



NEW YORK: EMPLOYEE BENEFIT CONSIDERATIONS

Employers doing business in New York (including those that have one or more employees working in or remotely from New York) should be aware of the state's laws regarding continuation of benefits, leave, retirement, and other notable components of employee benefits. Note that this publication is limited to employee benefit considerations and does not cover labor and employment law considerations.

WHEN NEW YORK LAW MAY APPLY

New York law requires that group accident and health insurance policies issued in the state comply with certain mandates. This publication covers several of the most important benefit considerations. See the Resources section below for a list of the state's mandated health benefits. If New York licensed the insurer that issued the policy and the insurer delivers the policy to New York residents, then the policy is likely subject to New York insurance regulations, including state-mandated health benefits. Self-insured plans are typically exempt from state mandates.

Insurers are generally aware of state insurance regulations, so employers should consult with the insurer or with legal counsel to determine whether particular state requirements will apply to their plan(s).

WAIVER OF GROUP HEALTH INSURANCE COVERAGE

Fully insured plans situated in New York cannot allow employees to waive any tier of coverage that is 100% employer-paid (i.e., non-contributory). For example, if the employee cost-share for self-only coverage is zero, employees cannot waive coverage from the plan. Similarly, if the employee cost-share for self-only coverage is zero but the cost-share for family coverage (i.e., all other coverage tiers) is greater than zero, employees cannot waive single coverage but can waive family coverage. Employers with fully insured plans in New York should review their waiver practices to ensure compliance with this state rule. The waiver of coverage restriction does not apply to self-insured plans.

More Information: [Employer Sponsored Group Health Insurance, Waiver of Coverage](#)

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STATE CONTINUATION OF BENEFITS

New York has two state continuation requirements to consider: New York state continuation (also known as “mini-COBRA”) and New York Coverage to Age 29. In states such as New York that have state continuation of benefits laws, employers subject to federal COBRA laws must offer eligible individuals the option to continue coverage under federal COBRA and the applicable state continuation law; individuals who wish to continue coverage must then make an election under one law or the other. State continuation does not apply to self-insured plans or to stand-alone dental, vision, accident, or disease-specific policies.

State Continuation (“Mini-COBRA”)

The New York mini-COBRA law applies to employers with fewer than 20 employees (i.e., those not subject to federal COBRA) and to policies issued in New York. In the event of termination of employment, reduction in work hours, or loss of eligibility, the law requires the policy to provide continuation coverage for 36 months.

The New York mini-COBRA law also expands federal COBRA requirements by requiring a group policy, group remittance contract, or group contract to offer participants who exhausted continuation coverage under federal COBRA the opportunity to continue coverage for up to 36 months from the date the federal COBRA coverage began. This rule applies only if participants were entitled to less than 36 months of continuation benefits under federal COBRA. The rule does not limit the reason for the qualifying event under federal COBRA.

Under the New York mini-COBRA law, qualifying events include voluntary or involuntary job loss, reduction in hours, transition between jobs, death, divorce, and other life events. Specifically, qualifying events include all of the following:

- Employees who lose group coverage due to termination of employment, reduction in hours of employment, or loss of membership in an eligible class.
- Spouses who lose group coverage due to the employee’s termination of employment, reduction in hours of employment, death, divorce, legal separation, eligibility for Medicare, or loss of membership in an eligible class.
- Dependent children who lose group coverage due to a loss of dependent child status under the plan or the employee’s termination of employment, reduction in hours of employment, death, divorce, legal separation, eligibility for Medicare, or loss of membership in an eligible class.

Qualified individuals may be required to pay up to 102% of the premium cost. The 36-month period may end sooner if any of the following events occur:

- The covered individual does not make timely premium payments.
- The employer ceases to maintain any group health plan (including successor plans of related companies).
- The employee or spouse/dependent becomes covered under any other group health plan that is not maintained by the employer (even if the other coverage is less comprehensive than COBRA or continuation coverage).
- The qualified beneficiary becomes entitled to (enrolled in) Medicare benefits.

