leave upon the same terms (unless the child has reached school age or, in the case of a hard-to-place or handicapped child, has reached age 18).</p> <p>Domestic violence leave: No provision, but employers are prohibited from discharging or discriminating against employees eligible for leave in terms, conditions or privileges of employment.</p> <p>Blood donation leave: No provision</p> <p>Bone marrow donation leave: No provision</p> <p>Military spouse leave: No provision</p>
<p>Key Employee Exception to Reinstatement Rights</p>	<p>Limited exception for salaried employees if among highest paid 10 percent of workforce within 75 miles of worksite, restoration would lead to grievous economic harm to employer and other conditions met.</p>	<p>No provision</p>
<p>Maintenance of Health Benefits During Leave</p>	<p>Health insurance must be continued under same conditions as prior to leave.</p>	<p>Paid family leave: Employers must maintain group health plan benefits for the duration of paid family leave as if the employee had continued to work.</p>

		<p>Pregnancy leave: Employers cannot discriminate on the basis of sex and must treat disability arising from pregnancy in the same manner as other disabilities.</p> <p>Adoptive parents leave: Employers that permit employees to take leaves of absence upon the birth of a child must permit an adoptive parent, following commencement of parent-child relationship, the same leave upon the same terms (unless the child has reached school age or, in the case of a hard-to-place or handicapped child, has reached age 18).</p> <p>Domestic violence leave: Employee's health insurance must be continued during leave.</p> <p>Blood donation leave: No provision</p> <p>Bone marrow donation leave: No provision</p> <p>Military spouse leave: No provision</p>
<p>Leave Requests</p>	<p>To be made by employee at least 30 days prior to date leave is to begin where need is known in advance or, where not foreseeable, as soon as practicable.</p> <p>If due to a planned medical treatment or for intermittent leave, the employee, subject to health care provider's approval, shall make a reasonable effort to schedule it in a way that does not unduly disrupt employer's operations.</p> <p>If due to foreseeable active duty of family member, notice must be made as soon as practicable.</p>	<p>Paid family leave: When the need for family leave is foreseeable (for example, for the birth or placement of a child or for planned medical treatment), an employee may be required to provide his or her employer with 30 days' advance notice of the intention to take family leave. If the need for leave is not foreseeable, the employee must provide notice as soon as practicable.</p> <p>Sick leave: Employers may require employees to make an oral or written request for leave before taking the leave. There is no specific notice or time period requirement under the law.</p> <p>Pregnancy leave: Employers cannot discriminate on the basis of sex and must treat disability arising from pregnancy in the same manner as other disabilities.</p> <p>Adoptive parents leave: Employers that permit employees to take leaves of absence upon the birth of a child must</p>

