

Paid Family Leave in New York: Everything Employers Need to Know Now



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New York's Paid Family Leave Law

- New York Paid Family Leave Benefits Law (“PFL”) will provide up to **12 weeks of paid family leave** to eligible employees
- Paid leave goes into effect **January 1, 2018**
- Virtually all New York employers must provide paid leave
- Financed by nominal deductions taken from employees’ wages

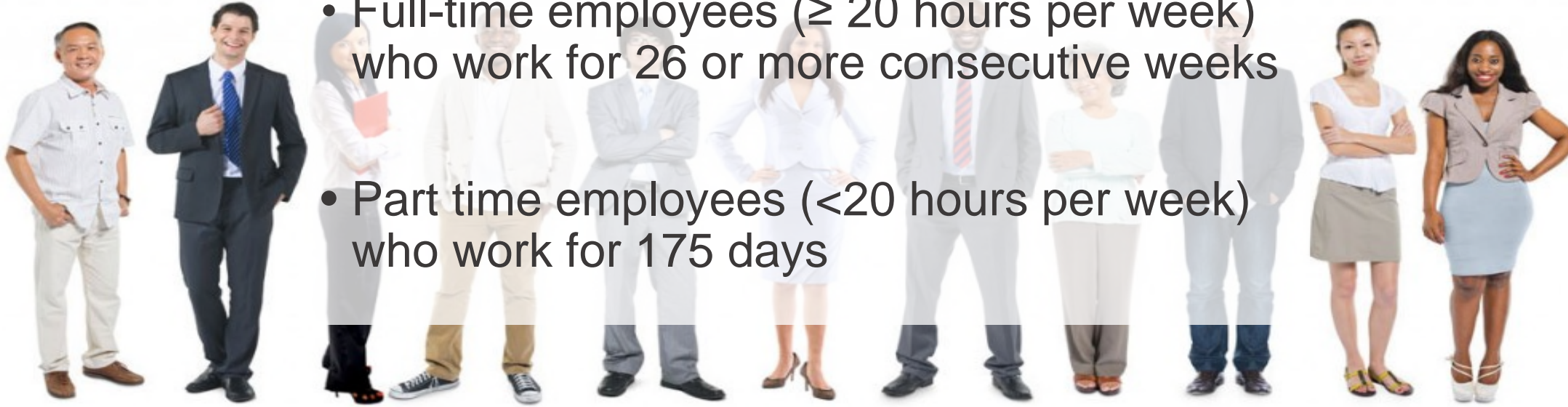


Which employers are covered?

- Virtually all private sector employers are covered
- New York employers that have employed as few as one individual for 30 consecutive days are covered
- Employee must work in New York



Which employees are eligible for leave?

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- Full-time employees (≥ 20 hours per week) who work for 26 or more consecutive weeks
 - Part time employees (< 20 hours per week) who work for 175 days

Who is Covered Under the PFLBL?

Employer Coverage

- Any employer covered by the New York Workers' Compensation Law
- Number of employees a business employs is irrelevant

Employee Coverage

- Works for a covered employer for 26 weeks (6 months)/175 days
- No minimum hours requirement

Are there any exceptions to employee eligibility?

- Family leave waiver
- Employees subject to collective bargaining agreement (if benefits at least as favorable are provided)



Schedule for Implementation of Paid Leave

Effective Date	Length of Leave	Amount of Pay During Leave
January 1, 2018	8 weeks	50% of average weekly wage, in an amount not to exceed 50% of the state average weekly wage
January 1, 2019	10 weeks	55% of average weekly wage, in an amount not to exceed 55% of the state average weekly wage
January 1, 2020	10 weeks	60% of average weekly wage, in an amount not to exceed 60% of the state average weekly wage
January 1, 2021	12 weeks	67% of average weekly wage, in an amount not to exceed 67% of the state average weekly wage

How is leave calculated?

