

Labor Relations Notice: Paid Family Leave

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A growing number of jurisdictions have passed or are considering legislation that will provide paid family leave to employees that may be funded in whole or in part by employers. Multi-jurisdictional employers with workers in the jurisdictions below will face ongoing compliance burdens due to the patchwork paid sick and parental leave laws that impose varying requirements.

New York State

Update as of July 19, 2017: New York State paid family leave benefits are financed by employee payroll deductions, and almost all employees' wages will be subject to the deduction with few exceptions. Employers may implement this withholding beginning July 1, 2017. The New York State Paid Family Leave Law (PFL), which was passed as of July 19, 2017, requires that employers purchase a paid family leave insurance policy or self-insure. Employers should contact their current New York Disability Benefits carrier to learn more about adding paid family leave coverage.

Summary: PFL will require virtually all private employers in New York to provide paid family leave benefits to eligible employees. Arguably, New York's PFL is as expansive—if not more expansive—than any similar paid leave law in the country. Eligible leave activities include, among other things, caring for a serious health condition of the employee or his or her family member (defined as a child, parent, grandparent, spouse, or domestic partner), providing care for the birth or adoption of a child, bonding with a new child up to 12 months following birth or adoption as defined by the federal Family and Medical Leave Act (FMLA).

When does the law go into effect?

Benefits will become available to employees starting January 1, 2018 and will be phased in over the next four years.

Which employees are eligible under the new law?

To be eligible for paid leave, full-time employees must be employed for 26 or more consecutive weeks for the employer, and part-time employees must be employed for 175 or more work days for the employer. If an employee's regular work schedule will never reach the period required, employers must provide the option to sign a waiver to become eligible for paid leave.

When do the next phases of the PFL go into effect?

Under the new law, paid leave benefits will phase in as follows:

- As of January 1, 2018, eligible employees will receive up to 8 weeks of leave at 50% of the employee's average weekly wage, or 50% of the state's average weekly wage, whichever is less.
- As of January 1, 2019, eligible employees will receive up to 10 weeks of leave at 55% of the employee's average weekly wage, or 55% of the state's average weekly wage, whichever is less
- As of January 1, 2020, eligible employees will receive up to 10 weeks of leave at 60% of the employee's average weekly wage, or 60% of the state's average weekly wage, whichever is less.
- As of January 1, 2021 and thereafter, eligible employees will receive up to 12 weeks of leave at 67% of the employee's average weekly wage, or 67% of the state's average weekly wage, whichever is less.

Is PFL applicable to employees who are covered under a collective bargaining agreement (CBA)?

Under the proposed regulations, employers may be relieved from providing PFL to employees who are covered by a CBA, provided that the CBA includes benefits at least as favorable as those set forth in the regulations. The CBA may not permit an otherwise eligible employee to waive his or her right to paid family leave, but it may provide different rules related to the use of paid family leave than those provided by the regulations.

Will an employee's benefits be affected by taking paid leave?

Employers must maintain an employee's health benefits for the entirety of paid leave as if the employee had remained at work. The law also protects an employee's all other benefits the employee has accrued at the time of taking the paid leave. In addition to benefits, employers are required to restore employees returning from and paid leave period to his/her prior position (or to an equal position with equal pay, benefits, and other terms and conditions of said position).

What will the cost be to the employer?

According to a study by New York's Workers' Compensation Board, the PFL should not impose significant costs on New York employers, employees, or insurance carriers. The employee contribution is deducted from each employee's paycheck at 0.126% of the employee's weekly wage. The proposed regulations further provide that the cost of the premium for the addition of paid family leave to an employer's disability benefits policy will be covered in total by the employee's contribution. Employers must either purchase a paid family leave insurance policy or self-insure, and employers can begin taking in July of 2017 (for coverage beginning on January 1, 2018). Employers must also inform all employees in writing of their rights and obligations under the new law, and eligibility information must also be included in an Employee Handbook. Employers must also display or post a notice regarding paid family leave in the form approved by the Workers' Compensation Board Chair.

