

## Client Alert

### **New York Issues Final Regulations for State’s New Paid Family Leave Law**

September 7, 2017 – Providing paid benefits to New York employees for circumstances such as some of those outlined in the federal Family and Medical Leave Act of 1993 (“FMLA”), the New York State Workers’ Compensation Board issued the final regulations (“Final Regulations”) for the New York State Paid Family Leave Benefits Law (“PFL”) on July 19, 2017. The PFL becomes effective on January 1, 2018 and will provide eligible employees broad family leave benefits based on the following “qualifying events”:

- To bond with a newborn child, or newly placed foster or adopted children, within the first 12 months after the birth or placement;
- A qualifying exigency arising from the service of a family member in the armed forces; or
- To care for a family member with a serious health condition, either physical or psychological.

Certain key provisions of the law as clarified by the Final Regulations are summarized below. Further information on these Final Regulations and more can be found by accessing the New York State Workers’ Compensation Board website’s page on Paid Family leave through the following link: [New York Workers’ Compensation Paid Family Leave](#).

#### **Employee Eligibility Requirements**

Employees who regularly work 20 or more hours in a work week become eligible to take paid leave after 26 consecutive weeks of employment. Those who work less than 20 hours per week become eligible to take paid leave on their 175<sup>th</sup> day of employment. The requirement that days of employment be “consecutive” may be tolled, however, “during periods of absence that are due to the nature of that employment, such as semester breaks for teachers, and when employment is not terminated during those periods of absence.” There are additional proof of eligibility requirements depending on the type of leave requested (*i.e.*, birth certificate, adoption papers, active duty orders, medical certification from a health provider, etc.).

Participation in the Paid Family Leave program is not optional for most employees. The Final Regulations do make an exception, however, for employees whose regular work schedule fails to achieve the required 26 weeks or 175 days of employment in a consecutive 52-week period. Employees who fall within this category may elect not to provide weekly contributions to the Paid Family Leave program.

## Notice Requirement

Where the leave is foreseeable, an employee is required to give his or her employer at least thirty (30) days' advance notice. If the employee is unable to give the employer thirty (30) days' advance notice, the employee must give notice as soon as practicable.

Employers must provide employees with written notice of their rights and obligations under the PFL, including how to file a claim for paid leave. This notice must be contained within any employee handbook maintained by the employer. Employers must also prominently display or post a notice concerning the PFL in the form prescribed by the Workers' Compensation Board Chair, as detailed on its [website](#).

## Paid Leave Benefits

The law takes effect on January 1, 2018 and phases in over a four-year period. Once fully phased-in, New York will boast the fullest and most comprehensive paid leave program in the nation. PFL benefits will be implemented on an annual basis as follows:

- Beginning on January 1, 2018, eligible employees will be entitled to at least **eight weeks** of leave during any 52-week period, along with at least **50%** of their average weekly wage or the state average weekly wage, whichever is less.
- On January 1, 2019, eligible employees will be entitled to at least **ten weeks** of leave during any 52-week period, along with at least **55%** of their average weekly wage or the state average weekly wage, whichever is less.
- On January 1, 2020, eligible employees will still be entitled to at least **ten weeks** of leave during any 52-week period, though they will now earn at least **60%** of their average weekly wage or the state average weekly wage, whichever is less.
- Finally, on January 1, 2021, eligible employees will be entitled to at least **twelve weeks** of leave during any 52-week period, along with at least **67%** of their average weekly wage or the state average weekly wage, whichever is less.

## Limitations and Other Details

The Final Regulations establish 26 weeks as the maximum amount of disability and Paid Family Leave benefits that may be taken within one year. As such, even those employees who take leave for their own medical reasons and leave for one of the qualifying events under the PFL may only receive up to a combined total of 26 weeks of paid leave under New York State's short-term disability and PFL benefits.

According to the Final Regulations, however, employees are permitted to supplement PFL leave with accrued vacation or personal leave and receive 100 percent of their salary during that period. In that case, the employer would be entitled to request reimbursement from its Paid Family Leave insurance carrier for benefits that would have otherwise been paid to the employee.

Those employers covered by the FMLA should further note that when Paid Family Leave is designated concurrently with FMLA leave, the use of available paid time off under an employer's policies may be governed by the FMLA rules. An employer's human resources department or the staff managing its paid leave must be trained to identify which particular entitlement of the various applicable leave laws comes into play in the different outlined circumstances. When in doubt, ask your employment counsel for guidance.

### **Continued Health Insurance and Job Protection**

Employers are obligated to continue providing employees with their existing health insurance benefits (with the same payment or contribution to payment of premiums for such coverage as existed during active employment) throughout the duration of their paid leave under the PFL. Employers are also required to reinstate employees to the same or comparable position upon their return to work from PFL leave. The Final Regulations do not, however, require that the employee continue to accrue seniority or other benefits while on leave.

If you require any additional information concerning the PFL or any other type of leave, or any other employment-related legal issue, please contact:

Jeffrey P. Englander  
(212) 735-8720

[jenglander@morrisoncohen.com](mailto:jenglander@morrisoncohen.com)

Keith A. Markel  
(212) 735-8736

[kmarkel@morrisoncohen.com](mailto:kmarkel@morrisoncohen.com)

Christopher W. Pendleton  
(212) 735-8783

[cpendleton@morrisoncohen.com](mailto:cpendleton@morrisoncohen.com)