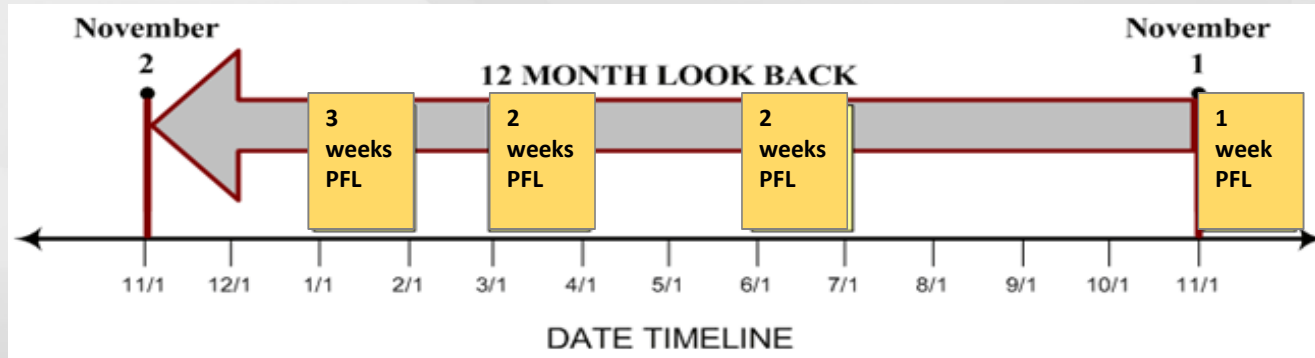
- Weekly leave: Eligible for the maximum number of weeks of leave in any 52 consecutive week period.
- Daily leave: Maximum period of leave is calculated on the average of number of days worked per week





How do you calculate the fifty-two consecutive weeks?

- Employers must use “rolling backward” method for calculating leave
- Different than FMLA



What can PFL be used for?

Covered employees receive up to 12 weeks of paid leave each year:

- To care for a family member with a serious health condition
- To bond with their child during the first 12 months after the child's birth or adoption
- For any "qualified emergency" under the FMLA (military active duty)

Does **not** include treatment or recovery for the **employee's serious health condition**

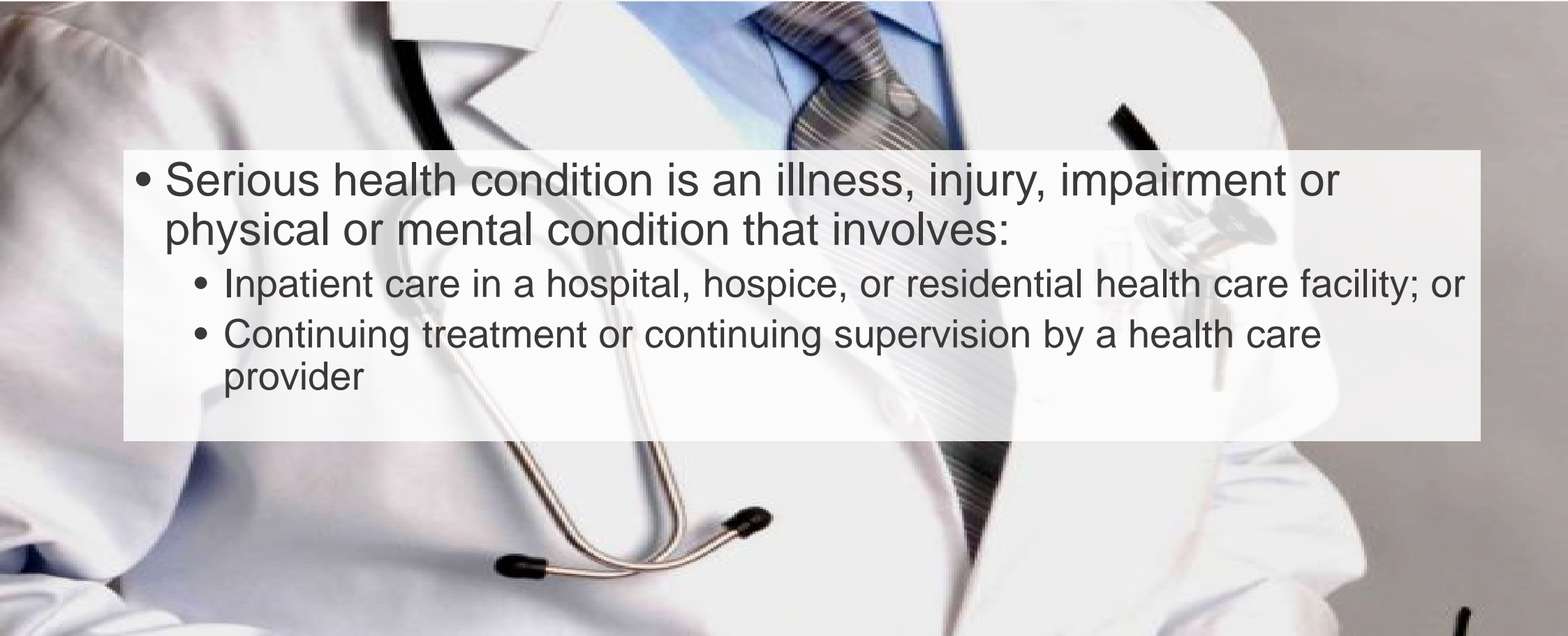
What can PFL be used for?

