



# FMLA New York

## Federal vs. New York Family & Medical Leave Laws

	FEDERAL ELEMENTS	STATE ELEMENTS
<b>Employers Covered</b>	<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 leave laws regarding (1) pregnancy leave, (2) adoptive parents leave, (3) blood donation leave, (4) bone marrow donation leave and (4) military spouse leave.</p> <p><b>Pregnancy leave:</b> Employers with four or more employees.</p> <p><b>Adoptive parents leave:</b> All employers.</p> <p><b>Blood donation leave:</b> Employers with at least 20 employees at one or more worksites.</p> <p><b>Bone marrow donation leave:</b> Employers with at least 20 employees at one or more worksites.</p> <p><b>Military spouse leave:</b> Employers with at least 20 employees at one or more worksites.</p>
<b>Employees Eligible</b>	<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</p>	<p><b>Pregnancy leave:</b> Pregnant employees.</p> <p><b>Adoptive parents leave:</b> 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</p>



	<p>worksite.</p>	<p>age 18).</p> <p><b>Blood donation leave:</b> Employees who work an average of 20 or more hours per week. Excludes independent contractors.</p> <p><b>Bone marrow donation leave:</b> Employees who work an average of 20 or more hours per week. Excludes independent contractors.</p> <p><b>Military spouse leave:</b> Employees who work an average of 20 or more hours per week and who are the spouse of member of U.S. Armed Forces, National Guard or Reserves who has been deployed during period of military conflict to a combat theater or combat zone of operations. Excludes independent contractors.</p>
<p style="text-align: center;"><b>Leave Amount</b></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><b>Pregnancy leave:</b> Employers cannot discriminate on the basis of sex and must treat disability arising from pregnancy in the same manner as other disabilities.</p> <p><b>Adoptive parents leave:</b> 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><b>Blood donation leave:</b> At the employer's option, either:</p> <ul style="list-style-type: none"> <li>• Three hours of leave in any 12-month period for an employee to donate blood; or</li> <li>• Blood donation during work hours, without use of accumulated leave time, at least two times 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.</li> </ul> <p><b>Bone marrow donation leave:</b> The total length of each leave is determined by the employee's physician, but may not exceed 24 work hours for each bone marrow</p>

		<p>donation, unless the employer agrees otherwise. There is no limit to how frequently an employee may take bone marrow donation leave.</p> <p><b>Military spouse leave:</b> Up to 10 days of leave.</p>
<p><b>Type of Leave</b></p>	<p>Unpaid leave for:</p> <ul style="list-style-type: none"> <li>• Birth of employee’s newborn child;</li> <li>• Placement of child with employee for adoption or foster care;</li> <li>• Providing care for employee’s parent, child or spouse with serious health condition;</li> <li>• Employee’s own serious health condition;</li> <li>• Any qualifying exigency when employee’s spouse, child or parent is on active duty or is notified of impending call or order to active duty in Armed Forces; or</li> <li>• Caring for a spouse, child, parent or next of kin who is a covered service member with a serious injury or illness.</li> </ul>	<p><b>Pregnancy leave:</b> 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 disability insurance program which requires employers to provide short-term disability insurance for their employees. Employers are required to provide partial wage replacement for up to 26 weeks to employees who are temporarily unable to work due to disability. Pregnancy is considered a disability under the program.</p> <p><b>Adoptive parents leave:</b> 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><b>Blood donation leave:</b> At the employer’s option, either:</p> <ul style="list-style-type: none"> <li>• Unpaid leave to donate blood off of the employer’s premises; or</li> <li>• Blood donation during work hours without use of any accumulated leave time or other paid time off.</li> </ul> <p><b>Bone marrow donation leave:</b> Unpaid leave to undergo a medical procedure to donate bone marrow.</p> <p><b>Military spouse leave:</b> Unpaid leave during the time the military member is on leave from deployment.</p>

<p><b>Serious Health Condition/Serious Injury or Illness</b></p>	<p><b>Serious Health Condition:</b></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"> <li>• A health condition lasting more than three consecutive full calendar days and involving a certain level of treatment;</li> <li>• A chronic serious health condition or a permanent or long-term condition for which treatment may be ineffective;</li> <li>• 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</li> <li>• Any incapacity related to pregnancy or for prenatal care.</li> </ul> <p><b>Serious Injury or Illness:</b></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</p>	<p>No provision</p>
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<b>Health Care Provider</b>	<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>	No provision
<b>Intermittent Leave</b>	<p>Permitted for serious health condition, for care of covered service member when medically necessary and for</p>	<p><b>Pregnancy leave:</b> Employers must treat disability arising from pregnancy in the same manner as other disabilities.</p> <p><b>Adoptive parents leave:</b> Employers that</p>

