

Paid Family Leave in New York State

The New York State soon will have among the most comprehensive paid family leave laws in the country. The New York Paid Family Leave Benefits Law (“PFL”) become effective January 1, 2018 and will require employers to provide eligible employees with paid leave -- initially eight weeks paid leave at 50% salary and, upon completion of a four year phase-in of the law as of January 1, 2021, increasing to twelve weeks of paid leave at 67% salary. Benefits will be capped at 50% of New York’s average weekly wage (which currently is \$1,296).

Under the new law, employees may take paid family leave in order to (1) care for a child within twelve months after birth, adoption or foster care placement, (2) care for a family member with a serious health condition, and (3) relieve family pressure in the event of a qualifying exigency when a family member is called to active military service. Such leave may be taken intermittently in full day increments during a 52 week period.

The PFL applies to all private sector employers – regardless of size – and employees after they have worked for 26 consecutive weeks (part-time employees who work fewer than 20 hours per week become eligible after working 175 days). The law applies to employees who work in New York (and no more than incidentally in another state). If an employee does not perform work in any other single state, then such employee is covered by the law if she/he performs some work in New York and is either based in New York, controlled from New York or lives in New York. Citizenship and immigration status do not impact an employee’s eligibility to paid family leave. An employer with employees working in New York for 30 or more days in a calendar year must obtain Paid Family Leave insurance coverage.

Family leave is a benefit for people who *work* in New York; it does not matter where the employer is headquartered or where the employee lives. For example, an employee who works from her/his home in New York is covered even if the employer is located outside of New York State. An employee who is required to travel occasionally into New York State to perform duties, such as a salesperson, will not be considered a New York state

Related Capabilities

- Labor & Employment

employee unless the employment is based in the state. An employer that is located outside of New York State does not need to cover employees who live in New York but work outside of New York.

The employee must provide 30-day notice if such leave is foreseeable; if not foreseeable, the employee must provide notice as soon as practicable.

During the leave, employers must maintain the employee's existing health insurance benefits (assuming the employee's payment of her/his portion of any premiums.) Upon expiration of the family leave, an employee is entitled to reinstatement in the same position that she/he held prior to the leave or a comparable position with comparable pay, benefits and other terms and conditions of employment. Employers will be prohibited from retaliating against an employee for exercising her/his right to take family leave.

The NYS Workers Compensation Board (WCB) is the agency charged with enforcing the PFL, and it has issued regulations implementing the law. Similar to NYS disability benefits, PFL will be employee-funded through paycheck deductions. Employers will be required to purchase PFL insurance coverage, similar to disability coverage. In addition, the WCB has issued mandatory posters and a Request for Paid Family Leave and Certification form to use when applying for PFL leave. WCB is also providing a statement of employee rights for employers to distribute. Employers are also required to provide written guidance to employees concerning their rights and obligations, in the employee handbook or other written format.

In contrast to the federal Family Medical Leave Act (FMLA), PFL (a) applies to employers with as few as one employee; (b) extends coverage to domestic partners and grandparents; (c) prohibits employers from requiring that employees use all accrued paid time off while they are on leave; (d) does not apply to employees seeking leave to address their own serious health condition. To the extent an employee is simultaneously eligible for FMLA and PFL, an employer may require that they run concurrently. As a result, it appears that a pregnant employee may take up to twelve weeks of FMLA leave, followed by PFL leave to bond with her child.

PFL does not cover periods of personal disability; therefore, short term disability leave and PFL cannot run concurrently. Since employees seeking leave in connection with the birth of a child typically are eligible for short term disability leave, an employee could choose disability leave following childbirth followed by PFL leave (although the total leave may not exceed 26 weeks in a 52 week period).

Disputes relating to a claim for leave will be subject to arbitration pursuant to New York's workers' compensation law. Employers who fail to comply with PFL will be subject to fines and other relief.

In anticipation of the new law, employers are advised to review and update their leave policies in order to ensure that they comply with PFL's requirements. They should work with payroll vendors or internally to make certain that the deduction for PFL is

implemented, train HR and other appropriate staff on the details of PFL, supplement their existing disability insurance policy to provide coverage for PFL or arrange for self-insurance, post the required PFL notice issued by the WCB and communicate with employees regarding the new law in advance of its January 1, 2018 implementation. A helpline and website have been created to provide employees and employers with information about PFL, at www.ny.gov/programs/new-york-state-paid-family-leave.