

## New York's Paid Prenatal Leave Law Takes Effect on January 1, 2025

As noted in our prior [Client Alert](#), New York's Paid Sick and Safe Leave (PSL) Law received a major update as part of the state's final budget for Fiscal Year 2025, which includes the nation's first statewide paid prenatal leave mandate for private employers.

### **How Much Paid Prenatal Leave Are Employers Required to Provide?**

Starting on January 1, 2025, New York employers are required to provide pregnant employees with 20 hours of paid prenatal leave within a 52-week period.

Paid prenatal leave under the PSL is not an incrementally accrued benefit. The entire 20 hours must be frontloaded and made available immediately to employees. Such paid prenatal leave can be taken in hourly increments. And the law does not restrict the number of times paid prenatal leave can be taken by a single employee over time, other than to limit the use to 20 hours in a 52-week period.

Paid prenatal leave, however, does not roll over to the following benefit year if unused. In other words, use is capped at 20 hours per year. The law does not require employers to pay out unused prenatal leave at the end of the year or at any other time.

### **How Can Employees Request and Use Paid Prenatal Leave?**

Employees can use paid prenatal leave under the PSL for physical exams, monitoring and testing, fertility treatments, discussions with their physicians, and other types of prenatal care.

Paid prenatal leave cannot be used for medical care occurring at times other than when the employee is actually pregnant or for care unrelated to pregnancy. Employees may use other paid time off benefits if eligible for them, including paid sick leave and vacation time, for such purposes.

Employees can request to use paid prenatal leave pursuant to an employer's existing methods for requesting and using paid sick leave.

### **How Does Paid Prenatal Leave Interact with Other Paid Employee Benefits?**

Paid prenatal leave is separate and distinct from and in addition to existing requirements under New York's Paid Sick Leave Law and the New York City Earned Safe and Sick Time Act, which provide 40 or 56 hours of paid leave, depending on the size of the employer. This is also separate from and in addition to the separate bank of paid safe leave available to employees working in Westchester County, New York.

Under the amendments to the PSL, employers must provide employees with a separate bank of paid prenatal leave to use without reducing any existing paid leave benefits like paid leave under the New York Paid Family Leave Law (NYPFL), which provides employees with 12 weeks of paid family leave for qualifying absences (i.e., bonding with a newborn, adopted, or

fostered child, or caring for a family member with a serious health condition). It should be noted that NYPFL is not available for prenatal conditions.

There is no waiting period for usage of paid prenatal leave, and employers cannot require employees to exhaust their paid sick/safe leave balance, accrued vacation time, or other paid leave benefits prior to accessing their paid prenatal leave benefits.

### **Who Pays for the Paid Prenatal Leave Benefit?**

As noted above, the new paid prenatal personal leave mandate is part of New York's Paid Sick Leave program. This program is funded solely by employers, unlike the NYPFL law, which is partially funded by employee payroll contributions. In accordance with the amended PSL, employees must receive compensation for paid prenatal personal leave at their regular rate of pay or the applicable minimum wage, whichever is greater.

### **Reasonable Accommodations and Job Protection**

While employers are not required to offer paid leave for prenatal appointments under federal regulations, the United States Equal Employment Opportunity Commission (EEOC) published [final regulations](#) in April 2024 interpreting the federal Pregnant Workers Fairness Act (PWFA), making clear that employers must provide reasonable accommodations for pregnant workers, including time off for prenatal or postnatal appointments.

As such, paid prenatal leave constitutes both a leave entitlement under New York State Law, and a reasonable accommodation. Employers must take care to ensure that paid prenatal leave is provided in a manner consistent with federal law, New York State Law and applicable local law.

The new law also provides that paid prenatal leave is job-protected leave, and that employees returning from such leave are entitled to restoration to their former position pursuant to the same terms and conditions of employment. Unlike the NYPFL, the paid prenatal leave law does not set forth any conditions under which employers may return employees to alternative positions or terms of employment. Given that the annual entitlement to such paid prenatal leave is 20 hours, this provision is more of a policy statement than one which would normally affect the employer-employee relationship or an employee's terms and conditions of employment.

### **Key Takeaway**

Employers should prepare for the effective date of the Paid Sick Leave Law's prenatal leave provision by crafting policies for distribution to employees prior to January 1, 2025, and ensure that payroll programming accounts for its implementation. Employers and Human Resources professionals should also be prepared review paid prenatal leave benefits with pregnant employees who may require such leave in the near future.

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### **Key Contacts**

Our Labor & Employment Law team is available to assist employers with compliance with all New York Labor Laws concerning employee time and leave benefits, including updating employee handbooks and policy implementation.

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