

# DMEC Compliance Conference 2026

## MAN VERSUS MACHINE: AI EDITION\*

My boyfriend is having surgery. I live in New York. Can I take paid family leave to take care of him?

### [ChatGPT]

In **New York State**, **Paid Family Leave (PFL)** can let you take **paid, job-protected time off work** to **care for a qualifying family member with a serious health condition** — such as after surgery — **but a boyfriend generally *does not* count as a qualifying family member under the state law.**

#### ✅ **When PFL *does* apply**

You can take Paid Family Leave to care for a family member with a **serious health condition** (e.g., surgery recovery that requires care), *if the person is one of the following:*

- **Spouse**
- **Domestic partner** (including same- or different-gender; legal registration not required)
- **Child** (including step- or adopted)
- **Parent/stepparent**
- **Parent-in-law**
- **Grandparent**
- **Grandchild**
- **Sibling** (including step/half)

These are the relationships currently recognized for family care under New York's Paid Family Leave law.

#### ❌ **Boyfriend status**

A **boyfriend** who is *not* your **domestic partner** is **not listed** as a qualifying family member for Paid Family Leave. Unless you and your boyfriend are legally recognized as **domestic partners** under New York rules (which the PFL program considers without requiring formal registration), you **cannot use Paid Family Leave to care for him** under the family-care provision.

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### **What is a serious health condition?**

To qualify, the care recipient must have a **serious health condition**, such as one that requires inpatient care or ongoing treatment and supervision by a health care provider (e.g., recovery from major surgery). This condition must be certified by a health care provider on the required PFL form if you apply.

#### **Other options to consider**

##### **1. Sick leave (employer policy).**

Some employers allow use of **paid sick time** to care for a partner or family member, even if PFL doesn't apply — check your company's policy.

##### **2. Federal Family and Medical Leave Act (FMLA).**

If you work for a covered employer and meet eligibility (typically 12 months with the employer and enough hours worked), you may be able to take **unpaid, job-protected FMLA leave to care for a family member**. FMLA has a similar but separate definition of “family member” and typically covers spouses, children, and parents — but *not* unrelated adults. So a FMLA . (I can look up the exact FMLA definitions if you want.)

##### **3. Employer-specific leave.**

Some employers have their own **paid caregiver leave** that may be broader than the state program.

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### **Quick summary**

✅ You *can* take Paid Family Leave in New York to care for a **recognized family member** recovering from surgery.

❌ You *cannot* use Paid Family Leave to care for a **boyfriend** who is not your **domestic partner** or otherwise a qualifying family relationship under the PFL law.

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We provide flexibility for our employees regarding how often they must work in the office. For purposes of state PFML laws, how do I determine what program(s) applies to an employee?

### [ChatGPT]

This is a really common (and tricky) question with hybrid and remote work. The good news: most state PFML laws follow a similar **decision framework**, even though the details vary. Below is the practical way employers usually determine **which PFML program applies** to a given employee.

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#### **The primary rule: Where the employee works**

For PFML purposes, states generally look first at the **employee's primary work location**, not:

- where your company is headquartered, or
- where the employee lives (with some important exceptions).

**"Primary work location"** usually means:

- the state where the employee **physically performs the majority of their work**, or
- the state listed as the employee's assigned work location in your records, if their work is split.

If an employee works **mostly in one state**, that state's PFML program typically applies.

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#### **Hybrid employees (office + remote)**

For hybrid workers, most states use a **majority-of-time test**.

Ask:

- Where does the employee work **more than 50% of the time**?

Examples:

- Works 3 days/week in New York, 2 days/week from home in New Jersey → **NY PFML**
- Works 1–2 days/month in the office, otherwise remote from Oregon → **Oregon PFML**

If no state clearly exceeds 50%, many employers default to:

- the employee's **assigned office location**, or
  - the location tied to payroll and tax withholding  
(Consistency and documentation matter a lot here.)
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#### **Fully remote employees**

For employees who are 100% remote:

- The PFML program is usually based on **the state where the employee physically works (their home state)**.

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This is true even if:

- the company has no office there, or
- the employee occasionally travels to other states for meetings.

If the employee moves to a new state, PFML coverage often changes as of the move date.

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### **When residency matters**

Some states care about **residency in addition to work location**. For example:

- If an employee **lives in State A but works in State B**, certain states require participation based on:
  - where the work is performed, **or**
  - where state income tax is withheld.

This is where things get state-specific fast, and where payroll setup becomes critical.

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### **Multi-state employers: best practice checklist**

To stay compliant and defensible:

1. **Define each employee's primary work location** in writing
  2. **Track changes** (moves, schedule changes, long-term remote arrangements)
  3. Align PFML with:
    - state income tax withholding
    - unemployment insurance coverage
  4. Apply rules **consistently across similarly situated employees**
  5. Re-check PFML obligations whenever:
    - an employee relocates
    - you approve a permanent remote arrangement
    - you hire in a new state
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### **One important caution**

PFML laws are **not uniform**, and states do update guidance. If you have:

- employees splitting time evenly across states,
- cross-border commuters,
- or remote employees in multiple PFML states,

it's smart to confirm your approach with:

- employment counsel, or
- a payroll provider that supports multi-state PFML compliance.

