



March 20, 2017

New York Paid Family Leave regulation comments due April 7

The New York State Workers' Compensation Board released proposed regulations detailing the state's new Paid Family Leave law on Feb. 22, 2017. Eventually, the law will require almost every private employer in New York to provide employees with up to 12 weeks of paid leave. While the PFL was part of the 2016 state budget, the Workers' Compensation Board oversees the rules through regulation.

Under the New York State Administrative Procedure Act, the regulation is open for comments from the public for 45 days, and the comment period will close Friday, **April 7, 2017**. The board will review the comments and make any desired changes to the regulation. If the final rule is substantially different from the proposed rule, the board will publish a "Notice of Revised Rule Making" and accept public comment for at least another 30 days.

According to the proposed regulation:

- **A "covered employer" is any employer who employs one or more employees.** The definition does not leave any exemption for small businesses and instead seems to be all-inclusive. Sole proprietors and members of limited liability companies are considered "individual business owners" so long as they are entitled to keep all the profits after taxes, are liable for all losses and do not have any employees.
- Employers will purchase PFL coverage through their disability insurance carrier, and employers will collect contributions up to the maximum allowed by law from their employees. Beginning Jan. 1, 2018, all disability benefits policies also will include PFL coverage in the disability policy. Effective on Jan. 1, 2018, every employee covered by their employer's disability benefits policy are covered automatically for PFL, regardless of whether employers have updated their policies.
- PFL will allow for eight weeks of paid leave beginning Jan. 1, 2018, which increases to 10 weeks in 2019, and finally to 12 weeks in 2020. Benefits are paid by the disability insurance carrier of the employer.
- The employee will apply for PFL benefits **directly to the employer's disability carrier**. The employer will complete one section of the application before the employee submits the claim to the carrier. **The disability carrier will make the final determination if PFL is granted.**
- **PFL benefits will be limited to family, and will not cover the employee's own illness.** The regulation would provide leave for an employee to bond with a child in the first 12 months after birth; if a child is placed in foster care with the employee or adopted by the employee; or to allow the employee to care for qualified family members who have a "serious health condition." This means that some Family Medical Leave Act leave will not qualify for PFL, but PFL will most likely qualify for FMLA leave.

- **Disability benefits do not run concurrently with PFL benefits.** In essence, an employee could take short-term disability leave before PFL, followed by using his or her PFL benefits.
- If the leave also qualifies under the FMLA as a covered leave, then the employer must notify the employee that it is an FMLA leave and **designate the leave as FMLA**. Should an employer fail to provide proper notice of the qualified FMLA leave, then the employer would waive the FMLA leave that occurs concurrently with PFL.
- The employer must continue to provide health insurance benefits while the employee is on leave, if the employee receives his or her benefits through the employer. The employer also must reinstate the employee upon his or her return from PFL.
- **Employers would not be able to require an employee to use any accrued paid time off prior to utilizing PFL benefits.** Employers will be able to offer an employee the option to use his or her PTO and receive full wages for that time period. The employer could then seek reimbursement from the insurance carrier.
- Any dispute brought by an employee, employer or carrier would be settled through an arbitration system that is on a strict timeline to settle the disputes quickly.

This new regulation would be effective Jan. 1, 2018, with a full phase-in date of 2020.

For more information, the summary of the regulation can be found [here](#), and the full regulation can be found [here](#).

3/17

Think PIA first

CONFIDENTIALITY NOTICE: This email message, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message. You have received this email because you are a valued member or affiliate of PIA and because we believe this information will be of interest to you. If you prefer not to receive ANY email communication from PIA [click here](#).