Importantly, the New York mini-COBRA law does not apply to self-insured plans, dental-only plans, vision-only plans, or prescription-only plans, so continuation under those types of plans follows federal COBRA rules without respect to the lengthier New York mini-COBRA extension.

More Information and FAQs: [State Continuation Coverage Extension to 36 Months](#)

DEPENDENT COVERAGE LAWS

Coverage to Age 29

The Coverage to Age 29 law permits young adults who age off their parent’s plan to continue or obtain coverage under the employer’s policy through age 29. Under the law, fully insured plans must extend coverage through age 29 to children who live, work, or reside in NY; are not married; are not eligible for Medicare; and do not have other employer-sponsored coverage. The

rule applies to children regardless of their financial dependence. Further, it pertains to all NY employers, regardless of size (i.e., regardless of whether the employer qualifies as an Applicable Large Employer under the ACA). The law does not apply to self-insured plans.

Employees or dependent children are permitted to elect the extended coverage on a self-pay basis within 60 days following the date coverage would otherwise terminate due to age, within 60 days of qualifying as a dependent child, or during the employer's annual open enrollment period.

The law provides two distinct ways in which coverage may be extended: a Young Adult Option and a Make Available Option. Under both options, carriers are responsible for making the coverage available and notifying employees. Employers have no compliance obligations under the Young Adult Option and can opt in to or out of the Make Available Option.

Under the Young Adult Option, the carrier is required to notify employees of the extension of coverage to age 29. Employees or their eligible dependents may then elect the benefit and pay the premium, which cannot exceed 100% of the single premium rate. Young adults may also elect this coverage when they newly meet the eligibility criteria, such as if they lose eligibility for group health insurance coverage. This is called the Young Adult Option because it permits eligible young adults to continue their coverage through the employer's health insurance coverage once they reach the dependent age limit under the policy.

NY FAQs on Young Adult Option: [Coverage Expansion Through Age 29 "Young Adult" Option - Frequently Asked Questions](#)

Under the Make Available Option, the carrier makes the Age 29 extension available to the employer, and the employer decides whether to offer the option to their employees. Employers that implement the Make Available Option must purchase a rider to extend the age of dependent coverage to age 29. Most carriers impose a rate load for this option. This is called the Make Available Option because it allows the employer to determine if they want to extend the age limit for dependent eligibility under the employer's plan.

NY FAQs on Make Available Option: [Coverage Expansion Through Age 29 "Make Available" Option - Frequently Asked Questions](#)

Although the carrier is responsible for issuing employee notices, employers should work closely with their carrier to ensure that the Coverage to Age 29 law is implemented and communicated to employees.

HEALTH CARE REFORM ACT (HCRA) CONTRIBUTIONS

Under the New York Health Care Reform Act (HCRA), health claim payors are subject to two distinct surcharges: the Graduate Medical Education (GME) surcharge and the Indigent Care Surcharge (ICS). HCRA contribution requirements apply to medical, dental, and vision plans, but only to inpatient and outpatient services provided at hospitals and certain other designated facilities located in New York.

Importantly, the term "payors" includes employers for self-insured (including level-funded) plans and carriers for fully insured plans. These surcharges apply regardless of a patient's residence or where the health insurance contract is issued. The HCRA surcharges therefore apply equally to in-state and out-of-state employers.

With respect to the GME, payors can choose one of two ways to satisfy the surcharge requirement. First, they can elect to pay directly to the Public Goods Pool via a covered lives assessment (CLA), the rate for which varies based on where covered individuals reside. The CLA is assessed on such "electing payors" based on the number of the employer's covered individuals and families living in New York. Second, they can opt to pay the surcharge directly to the provider as a denominated percentage of the billed amount that gets added to the provider's bill. Surcharge payments to providers are typically set at a higher percentage than payments made directly to the Public Goods Pool. Since electing payors with no covered employees residing in New York would not owe a CLA, out-of-state employers with few or no covered New York residents may want to consider becoming electing payors to avoid the potential assessment of a higher GME surcharge. Payors must make an initial election with the state and then pay the surcharge annually; for further details, see the links at the end of this section.

