



## **e-Alert: New York Publishes Final Paid Family Leave Regulations**

On July 19, 2017, New York released its final regulations on the state's Paid Family Leave (PFL) benefit. The new PFL program provides New York employees the opportunity to bond with a child after birth, care for a sick relative, or help relieve the burden when a family member is called to active military service. The law, which takes effect on January 1, 2018, not only gives employees the right to a leave of absence to care for a family member but also guarantees job protection, as well as the right to continue health insurance by paying the premiums while on leave.

The New York Workers' Compensation Board allowed for public comments and questions about the proposed regulations and has responded with revisions. Notable changes to the previously proposed regulations follow:

**Eligibility:** Updated regulations have removed the terms "full-time" and "part-time" employee, replacing them with the following eligibility guidelines: Employees who work 20 or more hours a week become eligible for paid family leave benefits upon working 26 consecutive work weeks. Employees working fewer than 20 hours a week are eligible on their 175<sup>th</sup> day of employment.

Additionally, the board has clarified that use of scheduled vacation time or other paid time off should be counted as days/weeks worked when determining eligibility for PFL; however, a period of time in which short-term disability is used does not count toward the thresholds.

**Coverage:** An employer with employees working in New York for 30 or more days in a calendar year must obtain Paid Family Leave 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 their home in New York is covered even if the employer is located outside of New York State.
- An employee that is required to travel occasionally into New York State to perform duties, such as a salesperson, will not be considered a New York State 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 Optional Waiver:** The updated regulations have clarified that the "optional waiver" provision of the law, where certain employees may opt out of contributions, is available only for those part-time employees whose regular work schedule will not exceed 175 days in a 52-week period. If an employee's schedule changes, making the employee eligible for PFL, any previous waiver will become invalid within eight weeks of the schedule change.

**Intermittent leave:** If an employee takes PFL in daily increments, the maximum amount of paid leave available is calculated and prorated based on the average number of days worked per week, with a maximum of 60 days for employees who work an average of five days a week once the final phase of the



law is implemented on January 1, 2021. When an employee takes intermittent PFL, the employer may require notice as soon as is practicable before each day of the intermittent PFL.

**Interaction with the FMLA:** The updated regulations state that if an employee is eligible for covered leave under both the federal Family Medical Leave Act (FMLA) and the PFL, employers may designate the leave as both FMLA and PFL, even if the employee declines to apply for PFL payments. However, FMLA-designated leave taken by the employee for their own serious medical condition does not qualify as PFL and does not reduce the amount of leave an employee is eligible for under PFL.

**NY PFL & NY DBL interplay:** An employee who is eligible for both disability and paid family leave benefits within the same 52-week consecutive calendar may only receive up to 26 weeks in total PFL and Disability Benefits Law (DBL) leave benefits during that time frame.

**Contribution rate:** The New York State Department of Financial Services determined that the rate of contribution for PFL beginning in 2018 will be 0.126 percent of an employee's weekly wage, up to a maximum of \$1.63 per week (0.126 percent of the statewide average weekly wage of \$1,296).

**Next steps for employers:**

**1. Review and update current handbooks and leave policies:**

- Begin preparing for the new regulations by reviewing and revising current family and medical leave policies and practices to ensure full compliance.
- If you have employees operating in New York State, you will need to update their employee handbooks to include written guidance on the PFL.
- If your company does not maintain an employee handbook, it is still required to provide written PFL guidance to employees.
- Contact us to review your current leave of absence policy to ensure it is compliant with the new law and to update your employee handbook. Please [email us](#) and an HR advisor will be happy to assist.

**2. Post employer notice:**

By January 1, 2018, you must post a notice explaining employees' rights to PFL that is in full view of employees and applicants. The posted notice must be in a format that will be issued by the Workers' Compensation Board. *HR Knowledge will provide updated e-alert once the poster is made available.*

**3. Obtain coverage:**

Prepare to obtain coverage, either through an insurance carrier or as a self-insured employer, under the PFL. Work with insurance carriers and payroll administrators to set up PFL benefits for eligible employees and begin payroll deductions before January 1, 2018. If you are an HR Knowledge client, please [email us](#) for assistance in obtaining coverage.

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