

Know Your Rights: New York's Temporary Disability Insurance Law

Many New Yorkers do not receive any long-term paid time off work when they are seriously ill, injured, pregnant, or have recently given birth. The State of New York's Temporary Disability Insurance (TDI) program provides regular payments to some who are temporarily unable to work, including those with pregnancy-related disabilities and those workers who need time to recover from childbirth. **Sometimes, TDI is called "New York Disability Benefits" or "DB."**

This fact sheet addresses only the minimum requirements of the law. Your employer may go beyond these requirements.

What is temporary disability insurance (TDI)?

1. Am I covered?

To be covered for TDI, you must:

- Be employed or recently employed in New York State (where you live doesn't matter);
- Have worked for your employer for 4 or more weeks in a row if you are a full-time employee, or for at least 25 days if you are a part-time employee; and
- Not work for the government or fall into another exception:
 - Nearly all private sector (non-government) employers are covered, but there are some exceptions, such as for certain domestic workers, certain nonprofit employees, and certain teachers. For a complete list of exceptions, visit <http://www.wcb.ny.gov/content/main/coverage-requirements-db/db-coverage-required.jsp>.
 - Employers may voluntarily choose to cover employees who fall into an exception, so it's a good idea to check if your employer has done so.

2. What counts as a disability?

To collect TDI payments, you must be unable to work because of an injury or sickness that occurred "off the job." This is different from Workers' Compensation, which covers people who are injured or become ill as a direct result of their job.

TDI also covers pregnancy-related disabilities or complications. For example, you are covered if you are unable to work due to a pregnancy-related medical condition. You can also receive TDI to recover from childbirth, both vaginal and Caesarian. For more information, see "Can I receive TDI during pregnancy and after childbirth?" below.

3. What benefits can I receive?

For covered workers, TDI provides cash payments equal to one-half (½) of the worker's average weekly wage, up to a maximum of \$170 per week. TDI does *not* cover medical bills or any other expenses beyond those payments.

4. When can I start receiving benefits?

You can apply for TDI as soon as you become disabled. To receive your full benefits, you must submit your claim within 30 days of becoming disabled.

Generally, you will not be paid for your first week of TDI. This is called the “waiting period.” For example, if your health provider says you are disabled for 4 weeks, usually you will receive only 3 weeks of paid TDI benefits.

Once you submit your claim, there may be an additional delay before your first payment arrives. After that, benefits are payable every 2 weeks.

5. How long can I receive TDI for?

You can receive TDI for up to 26 weeks in a year or for any particular “period of disability.” However, you can only receive TDI for the time you are disabled. You cannot receive TDI for any period of time in which you are working for pay for any employer, even if you are working from home or working reduced hours. Remember that there is generally a one-week unpaid waiting period for TDI.

6. Can I receive TDI during pregnancy and after childbirth?

Yes. If you are pregnant, you can receive TDI for 4 weeks before your due date and in the 6 weeks after giving birth (or 8 weeks if you delivered via Caesarian section).

You may also receive TDI for a longer period of time if your health provider says you cannot work for health reasons during your pregnancy, such as due to a pregnancy complication, or if your health provider certifies that you are disabled for a longer period of time following childbirth. Workers can receive TDI for both physical or mental health conditions, such as post-partum depression.

Remember that there is generally a one-week unpaid waiting period for all TDI benefits. For example, if your health provider says you are disabled for 6 weeks after giving birth, typically you will only receive 5 weeks of paid TDI benefits.

More information is available at <http://www.wcb.ny.gov/content/main/DisabilityBenefits/employee-disability-benefits.jsp#pregnancyMaternityLeave>.

7. Does TDI require my employer to hold my job for me?

No. Your employer does not have to keep your job open for you (also known as “job protection”) while you are on TDI. Technically, your employer is not allowed to fire you or otherwise punish you solely *because* you took TDI payments. But, because the TDI law does not provide job protection, it can be extremely difficult to prove that you were fired or punished because you took TDI payments.

Your employer *may* be required to hold your job if you qualify for leave under the federal Family and Medical Leave Act, time off as a reasonable accommodation under the Pregnant Workers Fairness Act or Americans with Disabilities Act, or another law. (Please note that it is unlawful to punish a worker for requesting or needing a reasonable accommodation.) For more information, see “How does TDI relate to other laws?” below.

When and how can I apply for temporary disability insurance (TDI)?

8. How do I apply?

If you are currently employed, you will need to complete a DB-450 form, available at <http://www.wcb.ny.gov/content/main/forms/db450.pdf>.

- You should fill out and sign Part A.
- Your doctor or other appropriate health care provider will need to fill out and sign Part B as proof of your disability. You can only receive TDI if you are under the care of an appropriate health care provider.
- Submit this form to your employer or, if your employer directs you to do so, to your employer's disability insurance carrier.

9. What if I'm unemployed?

If you were previously a covered employee and your unemployment began less than 26 weeks before you became disabled, you may be able to receive TDI while unemployed.

