

New York is the first state to enact a paid prenatal leave law, but certainly not the last

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On April 22, 2024, New York State Governor Kathy Hochul signed new legislation expanding section 196-b of the New York Labor Law, aka the New York State Paid Sick Leave Law, requiring employers to provide full- and part-time pregnant workers with up to an *additional* 20 hours of Paid Prenatal Personal Leave (PPPL). The new law takes effect on January 1, 2025.

It is important to note that the 20 PPPL hours are *in addition to* paid New York State sick leave under the New York Paid Family Leave Law (NY PFL),¹ which provides employees with up to 12 weeks of paid leave for qualifying absences such as birthing or adopting a child, bonding with a child or caring for a family member with a qualified serious health condition.

Qualified employees can take paid prenatal personal leave in one-hour increments, up to 20 times.

Just one week prior to Governor Hochul's expansion of New York Labor Law section 196-b, on April 15, 2024, the U.S. Equal Employment Opportunity Commission (EEOC) issued a final rule² to implement the Pregnant Workers Fairness Act (PWFA),³ and published⁴ its summary of the key provisions of its final rule on April 19, 2024.

The EEOC's PWFA regulation, which went into effect on June 18, 2024 (60 days after its April 19, 2024, publication), requires employers to provide reasonable accommodations for pregnant employees absent undue hardship on the operation of the business of the covered entity.

Reasonable accommodations include (but are not limited to) schedule changes, part-time work, paid and unpaid leave, telework, light duty, frequent breaks, availability of closer parking, and appropriately sized uniforms and safety apparel. Notably, and in contrast to New York's PPPL, the PWFA does not require employers to provide employees paid leave to attend *prenatal* appointments.

Purpose and intended use of PPPL

The PPPL is to be used for prenatal care such as medical appointments and monitoring and testing. The amendment defines PPPL as leave taken for the health care services received by an employee during their pregnancy or related to such pregnancy,

including physical examinations, in-office medical procedures, monitoring and testing, and discussions with a health care provider related to the pregnancy.

Qualified employees can take PPPL in one-hour increments, up to 20 times. The law allows employers to verify the existence of a qualifying prenatal need, but employees are not required to disclose confidential information relating to their pregnancy as a condition for taking paid prenatal personal leave.

Eligibility criteria

The PPPL is available for all employees, full- and part-time, and does not require a minimum length of employment. The law also applies to all employers, with no minimum employee threshold.

Funding the PPPL

This law, like the existing PFL program,⁵ is financed through employee payroll contributions. Qualified employees must be paid at their regular rate of pay or the applicable minimum wage established pursuant to New York law (\$16.00/hour for New York City, Nassau, Suffolk and Westchester counties; \$15.00/hour for all other counties), whichever is greater.

Unused PPPL time does not need to be paid out upon termination of employment, resignation or separation from employment.

Conclusion

As a result of this recently enacted law, New York employers should review their employee handbooks and policies to ensure compliance with the state's PPPL. Employers may face difficulties in managing staffing during periods when employees take leave, particularly in industries with high turnover rates.

Additionally, smaller businesses might struggle with the financial implications of implementing these policies. Finally, employers should be aware of their legal exposures for employees' potential discrimination and retaliation claims arising under this statute.

Notes:

¹ <https://bit.ly/4dplz5z>

² <https://bit.ly/46050eA>

³ <https://bit.ly/3X7W584>

⁴ <https://bit.ly/3AtyB4B>

⁵ <https://on.ny.gov/4dL4KCZ>

About the author



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