



LICP Talks Labor & Employment: Time Off in New York

PRESENTED BY:

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Time Off in New York

FMLA – Family and Medical Leave Act

NYSPFL – New York State Paid Family Leave

NYSTD – New York Short Term Disability

NYWC – New York Workers’ Compensation

NYSPSL – New York State Paid Sick Leave

PTO – Paid Time Off (*i.e.*, vacation, holidays)

ADA – Americans with Disabilities Act

NYHRL – New York Human Rights Law

FFCRA – Families First Coronavirus Response Act



FMLA Coverage & Eligibility



- Covered Employers
 - Employers with 50 or more employees for each working day during 20 or more calendar workweeks in the current or preceding calendar year.
- Eligible Employees
 - Employed for at least 12 months;
 - Worked 1,250 hours during the last 12 months; and
 - Works at a worksite with 50 or more employees within a 75 mile radius.

Reasons for FMLA Leave (12 weeks within a 12 month period)

- Birth or care of the employee's child;
- Employee's "serious health condition;"
- To care for the employee's spouse, child or parent with a "serious health condition;"
- To address "qualifying exigencies" that arise because the employee's spouse, child or parent is a member of the Armed Forces (or Reserves).



Requesting FMLA Leave

- Employee must provide 30 days advance notice if need is foreseeable; otherwise, “as soon as practicable.”
- Employee must provide enough information for employer to determine that the FMLA may apply.
- Employer must respond to requests within providing the **Notice of Eligibility** and **Rights & Responsibilities Notice**.

Notice of Eligibility & Rights and Responsibilities under the Family and Medical Leave Act

U.S. Department of Labor
Wage and Hour Division



DO NOT SEND TO THE DEPARTMENT OF LABOR. PROVIDE TO EMPLOYEE.

OMB Control Number: 1235-0003
Expires: 6/30/2023

In general, to be eligible to take leave under the Family and Medical Leave Act (FMLA), an employee must have worked for an employer for at least 12 months, meet the hours of service requirement in the 12 months preceding the leave, and work at a site with at least 50 employees within 75 miles. While use of this form is optional, a fully completed Form WH-381 provides employees with the information required by 29 C.F.R. §§ 825.300(b), (c) which must be provided within five business days of the employee notifying the employer of the need for FMLA leave. Information about the FMLA may be found [on the WHD website at www.dol.gov/agencies/whd/fmla](http://www.dol.gov/agencies/whd/fmla).

Date: _____ (mm/dd/yyyy)

From: _____ (Employer) To: _____ (Employee)

On _____ (mm/dd/yyyy), we learned that you need leave (beginning on) _____ (mm/dd/yyyy) for one of the following reasons: (Select as appropriate)

- The birth of a child, or placement of a child with you for adoption or foster care, and to bond with the newborn or newly-placed child
- Your own serious health condition
- You are needed to care for your family member due to a serious health condition. Your family member is your:
 - Spouse Parent Child under age 18 Child 18 years or older and incapable of self-care because of a mental or physical disability
- A qualifying exigency arising out of the fact that your family member is on covered active duty or has been notified of an impending call or order to covered active duty status. Your family member on covered active duty is your:
 - Spouse Parent Child of any age
- You are needed to care for your family member who is a covered servicemember with a serious injury or illness. You are the servicemember's:
 - Spouse Parent Child Next of kin

Spouse means a husband or wife as defined or recognized in the state where the individual was married, including in a common law marriage or same-sex marriage. The terms “child” and “parent” include *in loco parentis* relationships in which a person assumes the obligations of a parent to a child. An employee may take FMLA leave to care for an individual who assumed the obligations of a parent

Certification of Health Care Provider for Employee's Serious Health Condition under the Family and Medical Leave Act

U.S. Department of Labor
Wage and Hour Division



DO NOT SEND COMPLETED FORM TO THE DEPARTMENT OF LABOR.
RETURN TO THE PATIENT.