	<p>active duty leave.</p> <p>Not permitted for care of newborn or new placement by adoption or foster care, unless employer agrees.</p>	<p>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><b>Blood donation leave:</b> No provision</p> <p><b>Bone marrow donation leave:</b> No provision</p> <p><b>Military spouse leave:</b> No provision</p>
<p><b>Substitution of Paid Leave</b></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><b>Pregnancy leave:</b> 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><b>Adoptive parents leave:</b> 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><b>Blood donation leave:</b> If the employer chooses to allow employees to donate blood during work hours, it must be without use of accumulated leave time.</p> <p><b>Bone marrow donation leave:</b> No provision</p> <p><b>Military spouse leave:</b> No provision</p>
<p><b>Reinstatement Rights</b></p>	<p>Must be restored to same position or one equivalent to it in all benefits and other terms and conditions of employment.</p>	<p><b>Pregnancy leave:</b> Employers cannot discriminate on the basis of sex and must treat disability arising from pregnancy in the same manner as other disabilities.</p> <p><b>Adoptive parents leave:</b> 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</p>

		<p>reached school age or, in the case of a hard-to-place or handicapped child, has reached age 18).</p> <p><b>Blood donation leave:</b> No provision</p> <p><b>Bone marrow donation leave:</b> No provision</p> <p><b>Military spouse leave:</b> No provision</p>
<b>Key Employee Exception to Reinstatement Rights</b>	<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>
<b>Maintenance of Health Benefits During Leave</b>	<p>Health insurance must be continued under same conditions as prior to leave.</p>	<p><b>Pregnancy leave:</b> Employers cannot discriminate on the basis of sex and must treat disability arising from pregnancy in the same manner as other disabilities.</p> <p><b>Adoptive parents leave:</b> 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><b>Blood donation leave:</b> No provision</p> <p><b>Bone marrow donation leave:</b> No provision</p> <p><b>Military spouse leave:</b> No provision</p>

<p><b>Leave Requests</b></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><b>Pregnancy leave:</b> Employers cannot discriminate on the basis of sex and must treat disability arising from pregnancy in the same manner as other disabilities.</p> <p><b>Adoptive parents leave:</b> 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><b>Blood donation leave:</b> No provision, however the <a href="#">New York Department of Labor has issued guidelines</a> allowing employers to require at least:</p> <ul style="list-style-type: none"> <li>• Three working days' advance notice of the employee's intent to take leave for off-premises blood donation; or</li> <li>• Two days' advance notice of the employee's intent to take leave for any other blood donation.</li> </ul> <p>The employer may require up to ten working days' advance notice as necessary to fill the position if both:</p> <ul style="list-style-type: none"> <li>• The employee taking leave is in a job which is essential to the employer's operations or necessary to comply with legal requirements; and</li> <li>• Three days' notice is insufficient for the employer to fill the position for the leave period.</li> </ul> <p>If leave is for blood donation in an emergency, employers must reasonably accommodate a shorter notice period.</p> <p><b>Bone marrow donation leave:</b> No provision, however the <a href="#">New York Department of Labor has advised</a> that employers may require notice:</p> <ul style="list-style-type: none"> <li>• At least 24 hours in advance of a scheduled bone marrow donation; or</li> <li>• As soon as possible after receipt of a request for an unscheduled bone</li> </ul>
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		<p>marrow donation.</p> <p><b>Military spouse leave:</b> No provision</p>
<p><b>Certification Requirement</b></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><b>Pregnancy leave:</b> Employers cannot discriminate on the basis of sex and must treat disability arising from pregnancy in the same manner as other disabilities.</p> <p><b>Adoptive parents leave:</b> 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><b>Blood donation leave:</b> No provision, however the <a href="#">New York Department of Labor has issued guidelines</a> allowing employers to require proof of off-premises blood donation.</p> <p><b>Bone marrow donation leave:</b> Employer may require physician verification for the purpose and length of each leave requested by an employee.</p> <p><b>Military spouse leave:</b> No provision</p>
<p><b>Executive, Administrative, and Professional Employees</b></p>	<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</p>	<p>No specific provision</p>

	overtime requirements.	
<b>Other</b>		Registered domestic partners must be treated the same as spouses for most purposes under New York law, including for employee leave purposes.
<b>Statutes</b>	29 USC 2601	N.Y. Exec. Law § 296 (pregnancy leave) N.Y. Lab. Law § 201-c (adoptive parents leave); § 202-j (blood donation leave); § 202-a (bone marrow donation leave); § 202-i (military spouse leave)

### **Paid Family Leave**

On April 4, 2016, New York Governor Andrew Cuomo signed a [bill](#) that will require employers to provide paid family leave benefits to eligible employees as part of the state’s disability insurance program. Paid family leave benefits will be phased in over a four-year period, beginning Jan. 1, 2018. When the law is fully implemented in 2021, employees may be eligible for up to 12 weeks of paid family leave. New York’s paid family leave benefits will be funded through deductions from employee’s paychecks. Under the new law, employers are not responsible for contributing to, or funding paid family leave benefits. For more information, refer to the [state of New York](#).

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