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New York State's Paid Family Leave Law is Arriving–Are You Ready?

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In 2016, Governor Andrew Cuomo signed into law the New York Paid Family Medical Leave Law ("NY PFL"). This law will require any private employer who has at least one employee to purchase a Paid Family Leave insurance policy or self-insure in order to provide paid family leave benefits to eligible employees as part of New York State's disability insurance program. Public employers are not obligated to provide paid family leave benefits, but may opt-in to same.

NY PFL benefits will be phased in over a four-year period, beginning January 1, 2018, and will be fully implemented by 2021. Employees can use the leave to (1) bond with a child; (2) care for a close relative who is seriously ill; or (3) relieve family pressures when a relative is called to active military service. The following chart outlines the implementation schedule and the benefits available in each implementation year:

Year	Weeks Available	Benefits Available
January 1, 2018	8	Fifty (50%) percent of the employee's average wage or fifty (50%) o state average weekly wage, whichever is less.
January 1, 2019	10	Fifty-five (55%) percent of the employee's average wage or fifty-five the state average weekly wage, whichever is less.
January 1, 2020	10	Sixty (60%) percent of the employee's average wage or sixty (60%) state average weekly wage, whichever is less.
January 1, 2021	12	Sixty-seven (67%) percent of the employee's average wage or sixty- (67%) of the state average weekly wage, whichever is less.

The benefits provided under the NY PFL will be entirely employee-funded, to be paid by the employees through payroll deductions. Employers are not responsible for contributing to or funding paid family leave benefits.

Employers can, but are not required to, begin collecting employees' weekly contributions on July 1, 2017. The maximum employee contribution rate will be set each year, on September 1, by the Superintendent of Financial Services. This year, the maximum employee contribution has been set at 0.126% of the employee's weekly wage, up to and not to exceed 0.126% of the statewide average weekly wage (currently $1,305.92). Employees taking NY PFL are guaranteed paid leave, the ability to return to their jobs, and continued health insurance. If the leave is foreseeable, it is the employee's duty to notify his/her employer thirty (30) days in advance of the leave, so that the employer can plan for the employee's absence. If the event is unforeseeable, the employee must inform the employer of the intended leave as soon as possible. If an employee fails to provide the requisite notice without unusual circumstances justifying the failure, the employee's paid family leave can be delayed or partially denied. The notice provided must be sufficient to make the employer aware of the qualifying event and the anticipated timing and duration of the leave. The employee must also file a Request for Paid Family Leave form and submit the required documentation in support of his/her request.

Federal Family Medical Leave Act ("FMLA")

Any NY PFL benefit may run concurrently with an employee's available entitlement under the FMLA. For it to run concurrently, the employer must notify the employee of such designation and provide the employee with the requisite FMLA notice. If an employer failed to provide these required notices, the employer is deemed to have permitted the eligible employee to receive NY PFL benefits without concurrently using the benefits available under the FMLA.

New York Disability Law

An employee cannot receive both disability benefits and NY PFL benefits for the same period of time (i.e., the two cannot run concurrently). An employee may, however, supplement disability benefits with NY PFL benefits up to the family leave benefit maximum which, when combined with the disabilities benefits, is a total of 26 weeks. No employee is entitled to more than 26 weeks of combined disability and NY PFL benefits during a 52-consecutive week period. Furthermore, the protections afforded the employee under NY PFL do not extend to any "tacked-on" disability benefits.

Employers Preparing for Effective Date

In preparation for the effective date of this new law, New York employers should:

- Confirm with their disability insurance provider that same is adding insurance to cover claims for paid family leave;
- Review existing family and medical leave policies as such may need to be revised to comply with the new paid family leave program;
- Ensure that required notices are posted and maintained in accordance with the provisions of the NY PFL;
- Prepare to take paid family leave deductions from employees' salaries; and
- Prepare for the potential costs related to employee absences during their paid family leave.

Please note that this is a general overview of developments in the law, and does not constitute legal advice. Nothing herein creates an attorney-client relationship between the sender and recipient. If you have questions regarding these provisions or any other aspect of employment law, please contact Thomas B. Wassel at 516-357-3868 or twassel@cullenanddykman.com, Gerard Fishberg at 516-357-3703 or gfishberg@cullenanddykman.com, or Cecilia Ehresman at 516-357-3727 or cehresman@cullenanddykman.com.

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