OMB Control Number: 1235-0003
Expires: 6/30/2023

The Family and Medical Leave Act (FMLA) provides that an employer may require an employee seeking FMLA protections because of a need for leave due to a serious health condition to submit a medical certification issued by the employee's health care provider. 29 U.S.C. §§ 2613, 2614(c)(3); 29 C.F.R. § 825.305. The employer must give the employee **at least 15 calendar days** to provide the certification. If the employee fails to provide complete and sufficient medical certification, his or her FMLA leave request may be denied. 29 C.F.R. § 825.313. Information about the FMLA may be found [on the WHD website at www.dol.gov/agencies/whd/fmla](http://www.dol.gov/agencies/whd/fmla).

SECTION I – EMPLOYER

Either the employee or the employer may complete Section I. While use of this form is optional, this form asks the health care provider for the information necessary for a complete and sufficient medical certification, which is set out at 29 C.F.R. § 825.306. **You may not ask the employee to provide more information than allowed under the FMLA regulations, 29 C.F.R. §§ 825.306-825.308.** Additionally, you **may not** request a certification for FMLA leave to bond with a healthy newborn child or a child placed for adoption or foster care.

Employers must generally maintain records and documents relating to medical information, medical certifications, recertifications, or medical histories of employees created for FMLA purposes as confidential medical records in separate files/records from the usual personnel files and in accordance with 29 C.F.R. § 1630.14(c)(1), if the Americans with Disabilities Act applies, and in accordance with 29 C.F.R. § 1635.9, if the Genetic Information Nondiscrimination Act applies.

(1) Employee name: _____
First Middle Last

(2) Employer name: _____ Date: _____ (mm/dd/yyyy)
(List date certification requested)


(3) The medical certification must be returned by _____ (mm/dd/yyyy)
(Must allow at least 15 calendar days from the date requested, unless it is not feasible despite the employee's diligent, good faith efforts.)

(4) Employee's job title: _____ Job description (is / is not) attached.
 Employee's regular work schedule: _____
 Statement of the employee's essential job functions: _____

FMLA Medical Certification

- Allow 15 days to return forms;
- Serious Health Condition Certification
- Recertification (after initial period of leave, but no more than every 30 days).
- Fitness for Duty

FMLA: Policy Choices

- 
- 12 weeks in 12 months, define the year
 - Calendar Year
 - Fiscal Year
 - Rolling Year
 - Paid time off, mandate or choice
 - Health benefit premiums, collected during or post leave.

New York State Paid Family leave

- Covered Employers
 - 1 or more employees.
- Eligible Employees
 - Employed for at least 26 weeks for 20 or more hours per week; or
 - Employed for at last 175 days for less than 20 hours per week.



Reasons for NYS-PFL Leave (12 weeks within 52 consecutive weeks)


- “Providing Care” for child, spouse, domestic partner, parent, parent-in-law, grandparent, grandchild who has a “serious health condition.”
- Birth, adoption or foster care.
- Qualifying exigency arising from the service of a family member in the Armed Forces.




Requesting NYS-PFL

- Employee must notify employer 30 days before the start of leave if foreseeable; otherwise, “as soon as possible.”
- Employer must complete its portion of the application within 3 business days and return to the employee.
- Employee submits to your insurance carrier.

How to Request Paid Family Leave
to bond with a newly born, adopted, or fostered child



Paid Family Leave



Before you apply

- Check the eligibility requirements for Paid Family Leave. (See next page or visit PaidFamilyLeave.ny.gov)
- Plan your leave. Leave can be taken either all at once or intermittently, but must be taken in full-day increments.
- Notify your employer at least **30 days** before the start of leave, if foreseeable; otherwise, notify your employer as soon as possible.