If you want, you can tell me:

- which states you operate in, or
- a couple of real employee scenarios,

and I can walk through how PFML would typically be determined in those cases.

I am pregnant and planned to work for my company for a year before having my baby so I could qualify for a maternity leave. But recently I was told by my doctor I need to be put on bedrest for preeclampsia. If my symptoms don't improve soon, the doctors will have to induce me. But I will be just short of having worked for 12 months. Can I still get my maternity leave or will I be fired?

**[Gemini]**

I am so sorry you're going through this. Preeclampsia is incredibly stressful, and the last thing you should have to worry about right now is a calendar and a punch card. Take a deep breath—while the "12-month rule" is a real thing in many policies, you have more protections than you might realize.

Here is a breakdown of how the law and company policies generally handle this situation.

**1. The 12-Month Rule (FMLA)**

In the United States, the **Family and Medical Leave Act (FMLA)** provides 12 weeks of unpaid, job-protected leave, but it strictly requires that you have worked for the employer for **12 months** and at least 1,250 hours.

- **The Bad News:** If you are even one day short of that 12-month mark when you stop working, the company is not legally *obligated* by FMLA to hold your job.
- **The Good News:** FMLA is the *minimum* requirement. Many companies choose to be flexible, especially when the "shortfall" is due to a medical emergency like yours.

**2. The Pregnant Workers Fairness Act (PWFA)**

This is a newer, powerful federal law. It requires employers to provide "reasonable accommodations" for pregnancy-related medical conditions (like preeclampsia) unless it causes the company significant difficulty.

- **Bedrest as Accommodation:** Courts and agencies often view a short period of leave (even if you don't qualify for FMLA yet) as a reasonable accommodation.
- **Protection:** Your employer cannot simply fire you for needing medical leave due to a high-risk pregnancy without proving it would ruin their business.

**3. Short-Term Disability (STD)**

Even if you don't qualify for "Maternity Leave" as defined by FMLA, you likely qualify for **Short-Term Disability**.

- Preeclampsia and recovery from an induction/C-section are medical disabilities.

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- Check your employee handbook. STD often kicks in after a much shorter period (e.g., 90 days or 6 months) rather than a full year. This could provide you with partial income while you are out.

#### 4. Company Discretion

Most HR departments are run by humans, not robots. If you are a week or two short of your anniversary:

- **Request an extension:** Ask if you can use accrued vacation or sick time to bridge the gap until your 12-month anniversary.
- **The "Grace Period":** Many companies will grant leave "in the spirit of the policy" rather than the letter of the law to avoid a PR nightmare or a potential discrimination lawsuit.

#### Comparison of Protections

Law/Policy	Requirement	What it provides
<b>FMLA</b>	12 months of service	12 weeks job protection (unpaid)
<b>PWFA</b>	Applies to most employers	"Reasonable" leave for medical necessity
<b>STD Insurance</b>	Varies (often 0-6 months)	50–100% of your salary
<b>ADA</b>	Applies to 15+ employees	Protection if pregnancy complications are "disabling"

#### What You Should Do Right Now

1. **Get it in Writing:** Have your doctor provide a clear note stating that bedrest and/or early induction is **medically necessary**.
2. **Contact HR (Gently):** Don't go in defensive. Say: *"I am fully committed to my role, but I have a medical emergency. I am slightly short of the FMLA 12-month mark. What options do we have to ensure my job is protected while I follow my doctor's orders?"*
3. **Check State Laws:** States like California, New Jersey, New York, and others have much more generous leave laws that often start on Day 1 of employment.

My employee has an approved intermittent leave but I don't think their absences are valid. She's been seen out and about town when she's supposed to be too sick to work. Can I deny the absences?

### [Copilot]

Intermittent leave can be one of the most frustrating things for employers, and what you're describing is a very common scenario. But the law draws a pretty firm line here, and it's not usually the line employers expect.

#### The short version

Seeing an employee "out and about" **is not enough** to deny an FMLA-protected intermittent absence. You can't deny the leave or discipline them *just* because you think they don't look sick enough.

But you *do* have options that stay fully compliant.

#### Why you can't deny the absences

FMLA (and similar state leave laws) protect employees who are unable to perform their **job duties**, not people who are bedridden. Many conditions allow someone to:

- run errands
- go to the pharmacy
- attend appointments
- do normal daily activities

...while still being unable to work a full shift or perform essential tasks.

So legally, "I saw her at Target" doesn't equal "she's abusing leave."

#### What you can do

You're not stuck. You just have to use the right tools.

##### 1. Request a recertification

If you have a **good-faith, objective reason** to question the pattern or frequency of absences, you can ask for updated medical certification. Examples of good-faith reasons:

- absences far outside what the doctor originally certified
- suspicious patterns (e.g., always Mondays)
- behavior inconsistent with the stated limitations

This is the safest and most common employer response.

