

NEW YORK PUBLISHES PROPOSED REGULATIONS FOR IMPLEMENTATION OF NEW FAMILY LEAVE LAW

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As discussed [here](#) in our alert from April 2016, New York enacted one of the most comprehensive paid family leave laws in the country: the Paid Family Leave Law (PFL). Under the PFL, employers will be required to provide eligible individuals with paid time off from work to attend to familial obligations, and upon full implementation, eligible individuals will be entitled to receive up to 12 weeks of paid time off from work per year. The PFL is set to go into effect starting January 1, 2018, and be phased into full implementation by 2021.

PFL requires New York private-sector employers, regardless of size, to provide family leave to their employees after 26 consecutive weeks of employment. Employees may take paid family leave in order to: care for an infant, care for a family member with a serious health condition (but not an employee's own serious health condition) or to relieve family pressures when someone is called to active military service.

Under the law, paid family leave will be administered and paid for by New York's Disability Benefits fund, and therefore employers will not be responsible for paying employees for family leave. The program will be funded through a payroll deduction of approximately \$1 per week, and, when fully implemented, an employee on family leave will be entitled to up to 2/3 of the state's average weekly salary as determined by the New York Department of Labor.

Although employers will not have to pay employees directly for this family leave, there will be many nuances and rules for employers to learn in order to be in full

compliance with the PFL. Late last month, the New York Workers' Compensation Board published proposed rules to provide guidance and clarity to employers, insurance carriers and employees regarding their rights and responsibilities in providing the new family leave coverage and the use of family leave benefits. The proposed rules, published February 22, are subject to a 45-day comment period before they can go into effect. New York state has also launched a website that discusses important aspects of the PFL, and it created a hotline to answer any questions about the new law from employers and employees alike.

Among the notable new regulations that have particular significance for employers:

- Employers will be required to provide written policies, guidance or notifications to employees regarding leave under the PFL. This written notice can be provided in an employee handbook. If an employer does not have an employee handbook, it will still be required to provide notice to the employees about their rights and obligations under this law, including how to file a PFL claim. The Workers' Compensation Board has also indicated that there will be a requirement to post notices at the place of employment, but it has not yet specified what form that will take.
- Part-time employees will be eligible to receive pro-rata portions of family leave under the law.
- An employer's failure to provide paid family leave or to make applicable withholdings will expose the

ALERT



employer to costly penalties. Employers who fail to provide coverage shall be liable for a fine of up to 0.5% of weekly payroll during the time leave is not provided, and an additional fine of up to \$500. Furthermore, if the employer does not continue to provide health coverage to an employee during the period of time the employee takes family leave, the employer will be responsible for any medical costs incurred by the employee during the period of the leave.

- If the “qualifying event” that precipitates the employee’s request for leave is foreseeable (for example, the expected birth of a child), the employee will be required to provide the employer with at least 30 days’ notice before he or she takes leave. If they do not, the employer (or insurance carrier) may file a partial denial of the family leave claim for a period of up to 30 days from the date notice is provided by the employee. If the qualifying event or the need for leave is not foreseeable by the employee, such as an emergency medical condition, the employee will still be required to provide notice as soon as practicable.
- Employees may be required to submit medical documentation from a health care provider if they take leave because of the serious health condition of a family member.
- In order to request leave under the PFL, employees will be required to complete a specific PFL request form that the state will draft and make publicly available. Similar to New York state’s Notice of Pay form, employers may create and use their own forms so long as they contain all of the information that is required on the state’s form.
- Any disputes related to claims under the PFL,

including employee eligibility, rates, claim denials and the appropriate length of time for employee leave, will be subject to arbitration through a process set forth under the new regulations. The Chairman of the Workers’ Compensation Board will appoint arbitrators, and any party who wishes to raise a dispute may do so by filing a request and filing fee with these arbitrators.

- The Workers’ Compensation Board regulations have also defined several important terms under the PFL, including the “average weekly wage” to calculate benefit amounts, “part-time employees” to determine eligibility of employees to receive PFL, and defining “serious health condition” with nearly the same definition as exists under the Federal Family and Medical Leave Act: an illness, injury, impairment or physical or mental condition that involves in-patient care in a hospital, hospice or residential health care facility; or continuing treatment or continuing supervision by a health care provider.

Prudent employers should stay informed of new rules and regulations that are released between now and the January 1, 2018 implementation date of the PFL in order to prepare for full compliance. Employers should audit and review payroll and leave policies in order to ensure they are prepared for implementation of the PFL. Fox Rothschild will continue to provide updates and alerts on these issues.

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