Complete your forms and attach required documentation

- Complete the **Request for Paid Family Leave (Form PFL-1)**
 - Fill out your section, make a copy, and give the form to your employer to fill out *Part B*.
 - Your employer is required to return **Form PFL-1** to you within **three business days**. If there is a delay, you do not have to wait to proceed. Send the **Form PFL-1** that you have filled out, along with the rest of your request package, directly to the insurance carrier.
- Complete the **Bonding Certification (Form PFL-2)**
Complete **Form PFL-2** and attach the required documentation. (See next page for details.)

Submit to your employer's insurance carrier

- You must submit your completed request package within **30 days** after the start of your leave to avoid losing benefits. **Keep a copy of all forms and documentation for your records.**

Mall or fax your **Form PFL-1**, **Form PFL-2**, and required documentation to your employer's insurance carrier.

To find out who your employer's insurance carrier is, you can:

- Look for the Paid Family Leave poster in your workplace.
- Ask your employer.
- Use the employer coverage search application on wcb.ny.gov to look up your employer's Paid Family Leave insurance carrier.

If you cannot find your employer's insurance carrier, call the Paid Family Leave Helpline for assistance. **(844) 337-6303** (Monday through Friday, 8:30 a.m. to 4:30 p.m.)

Please do NOT submit your request package to the NYS Workers' Compensation Board.

It is YOUR responsibility to submit the forms to the insurance carrier. It is NOT your employer's responsibility.