San Francisco

Summary: Employees in San Francisco can receive up to six weeks of fully paid parental leave for the purpose of bonding with a new child. Despite its name, the San Francisco Paid Parental Leave ordinance is not a protected leave statute. It does not provide employees with additional protected leave. Instead, the ordinance is a wage replacement law. In conjunction with California's Paid Family Leave program—which provides California employees with 55% of their wages from employee-funded state disability insurance—the San Francisco ordinance requires employers to make up the 45% difference so that employees are paid 100% of their normal wages for six weeks.

When does the law go into effect?

San Francisco's Paid Parental Leave Ordinance (PPLO) became effective on January 1, 2017, for employers with 50 or more employees. Effective July 1, 2017, the PPLO also applies to employers with 35 or more employees and, on January 1, 2018, to employers with 20 or more employees.

What will the cost be to the employer?

As of January 1, 2017, California's Employment Development Department (EDD) increased the maximum weekly benefit available to employees under the state PFL program to \$1,173 from \$1,129. As a result, San Francisco's supplemental benefit increased from a maximum weekly amount of \$924 to \$960.

Is there any way to offset the cost to the employer of paying for the Supplemental Paid Leave?

An employer may require an employee to agree to use up to two weeks of accrued, unused vacation leave to help meet the employer's supplemental compensation obligations. The employer is not required to provide supplemental compensation if the employee does not agree.

What are the eligibility requirements for employees?

Employees are eligible only when they have worked for a company for 180 days. Additionally, an employee must perform at least eight hours of work per week for an employer in San Francisco, and at least 40% of the employee's total weekly hours for the employer must be worked in San Francisco.

What if an employee quits after receiving Supplemental Paid Leave?

As a precondition to receiving Supplemental Compensation, employees are required to sign a form requiring them to reimburse the employer for the full amount of Supplemental Compensation received if the employee voluntarily separates from employment with the employer within 90 days of the end of the employee's leave period.

What if an employer already offers Paid Parental Leave?

If the employer provides at least six weeks of fully paid parental leave within a 12-month period for bonding with a new child, the employer does not need to comply with the San Francisco ordinance.

Are union employees entitled to paid parental leave under the ordinance?

Union employees are not entitled to paid parental leave if:

- the union's collective bargaining agreement (CBA) expressly waives the ordinance's protections; or
- the parties entered into the CBA before the ordinance's effective date.

District of Columbia

Summary: On December 20, 2016, a paid family leave ordinance was approved by the District of Columbia Council. On July 5, 2017, Washington State joined the handful of jurisdictions mandating paid family and medical leave, employees are eligible to receive starting 2020. The law provides up to eight weeks of paid parental leave for new child bonding. The total premium of this program is 0.4% of an employee's wages. The program will be financed by both employers and employees.

When does the law go into effect?

Payroll deductions will begin as of January 1, 2019. Benefits for employees will begin in 2020.

After January 1, 2020, employees covered by a collective bargaining unit will not be exempt from the statute. CBAs entered into or renewed after January 1, 2020 must be compliant with the ordinance.

What will the cost be to the employer?

The ordinance requires employers with 50 or more employees to pay at least 37.5% of the program's premium. Employers with fewer than 50 employees may elect not to pay the employer portion of the premium. If an employer has a comparable plan in place, they may elect to opt out of this program but must pay a fee of \$250 to have the plan evaluated to ensure it is truly comparable. Employers with few that 150 employees maybe receive grants to offset wage costs while an employee is on leave. Employees who earn more than 150% of the D.C. minimum wage will receive 90% of their regular earnings up to 150% of the D.C. minimum wage, plus 50% of their regular earnings above the D.C. minimum wage, up to an overall cap of \$1,000 per week.

What will the cost be to the employee?

While the employer pays 37.5% of the premium, the employee is required to pay the remaining 62.5% of the premium.

How much leave is available to the employee?

The availability of the family and/or medical leave is as follows:

- 12 weeks of family or medical leave; or
- 14 weeks of family or medical leave if the employee experiences a pregnancy-related serious health condition resulting in incapacity; or
- 16 weeks of combined family and medical leave; or
- 18 weeks of combined family and medical leave if the employee experiences a pregnancy-related serious health condition resulting in incapacity

What are the eligibility requirements for employees?

If an employee worked at least 820 hours in a ‘qualifying period’, that employee is eligible for this new leave law. ‘Qualifying period’ shall mean the first four quarters of the last five completed quarters; or, if eligibility is not established, the last four completed calendar quarters immediately preceding the application for leave.

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