

Tax Notes

Paid Family Leave — New Benefit Under New York Workers Compensation Laws

By Barbara E. Bel, CPA, Partner and Ragini Subramanian, Esq., EA, Tax Supervisor

A new benefit called Paid Family Leave will soon become part of the New York Workers Compensation Laws. Paid Family Leave is different from the following two existing benefits:

1. Disability Benefits under the New York Workers Compensation Laws — provides for a maximum of 26 weeks of paid leave of absence for one's own personal health, and
2. Family Medical Leave under the Family & Medical Leave Act — provides for a maximum of 12 weeks of **unpaid** leave of absence for taking care of serious illness for one's self or a family member, the birth of a child, or care of a covered service member.

Broadly speaking, Paid Family Leave guarantees **paid** leave and job protection to New York families who need to take care of a family member's serious health condition, or to bond with a new child, or who have family members under active military duty employment or have been notified of an impending call or order of active duty.

The effective date of Paid Family Leave is January 1, 2018.

Who is eligible for Paid Family Leave?

All full-time employees who are employed by an employer for 26 weeks or more and all part-time employees (whether or not a U.S. citizen and even if undocumented) who are employed by an employer for 175 days or more are eligible for Paid Family Leave.

What can Paid Family Leave be used for?

The Paid Family Leave can be used:

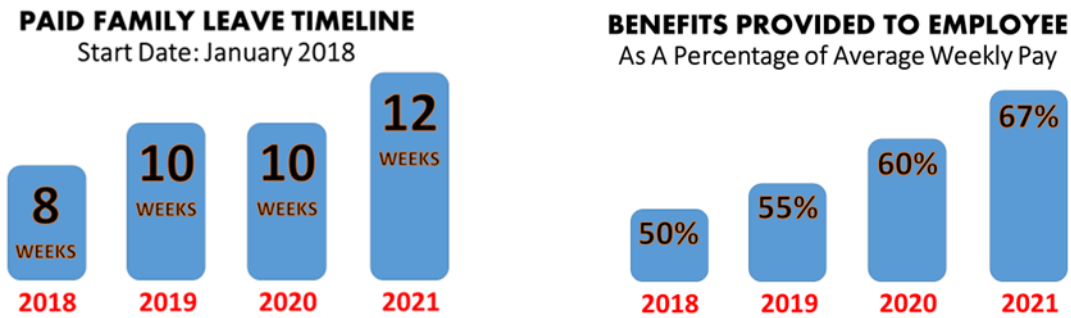
- To care for the employee's family member with a serious health condition, whether physical or psychological, **or**
- To bond with the employee's child during the first 12 months following birth, adoption, or fostering, **or**
- By military families who are eligible for time off under the military provisions in the federal Family Medical Leave Act, when the family member is on active duty or has been notified of an impending call or order of active duty.

What Benefits does Paid Family Leave provide?

The benefits include:

- Paid Family Leave provides for a paid leave of absence of up to 8 weeks annually starting in 2018, increasing to 12 weeks by 2021.

- The maximum Paid Family Leave benefit for 2018 is 50% of the New York State average weekly wage, increasing to 67% by 2021. The New York State average weekly wage is updated annually. For July 1, 2017 to June 30, 2018, it is \$1,305.92.



- The employer is required during the Paid Family Leave period to maintain the same level of health insurance coverage provided the employee continues to contribute to the health insurance as before the Paid Family Leave began.
- The employee must be reinstated to the same position, pay and benefits — or comparable position, pay and benefits — upon his/her return from Paid Family Leave, except that the employee cannot accrue seniority or other benefits (except health insurance as previously stated) during the Paid Family Leave period.
- The employee must take Family Medical Leave (if it applies) and Paid Family Leave **concurrently**, with total leave time not to exceed 12 weeks in a consecutive 52-week period.
- Paid Family Leave and Disability Benefits, on the other hand, must be taken **sequentially**. The total combined Paid Family Leave and Disability Benefits cannot exceed 26 weeks in a consecutive 52-week period.
- The employer cannot require the employee to take sick leave, or vacation time, or use other disability benefits before using Paid Family Leave.

How is Paid Family Leave funded?

Paid Family Leave benefits will be added to the existing short-term disability insurance policy that New York employers are required to carry. The employer must contact their disability insurance provider to add Paid Family Leave to their existing short-term disability insurance policy. Unless the employer chooses to fund the premium, the premium is funded by employees through payroll deductions. The payroll deductions can begin as early as July 1, 2017, but not later than January 1, 2018.

The Department of Financial Services has set the rate for Paid Family Leave at 0.126% of the employee's weekly wage, not to exceed the statewide average weekly wage. For July 1, 2017 to June 30, 2018, this translates to a maximum of \$1.65 per week.

How is Paid Family Leave administered?

The employee is required to request Paid Family Leave benefits and give at least a 30-day notice when Paid Family Leave is a foreseeable event. In case of an emergency, the employee must inform the employer as soon as possible.

New York State employers must provide employees with a written policy and conspicuously post a notice that they are in compliance with the Paid Family Leave policies.

The request for Paid Family Leave must be accompanied by appropriate certification. Some examples are:

- for a health condition of the family member, a certificate from the health care provider

- in the case of a childbirth, the certificate of birth
- in the case of adoption, a certificate evidencing adoption

What are the differences of the three benefit categories?

There are significant differences between Paid Family Leave, Disability Benefits and Family Medical Leave. For example:

- Unlike Family Medical Leave that covers employees with full-time employment of at least 12 months and at least 1,250 hours, the Paid Family Leave covers employees with only 26 weeks of full-time employment (or 175 days of part time employment).
- Unlike Family Medical Leave which needs to be offered only by employers with at least 50 employees, the Paid Family Leave must be offered by **all** private sector employers that are covered by New York Workers Compensation Law. A public sector employer is not mandated but can opt to provide Paid Family Leave.
- Unlike Disability Benefits, which are used for an employee's personal health issues, Paid Family Leave is allowed only for issues related to family members.

What to do now?

All private sector employers that are covered by New York Workers Compensation Law will be well advised to begin looking at their current Family Medical Leave, Disability Benefits, sick leave, and vacation policies and begin putting in place procedures that will enable them to track the type of leave taken by the employee and to monitor the payments related to each.

The employers should also begin reviewing their employment records to identify the employees who will be eligible — effective January 1, 2018 — for Paid Family Leave, but not Family Medical Leave.

Those employers with fewer than 50 employees (or even a single employee) should begin setting up procedures and processes for Paid Family Leave.

The employers should contact their insurance carrier to add Paid Family Leave to their existing insurance policy as well as conspicuously post a notice in the workplace on the new Paid Family Leave benefit.

The employers should advise the employees in writing and otherwise of their various obligations related to the Paid Family Leave benefit, including:

- The amount and anticipated date when payroll deductions, if any, may begin.
- The 30-day notification and supporting certification requirement (as outlined earlier in this newsletter) before Paid Family Leave can be taken.

A lot to think about between now and January 1, 2018.

Contact Us

We welcome the opportunity to speak with you regarding the new Paid Family Leave benefit and any questions you may have as a New York State employer. Please contact us:

Barbara E. Bel, CPA
Partner
bbel@pkfod.com

Ragini Subramanian, Esq., EA
Tax Supervisor
rsubramanian@pkfod.com

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