		<p>permit an adoptive parent, following commencement of parent-child relationship, the same leave upon the same terms (unless the child has reached school age or, in the case of a hard-to-place or handicapped child, has reached age 18).</p> <p>Domestic violence leave: Employees must provide reasonable advance notice of the leave where feasible.</p> <p>Blood donation leave: No provision, however, the New York Department of Labor has issued guidelines allowing employers to require at least:</p> <ul style="list-style-type: none"> • Three working days' advance notice of the employee's intent to take leave for off-premises blood donation; or • Two days' advance notice of the employee's intent to take leave for any other blood donation. <p>The employer may require up to 10 working days' advance notice as necessary to fill the position if both:</p> <ul style="list-style-type: none"> • The employee taking leave is in a job that is essential to the employer's operations or necessary to comply with legal requirements; and • Three days' notice is insufficient for the employer to fill the position for the leave period. <p>If leave is for blood donation in an emergency, employers must reasonably accommodate a shorter notice period.</p> <p>Bone marrow donation leave: No provision, however, the New York Department of Labor has advised that employers may require notice:</p> <ul style="list-style-type: none"> • At least 24 hours in advance of a scheduled bone marrow donation; or • As soon as possible after receipt of a request for an unscheduled bone marrow donation. <p>Military spouse leave: No provision</p>
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<p>Certification Requirement</p>	<p>Employer may require certification for the following:</p> <p>Request for leave because of serious health condition or to care for covered service member with a serious illness or injury.</p> <p>Request for qualifying exigency leave because of family member’s active duty or call to active duty in the Armed Forces.</p> <p>To demonstrate employee's fitness to return to work from medical leave where employer has a uniformly applied practice or policy requiring such certification.</p>	<p>Paid family leave: An employee may be required to provide a medical certification completed by a health care provider to support the need for family leave.</p> <p>Sick leave: No provision.</p> <p>Pregnancy leave: Employers cannot discriminate on the basis of sex and must treat disability arising from pregnancy in the same manner as other disabilities.</p> <p>An employee must cooperate in providing medical or other information that is necessary to verify the existence of the disability or pregnancy-related condition, or that is necessary for consideration of the accommodation. The employee has a right to have such medical information kept confidential.</p> <p>Adoptive parents leave: Employers that permit employees to take leaves of absence upon the birth of a child must permit an adoptive parent, following commencement of parent-child relationship, the same leave upon the same terms (unless the child has reached school age or, in the case of a hard-to-place or handicapped child, has reached age 18).</p> <p>Domestic violence leave: When advance notice is not feasible, the employee must provide a certification if the employer requests it (within a reasonable time after the leave). The certification must be in the form of a police report, a court order or other evidence that the employee appeared in court, or documentation from one of a number of specified counseling or medical professionals.</p> <p>Blood donation leave: No provision, however, the New York Department of Labor has issued guidelines allowing employers to require proof of off-premises blood donation.</p> <p>Bone marrow donation leave: Employer may require physician</p>
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		<p>verification for the purpose and length of each leave requested by an employee.</p> <p>Military spouse leave: No provision</p>
Executive, Administrative, and Professional Employees	<p>These individuals are entitled to FMLA benefits. However, their use of FMLA leave does not change their status under the Fair Labor Standards Act (FLSA), i.e., an employer does not lose its exemption from the FLSA's minimum wage and overtime requirements.</p>	No specific provision
Other		<p>Registered domestic partners must be treated the same as spouses for most purposes under New York law, including for employee leave purposes.</p>
Statutes	29 USC 2601	<p>N.Y. Work. Comp. Law § 200, et seq (paid family leave); N.Y. Lab. Law § 196-b (sick leave); N.Y. Exec. Law § 296 (pregnancy leave); N.Y. Lab. Law § 201-c (adoptive parents leave); N.Y. Exec. Law § 296 (domestic violence leave); N.Y. Lab. Law § 202-j (blood donation leave); N.Y. Lab. Law § 202-a (bone marrow donation leave); N.Y. Lab. Law § 202-i (military spouse leave);</p>

SPECIAL NOTE: New York state enacted a [law](#) providing leave for employees subject to a quarantine or isolation order due to COVID-19, effective March 18, 2020. Whether and how much employee compensation is required during the leave depends on the size and net income of the employer, as follows:

- **\$1 million or less, and up to 10 employees:** Unpaid leave through the end of the quarantine or isolation. (Employees are eligible for paid family leave and disability benefits.)
- **More than \$1 million, and up to 10 employees:** Leave through the end of the quarantine or isolation, at least five days of which must be paid. (After five days, employees are eligible for paid family leave and disability benefits.)
- **Between 11 and 99 employees:** Leave through the end of the quarantine or isolation, five days of which must be paid. (After five days, employees are eligible for paid family leave and disability benefits.)
- **100 or more employees:** 14 days of paid sick leave during quarantine or isolation.
- **Public employers:** 14 days of paid sick leave during quarantine or isolation.

SPECIAL NOTE: The information in the above chart focuses on statewide laws. Cities, towns and counties across the country (including [New York City](#) and [Westchester County](#)) have enacted local employee leave ordinances. Employers must comply with local ordinances and statewide law where they apply.

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