PAIDFAMILYLEAVE.NY.GOV • (844) 337-6303 PAGE 1 OF 2

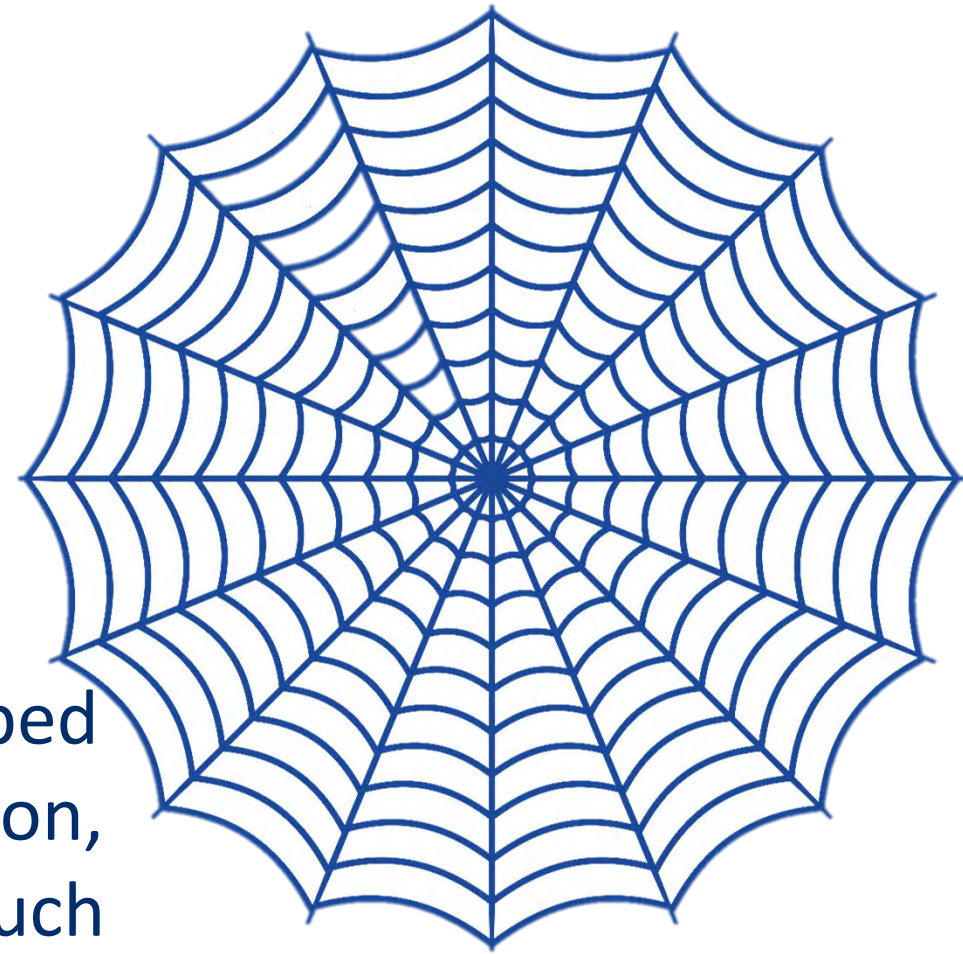
NYS Paid Sick (& Safe) Leave

- Covered Employers
 - <5 Employees – 40 hours unpaid leave;
 - 5-99 Employees – 40 hours paid leave;
 - 100+ Employees – 56 hours paid leave.
- Eligible Employees
 - Full-time, part-time, temporary, interns



Untangling the Web

Elissa is pregnant. She requires 6 weeks bed rest before the baby is born, has a C-Section, and plans to bond with her baby. How much job protected leave is Elissa entitled to take?



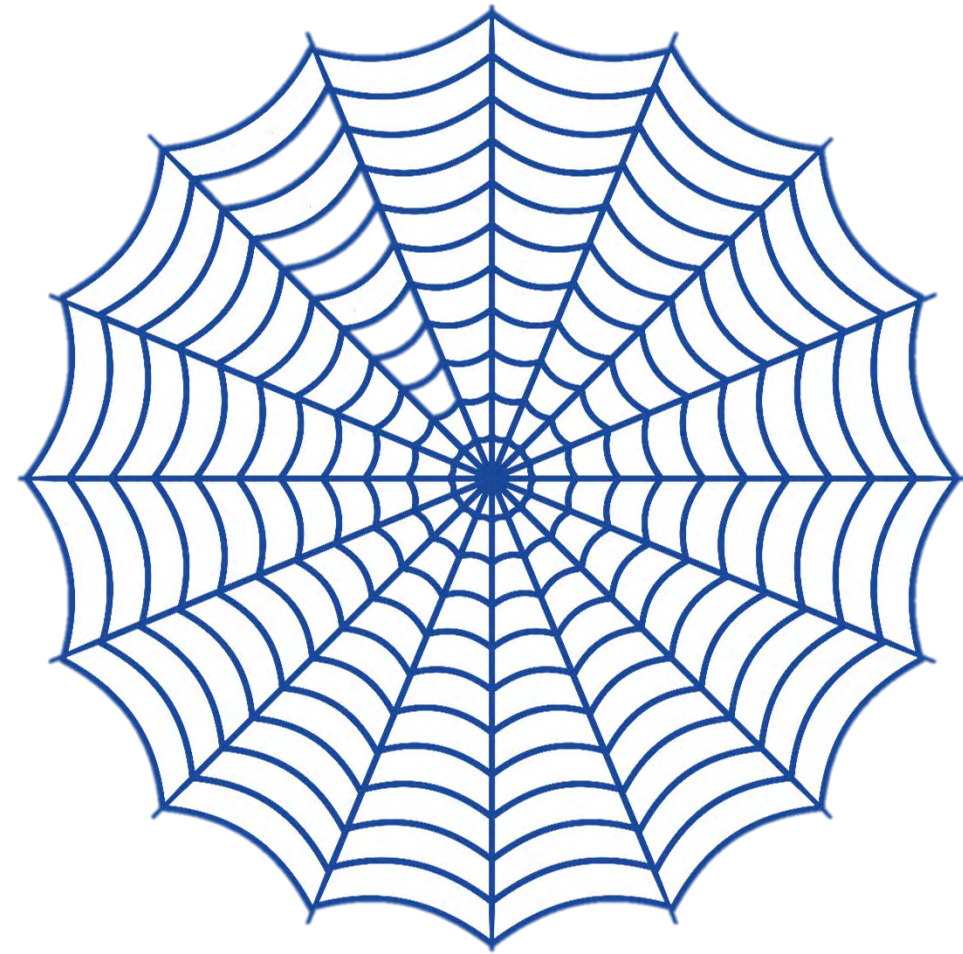
Untangling the Web

Elissa is pregnant. She requires **6 weeks bed rest** before the baby is born, has a **C-Section**, and plans to **bond with her baby**. How much job protected leave is Elissa entitled to take?

