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State WC board releases final Paid Family Leave regulations PIA offers webinar with details

The New York State Workers' Compensation Board last week released the final version of its paid family leave regulations, which take effect **Jan. 1, 2018**. The regulation includes a phase-in of the duration of leave to be provided until 2021, at which time, almost every private employer will be required to provide 12 weeks of paid leave to its employees.

The Workers' Compensation Board made several administrative, but no substantive, changes to the regulation. No comment period will take place, as the regulation is final and it went into effect upon publication. **All benefits begin Jan. 1, 2018.**

The clarifications made in the final regulation include the following:

- Periods of absence that are due to the nature of that employment and when employment is not terminated during those periods of absences tolls the consecutive week period required for eligibility (ex-semester breaks).
- Employers of employees who will not be eligible for PFL are required to provide these employees with the option to sign a waiver to exclude them from PFL employee contributions and benefits. This applies to employees who will be employed long enough during their entire period of employment to become eligible for PFL benefits, such as temporary and seasonal employees.
- Employers subject to collective bargaining agreements do not have to provide PFL benefits so long as the collective-bargaining agreement provides PFL benefits at least as favorable and does not permit the employee to waive their rights.
- A carrier has three days to confirm receipt of all missing information requested for a pre-filed claim for PFL benefits.

As a reminder, some key elements that remain unchanged:

- An employee of a covered employer who works 20 or more hours a week becomes eligible for benefits after 26 consecutive weeks of employment. Any employee of a covered employer who regularly works less than 20 hours a week becomes eligible for benefits after the 175th day of employment.
- If an employee takes a designated FMLA leave for their own serious health condition, it **does not reduce the amount of paid family leave an employee is eligible for.**

- **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.
- An employer purchases PFL coverage through their disability insurance carrier and collects contributions up to the maximum allowed by law from the employees. Beginning Jan. 1, 2018, all disability benefits policies also will include PFL coverage in the disability policy. Effective Jan. 1, 2018, every employee covered by their employer’s disability benefits policy are automatically covered for PFL regardless of whether or not the employer has updated their policy.
- The weekly employee contribution for 2018 is .126 percent of employee’s weekly wage capped at New York state average weekly wage, which was \$1,305.92 in 2016. This means the maximum contribution in 2018 is \$1.65 per week.
- PFL allows for eight weeks of paid leave beginning Jan. 1, 2018, which increases to 10 weeks in 2019, and finally to 12 weeks in 2021. Benefits are paid by the disability insurance carrier of the employer at the rate of 50 percent of the average weekly wage in 2018, 55 percent in 2019 and 2020 and caps out at 67 percent in 2021.
- **Disability benefits do not run concurrently with PFL benefits.** In essence, an employee can take short-term disability leave before using their PFL benefits.

For more information, a summary of the regulation can be found on the Workers’ Compensation Board website [here](#). The full regulation is posted [here](#).

Tomorrow’s Webinar

Want to learn more? Sign up for tomorrow’s Webinar—**NYS Paid Family Leave: What you need to know about the regulation.** It will review the revised Paid Family Leave regulation to assist in preparing for its implementation on Jan. 1, 2018. Specifically, it will cover how the regulation will affect employers and their employees by reviewing covered employers, eligible employees and the phase-in of benefits. To register, [click here](#).

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