



New York State Paid Family Leave Benefits Law update: new guidance for 2019

By Tony G. Dulgerian and Christopher J. Moro

Although the New York State Paid Family Leave Benefits Law (“PFL”) has been effective for nearly a year, it continues to evolve. As the new year approaches, there are a number of updates to the PFL that employers should be aware of. The Workers’ Compensation Board (“Board”) also recently published additional guidance relating to the PFL, which provides additional clarity regarding these updates.¹ Below is a summary of these updates:

- **Increase in Benefits in 2019:** Employers should be aware that PFL benefits to employees will increase in the new year. As of January 1, 2019, employees will be entitled to request up to 10 weeks of PFL—an increase from the eight-week maximum in 2018. In addition, the benefit amount paid to employees who use PFL benefits will increase from 50% to 55% of the employee’s average weekly wage or 55% of the statewide average weekly wage, whichever is lower. The statewide average weekly wage is also increasing from \$1,305.92 to \$1,357.11, which, in turn, increases the maximum weekly PFL benefit amount from \$652.96 in 2018 to \$746.41 in 2019.
- **Payroll Deductions Increase:** Employee contributions toward PFL benefits are also scheduled to increase as of January 1, 2019. In 2018, employees contributed 0.126% of their earnings to PFL benefits with an annual cap of \$85.56 per year. Starting on January 1, 2019, the deduction amount increases, with employees contributing 0.153% of their earnings each pay period, with an annual cap of \$107.97.
- **New Statement of Rights Form:** The Board published a new Statement of Rights form for 2019, which employers should provide to employees who are absent from work to take family leave for more than seven days.²
- **“Serious Health Condition” now includes organ donors:** On November 5, 2018, Governor Andrew Cuomo signed the Living Donor Protection Act of 2018, which, among other things, amended the PFL’s definition of a “serious health condition” to include “preparation and recovery from surgery related to organ or tissue donation.” This law becomes effective on

¹ The Board’s guidance is available [here](#)

² A copy of this form is available [here](#)

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The Board's recent guidance clarifies a number of points relating to the administration of PFL benefits. For instance, the Board's guidance explains what happens when an employee starts using intermittent PFL benefits in 2018, but such use extends into 2019. The Board's position in this regard is that an employee would need to wait three months between intermittent days of PFL before the employee can take advantage of the additional two weeks of PFL in 2019. By way of example, if an employee uses PFL benefits during the last eight weeks of 2018 to bond with a child, the employee would need to wait at least three months in 2019 in order to take two more weeks of leave to bond with that same child.

The Board's recent guidance also confirms that payroll deductions are not capped on a weekly basis, but are capped on an annual basis. Thus, if an employee earns \$1,357.11 or more, the amount of the employee's payroll deduction in 2019 will be "0.153% x their gross wages each pay period until they reach the maximum of \$107.97." At that point, the employer should stop taking payroll deductions from this employee until 2020.

Another potential update to keep in mind is that employees may soon become eligible to use PFL benefits for bereavement leave. In June 2018, the New York State Assembly passed a bill which would permit employees to use PFL benefits to take leave following the death of a family member. The bill, which is awaiting Governor Cuomo's signature, would permit employees to use PFL benefits for the purpose of grieving a deceased "family member" as that term is defined in the PFL. If Governor Cuomo signs this bill into law, it could significantly broaden the scope of reasons an employee may seek PFL benefits. Based on the current version of the bill, however, this law would not go into effect until January 1, 2020.

Employer Takeaways

In advance of the new year, employers should update their payroll practices to ensure the increased payroll deductions will begin on January 1, 2019. This is particularly important for employers that are fully insured for PFL benefits, as the payroll deductions should match the insurance premiums, to avoid under- or over-collecting PFL contributions.

Employers should also consider notifying their employees of the increase in the deduction amount to avoid any confusion regarding the amount of the payroll deductions. The Board published a form that employers may use for this purpose, which would need to be customized to each employee.³ Employers should also start using the new Statement of Rights form, as previously mentioned.

For more information on the content of this alert, please contact your Nixon Peabody attorney or:

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³ A copy of this form is available [here](#)