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26													
Bed Rest: 6 Weeks						C Section Recovery: 8 Weeks								Baby Bonding - 12 Weeks																								
FAMILY AND MEDICAL LEAVE ACT - 12 Weeks Unpaid Leave																																						
SHORT TERM DISABILITY INSURANCE - 14 Weeks Insurance Benefit																																						
PAID TIME OFF - 4 Weeks Paid Leave																																						
														NYS PAID FAMILY LEAVE - 12 Weeks Insurance Benefit																								

Untangling the Web

Mark and his husband just adopted their first child. Mark would like to take baby bonding leave. How much protected leave is Mark entitled to take?



Untangling the Web

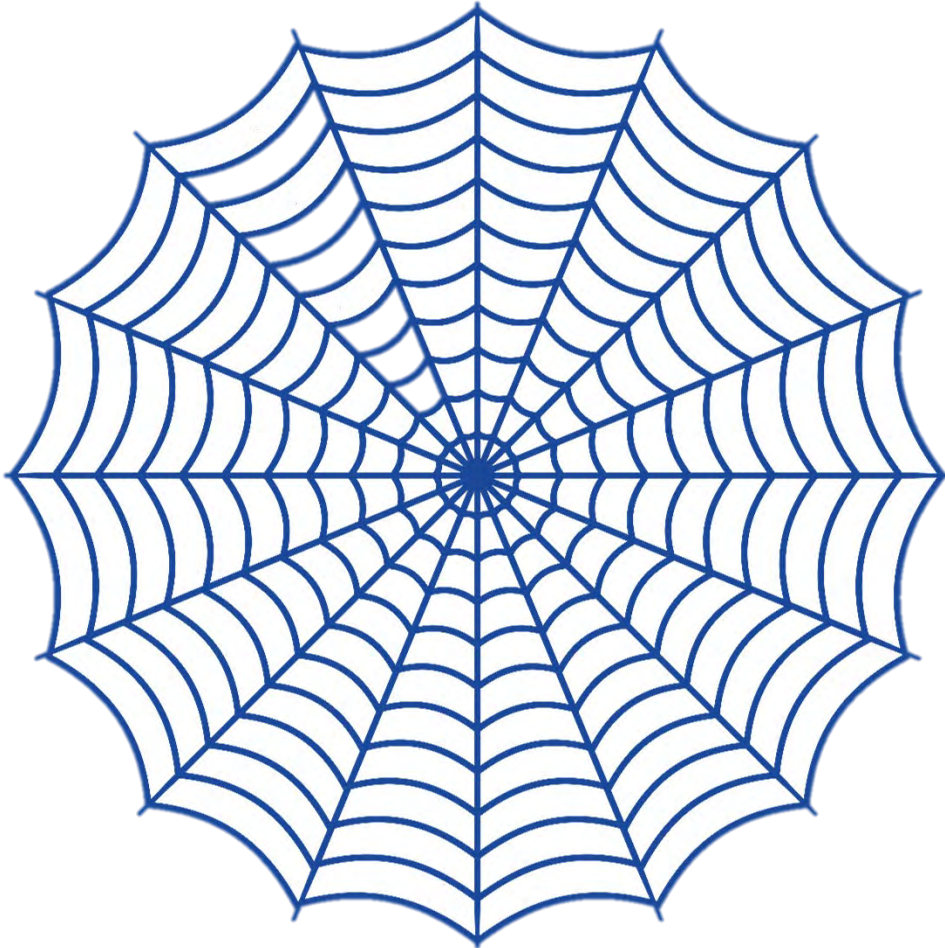
Mark's husband just gave birth to their first child. Mark would like to take baby **bonding leave**. How much protected leave is Mark entitled to take?