With respect to the ICS, this surcharge applies to services at certain state healthcare facilities regardless of a patient's residence or where the health insurance contract is issued. The indigent care rate in effect through December 31, 2023, is 9.63% for payors

electing to pay the amount directly to the state Public Goods Pool as opposed to 28.27% for non-electing payors that pay the surcharge directly to healthcare providers.

Note that electing entities are required to file New York Public Goods Pool reports electronically with the NY state on an annual basis, regardless of whether any payments are due.

Employers with self-insured plans should work with their TPA regarding their HCRA elections and processes.

For more information, see:

[FAQs on Electronic Elections](#)

[HCRA FAQs](#)

[Indigent Care and Health Care Initiatives Surcharges by Payor](#)

[HCRA Regional Covered Lives Assessment Rates](#)

[New York State Health Care Reform Act](#)

SMALL EMPLOYER HEALTH INSURANCE

New York state law does not require small employers (defined as businesses with 1 to 100 employees) to offer health insurance. However, if those businesses do offer health coverage issued and regulated by the state as described above, then they must offer it to all employees who work 20 or more hours per week as well as to their dependents. As defined under the ACA's employer mandate, "dependents" means children up to age 26. The definition does not include stepchildren, foster children, or spouses.

Federal requirements for small employer health plans, such as the requirement to provide essential health benefits, apply to small employer health plans issued in New York, as do prohibitions against discrimination or exclusion based upon preexisting conditions. Carriers are generally responsible for any coverage or mandated benefit requirements that apply to small employer health insurance plans.

DOMESTIC PARTNERSHIPS AND CIVIL UNIONS

New York offers and recognizes domestic partnerships as formal relationships with protections under state law. That said, there is no state (or federal) requirement to offer employer-sponsored health and welfare coverage (medical, dental, vision, prescription drugs, etc.) to an employee's domestic partner or the child(ren) of a domestic partner. For purposes of group health insurance eligibility under New York state insurance law, a domestic partnership involves two persons who are financially interdependent (evidenced by common ownership of property, common householding, shared budgeting, length of relationship, etc.). Domestic partners can be of the same or different genders.

Some jurisdictions in New York provide for domestic partner registration, and employers in those jurisdictions may choose to rely on the registration criteria, or criteria that are no more restrictive than those criteria, for their own definition of domestic partnership. Fully insured groups should coordinate with their health insurer on defining eligible domestic partners, since health insurers are responsible for ensuring the policy covers only eligible persons recognized under New York state insurance law (i.e., financially interdependent domestic partners). For information about establishing a working definition of domestic partner for the administration of employee benefits, see the NFP publication [Domestic Partner Benefits: A Guide for Employers](#).

New York does not offer or allow common-law marriage or civil unions as a form of legal marriage. However, New York does recognize legal marriages performed in other states (and other states might offer and allow common-law marriages or civil unions as legal marriages).

OFFER OF RETIREMENT PLAN

New York does not have retirement savings program statutes or regulations that apply generally to private employers.

GROUP TERM LIFE INSURANCE

Employers in New York are not required to provide employer-paid group term life insurance (GTLI) benefits. However, insurers that issue GTLI policies to employers must comply with certain requirements. For example, if employees pay any portion of the GTLI premiums, the GTLI policy must cover a minimum of 50% or five of the eligible employees, whichever is fewer.

Further, GTLI policies issued in New York are required to include a conversion option that gives covered employees a time-limited opportunity to convert group coverage to an individual policy without evidence of insurability upon termination of employment, termination of membership in an eligible class, policy termination, or certain age-related coverage reductions. GTLI policies issued in New York must also include a conversion option for covered dependents when dependent coverage is terminated or reduced, upon the employee's death (with respect to covered surviving spouses and children), when a covered child reaches the maximum covered age, or upon divorce or annulment of marriage.

