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# Hughes Hubbard & Reed

## Five Things to Know About New York State's Paid Family Leave

### Client Advisories

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**July 27, 2017** - New York State is in the process of implementing its new Paid Family Leave Law (the "PFL"). This new law will provide leave and partial wage replacement to certain eligible employees for a qualifying event that causes an absence from work. While the PFL goes into effect on January 1, 2018, there are many steps employers can take to prepare themselves now. Below is an outline of certain key points of the PFL and steps that may need to be taken to comply with the PFL.

### 1. Covered Employers

All private employers who employ one or more individuals for at least 30 consecutive days are covered by the PFL. Public employers are not covered automatically, but can opt-in to the PFL.

### 2. Eligible Employees

Employees are eligible for benefits under the PFL if they (1) work 20 more hours per week for 26 or more consecutive weeks for an employer or (2) work less than 20 hours per week and have worked for an employer for 175 days.

Eligible employees can trigger PFL benefits for the following reasons:

1. to care for a close relative who has a serious health condition,
2. parental leave to bond with a new child during the 12 months following the child's birth or adoption, or
3. certain exigencies relating to the military service of an employee's spouse, domestic partner, child or parent.

Unlike the federal Family Medical Leave Act ("FMLA"), which also provides for time off (albeit unpaid), the PFL does not cover medical leave necessitated by the employee's own serious health condition. Employees must notify their employer if they intend to take leave under the PFL. If the leave is foreseeable, the employee must provide the employer with at least 30 days' notice.

### **3. Benefits Provided**

PFL benefits will be phased in over four years, beginning on January 1, 2018.

- On or after January 1, 2018, eligible employees may receive up to 8 weeks leave, in any 52 week period, paid at the lesser of (1) 50% of their average weekly wage and (2) 50% of the statewide average weekly wage (the "SAWW").
- On or after January 1, 2019, eligible employees may receive up to 10 weeks leave, in any 52 week period, paid at the lesser of (1) 55% of their average weekly wage and (2) 55% of the SAWW.
- On or after January 1, 2020, eligible employees may receive up to 10 weeks leave, in any 52 week period, paid at the lesser of (1) 60% of their average weekly wage and (2) 60% of the SAWW.
- On or after January 1, 2021, eligible employees may receive up to 12 weeks leave, in any 52 week period, paid at the lesser of (1) 67% of their average weekly wage and (2) 67% of the SAWW.

The New York State Department of Labor sets the SAWW each March. For 2017 the SAWW was set at \$1,305.92. In addition to the leave and partial wage replacement, employees must be entitled to return to the same or comparable job upon return from leave.

### **4. Payroll Deductions**

Employers are not required to fund the PFL - it will be fully funded through employee payroll deductions. The maximum employee payroll contribution rate has been set at 0.126% of the lesser of (1) an employee's average weekly wage and (2) the SAWW. Since the 2017 SAWW has been set at \$1,305.92, the maximum that an employee can contribute is \$1.65 per week, or \$1,305.92 multiplied by 0.126%. Although employees cannot claim benefits until January 1, 2018, employers can begin deducting contributions from payroll beginning on July 1, 2017. The employee contributions will be used by employer's to obtain PFL insurance coverage, which should be included in the employer's disability coverage.

### **5. PFL & Certain Other Leave Policies or Laws**

Some employers already offer paid leave benefits to their employees. If an employer offers paid leave which is more generous than PFL benefits, then employees will not be entitled to PFL benefits in addition to the paid leave offered by the employer.

Employees will be required to use FMLA leave and PFL concurrently. However, employees will be allowed to combine disability leave and PFL as long as the employee's leave does not exceed 26 weeks in any 52-week period. Employees cannot collect disability payments and PFL benefits at the same time. FMLA contains many differences from the PFL, including, but not limited to, which employers must provide leave, which employees are eligible for leave and whether the leave is paid.

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