1	2	3	4	5	6	7	8	9	10	11	12
Baby Bonding with Adopted Child											
FMLA - 12 Weeks Unpaid Leave											
NYS PAID FAMILY LEAVE - 12 Weeks Insurance Benefit											
PTO / VACATION / SICK											

Untangling the Web

Mark's husband just gave birth to their first child. Mark would like to take baby **bonding leave**. How much protected leave is Mark entitled to take?

1	2	3	4	5	6	7	8	9	10	11	12				
Baby Bonding with Adopted Child															
FMLA - 12 Weeks Unpaid Leave															
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Baby Bonding with Adopted Child															
FMLA - 12 Weeks Unpaid Leave												PTO / VACATION / SICK			
NYS PAID FAMILY LEAVE - 12 Weeks Insurance Benefit															



Untangling the Web

In January 2021, Melissa takes leave to care for her infant grandchild for 8 weeks. In July, Melissa falls and needs 6 weeks off to recover from surgery. Her employer has 120 employees.

Untangling the Web

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1	2	3	4	5	6	7	8	9	10	11	12	13	14
Care for Grandchild with Serious Health Condition: 8 Weeks								Recovery From Surgery: 6 Weeks					
NYS PAID FAMILY LEAVE - 8 Weeks Insurance Benefit								FMLA - 6 Weeks Unpaid Leave					
								SHORT TERM DISABILITY - 6 Weeks Insurance					