When an event occurs that triggers GTLI conversion rights, New York law requires insurers to provide notice of these rights within 15 days of the event. If notice is given more than 15 days but fewer than 90 days after the event, then the conversion period is extended for 45 days after the notice is provided. But if notice is not given within 90 days, the conversion period expires at the end of 90 days. Notice can be delivered to the covered individual by employer or insurer, and mailing to the covered individual's last known address satisfies delivery requirements. GTLI policies may contain conversion and notice terms that are more favorable to employees.

Employers become subject to these state law requirements to the extent they are incorporated into the GTLI plan terms (i.e., as ERISA fiduciaries, employers sponsoring GTLI must follow the plan terms). Carrier agreements may also require employers to assist with meeting notice requirements related to conversion rights. Employers should confirm with their GTLI insurer whether they are responsible for delivering conversion notices under the terms of the GTLI plan or carrier agreement. For general information about GTLI benefits, see the PPI publication [Group Term Life Insurance: A Guide for Employers](#) .

DISABILITY INSURANCE

All private employers with at least one employee working in New York must comply with New York's Disability Benefits Law (DBL). New York DBL (NY DBL) requires employers to provide disability benefits coverage to employees for an off-the-job illness or injury, including pregnancy and childbirth recovery. Employers can provide coverage through the State Insurance Fund or through a private plan (fully insured or self-insured). Most covered employers contract with a carrier to handle NY DBL (and, by extension, NY PFL, as described under the Leave Laws section below).

Following a seven-day waiting period, NY DBL provides salary replacement benefits at 50% of the employee's weekly wage up to \$170. Benefits are available for up to 26 weeks during a 52-consecutive-week period.

Full-time employees must work four consecutive weeks of covered employment, which does not necessarily need to be with the same employer, to be eligible for NY DBL. Part-time employees become eligible on the 25th day of regular New York employment unless eligibility was previously satisfied.

[Quick Reference Chart: Statutory Disability and Paid Family & Medical Leave Programs.](#)

[NY Web Page on Disability](#)

[Disability Benefits Information for Employers](#)

LEAVE LAWS

Employers must comply with certain state and local leave laws with respect to those employees working in New York (including employees that are working remotely from any location in New York). These leave laws generally provide job and benefit protection when employees take time away from work for specified reasons. Federal leave laws, such as the FMLA, may also impact an employee's protections and rights during a leave of absence. Employers should also consider their internal leave

policies and the related benefit plan documents, which together may determine when benefit plan coverage ends following the federal, state and/or local leave protection. New York's leave-related laws are described at a high level below.

NY State Paid Family Leave (PFL)

New York Paid Family Leave law (NY PFL) requires all private employers with one or more employees working in New York to provide paid leave for employees' qualified family-related reasons. At a high level, full-time employees (those who work 20 or more hours per week) are eligible after 26 consecutive weeks of employment, while part-time employees (those who work fewer than 20 hours per week) are eligible after working for 175 days (which do not have to be consecutive, and there is no hour limit on a "day" worked). PFL policies are issued as a rider to the DBL policy.

Eligible employees may take NY PFL to care for a family member with a serious health condition, bond with a new child (by birth, adoption, or fostering) within one year of the birth or placement, to care for a military family member injured during active duty, to provide support for family members when deployed abroad on active military duty, or due to an order of quarantine or isolation for employees (or their minor child) related to COVID-19. Importantly, "family member" includes a spouse, domestic partner, child/stepchild, parent/stepparent, parent-in-law, grandparent, grandchild, biological and adopted sibling, half-sibling, and stepsibling. New York PFL leave can be taken continuously or intermittently (in full day increments) for up to 12 weeks. The maximum benefit amount is 67% of the employee's average weekly wage (capped at the state average weekly wage and updated annually as of each January 1).

