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OCCASIONAL THOUGHTS ON EMPLOYMENT ISSUES FROM

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NEW YORK STATE'S PAID FAMILY LEAVE PROGRAM

As of January 2, 2018, New York State has joined California, Rhode Island, Washington, New Jersey and the District of Columbia in providing eligible workers with not only job-protected, but paid family leave. In New York, the leave will be provided in the following circumstances: to bond with a newly born, adopted, or fostered child, care for a close relative with a serious health condition, or help relieve family pressures when a spouse, domestic partner, child or parent is called to active military service.

Which Employers Are Affected?

If a company is required to provide disability insurance under New York State law (which is usually the case if there is one or more non-owner employee for at least 30 days in a calendar year), then it must comply with the new paid family leave program.

Who Is Eligible?

An employee must be employed full-time for 26 weeks or part-time for 175 days to be deemed eligible to receive paid family leave; independent contractors are not eligible. Employees cannot take paid family leave in connection with their own illness, but only to care for a spouse, domestic partner, child, parent, parent in-law, grandparent or grandchild. A "serious health condition" is defined as an illness, injury, impairment or physical or mental condition that involves either inpatient care or continuing treatment or continuing supervision by a health care provider. The employee may also take paid family leave to bond with a child or in the event of the military deployment of a close relative.

How Long Is the Leave?

While the law will ultimately provide for an employee to take paid family leave of up to 12 weeks, this will be implemented in four phases. In 2018, employees may receive up to eight weeks of leave, in 2019 and 2020 up to ten weeks, culminating in 12 weeks of leave in 2021. If the purpose of the leave is to bond with a child, it must be taken within 12 weeks of the birth, adoption, or placement of the foster child.

What Is the Employee Guaranteed?

The employee is entitled to receive a percentage of their average weekly wage up to a maximum amount, which amount in 2018 is \$1,305.92:

- In 2018, up to 8 weeks' leave at 50% of the average weekly wage;
- In 2019, up to 10 weeks' leave at 55%;
- In 2020, up to 10 weeks' leave at 60%; and
- In 2021, up to 12 weeks' leave at 67%.

The employee must be able to return to their same or comparable job upon return from paid family leave, and the employer is prohibited from discriminating against an employee for choosing to take paid family leave. The employee's health insurance must also continue while on leave.

Who Pays for This?

While coverage for paid family leave will be provided through a rider to the employer's pre-existing disability policy, the employees themselves will pay the premiums for the leave policy through payroll deductions, unless the employer chooses to pay for the premiums. New York State will set a maximum rate of employee contributions for each year, and employers should consult with their payroll providers annually to make the necessary arrangements. In 2018, 0.126% of the employee's average weekly salary (up to the cap of \$1.65 per week), may be withheld for the premium, up to an annual cap of \$86.56.

Must an Employee Use PTO Before Taking Paid Family Leave?

No. While the employer may permit the employee to use vacation or sick time in order to receive full pay, the employee cannot be required to take vacation or sick leave before taking paid family leave.

What Should Employers Do?

In addition to checking with their payroll providers and tax professionals to make the necessary withholding arrangements, companies should also review their other leave policies to see how they will interact with the new paid family leave program. They must also provide employees with written notice of their rights to paid family leave, as well of how they can file a claim to take it. Employee manuals should be revised to reflect the change in the law. Employers should check with their current disability insurance carrier for

implementation if they have not heard from such carrier already.

Additional information is set out on the New York State website at: <https://www.ny.gov/programs/new-york-state-paid-family-leave>

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