- If you were unemployed for less than 4 weeks before your disability began, submit your DB-450 form to your former employer or their insurance carrier (the same process as if you were still employed).
- If you were unemployed for more than 4 weeks, but less than 26 weeks, before your disability began, mail your DB-450 form to: Workers' Compensation Board, Disability Benefits Bureau, P.O. Box 9029, Endicott, NY 13761.
- If you were unemployed for more than 26 weeks before you became disabled, you are generally not eligible for TDI.
- You must file your claim within 30 days of becoming disabled.

How does temporary disability insurance (TDI) relate to other laws?

10. Can I take unemployment insurance (UI) and TDI at the same time?

No. By law, you cannot claim TDI and UI at the same time. In order to receive TDI, you must be unable to work due to disability (including pregnancy); in order to receive UI, you must be ready, willing, and able to work.

Because UI benefits are generally more generous than TDI benefits, it may be beneficial to go back on UI as soon as you are ready, willing, and able to work again. If you are unemployed, be sure to discuss with your doctor your desire to return to work as soon as you are able before your doctor prepares your TDI documentation.

11. How is TDI different from paid family leave (PFL)?

Paid family leave is a state program that guarantees workers up to 12 weeks of paid, job-protected time off to care for a seriously ill or injured family member, bond with a new child, and address certain military family needs. If you're employed outside of the government in New York State, either full-time or part-time, you're probably covered under the paid family leave law, regardless of how many people work for your employer.

While TDI and paid family leave are very similar in many ways, they also have some key differences. You can receive TDI while you are away from work due to your *own* serious health needs, while you can take paid family leave to bond with a new child, care for a seriously ill or injured family member, or address certain military family needs. Unlike paid family leave, TDI does *not* provide job protection, (though workers may still have rights under other laws like the FMLA) and TDI benefits are capped at a maximum of \$170 per week while paid family leave benefits are capped at a higher weekly dollar amount.

You cannot receive TDI benefits and paid family leave benefits at the same time. However, if you are eligible for both TDI and paid family leave benefits, you can choose how to combine those benefits. For example, you can receive TDI benefits for recovery from childbirth, then take paid family leave to bond with your new child. You can receive TDI and paid family leave benefits for a combined total of up to 26 weeks in a 52-week period.

For more information about New York paid family leave, visit <https://www.abetterbalance.org/family-leave-works-new-york/>.

12. How is TDI different from the Family and Medical Leave Act (FMLA)?

FMLA is a federal law that provides a legal right to up to 12 weeks of unpaid, job-protected time off when you are seriously ill, taking care of a family member who is seriously ill, or bonding with a new child. *However, many workers, including most part-time workers and those whose employers have fewer than 50 employees, are not covered by the FMLA.*

If you qualify for FMLA leave, you can receive TDI payments while on unpaid FMLA leave for your own serious illness, incapacity due to pregnancy, or recovery from childbirth. Your employer may require that FMLA leave and TDI run at the same time. With very limited exceptions, your employer *must* hold your job while you are on FMLA leave (even if you are also taking TDI), but only for the up to 12 weeks covered by the FMLA.

For more information about the FMLA, visit <https://www.abetterbalance.org/resources/the-family-and-medical-leave-act/>.

What if I need more help?

13. What other legal protections do I have?

- If you are an employee in New York State, you may be eligible for sick time under the New York State paid sick time law. For more information, visit <https://www.abetterbalance.org/resources/know-your-rights-new-york-state-paid-sick-time-flyer/>.
- If you are pregnant or have just given birth, you may be entitled to workplace protections and accommodations, including time off, under state and federal law. It is unlawful to punish a worker for requesting or needing an accommodation. For more information, visit <https://www.abetterbalance.org/resources/pregnant-in-ny> and <https://www.abetterbalance.org/states/new-york/>.

- If you are a parent who has had a new child within the past 12 months (including through adoption or foster care), need to care for a family member with a serious health condition, or have certain military family needs, you may be entitled to paid family leave. For more information, visit <https://www.abetterbalance.org/family-leave-works-new-york/>.
- If you work in New York City, additional laws may protect you.
 - You may be eligible for paid sick time under the Earned Safe and Sick Time Act. For more information, visit <https://www.abetterbalance.org/resources/nyc-earned-sick-time-act-flyer/>.
 - You may be entitled to additional protections in the workplace under the Pregnant Workers Fairness Act, including time off as a reasonable accommodation related to pregnancy and recovery from childbirth. It is unlawful to punish a worker for requesting or needing an accommodation. For more information, visit <https://www.abetterbalance.org/resources/pregnant-in-ny> and <https://www.abetterbalance.org/resources/nyc-pregnant-workers-fairness-act-flyer/>.

14. Where can I get more information?

- **Call A Better Balance's free, confidential legal helpline at 1-833-NEED-ABB (1-833-633-3222)** or visit <https://www.abetterbalance.org/get-help/>.
- Contact the Disability Benefits Bureau of the Workers' Compensation Board, the agency that administers the law, toll-free at (877) 632-4996 or visit <http://www.wcb.ny.gov/content/main/DisabilityBenefits/employee-disability-benefits.jsp#benefits>.

This guide is designed to assist you in understanding your basic rights under the Temporary Disability Insurance program. It does not cover all aspects of the law and does not constitute legal advice. It is possible that other laws or additional TDI provisions or rules not described here may apply to your specific circumstances.