



June 6, 2017

## Revised New York Paid Family Leave

The New York State Workers' Compensation Board released a revised version of the proposed paid family leave regulations on May 24, 2017. The regulation goes into effect **Jan. 1, 2018**, and the duration of benefits will be phased in until 2021, when it will require almost every private employer at that time to provide 12 weeks of paid leave to its employees.

Under the New York State Administrative Procedure Act, the proposed regulation was open for comments from the public after its initial release. The WCB received over 100 comments during this period and subsequently made several revisions. Now, another 30-day comment period is open for the public to provide input on the changes. This comment period will close on **June 23, 2017**.

Below are the highlights of the revisions made in the proposed regulation:

- 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 175<sup>th</sup> day of employment. **This removes the full-time and part-time distinction in the original version.**
- Any employee taking weekly leave, regardless of their hours worked, is eligible for the maximum number of weeks of leave in a 52-consecutive week period.
- If an employee refuses to apply for benefits for a qualified family leave under both FMLA and PFL, the employer and the carrier may charge the leave against the maximum duration of leave allowed, so long as the employer has notified the employee of their eligibility for both leaves.
- 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.**
- When an employee takes intermittent leave, the employer is permitted to require that the employee provide notice before each day of leave taken.
- Completed claims submitted to the employers' disability carrier must be paid or denied within 18 days. Any denial issued by carriers must state the reason for denial, repeat any relevant information filed in the claim and include any other information considered by the carrier in making the decision.
- An employer covered by the FMLA that designates a concurrent period of family leave under this regulation may charge an employee's accrued paid time off "in accordance with the provisions of the FMLA". **Previously, all employers were prohibited from charging accrued paid time off as part of a qualified family leave under the regulation.**
- An employer may continue to deduct a qualified employee's contributions while the employee is on family leave.

As a reminder, here are some key elements that did not change in the revision:

- **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.

The Department of Financial Services has by [decision](#) set the Jan. 1, 2018, **premium rate** for Family Leave Benefits at **.126 percent** of an employee's weekly wage up to and not to exceed the statewide average weekly wage (currently at \$1,305.92; yielding a maximum employee contribution of \$1.65 per week).

- 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 on 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.
- 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.
- The employee applies for PFL benefits **directly to the employer's disability carrier**. The employer must complete one section of the application before the employee submits the claim to the carrier. **The disability carrier makes the final determination of whether PFL is granted.**
- **PFL benefits are limited to family, and do not cover the employee's own illness.** It provides for leave for bonding with a child in the first 12 months after birth, placement in foster care or adoption, or to care for qualified family members who have a "serious health condition." This means that some FMLA 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 can take short-term disability leave before PFL followed by using their PFL benefits.
- The employer must continue to provide health insurance benefits while the employee is on leave if the employee receives their benefits through the employer. The employer also must reinstate the employee upon their return from PFL.
- Any dispute brought by an employee, employer or carrier is settled through an arbitration system that is on a strict timeline to settle the disputes quickly.

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

If you have any additional comments or questions, contact PIA's Industry Resource Center at [resourcecenter@pia.org](mailto:resourcecenter@pia.org).

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