New York Paid Family Leave - Revised Proposed Regulations and the Contribution Rate

The New York State Workers’ Compensation Board issued revised proposed regulations to implement New York’s Paid Family Leave (“PFL”) benefit program that becomes effective January 1, 2018. The revised rules do not significantly differ from the proposed rules issued earlier this year however; the revised rules do make some notable changes based on public comments. The revised rules were published in the NYS Register on May 24, 2017 and the public has 30 days to comment on the revised rules. In a separate announcement, the NY Department of Financial Services has set the employee contribution rate at .126% of an employee’s weekly wage up to the state’s average weekly wage (set to increase July 1 to $1,305.92). Beginning July 1, the maximum weekly contribution will be $1.65 (.00126 x $1,305.92).

A PFL website has been created to help employers and employees prepare for the new statewide benefit. The following summarizes key changes addressed in the revised proposed regulations:

- The definition of a part-time employee has been changed to those who work less than 20 hours per week. Prior rules set the part-time criteria as those working less than 5 days per week. Part-time employees become eligible for PFL on the 175th day of regular employment. Full-time employees are those who work 20 or more hours per week.

- If an employer designates a period of leave as covered by the Family Medical Leave Act (“FMLA”), notifies the employee that the leave qualifies as PFL (when applicable), and the employee declines to designate the leave as PFL, the employer may count the period against the employee’s allowable PFL in a consecutive 52-week period. This change helps prevent employees from “stacking” leave under FMLA and PFL to extend protected time off from work.

- An employer covered by FMLA that designates a concurrent period of family leave, may also charge an employee’s accrued time off in accordance with FMLA provisions. Under all other circumstances an employer is prohibited from requiring employees to use accrued paid time off when eligible for PFL, although an employee may elect to do so.

- Tips must be included in the calculation of an employee’s average weekly wage for PFL benefits.

- A covered employer may continue to deduct the employee contributions for DBL and PFL when an employee is receiving DBL or PFL benefits. At the present time we are unsure as to what this provision allows as the insurance carrier, not the covered employer, is responsible to pay DBL and/or PFL benefits to qualified employees.

- Benefits taken in daily increments will be calculated as the average weekly wages divided by the average days worked over the eight week period prior to the leave. The maximum number of PFL days is based on a five-day workweek and set at 60 days (12 weeks) in 2021. An employer may require an employee requesting intermittent PFL to provide notice as soon as practicable before each day of intermittent leave, if not previously reported.

- Certain administrative changes were made such as allowing carriers the option to provide PFL payment in the form of a debit card or direct deposit.

- Employers that self-insure NY DBL prior to January 1, 2018 who continue to self-insure DBL coverage, may elect to self-insure PFL and must notify the Board no later than September 30, 2017 (previously November 30, 2017).

- Carriers have until the later of July 1, 2017, or within 60 days of the date the PFL community rates are released by the State (June 1) to declare if they will exit the DBL and PFL market for the 2018 calendar year. Carriers who wish to exit the market on or after January 1, 2018 must give 90 days notice to the Department of Financial Services.

More information about PFL can be found in our March 2017 Update.