New York PFL provides both job protection and health plan continuation requirements, meaning employees must be allowed to continue their health benefits. Employers may permit employees to use sick or vacation leave (PTO), as applicable, prior to or concurrent with NY PFL, but they cannot require employees to do so. Note, however, that NY PFL cannot run concurrently with NY DBL; in cases of maternity and bonding leave, the leaves can run consecutively at the discretion of the employee. The total NY DBL and NY PFL leave duration in any 52-week period may not exceed 26 weeks.

For further information about NY PFL, see the PPI publication [New York Paid Family Leave: A Guide for Employers](#).

Other NY State and Local Leave Laws

New York has several other leave protections for employees. Employees can take leave for jury duty; military; victim; voting; and organ, blood and bone marrow donor reasons. In addition, NYC and Westchester County have their own paid sick leave laws, and Westchester County also has a Safe Time Leave Law, as outlined more fully below.

NYC Sick Leave

Generally, all New York City employers must provide at least one hour of safe or sick leave for every 30 hours worked, up to 40 hours in a calendar year. Safe leave applies when the employee or their family member has been the victim of domestic violence, sexual offense, stalking, or human trafficking. Sick leave applies when an employee or their family member suffers a mental or physical illness or injury. Employers must provide a notice to employees upon hire (in the language of the employee) and upon request.

NYC Sick Leave

NYC Sick Leave Notice for Employees

NYC Sick Leave Employer Tools

NY Paid Sick Leave

New York sick leave law requires employers to provide between 40 and 56 hours per year of benefits-protected paid leave, depending on their size. Employers with fewer than five employees and an annual income of \$1 million or less may satisfy the law by providing unpaid leave of 40 hours annually. Employers with 5 to 99 employees must provide up to 40 hours of paid sick leave annually. Lastly, larger employers (those with 100 or more employees) must provide the maximum paid sick leave benefit (up to 56 paid hours annually).

Employees can use the leave for a broad number of reasons. Generally, it can be used for an employee's or employee's family member's mental/physical illness, injury, or health condition (regardless of whether that condition has actually been diagnosed or

requires medical care at the time the employee requests the leave), and for the diagnosis, care, or treatment of a physical/mental illness, injury or health condition of (or need for medical diagnosis of or preventive care for) an employee or family member.

New York paid sick leave is also available for an employee or family member who has been the victim of domestic violence, a family offense, a sexual offense, stalking, or human trafficking. Under these circumstances, leave may be taken for any of the following reasons:

- To obtain services from a domestic violence shelter, rape crisis center, or other service programs.
- To participate in safety planning, temporary/permanent relocation, or to take other actions to increase the safety of the employee or family member.
- To meet with an attorney or other social services provider to obtain advice or information or to 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.
- To take any other necessary action to ensure the health and safety of the employee or family member.

Importantly, for purposes of New York's paid sick leave law, "family member" means an employee's child, spouse, domestic partner, parent, sibling, grandchild, or grandparent, or the parent or child of an employee's spouse or domestic partner. "Parent" means a biological, foster, stepparent or adoptive parent, a legal guardian of an employee, or a person who stood in loco parentis when the employee was a minor child. "Child" means a biological, adopted, or foster child; a legal ward; or a child of an employee standing in loco parentis.

Westchester County

Employers with a presence in Westchester County must comply with Westchester County's Safe Time Leave Law. Under Westchester County's Safe Time Leave Law, covered employees (those that have worked for more than 90 days in a calendar year) have the right to use paid leave to attend or testify in criminal or civil court proceedings related to domestic violence or human trafficking or to move to a safe location. Covered employees may take up to 40 hours of paid leave in any calendar year or "year" as determined by the employer.

Westchester County also has paid sick leave requirements, but those have been superseded by the NY sick leave law (see above).

[Information on Westchester County Safe Time Leave Law](#)

[Westchester County Notice of Employee Rights for Safe Time Leave Law](#)

[Westchester County Safe Time Leave Law Poster](#)

SUMMARY

Employers with one or more employees who work in reside in New York should be well informed about the range of benefit requirements that pertain to such employees.

RESOURCES

[New York-Mandated Health Benefits](#)

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