



## New York State Paid Family Leave

### SUMMARY AND RECOMMENDATIONS FOR EMPLOYERS

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#### Background:

- In April of 2016, New York State Governor Cuomo signed into law the Paid Family Leave (PFL) Law, providing partially paid, job protected, family leave to all eligible employees of covered employers.
- Employers will be required to purchase an insurance policy to pay the benefits, or self-fund the benefits. The insurance premiums are intended to be fully paid by employees, via payroll deduction, similar to how NYS Statutory Disability is administered today. The maximum deduction amount permitted is \$1.65 per employee per week. Employers may begin deducting contributions from employee wages as early as July 1, 2017.
- Eligible employees may utilize leave benefits beginning January 1, 2018, with a maximum total benefit of \$653 per week for 8 weeks.
- On February 22, 2017, the New York State Workers' Compensation Board unveiled proposed regulations concerning the State's new PFL law. The 30-day comment period for these regulations has expired, and the revised regulations were adopted effective July 19, 2017.

#### Coverage and Eligibility:

- An eligible employee is an employee who has worked for a covered employer, working more than 20 hours per week for 26 or more consecutive weeks, or 20 or fewer hours for 175 days (the final regulations removed the terms full-time and part-time from this definition). Some specific occupations are excluded, including livery drivers, black car operators, jockeys, exercise persons and employees and owners under the racing, wagering and breeding law.
- A covered employer is an employer with one or more employees in the State of New York on each of at least 30 days in any prior calendar year. For new employers, benefits must begin to be provided at the end of 4 weeks following the end of the 30 days of initial employment.
- Leave is permitted to care for a seriously ill family member, bond with a new child or for a qualifying reason due to military leave of a family member. PFL leave is not permitted for any other reasons that may be covered by the Federal Family Medical Leave Act (FMLA). Employees must provide certification of the need to care for the family member from the applicable healthcare provider or information to confirm the birth or adoption of a child.
- Most employers and employees will be covered by this Law.
- Public employers may voluntarily provide the coverage but are not mandated to do so.

#### Employees who are not Eligible for Leave:

- An employee seeking leave due to his or her own serious health condition.
- Employees who have filed a waiver of leave benefits.
- Any employee receiving disability benefits (i.e. the coverage an injured worker may receive during his/her recovery).



- Employees on administrative leave.
- Employees who work for an exempt employer.
- Employees who are excluded from coverage under Article 9 of the Disability Benefits Law (DBL) and the Paid Family Leave (PFL) Law.

#### Benefit Amount:

- Phased from 2018-2021:
  - 2018—up to 8 weeks @ 50% of the employee's average weekly wage (AWW) up to max (state wide average weekly wage [2016 AWW was \$1,305.92])
  - 2019—up to 10 weeks @ 55% of average weekly wage up to max
  - 2020—up to 10 weeks @ 60% of average weekly wage up to max
  - 2021—up to 12 weeks @ 67% of average weekly wage up to max
- No waiting period for benefits to start, assuming the employee has met the eligibility periods identified above.
- Annual increases could be delayed by NYS Dept. of Fin Svc if there are concerns about program or impact on economy.
- No employee may exceed 12 weeks of PFL within a 52-week calendar period.
- Employees may take NYS disability benefits prior to or after their PFL, which may not run concurrently, not to exceed a total combined period of 26 weeks of leave in any 52-week period.
- If possible, employees are required to provide 30 days' advance notice of leave.
- Benefits may be taken intermittently in full day increments.
- If an employee takes intermittent PFL in daily increments, employees who work at least five days per week may take up to 60 days of PFL per year. For employees who work fewer than five days per week, the maximum number of days available is prorated based on their regular employment schedule.
- When an employee takes intermittent PFL, the employer may require the employee to provide notice as soon as is practicable before each day of the intermittent PFL.

