WINSTON & STRAWN LLP

CLIENT ALERT

New York Paid Family Leave Law Update

OCTOBER 30, 2017

In advance of the January 1, 2018 effective date for the New York Paid Family Leave Law (PFLL), the New York Workers Compensation Board (the Board) has issued model paid family leave request, certification, and waiver forms, which are available here.

As discussed in our previous briefing, which can be found here, in April 2016, New York Governor Andrew Cuomo signed legislation enacting a plan to provide for paid family leave, which will be funded by employees through a mandatory payroll deduction. Under the PFLL, full-time employees who have worked for their employer for at least six months, and part-time employees who have worked for their employer for at least 175, days will be eligible for paid family leave when caring for an infant, a family member with a serious health condition, or to relieve family pressures when someone is called to active military service. In July 2017, the Board released the final regulations for the implementation of the PFLL.

The Forms

In order to receive any of the benefits under the PFLL, an employee must complete Request for Paid Family Leave Form (Form PFL-1). The employee is required to complete Part A of Form PFL-1, which includes questions relating to the employee's planned period of leave, date of hire, and average gross weekly wage. The employer is in turn required to complete Part B of Form PFL-1, and to return it to the employee within three days. Then, the employee must complete a certification form specific to the reason for the requested leave, whether it is for parental bonding, caretaking for a family member with a serious health condition, or assisting a family member in connection with a military deployment.

The Board has also published an Employee Opt-Out of Paid Family Leave Benefits form. This waiver form gives any employee hired on a temporary, periodic, or otherwise short-term basis the option to waive the PFLL's benefits and avoid the PFLL payroll deductions when either: (i) his or her regular employment schedule is 20 hours or more per week but the employee will not work 26 consecutive weeks, or (ii) his or her regular employment schedule is less than 20 hours per week and the employee will not work 175 days in a 52 consecutive week period.

Background on the PFLL

The benefits under the program will be phased in starting on January 1, 2018, with employees eligible for leave of up to eight weeks; will escalate in 2019 with eligibility for leave of up to 10 weeks; and will then be fully implemented in 2021 with eligibility for up to 12 weeks of leave under the program. The PFLL does not, however, provide employees with their full wages while on leave. Instead, as with the number of weeks of leave under the PFLL, the monetary benefits under the program escalate from January 1, 2018 until the PFLL's full implementation in 2021. Specifically, beginning on January 1, 2018, employees taking leave under the program will be paid at a rate of 50 percent of their average weekly wage (capped at 50 percent of the statewide average weekly wage, which is currently set by the New York State Department of Labor at $1,305.92). The payments to employees on leave will then gradually increase until 2021, when employees will receive payment of 67 percent of their weekly wage (capped at 67 percent of the statewide average weekly wage). The PFLL's benefits scheme is recreated in full in the chart on the next page.

YEAR	WEEKS OF LEAVE	BENEFIT
2018	8 weeks	50% of employee's average weekly wage, up to 50% of statewide average weekly wage
2019	10 weeks	55% of employee's average weekly wage, up to 55% of statewide average weekly wage
2020	10 weeks	60% of employee's average weekly wage, up to 60% of statewide average weekly wage
2021	12 weeks	67% of employee's average weekly wage, up to 67% of statewide average weekly wage

As noted above, the program does not come without a cost. As New York State's website boasts, the PFLL is a non-voluntary program that "will be fully funded by employees" through payroll deductions. The maximum contribution in 2018 will be 0.126 percent of an employee's weekly wage, up to the statewide average weekly wage. Further, although the program will be funded in full by employees, employers are required to obtain insurance in connection with the program unless they have applied for approval from the Chair of the New York State Workers' Compensation Board to be a self-insured employer. Employers that currently receive New York State Disability Benefits coverage through a private carrier must obtain coverage for PFLL through the same carrier. Employers that are not covered through a private carrier may purchase coverage either through a private carrier or through the New York State Insurance Fund. Under the Board's final regulations, employers are permitted to have begun the wage deductions any time on or after July 1, 2017.

Employees are guaranteed job protection and continuation of health insurance while on leave through the program. Whereas New Jersey—one of the other three states with a paid family leave benefit—features only a wage

replacement program, New York's system is meant to be a leave law, requiring employers to provide employees the leave time specified under the law. New York employers also must provide employees with a written policy regarding the PFLL and conspicuously post a notice that will be published by the Board.

The Board's final regulations can be found here. Employers should review the final regulations to ensure full compliance with the PFLL, including the structure of the wage deduction scheme. New York State's worksheet summarizing the basic requirements for employers under the program can be found here.

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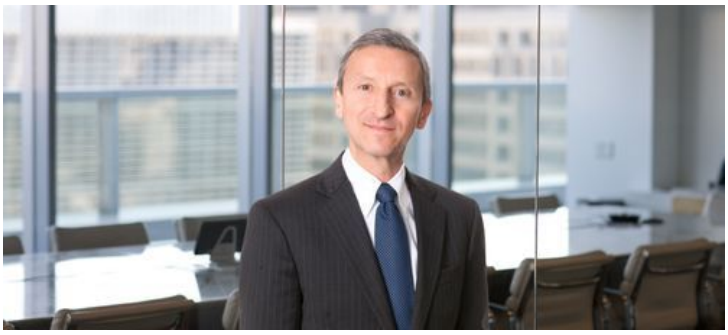

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