

Workers' Compensation Board Releases Revised Rules for NY State Paid Family Leave

On May 24, 2017, the New York State Workers' Compensation Board (the "WCB") released revised proposed regulations to the New York State Paid Family Leave Benefits Law (the "PFL"), which takes effect on January 1, 2018. As [reported in our previous Employment Note](#), the WCB first proposed rules to the PFL on February 22, 2017. These revised rules are the product of the WCB's assessment and assimilation of comments received through April 8, 2017.

The following are notable changes in the revised rules and a recap of certain significant provisions:

- With respect to acquiring eligibility for paid family leave, the distinction between full-time and part-time employees has been removed. The revised rules now provide that employees who are regularly scheduled to work more than 20 hours per week become eligible after working 26 consecutive weeks for the employer, and employees who are regularly scheduled to work less than 20 hours per week become eligible after working 175 days¹ for the employer. Any vacation, sick or personal time used by an employee, or other time away from work approved by the employer, is counted as part of the time worked for determining PFL eligibility, as long as the employee continues to make the required contributions to the PFL plan.
- The revised rules clarify that employees whose regular work schedule does not meet the 26 consecutive weeks or 175 days in a 52 consecutive week period may file a waiver of paid family leave benefits, and thus will not have to make contributions to the employer's PFL plan (unless and until such an employee meets the eligibility thresholds).
- The revised rules provide that where an employer that is also covered by the federal Family and Medical Leave Act ("FMLA") designates a period of leave as FMLA leave which concurrently qualifies as PFL leave, the employer can require the employee to use accrued paid time off during the period of such leave in accordance with the provisions of the FMLA. Employees have the option (but employers cannot require employees) to use accrued paid time off during periods of PFL leave that is not concurrent with FMLA leave, which may be the case if, for example, the employer is not covered by the FMLA.
- The revised rules provide that an employee's use of FMLA for the employee's own serious health condition will not reduce the amount of paid family leave that the employee is entitled to in such 52 consecutive week period under the PFL.
- Pursuant to the revised rules, employers may require that employees who take intermittent paid family leave provide notice as soon as practicable before each day of intermittent leave. Under the old proposed rules, whether leave was to be taken continuously or intermittently, notice of leave only had to be given one time.

¹ While the revised rules are not explicitly clear, we believe this to mean that employees who work 175 days in a 52 consecutive week period are eligible for paid family leave.

- The revised rules maintain that, although the PFL does not take effect until January 1, 2018, employers may begin collecting employee contributions on July 1, 2017. The New York Department of Financial Services recently announced that the maximum rate of contribution for coverage under the PFL will be 0.126% of an employee's weekly wage (capped at 0.126% of the New York State average weekly wage, which is currently \$1,305.92, and thus would result in a maximum employee contribution of \$1.65 per week).
- The rules require covered employers to provide employees with written guidance regarding their rights and obligations under the PFL, which includes instructions on how to file a claim. Employers that issue employee handbooks or manuals must incorporate this information under the PFL into such handbooks or manuals

When fully implemented, the PFL will require private employers to provide eligible employees with up to 12 weeks of paid family leave benefits in a 52-week period to: (i) bond with their child during the first 12 months after the child's birth or placement for adoption or foster care with the employee; (ii) care for a family member with a serious health condition; or (iii) attend to a qualifying exigency arising when a family member is on or called to active duty in the U.S. armed forces.

In anticipation of the adoption of the revised rules and the January 1, 2018 PFL effective date, employers should obtain coverage for paid family leave benefits and consider taking payroll deductions from eligible employees beginning as early as July 1, 2017. Moreover, employers will need to revise their employee handbooks and written policies to provide the required information with respect to the PFL and incorporate their related policies and procedures implemented in accordance with the law.

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