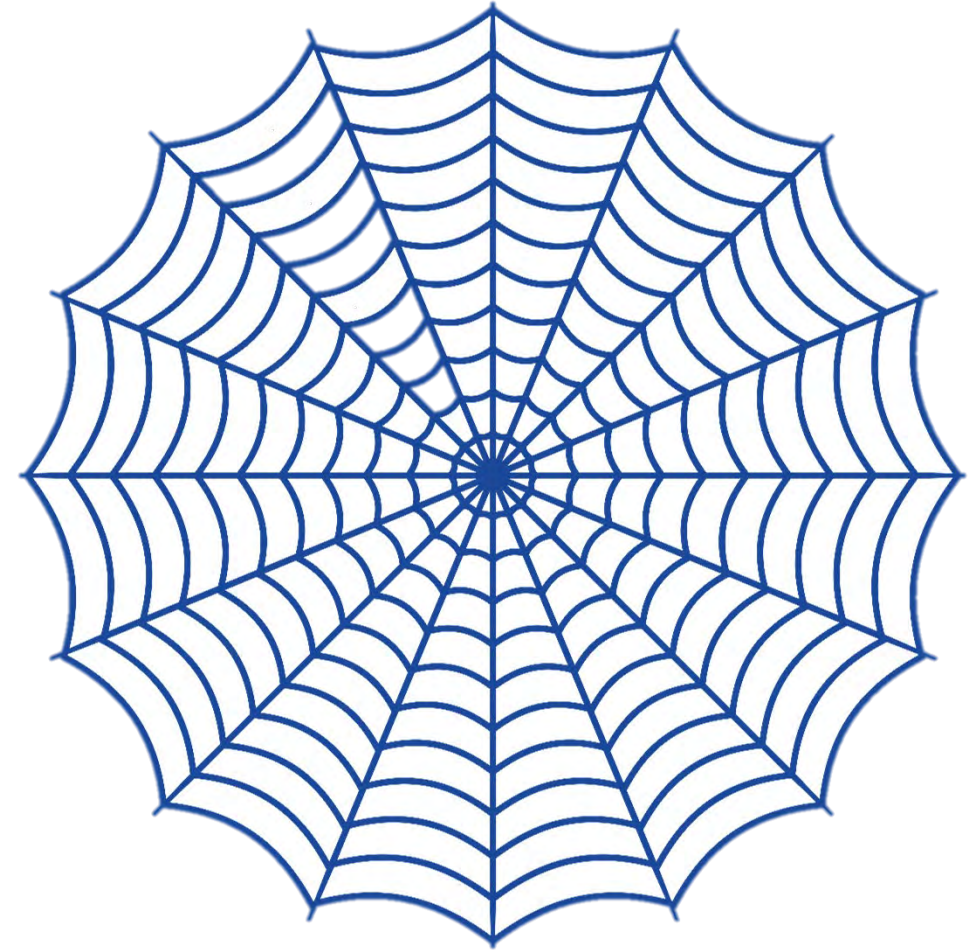
Untangling the Web

In January 2021, Melissa takes leave to care for her infant grandchild for 8 weeks. In July, Melissa falls and needs 6 weeks off to recover from surgery. Her employer has 120 employees **and employees are required to exhaust PTO as part of FMLA.**

1	2	3	4	5	6	7	8	9	10	11	12	13	14
Care for Grandchild with Serious Health Condition: 8 Weeks								Recovery From Surgery: 6 Weeks					
NYS PAID FAMILY LEAVE - 8 Weeks Insurance Benefit								FMLA - 6 Weeks Unpaid Leave					
								SHORT TERM DISABILITY - 6 Weeks Insurance					
								PAID TIME OFF - 4 Weeks Paid					

Untangling the Web

Nikki begins maternity leave on October 8, 2021. Her employer calculates FMLA on a calendar year basis and does not require employees to use PTO as part of FMLA.



Untangling the Web

Nikki begins maternity leave on October 8, 2021. Her employer calculates FMLA on a calendar year basis and does not require employees to use PTO as part of FMLA.

Total Absence: October 8, 2021 – March 25, 2022

Oct. 8	Oct. 15	Oct. 22	Oct. 29	Nov. 5	Nov. 12	Nov. 19	Nov. 26	Dec. 3	Dec. 10	Dec. 17	Dec. 24	Dec. 31	Jan. 7	Jan. 14	Jan. 21	Jan. 28	Feb. 4	Feb. 11	Feb. 18	Feb. 25	Mar. 4	Mar. 11	Mar. 18
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24
Birth of Child - 6 Weeks						Baby Bonding - 6 Weeks						Baby Bonding - 12 Weeks											
FMLA - 12 Weeks - Calendar Year 2021												FMLA - 12 Weeks - Calendar Year 2022											
						NYS PAID FAMILY LEAVE - 12 Weeks																	
SHORT TERM DISABILITY - 6 Weeks Insurance																							
PAID TIME OFF - 4 Weeks Paid Leave																							

