

The Final Push: New York Delivers a Revised Version of Paid Family Leave Rules

On May 24, 2017, the New York State Workers' Compensation Board (the "Board") released a revised set of proposed rules regarding the rights and responsibilities of employees, employers, and insurance carriers under the New York Paid Family Leave Benefits Law (the "PFL"). The PFL was signed into law by Governor Andrew Cuomo on April 4, 2016 and goes into effect on January 1, 2018. As discussed in our previous [alert](#), the Board released an initial set of proposed rules on February 22, 2017. Following a public comment period, the Board made a number of notable revisions to the proposed rules. Those revisions are discussed below, and opened a new 30-day comment period before the final rules are issued.

Eligibility for Paid Family Leave

The initial rules provided that full-time employees were eligible for paid family leave after 26 consecutive weeks of work, and part-time employees were eligible after 175 days of work. Part-time employees were defined as those who worked fewer than five days per week. After receiving comments concerning full-time employees with compressed work schedules (*i.e.*, long shifts spread across fewer than five days per week), the Board made a change: the 26-week requirement now applies to employees who work 20 or more hours per week, and the 175-day requirement applies to employees who work fewer than 20 hours per week.

Concurrent Leave

The initial rules allowed an employer to require that an employee's PFL leave run concurrently with his or her leave under the federal Family Medical Leave Act ("FMLA"). But they did not permit employers to require the use of accrued paid time off during the period of paid family leave. The revised rules allow employers to charge an employee's accrued paid time off balance "in accordance with the provisions of the FMLA" when FMLA leave runs concurrently with PFL leave.

The revised rules also clarify that FMLA leave taken by an employee due to his or her own serious health condition—which is not a qualifying event under the PFL—may not reduce the employee's PFL leave.

Notice and Documentation

The Board added or revised several rules related to notice and documentation requirements:

- The revised rules state that an employer may require an employee to provide separate notice before each day of intermittent leave. The initial rules allowed employees taking intermittent leave to provide notice only once.
- The revised rules require a carrier's denial of a request for paid family leave to state the reason for denying the request.
- The initial rules required an employee who was not reinstated by his or her employer to file a formal request for reinstatement within 120 days. The revised rules eliminated the 120-day requirement, but kept the requirement to file a formal request as a precondition to filing a complaint.

Deductions

Generally, paid family leave will be funded by employee payroll contributions to either an insurance policy from an insurance carrier or New York's state insurance fund. On June 1, 2017, the Department of Financial Services announced that the maximum employee contribution for coverage beginning January 1, 2018 will be 0.126% of an employee's weekly wage (capped at New York State's current average weekly wage of \$1,305.92). This translates to a maximum employee contribution of \$1.65 per week.

The initial rules provided that employers were permitted, but not required, to collect weekly employee contributions starting July 1, 2017, even though coverage will not begin until January 1, 2018. The Board received comments requesting the removal of that provision, but the Board kept it in place, noting that the PFL envisioned allowing early collection of employee contributions to offset the cost of acquiring mandated insurance policies. The Board also clarified that an employer may continue to deduct employee contributions while an employee is receiving disability benefits.

Next Steps for Employers

Employers should expect the final rules to closely mirror the current set, and should develop their paid family leave benefits policies and procedures, and amend their employee handbooks, to reflect these revised rules. Employers also should prepare to collect employee contributions beginning on July 1, 2017, to offset costs they will incur in obtaining insurance before the January 1, 2018 effective date of the PFL.

This alert is for general informational purposes only and should not be construed as specific legal advice. If you would like more information about this alert, please contact one of the following attorneys or call your regular Patterson contact.

<u>Lisa E. Cleary</u>	212-336-2159	<u>lecleary@pbwt.com</u>
<u>Catherine A. Williams</u>	212-336-2207	<u>cawilliams@pbwt.com</u>
<u>Eric B. LaPre</u>	212-336-2858	<u>elapre@pbwt.com</u>
<u>Helen P. O'Reilly</u>	212-336-2739	<u>horeilly@pbwt.com</u>
<u>Adam E. Pinto</u>	212-336-2156	<u>apinto@pbwt.com</u>

To subscribe to any of our publications, call us at 212.336.2813, email info@pbwt.com or sign up on our website, <https://www.pbwt.com/subscribe/>.

This publication may constitute attorney advertising in some jurisdictions. © 2017 Patterson Belknap Webb & Tyler LLP