#### Coordination with Other Benefits and Leaves:

- PFL runs concurrently with FMLA eligibility unless employer allows otherwise, or if employer does not provide notice that FMLA runs concurrently with PFL. The new regulations clarify that if the employer does provide such notice, the employee must take the benefits concurrently even if they decline to apply for PFL.
- FMLA-designated leave taken by an employee due to his or her own serious health condition does not qualify as family leave under the PFL Law, and does not reduce the amount of PFL that the employee is eligible to take. For example, a pregnant employee may take up to 12 weeks of leave for her own serious health condition that is covered by the FMLA (and not by the PFL Law), and then take PFL after the period of disability ends so that she may bond with her child.
- Employees cannot be required to use vacation or other paid time off benefits prior to or during PFL, but may choose to do so. Additionally, the updated regulations confirm that if the employer designates the leave as both FMLA and PFL, concurrently, the employer may *require* that the



employee use any accrued paid leave at the same time, as permitted by the FMLA. A PFL only leave would not permit the employer to require the employee to use paid time first.

- Employee must be reinstated to the same or comparable position upon return.
- The employer may not discriminate or retaliate against employees who take PFL.
- Group health benefits must continue as if working during the PFL.
- Employees may not lose any benefits accrued during employment.

#### Employer Notice Requirements:

- Must make conspicuous posting of notice of compliance with PFL Law using the form prescribed by the NYS Workers Compensation Board.
- Must notify any employee who has taken 8 or more consecutive days of FMLA of the availability of the benefit of PFL.
- Must notify employee that PFL runs concurrently with FMLA, if applicable.
- Must have a policy regarding PFL. Should the employer fail to have a policy regarding this benefit, it may be required to reimburse employees for payroll deductions taken to fund the benefit.

#### Payment for Benefit:

- 100% paid by employee payroll deduction, unless employer chooses to share in the cost.
- 0.126% of employees AWW up to max (Statewide AWW). Max annual cost per employee based on 2016 max AWW would be \$86 per employee.

#### Penalties for Non-Compliance:

- General penalties include misdemeanor, fines, imprisonment.
- An organization that fails to provide coverage for paid family leave will be liable for .5% of the weekly payroll during the lapse, and an additional penalty of up to \$500.
- If the organization fails to continue an employee's health insurance during the leave, it will be liable for the employee's medical costs during the leave.
- If the employer fails to obtain an insurance policy to pay the leave benefits, it must pay those benefits itself.
- If the employer fails to comply with the posting and policy requirements, it may be required to refund payroll deductions to the employees.

#### Dispute Resolution:

- If you decline to reinstate an employee returning from PFL, the employee may report your business to NY State. There is no time limit for the employee to file a complaint regarding claim denial. The employer then has 30 days to either take corrective action or file a formal response to the employee.
- Disputes regarding claims for benefits will be handled via arbitration.



- Disputes regarding discrimination and retaliation will be handled at the Workers Compensation Board. The Workers Compensation Board has a 2-year statute of limitations for filing discrimination claims.

Recommendations:

- Begin taking payroll deductions on July 1, 2017, or as soon thereafter as possible, unless concern for employee deduction would dictate otherwise. If you pay Statutory DBL monthly, or in advance, it is highly recommended that you begin deductions by July 1, 2017 as you will need to submit a payment for coverage prior to January 1, 2018.
- Create a process for determining (automating if possible) how much to deduct from each employee check, as the deduction will be a percentage of employee pay, up to a cap.
- Do not make deductions from wages from any employee who is not expected to work the required time to become eligible for the benefit. This employee must sign a waiver.
- Because PFL may be taken intermittently, in full day increments, create a system for tracking leave accruals to notify employees when leave entitlement expires.
- Provide required notices and policies identified above, prior to end of December 2017.
- For each period of leave, ensure that appropriate notices of concurrently leave, use of other paid benefits, and any other required notices are provided to the employee.
- Train managers on anti-discrimination and retaliation requirements.

If you have questions regarding PFL, or need assistance with implementation of these requirements, please contact:



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