Labor and Employment Alert: New York's Paid Family Leave Law Becomes Effective January 2018

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New York's Paid Family Leave Law (PFLL) will provide employees with wage replacement while away from work in order to bond with a child, care for a close relative with a serious health condition, or help with family duties when someone is called to military service. Paid family leave (PFL) is included under an employer's disability policy that all private employers must carry, and will be fully funded by employees through payroll deductions. Key provisions of the PFLL, which becomes effective on January 1, 2018, are below.

Eligibility and Benefits

To be eligible for PFL, employees must have been employed full-time for 26 weeks or part-time for 175 days at the time they apply for benefits. Eligible employees include:

- New parents during the first 12 months following the birth or adoption of a child;
- Employees caring for a sick child, spouse, domestic partner, parent, parent-in-law, grandparent, or grandchild (but ***not*** for an employee's ***own*** serious health condition);
- Employees with a spouse, child, domestic partner, or parent notified of an order of active military duty;
- Non-citizens covered by an employer for the mandatory 26-week period.

Employees will receive eight weeks of paid leave in 2018, increasing to 12 weeks by 2021. The wage replacement benefits cover 50% of the employee's average weekly wage commencing in 2018, subject to a statutory cap, and reach a maximum of 67% by 2021.

Coordination with the Family and Medical Leave Act and Other Benefits

Leaves covered by both the PFLLA and FMLA run concurrently only if the employer notifies the employee that the time off is designated as leave under both laws and provide the FMLA's notice and certification forms. If the employer provides notice, and if PFL is also covered by the FMLA, but the employees decline to apply for PFL, then the leave may be counted against the employee's PFL entitlement. FMLA leave taken for an employee's own serious health condition may not be counted against the PFL leave entitlement.

Employers may allow employees to use vacation or PTO in lieu of taking PFL, but employers may not require the exhaustion of paid leave. Employees may supplement their PFL benefits up to their wages with accrued paid leave during PFL.

Employee Protections

The PFLL requires that employees be reinstated upon returning from leave to their prior position or to a position with comparable pay, benefits, and other conditions of employment. Taking PFL may not reduce the employee's accrued benefits when taking such leave. And an employee who is provided health insurance is entitled to the continuation of that group health insurance coverage during PFL on the same terms as if he or she had continued to work.

Employer Obligations

PFL benefits are financed through employee wage deductions, which employers were permitted to begin making on July 1, 2017. These premiums are deducted from employees' after-tax wages, and PFL benefits will be taxable, non-wage income. The maximum deduction from employee pay is 0.126% of the employees' weekly pay, capped at 0.126% of the state average weekly wage, which is currently $1,305.92. This makes the current maximum weekly employee contribution $1.65 per week.

If an employer maintains written guidance for employees concerning employee benefits or leave rights, such as in an employee handbook, information about the PFLL must be included. Otherwise, the employer must provide written guidance to the employees concerning rights and obligations under PFLL, including on how to file a claim. Each employer must conspicuously post a prescribed notice of PFL rights.

Self-Insuring Employers

An employer may apply to the chair of the New York State Workers' Compensation Board for approval as a self-insured employer **by September 30, 2017**. To be approved as a self-insured employer, an employer must: (1) provide PFL benefits at least as favorable as required by the PFLL; (2) demonstrate the ability to make PFL payments; (3) submit certain financial information; (4) file with the chair an agreement to pay disability and PFL benefits; (5) assume all liability for PFL benefits that exceed the funds collected in excess of the maximum contribution amount; (6) post a surety bond; (7) allow the chair to examine its operations and records; and (8) file annual reports.

Conclusion

Employers who haven't already done so should contact their insurance carrier to discuss PFL benefits and then update their employee handbooks and leave policies to account for the PFLL's requirements. Contact your Vorys lawyer if you have questions about New York's PFLL.