##### 2. Enforce your normal call-in procedures

If she fails to follow your attendance reporting rules, that can be addressed separately from FMLA.

##### 3. Compare the absences to the medical certification

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If the certification says “1–2 days per episode, up to 3 episodes per month,” and she’s taking 8 days, that’s a legitimate basis to request recertification.

#### **4. Investigate only if you have objective evidence**

Employers *can* investigate suspected abuse, but it must be based on facts—not assumptions about what someone “should” be able to do.

##### **What you *cannot* do**

- Deny an FMLA absence because you saw her in public
- Discipline her for absences that fall within the certification
- Demand medical details beyond what the certification allows
- Treat her differently from other employees with medical leave

##### **A practical path forward**

If you’re genuinely concerned, the cleanest approach is:

1. **Document the patterns** that concern you
2. **Request recertification**
3. **Ensure she follows your call-in rules**
4. **Compare future absences to the updated certification**

This keeps you compliant and protects you if the situation escalates.

If you want, I can help you think through how to word a recertification request or how to document the concerns in a way that stays legally safe.

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## What to do if my provider won't complete the leave/accommodation paperwork?

### [ChatGPT]

Yes — in most cases, your employer **can deny FMLA leave** if you don't provide the required medical certification.

Under the Family and Medical Leave Act (FMLA), employers are allowed to require a completed medical certification from a healthcare provider to approve leave for:

- Your own serious health condition
- Caring for a family member
- Pregnancy or childbirth recovery

If your doctor refuses to complete the paperwork, the employer can legally deny FMLA protection **because certification is part of the eligibility requirement**.

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### However, a few important things to know:

#### **1** Your employer must give you time

They generally must give you **at least 15 calendar days** to return the completed certification.

#### **2** They must notify you if it's incomplete

If the form is missing information, they have to give you a chance to fix it.

#### **3** You can use another provider

If your doctor refuses:

- You can ask another treating provider (specialist, therapist, urgent care provider, etc.) who is managing your condition.
- If your employer doubts the certification, they can request a second opinion (at their expense).

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### If your doctor refuses outright

Doctors are not legally required to fill out FMLA forms. If they won't:

- Ask why — sometimes it's a policy issue or missing documentation.
- Ask if they will complete it after another appointment.
- Consider switching providers if necessary.

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### Important distinction

If you don't qualify for FMLA (small employer, not enough hours worked, etc.), your employer can deny leave regardless of paperwork.

**Q: We have a strict policy of not giving employees leave before 12 months. Our employees are highly trained, we invest a lot of time and money into their training. So we don't allow leave before 12 months because it is a waste of their training to not get the full 12 months of work before they take leave. We consider it a serious hardship. Is it OK to terminate the employee if she insists on taking leave before 12 months?**

**[Copilot]**

This is one of those situations where the *policy you've created* and the *legal framework you operate in* may not line up neatly. I can help you think through the issue, but I can't give legal advice or make a legal determination. What I *can* do is walk you through the general principles that tend to matter in situations like this so you can see where the risks usually lie.

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 **Key considerations**

**1. The reason for the leave matters more than your internal policy**

If the employee is asking for **legally protected leave**—for example:

- medical leave,
- pregnancy-related leave,
- disability-related leave,
- military leave,
- jury duty,
- or any other category protected by federal or state law,

then your internal “12-month rule” cannot override those rights. Terminating someone for taking protected leave is generally considered retaliation, which is unlawful in most jurisdictions.

Even if the leave is *not* protected, many states require employers to consider reasonable accommodations or to avoid policies that disproportionately harm certain groups.

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**2. A blanket “no leave before 12 months” rule is risky**

From a business perspective, your reasoning makes sense: you invest heavily in training and want a return on that investment. But from an employment-law perspective, **blanket rules that don't allow for exceptions** often create problems because they:

- don't account for legally protected situations,
- may unintentionally discriminate,
- may be viewed as retaliatory if applied rigidly.

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Courts and regulators tend to look at *impact*, not just intent.

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### 3. Termination for insisting on leave can be lawful or unlawful depending on context

If the leave is:

- **Protected by law** → termination is generally *not* allowed.
- **Not protected**, and the employee simply wants time off for personal reasons → employers often *can* enforce attendance policies, including termination, as long as the policy is applied consistently and does not violate any other laws.

But even then, it's wise to consider:

- whether the employee is being treated the same as others,
  - whether the policy has ever had exceptions,
  - whether the leave request is tied to a medical or family issue that might trigger legal protections.
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#### **The real question to ask internally**

Before considering termination, the key is to determine:

#### **Is the employee requesting a type of leave that is legally protected?**

If yes → your policy must yield.

If no → you generally have more discretion, but you still need to ensure the decision is consistent, non-discriminatory, and well-documented.

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#### **My take**

Your business rationale is understandable, but the law doesn't usually allow employers to treat *all* leave as optional or discretionary. The safest path is to evaluate the *type* of leave being requested and whether any legal protections apply.