

# Client Alert **Employment & Labor**

## *Employers Must Prepare for New York State's Paid Family Leave Benefits Law – Effective January 1, 2018*

### Reasons to Take Leave and Notice to Employer

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As we previously discussed in our [April 2016 Client Alert](#), the PFL will provide job-protected and employee-funded paid leave for the following three reasons:

1. to care for a spouse, domestic partner, child, parent, parent-in-law, or grandparent with a serious health condition;
2. to care for a newborn child during the first 12 months after the child's birth or after the first 12 months after placement of the child for adoption or foster care with the employee; and
3. to address exigencies when a spouse, domestic partner, child or parent is called to active military duty.

These permitted purposes are similar to those outlined in the federal Family Medical Leave Act (FMLA), which entitles eligible employees to take unpaid, job-protected leave for family and medical reasons. Some of the notable differences are that the PFL does not permit leave to address the employee's own serious health condition and the PFL expands family member coverage to include domestic partners, parents-in-law and grandparents.

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### Employers Covered

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The PFL, however, will affect nearly all private sector employers in New York State. With a few exceptions, it will require private sector New York employers *with even a single eligible employee to provide coverage*. However, covered employers with employees subject to a collective bargaining agreement are not required to supply PFL coverage when the collective bargaining agreement provides benefits as least as favorable as those under the PFL.

### Employees Covered

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The following employees are eligible for paid family leave under the Law:

- » An employee whose regular employment schedule is 20 or more hours per week for at least 26 consecutive work weeks preceding the first full day family leave begins; or
- » An employee whose regular employment schedule is less than 20 hours per week but who works 175 days within 52 consecutive weeks.

The 26-week or 175 days worked requirements are calculated by looking back from the date leave is scheduled to begin. There are detailed rules as to the eligibility calculations.

### Funding via Employee Contributions

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As is the case with New York State disability benefits, the PFL is 100% employee-funded through payroll deductions, unless employers voluntarily choose to make the contributions on behalf of employees. Employers have been permitted to take deductions since July 1, 2017. Deductions will become mandatory on January 1, 2018.

### Amount of Leave Permitted and Job-Protection Upon Return

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The final regulations provide for a four-year phase-in with gradually increasing benefit amount and duration, allowing employers enough time to adjust and implement the program.

To receive their full wages, employees may arrange with their employer to use paid time off (PTO) during PFL. However, unlike the FMLA, an employer cannot require employees to take PTO concurrently with paid family leave.

The final regulations also clarify that like the FMLA, an employee may choose to take leave continuously or intermittently in weekly or daily increments throughout a 52-week period, using different methods of calculation.

The PFL guarantees employees the right to both a paid leave of absence and reinstatement. If an employer declines to reinstate an eligible employee, otherwise violates the rights of an employee taking paid family leave (for example, by denying the employee health insurance coverage while on leave), or discriminates or retaliates against the employee for taking such leave, the employee may file a formal complaint with the employer and New York State.

### Interaction with FMLA and Disability Pay

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The regulations provide specific limitations when PFL overlaps with existing benefits and pay. For instance, when employees are simultaneously eligible for leave under the FMLA and PFL, employers may require the leaves of absence to run concurrently upon proper notice to the employee. If an employer fails to properly notify the employee, the employee can successively take leave. When an employee is eligible for both state disability benefits and PFL during the same year, the employee shall not receive more than 26 total weeks of disability and family leave benefits during that time.

### Employer Notice Obligations

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Under the PFL, employers have two specific notice obligations. First, employers **must amend their existing handbooks** to be circulated on or before the start of the new year, advising employees of their rights and obligations under the Law. If an employer does not have a handbook regarding employee benefits and leave provisions, it must provide written guidance regarding the PFL, including how to file a claim for leave. Furthermore, employers may want to update existing policies to reflect the interaction between existing leave policies (e.g., the FMLA) and the PFL.

Second, by January 1, 2018, employers must display a printed notice a form that will be issued by the Chair of the Workers' Compensation Board regarding coverage in plain view where all employees and applicants can see it.

## Employer Tips

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For the remainder of 2017, employers should take the following steps to prepare for the PFL:

- » Every New York State employer must add a new comprehensive leave policy to its employee handbook no later than January 1, 2018, and it is advisable to demonstrate the interaction between the PFL and the FMLA.
- » Even if an employer does not have an employee handbook, the employer must distribute written guidance on the PFL to every employee no later than January 1, 2018.
- » Employers that have not started to deduct PFL premiums must decide whether to begin deducting premiums prior to January 1, 2018.
- » An employer that is a party to a collective bargaining agreement should not, prior to January 1, 2018, deduct PFL premiums from the paychecks of employees covered by that agreement without first consulting with labor counsel.
- » An employer that is party to a collective bargaining agreement should not implement PFL coverage with respect to employees covered by that agreement until the employer has done an assessment as to whether the agreement already provides benefits as favorable as those under the PFL.
- » Employers should obtain, post or maintain in a conspicuous place in the workplace the notice forms no later than January 1, 2018.

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The following attorneys in our Employment and Labor Law Practice Group can assist employers in drafting policies and answering questions about the detailed provisions of New York's PFL.

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