Untangling the Web

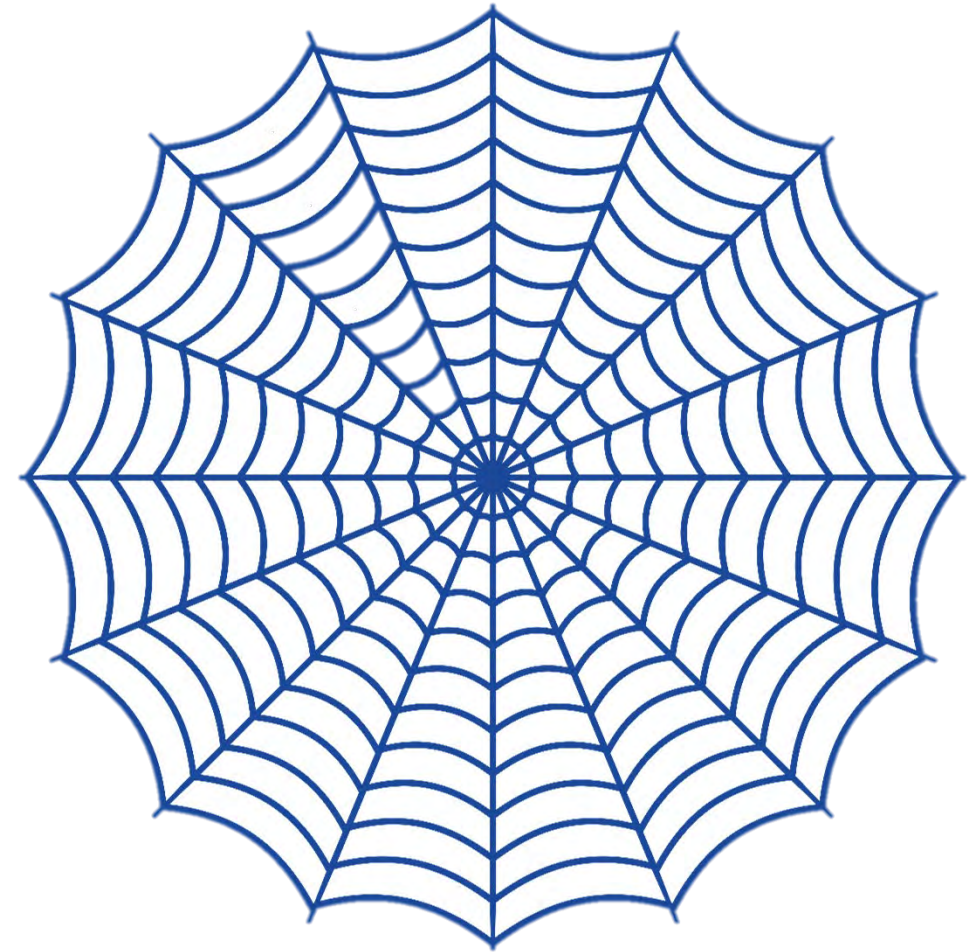
Nikki begins maternity leave on October 8, 2021. Her employer calculates FMLA on a calendar year basis and does not require employees to use PTO as part of FMLA.

Total Absence: October 8, 2021 – April 22, 2022

Oct. 8	Oct. 15	Oct. 22	Oct. 29	Nov. 5	Nov. 12	Nov. 19	Nov. 26	Dec. 3	Dec. 10	Dec. 17	Dec. 24	Dec. 31	Jan. 7	Jan. 14	Jan. 21	Jan. 28	Feb. 4	Feb. 11	Feb. 18	Feb. 25	Mar. 4	Mar. 11	Mar. 18	Mar. 25	Apr. 1	Apr. 8	Apr. 15		
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28		
Birth of Child - 6 Weeks						Baby Bonding - 6 Weeks						Baby Bonding - 12 Weeks																	
FMLA - 12 Weeks - Calendar Year 2021												FMLA - 12 Weeks - Calendar Year 2022																	
						NYS PAID FAMILY LEAVE - 12 Weeks																							
SHORT TERM DISABILITY - 6 Weeks Insurance																													
																								PAID TIME OFF - 4 Weeks Paid Leave					

Untangling the Web

Mac was injured leaving the office during a snow storm in January. After 12 weeks, Mac had made great progress but was still unable to return to his regular responsibilities, but his doctor said he could return in 6 weeks. Do you have to hold his position?



Untangling the Web

Mac was injured leaving the office during a snow storm in January. After 12 weeks, Mac had made great progress but was still unable to return to his regular responsibilities, but his doctor said he could return in 6 weeks. Do you have to hold his position?

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	
FAMILY AND MEDICAL LEAVE ACT - 12 Weeks Unpaid Leave																		
SHORT TERM DISABILITY INSURANCE - 26 Weeks Insurance Benefit																		
Paid Sick																		
												ADA/NYSHRL - REASONABLE ACCOMMODATION						



Additional Questions

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