

Paid Family Leave

Upon adoption of Part SS of the Education, Labor and Family Assistance Budget Bill on April 1st, New York employees will be able to leave work for up to 12 weeks at reduced pay, through an employee-funded insurance policy similar to the temporary disability program, to care for a seriously injured or sick family member or bond with a new child. The paid family leave program will be gradually phased in beginning on January 1, 2018. Family leave benefits will be 100% funded by employee payroll deductions.

An employee will become eligible for paid family leave after he or she has been employed for 26 consecutive weeks. When foreseeable, an employee must provide an employer with 30 days prior notice and document the employee's need to take family leave. The employer may require an employee to use available vacation and sick time. The employer must continue to provide health insurance coverage for such employee and preserve his or her job or a comparable position upon the employee's return.

Family leave benefits may be available to eligible employees as follows:

- On or after January 1st, 2018, an employee may take up to 8 weeks of paid leave at 50% of an employee's weekly wage, not to exceed 50% of state average weekly wage.
- On or after January 1st, 2019: an employee may take up to 10 weeks of paid leave at 55% of an employee's weekly wage, not to exceed 55% of state average weekly wage.
- On or after January 1st, 2020: an employee may take up to 10 weeks of paid leave at 60% of an employee's weekly wage, not to exceed 60% of state average weekly wage.
- On or after January 1st, 2021: an employee may take up to 12 weeks of paid leave at 67% of an employee's weekly wage, not to exceed 67% of state average weekly wage.

The Department of Financial Services (DFS) will set the premium rate an employee will have to contribute to the program on June 17, 2017 and on September 1st, each and every year afterward. DFS may also delay the graduated increase in family leave benefits based on a number of factors including, but not limited to: (i) cost to employees; (ii) expected change in cost to employees after increase; (iii) current number of insurers issuing policies providing family leave benefits; (iv) expected change in number of such insurers after increase; (v) impact of increase on employers' business; (vi) overall stability of the program; and (vii) impact of the increase on the financial stability of the disability leave and family leave benefits insurance markets and carriers.

As with temporary disability benefits, employers who fail to provide a policy for family leave benefits within 10 days of becoming a covered employer (employing a single employee for 30 days) shall be guilty of a misdemeanor and subject to a fine of \$100 - \$500 or imprisonment for up to a year, or both. Civilly, failure to provide family leave benefits will result in an employer being subject to a penalty not in excess of a sum equal to 0.5% of his or her weekly payroll for the period of such failure, as well as a maximum of \$500, both to be paid into the special fund for disability benefits.

Regulations promulgated by the workers' compensation board should be forthcoming to provide further clarity as to your obligations as employers.