Providing care for a family member with a serious health condition

- Must be a close relative
- Close proximity to care recipient
- Includes physical care, emotional support, visitation, assistance in treatment, transportation, arranging for a change in care, assistance with essential daily living matters and personal attendant services

What can PFL be used for?

Providing care for a family member with a serious health condition

- 
- Serious health condition is an illness, injury, impairment or physical or mental condition that involves:
 - Inpatient care in a hospital, hospice, or residential health care facility; or
 - Continuing treatment or continuing supervision by a health care provider

What can PFL be used for?


Providing care for a family member with a serious health condition

- Categories of “Serious Health Conditions”
 - Hospital care (in-patient)
 - Incapacitation plus treatment
 - Chronic conditions
 - Permanent/long-term conditions requiring medical supervision
 - Restorative surgery
 - Multiple treatments (non-chronic conditions)

Which of the following conditions might be considered a “serious health condition” under the New York Paid Family Leave Benefits Law and/or be a qualified reason for PFL leave?




- An employee’s mother’s migraine headaches



- A spouse’s foot surgery



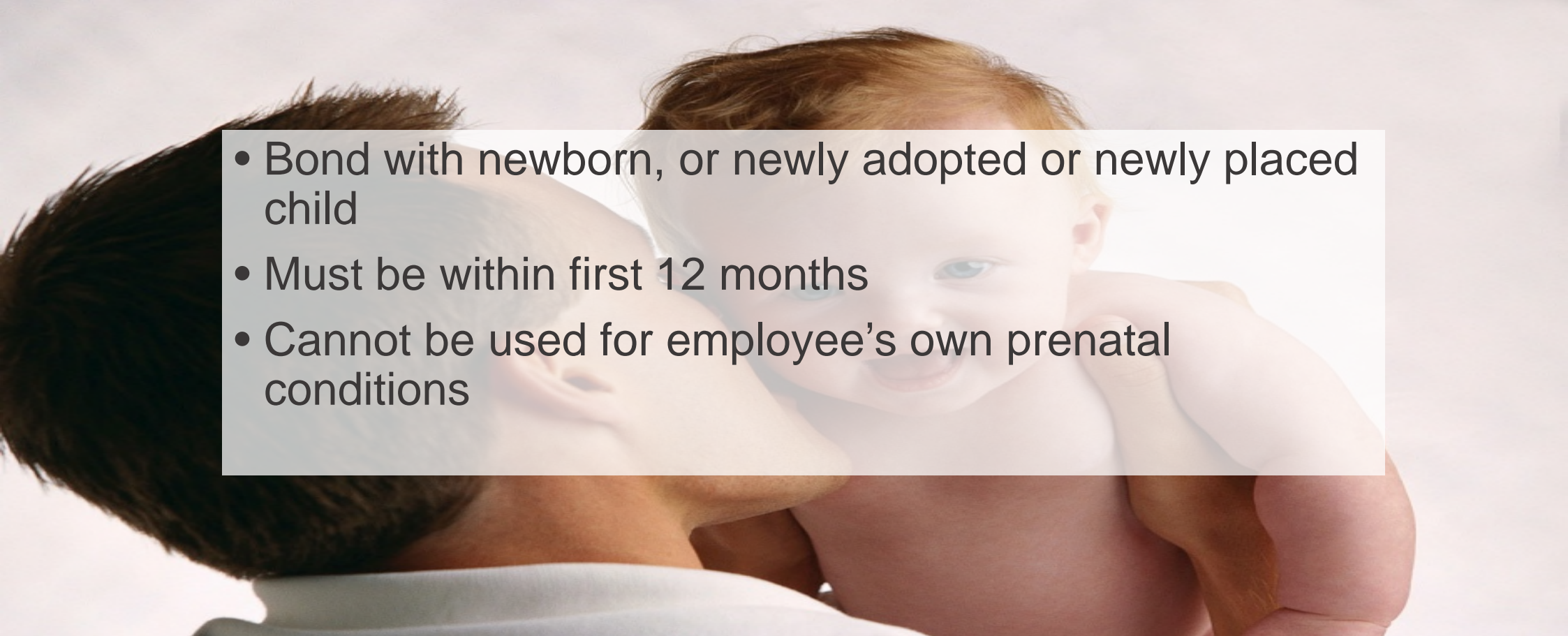
- A pregnant employee’s morning sickness



- An employee’s request to take a week of vacation because her father is having gall bladder surgery

What can PFL be used for?

Birth, adoption or foster care

- 
- Bond with newborn, or newly adopted or newly placed child
 - Must be within first 12 months
 - Cannot be used for employee's own prenatal conditions

What can PFL be used for?

Qualifying exigency

- Eight Qualifying Exigencies
 - Short-notice deployment
 - Military events and activities related to call to active duty
 - Childcare and school activities
