



July 20, 2017

New York Family Paid Leave – Final Regulations

On July 19, 2017, the Notice of Adoption for Paid Family Leave was published in the *New York State Register*, finalizing the New York Paid Family Leave (“NYPFL”) regulation.

The following summarizes public comments received and effect on the final regulation:

Comment	Effect
<p>Requesting that employers not provide NYPFL to employees not living or working in New York</p>	<ul style="list-style-type: none"> - Employees who work in New York with incidental work outside NY are covered - If an employee works in another state and only incidentally works in NY, the employee is not covered - If the employee does not perform the work in any other single state, he/she is a covered employee if: <ul style="list-style-type: none"> o The employee is based in New York; o Controlled from New York o Employee lives in New York <p><i>* No changes to the regulation were made; additional examples will be added to FAQs posted on the state's website</i></p>
<p>General comment about an employee having a child in 2017 and eligible for the employer's leave and effective 2018, eligible to take leave under the Family Medical Leave Act.</p>	<ul style="list-style-type: none"> - The NYPFL benefits become effective 1/1/2018 - Employees are permitted to take NYPFL to bond with a child within the first 12 months after the child's birth - Beginning in 2018, leave to bond with a child under NYPFL will run concurrently with FMLA <p><i>* No changes to the regulation were made.</i></p>
<p>General question about the requirement of an employer to deduct NYPFL contributions beginning 7/2017.</p>	<ul style="list-style-type: none"> - An employer may, but is not required to, take employee contributions beginning July 2017. <p><i>* No changes to the regulation were made.</i></p>

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<p>Clarification on whether an employee working less than 20 hours is eligible for NYPFL benefits on the 175th day of work OR the 175th day of employment.</p>	<ul style="list-style-type: none"> - An employee working less than 20 hours is eligible for NYPFL on the 175th day worked. <p><i>* No changes to the regulation were made.</i></p>
<p>Request to clarify if paid time off counts towards eligibility hours if the employee contributed to NYPFL.</p>	<ul style="list-style-type: none"> - Paid time off in which deductions are made count towards the number of work days necessary to meet the 20 hour per week eligibility. <p><i>* Change was made.</i></p>
<p>Concern over the NYPFL definition of average weekly pay when an employee takes intermittent leave and the week the employee takes the leave, the employee works less than the full week.</p>	<ul style="list-style-type: none"> - Employer may exclude the final partial week when calculating the average weekly wage. <p><i>* Change was made.</i></p>
<p>Question relating to calculation of average weekly rate. Can the employer use fractional number of days to calculate the average daily rate?</p>	<ul style="list-style-type: none"> - Yes, the employer may use fractions to accurately calculate an average daily wage. <p><i>* Change was made.</i></p>
<p>Question relating to an employee that becomes eligible for NYPFL, is laid-off, and is then rehired. Must the employee requalify for NYPFL?</p>	<ul style="list-style-type: none"> - No, an employee may take an unpaid leave of absence, with employer approval, and immediately become eligible for benefits upon return. <p><i>* No changes to the regulation were made.</i></p>
<p>Relating to state employers – Must state employers provide an option of waiver to employees or is it permissive?</p>	<ul style="list-style-type: none"> - State employers are required to provide a waiver option. <p><i>* Change was made.</i></p>
<p>Request to allow employers to choose measurement methods similar to FMLA to calculate the 12-month period.</p>	<ul style="list-style-type: none"> - Employers may choose any method used under FMLA. <p><i>* No changes to the regulation were made.</i></p>
<p>Request to require Collective Bargaining Agreements (“CBAs”) to provide benefits at least as beneficial as NYPFL.</p>	<ul style="list-style-type: none"> - NYPFL requires approval of a collectively bargained plan <p><i>* Change was made.</i></p>
<p>Comment from carriers expressing concern over pre-filed claim confirmation of receipt required to be completed in one day.</p>	<ul style="list-style-type: none"> - The NYPFL requires a carrier to send a list of required documents within five business days of receiving a NYPFL leave request. - After documents are received, the carrier must review the information and ensure its accuracy. - Change made to allow the carrier three days to acknowledge receipt of information/documents. - The carrier still has 18 days to pay the claim or deny the claim, which begins the date the information is received. <p><i>* Change was made.</i></p>
<p>Question as to how employee contributions for NYPFL may be used.</p>	<ul style="list-style-type: none"> - NYPFL employee contributions can only be used to provide NYPFL benefits – 1) pay for policy or 2) provide self-insurance. - If an employer has withheld surplus contributions, these must be returned to employees. <p><i>*No changes to the regulation were made.</i></p>

<p>Comment requesting an amendment to the NYPFL to become responsible for medical costs if the employer fails to provide health benefits while the employee is on leave.</p>	<ul style="list-style-type: none"> - The NYPFL provides that the employer's cancellation of insurance is punishable. - Furthermore, an employer's cancellation of insurance may be grounds for discrimination. <p><i>* No changes to the regulation were made.</i></p>
<p>Comments requesting general language that NYPFL does not reduce or infringe on any other rights of the employee.</p>	<ul style="list-style-type: none"> - Worker's Compensation Board does not have jurisdiction to do this and the statement is overly broad. <p><i>* No changes to the regulation were made.</i></p>

For additional information:

- <https://docs.dos.ny.gov/info/register/2017/july19/Rule%20Makings.pdf>
(beginning on page 22)

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