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# What Employers Need to Know About New York's New Paid Family Leave Law

Effective January 1, 2018, the new New York Paid Family Leave Law (NYPFLL) will provide eligible employees who work in New York State with up to eight weeks, increasing over time to 12 weeks, of job-protected leave for the following "qualifying events":

1. the birth, adoption or foster placement of a child;
2. the need to care for a spouse, domestic partner, child, parent, parent-in-law, grandparent or grandchild with a serious health condition; and
3. when a spouse, child, domestic partner or parent is on or is called to active military duty.

During such leave, employees will be eligible to receive a portion of their compensation fully funded through employee payroll deductions and will be entitled to continued health insurance if they continue to pay their portion of premiums.

Unlike the federal Family and Medical Leave Act (FMLA), which covers employers with at least 50 employees, the NYPFLL will apply to nearly all New York employers, even if they have only one employee for at least 30 days in any calendar year. Thus, employers that are not covered by the FMLA must implement leave policies prior to the NYPFLL's effective date, among other requirements. New York employers that are already covered by the FMLA must also review and revise their policies, as the NYPFLL provides more expansive rights in some areas, including but not limited to different employee eligibility requirements and more covered family members for whose care employees may take leave.

## NYPFLL Basics

- In addition to providing job-protected leave, the NYPFLL provides employees with some compensation during such leave. It is an extension of the New York State Disability Benefits Law and operates in a similar manner to required short-term disability benefits, although paid family leave benefits are entirely employee-funded through payroll deductions.
- Employers are required to provide paid family leave benefits through a rider to their private disability insurance policy, participation in the state insurance fund, or self-insuring. Election to self-insure must be made ***by September 30, 2017.***
- Employers may start deducting 0.126% of an employee's weekly wage, up to the statewide average (or about $85 per year) ***as of July 1, 2017***.
- Unlike under the FMLA, in which employees must be employed for 12 months and have worked at least 1,250 hours in the previous 12-month period, to be eligible for both leave and benefits under the NYPFLL, employees must be employed full time for 26 weeks or part time for 175 days (not counting any period of temporary disability). Employees may file a waiver of payroll deductions if they do not anticipate working for this length of time.
- The provisions of the NYPFLL will be phased in as follows:

  ? As of January 1, 2018, employees will be entitled to ***eight weeks*** of paid leave during a 52-week period and will receive at least ***50% of their average weekly wage or 50% of the state average weekly wage*** (determined by the New York State Department of Labor), whichever is less;
  ? As of January 1, 2019, employees will be entitled to ***10 weeks*** of paid leave during a 52-week period and will

receive at least ***55% of their average weekly wage or 55% of the state average weekly wage***, whichever is less;
? As of January 1, 2020, employees will be entitled to ***10 weeks*** of paid leave during a 52-week period and will receive at least ***60% of their average weekly wage or 60% of the state average weekly wage***, whichever is less and;
? As of January 1, 2021, employees will be entitled to ***12 weeks*** of paid leave during a 52-week period and will receive at least ***67% of their average weekly wage or 67% of the state average weekly wage***, whichever is less.

- In order to file a claim for benefits, employees must complete paperwork similar to that required for temporary disability benefits and submit it to the carrier or self-insured employer. Although there is no provision under the NYPFLL for leave or benefits when the employee has a serious health condition, employees may not receive more than 26 weeks of temporary disability or family leave benefits in a 52-week period.
- If a qualifying event is foreseeable, employees must provide the employer with at least 30 days' advance notice before their leave is to begin. If the qualifying event is not foreseeable, the employee must give notice as soon as practicable (usually in accordance with the employer's usual and customary requirements). The employee must submit a "Request for Paid Family Leave" form (to be created by the New York State Workers' Compensation Board) and supporting certification. The information required on the certification will vary based on the qualifying event. Failure to provide required notice may result in a delay or denial of leave and/or benefits. Employees may take leave intermittently and must satisfy the same notice requirements as if taking consecutive leave.
- The NYPFLL expands the list of family members for whose care employees may take leave from the FMLA's parent, child and spouse to also include domestic partner, parent-in-law, grandparent and grandchild. As under FMLA, employees may be required to provide medical documentation evidencing a serious health condition, which is defined the same as under the FMLA. Employees must provide such documentation to the carrier or self-insured carrier in order to receive benefits.
- Employees may not be required to take their sick leave and/or vacation before using paid family leave. Employers may permit employees to use sick or vacation time in order to receive full pay during leave, and in such case, may be reimbursed for what the employee would have received from the carrier. Employees may also be permitted to supplement their paid family leave benefits with accrued paid time off in accordance with employer policies.
- Employers covered by the FMLA may concurrently designate an employee's NYPFLL leave as FMLA leave. However, failure to notify employees that FMLA and NYPFLL leave run concurrently may permit employees to receive NYPFLL benefits without taking FMLA leave at the same time. This means an employee may be entitled to up to 24 weeks of job-protected leave (12 weeks under FMLA and 12 weeks under NYPFLL).
- Employers must maintain employees' existing health benefits while they are on NYPFLL leave, and may require employees to continue to pay their share of health insurance premiums while on leave.
- Employees who receive benefits must be reinstated to employment upon conclusion of their leave unless the same action would have otherwise been taken (e.g. layoff). Employees who are not so reinstated can file with the chairman of the Workers' Compensation Board (the "Chair") a formal request that they be reinstated. In such case, the employer must either take corrective action (i.e., reinstate the employee) or file a formal response to the employee (or his/her attorney/representative) and the Chair explaining the reason that corrective action will or will not be taken. If the employer takes corrective action to the employee's satisfaction, the Chair will take no further action.
- The NYPFLL will have tax implications for both employees and employers. The NY State Department of Taxation and Finance outlined some of these issues in an August 2017 Notice. For example, employers will deduct premiums for NYPFLL benefits from employees' after tax wages, and benefits will be paid as taxable non-wage income.

## What New York Employers Must Do Now

- Contact their disability benefits carrier to add NYPFLL coverage or determine whether they want to self-insure, and start making payroll deductions to fund the benefit as appropriate.

- Update employee handbooks to include information regarding employees' rights under the NYPFLL, including the procedure to file a claim for benefits or, if they have no handbook, provide written materials regarding NYPFLL policies to employees.
- Post a notice (available from carriers) about the NYPFLL in plain view where applicants and employees will see it.
- Ensure that there is no retaliation or discrimination against employees for exercising their rights under the NYPFLL.
- Contact legal counsel to ensure compliance.

The NYPFLL requires New York employers to navigate a new legal landscape they may not have needed to worry about in the past or, at the very least, requires a review and update of current policies. All covered employers should be prepared to change their policies and postings to reflect the requirements of the NYPFLL by the January 2018 effective date.

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