

CLIENT ALERT

NEW YORK ENACTS PAID FAMILY LEAVE LAW

New York's Paid Family Leave ("PFL") law will be phased in beginning on January 1, 2018. The law will be the most comprehensive in the country, providing paid leave to virtually all employees in New York, regardless of the size of the employer. The pertinent features of the PFL law are summarized below.

What types of employers must provide PFL?

Under the PFL law, employers will be required to provide 12 weeks of *paid* leave. The law applies to *all* employers, including small businesses, with very limited exceptions. This is a much more expansive benefit than what is provided by the federal Family and Medical Leave Act (FMLA), which guarantees 12 weeks of *unpaid* leave to employees who have worked for at least a year for an employer that has 50 or more employees,

Will employers have to pay an employee's salary while the employee is on PFL?

No. The employee will receive the PFL benefit through an insurance policy.

How will PFL be funded?

Employers will bear *none* of the direct cost of PFL. Employers will be required to purchase a PFL insurance policy or self-insure. The premium of the policy will be paid for by employees through small payroll deductions. The pool of money from which employees will receive pay for PFL will be created solely by deductions from their own wages, as is the case with temporary disability benefits or unemployment benefits.

Where may employers obtain a PFL policy?

Employers should contact their current New York Disability Benefits carrier to learn more about adding PFL coverage.

When may an employee take PFL?

The reasons an employee may take leave are as follows: (1) to provide care, including physical or psychological care, for the employee's family member (child, parent, grandchild, grandparent, spouse, domestic partner) who suffers from a serious health condition; (2) to bond with the employee's child during the first twelve months after the child's birth, or the first twelve months after the placement of the child for adoption or foster care with the employee; or (3) because of any qualifying exigency as interpreted under the Family and Medical Leave Act, arising out of the fact that the spouse, domestic partner, child, or parent of the employee is on active duty or has been notified of an impending call or order to active duty in the armed forces of the United States. *Notably, an employee may not take PFL for his or her own serious health condition. PFL only begins after birth of a child. It is not available for pre-natal conditions.*

Who is eligible to take PFL?

Employees who have been employed full-time for at least 26 consecutive weeks or part-time for at least 175 days are eligible for benefits. There is no minimum hours worked requirement as with the FMLA. Further, citizenship or immigration status has no impact on PFL eligibility.

Employees whose regular work schedule is less than either 26 weeks or 175 days in a consecutive 52-week period will be provided the option to file a waiver exempting them from paying contributions, and exempting them from receiving benefits.

Who is not eligible to take PFL?

Any employee who is not working or is on administrative leave from their employer is not eligible for PFL. Further, if an employee is not working but is collecting workers' compensation, he or she may not use PFL. In addition, employees may not collect benefits for short-term disability and PFL concurrently. Employees who also are eligible for disability benefits may receive only a combined amount of 26 weeks of disability benefits and PFL benefits in a 52-consecutive calendar week period. Independent contractors will not have PFL benefits unless they purchase their own coverage. Lastly, employers are not required to permit more than one employee to use the same period of PFL to care for the same family member.

How will the PFL law be implemented?

The law will be implemented over a period of four years, beginning on January 1, 2018. While on leave, eligible employees will receive a portion of their weekly earnings, subject to a cap, based on the following schedule:

- On or after January 1, 2018 at least 50 percent of the employee's average weekly wage or 50 percent of the state average weekly wage, whichever is less, and 8 weeks' maximum duration of leave in a 52-week period;
- On or after January 1, 2019 at least 55 percent of the employee's average weekly wage or 55 percent of the state average weekly wage, whichever is less, and 10 weeks' maximum duration of leave in a 52-week period;
- On or after January 1, 2020 at least 60 percent of the employee's average weekly wage or 60 percent of the state average weekly wage, whichever is less, and 10 weeks' maximum duration of leave in a 52-week period; and
- On or after January 1 of each succeeding year, at least 67 percent of the employee's average weekly wage or 67 percent of the state average weekly wage, whichever is less, and 12 weeks' maximum duration of leave in a 52-week period.

Will leave under the PFL law run concurrently with FMLA leave?

Yes. For employees eligible for FMLA leave, leave under the PFL law will run concurrently with the 12 week FMLA entitlement. Employees may not stack leave time to take over 12 weeks, or the maximum duration of leave permitted at the time by the phase-in schedule. But, again, employees are entitled to take PFL regardless of their eligibility for FMLA.

Can employees elect to use paid time off in lieu of receiving statutory PFL benefits?

Employees may elect to use (but employers may not require them to use) available paid time off, such as vacation or personal time, and receive full salary, in lieu of receiving statutory benefits for that period of time. However, employees are not entitled to extend PFL leave beyond the annual maximum simply because they have statutory PFL benefits remaining. Additionally, employers who pay an employee's full salary during a period of leave under the PFL law are entitled to reimbursement from the employee for the paid leave benefits the employee received from the state during that period.

Must employees be restored to the same position upon returning from PFL?

Yes. Employees returning from PFL are entitled to be restored to the position held prior to the leave, or to a comparable position with comparable employment benefits, pay, and other terms and conditions of employment.

Do existing health benefits have to be maintained during a period of PFL?

Yes. The employer must maintain the employee's existing health benefits for the duration of the leave, just as if the employee had continued to work. However, the PFL law does not require the accrual of seniority or other benefits during leave as if the employee had not taken leave.

When will employers be required to start taking deductions from employees' pay checks to fund PFL?

Although the law will be implemented beginning on January 1, 2018, employers should start taking deductions from employees' paychecks on July 1, 2017. As 2018 approaches, employers will need to revise their employee handbooks and other time-off policies revised to comply with the PFL law.

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If you have questions or would like additional information, please contact Amanda M. Fugazy (afugazy@egsllp.com), Paul P. Rooney (prooney@egsllp.com), Valerie J. Bluth (vbluth@egsllp.com), Orla J. McCabe (omccabe@egsllp.com) or the primary EGS attorney with whom you work.

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