 - Financial and legal arrangements
 - Counseling
 - Rest and recuperation
 - Post-deployment activities
 - Additional activities arising from the military duty

How are PFL benefits funded?

- Employer does not fund the PFL benefits
- Financed by nominal deductions from employees' wages
 - ❖ Maximum deduction is .126% of an employee's average weekly wage, up to the statewide average weekly wage
- Deductions used to purchase a PFL insurance policy or to self-insure

Are employees required to provide notice before taking PFL?

YES

- If foreseeable: 30 days advance notice
- If not foreseeable: As soon as practicable

Can PFL benefits be coordinated with other leave laws?


- Workers' comp → employee cannot collect both
- Disability → employee cannot collect both
- FMLA → can be used concurrently; employer must notify of concurrent designation
- NYC Sick Time Act → ???

Can PFL be coordinated with an employer's existing policies?

- Employee can choose whether to use available PTO in lieu of PFL benefits; employer cannot compel
- Employer can seek reimbursement
- Employee gets full protections of the law



What are the employer's obligations?

- 
- Job protection
 - Maintenance of health insurance benefits
 - Posting requirement
 - Employee handbook
 - No discrimination or retaliation

Is there a penalty for failure to comply?

- Penalty of .5% of the employer's weekly payroll plus a fine up to \$500
- Liable for payment of PFL benefits
- Medical costs if fail to maintain health insurance
- Arbitration for all claims related to PFL



How is the PFL different from the FMLA?

- It covers more employees
- It's paid
- It does not cover an employee's own serious health condition
- It lets employees choose whether to use accrued time off and receive full salary or receive paid family leave benefits



Final Questions



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Thank You



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