

# Developments in Paid Leave Requirements

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# Agenda

- ▼ Quick Health Care Reform Update
- ▼ Federal Paid Leave Laws
- ▼ State Paid Leave Laws

# Quick Health Care Reform Update

- ▼ **Take 3! – ACA Repeal and Replace: The Graham-Cassidy Bill**
  - ▼ Designed around transferring funds to the states to administer health care and health insurance markets
  - ▼ DOA
- ▼ **HHS Secretary Price resigns**
- ▼ **Reduced funding for open enrollment promotion and services**
- ▼ **Healthcare.gov to shut down for maintenance every week during open enrollment period**

# Federal Paid Leave Laws



# Federal Paid Leave Laws

## Paid Sick Leave for Federal Contractors

- ▼ **Paid Sick Leave for Federal Contractors [Final Rule, Executive Order 13706 (September 2016)]**
- ▼ **Requires federal contractors to provide covered employees with up to 7 days of paid sick leave annually, including paid leave allowing for family care**
  - ▼ **Employers may require accrual of leave**
  - ▼ **Employers must notify employees in writing of the amount of paid sick leave they have available, at the end of each pay period or each month, whichever interval is shorter**
- ▼ **Covered Contracts: Both procurement and non-procurement contracts that are subject to the SCA**

# Federal Paid Leave Laws

## Paid Sick Leave for Federal Contractors

### ▼ Covered Employees

- ▼ Any person performing work on or in connection with covered contract whose wages under such contract are governed by the SCA, DBA, or FLSA
  - ▼ Includes employees who qualify for an exemption from the FLSA's minimum wage and overtime provisions

### ▼ Covered Employers

- ▼ All federal contractors entering into a covered contract (generally, a contract subject to the SCA)

### ▼ Provides

- ▼ Employees may accrue up to 7 days of paid sick leave annually at a rate of 1 hour of paid sick leave for every 30 hours worked on or in connection with a covered contract
- ▼ Alternatively, the employer may provide an employee with at least 56 hours of paid sick leave at the beginning of each accrual year rather than allowing the employee to accrue leave based on hours worked
- ▼ Employer must permit carryover of paid sick leave from year to year, but can limit the maximum amount available at any time to 56 hours

# Federal Paid Leave Laws

▼ FMLA

▼ USERRA

▼ ADA

▼ *Family and Medical Insurance Leave Act*

# Federal Paid Leave Laws

## Family and Medical Leave Act

### ▼ Covered Employers

- ▼ All public agencies, including federal, state, and local
- ▼ Private employers with 50 or more employees within 75 mile radius

### ▼ Covered Employees

- ▼ Employees who have worked more than 1250 hours in a 12 month period

### ▼ Provides

- ▼ Up to 12 weeks unpaid, job protected leave
- ▼ GHP benefits continuation during FMLA leave

# Federal Paid Leave Laws

## USERRA

- ▼ **Covered Employers**
  - ▼ All employers
- ▼ **Covered Employees**
  - ▼ All employees who perform or have performed service in the uniformed services
- ▼ **Provides**
  - ▼ Up to five years of job-protected leave for service in the uniformed services

# Federal Paid Leave Laws

## ADA

- ▼ **Employees with disabilities must be provided with access to leave on the same basis as all other similarly-situated employees**
- ▼ **Unpaid/paid leave should also generally be considered as a potential reasonable accommodation, especially if employer would consider providing leave for other situations**
- ▼ **ADA does not require leave to be paid, but employers should generally provide the same access to paid leave as that for similarly-situated employees**
- ▼ **Leave may not necessarily be the only reasonable accommodation available – engaging in the interactive process is crucial to ADA compliance**

## **State Paid Leave Laws**

- ▼ **State Paid Family Leave Laws in effect: California, New Jersey, and Rhode Island**
  - ▼ **Coming soon: New York**
  - ▼ **D.C. (benefits payable beginning 2020); Washington (delayed)**
- ▼ **Paid Sick Leave Laws: As of September 2017, seven states (Arizona, California, Connecticut, Massachusetts, Oregon, Vermont, and Washington), the District of Columbia, 28 cities, and two counties have enacted laws mandating paid sick leave**

# State Paid Leave Laws

Figure 1. State Paid Family and Medical Leave Programs



**Program Design**

-  Social Insurance
-  State Fund with Highly Regulated Private Options
-  Employer Mandate

**Who Pays?**

-  Employer
-  Employee
-  TDI: Employee & Employer  
PFL: Employee

Note: All of the states highlighted on this map have paid family and medical leave programs with the exception of Hawaii, which has only a paid medical leave (TDI) program.

\*Source:  
<https://www.nasi.org/sites/default/files/research/NASI%20PFML%20brief%202017-%20Final.pdf>

# New York Paid Family Leave

- ▼ Eligible Employees
- ▼ Qualifying Reasons
- ▼ Benefits
- ▼ Restrictions on Leave
- ▼ Employer Notice Obligations
- ▼ Employee Notice Obligations
- ▼ Enforcement
- ▼ Action Items



# **New York Paid Family Leave**

- ▼ **Works with New York's existing Disability Benefits Law**
- ▼ **Provides paid leave benefits, the right to a leave of absence for qualifying reasons, and guaranteed reinstatement even if employee is not protected by the FMLA**
- ▼ **Designed to be employee-funded through a small payroll tax**
  - ▼ **Employee contribution for coverage beginning January 1, 2018 is 0.126% of an employee's weekly wage, up to and not to exceed the New York State Average Weekly Wage (NYSAWW\*)**
  - ▼ **Maximum employee contribution of approximately \$1.65 per week for 2018**
  - ▼ **This amount is subject to change on September 1 of each year**

# New York Paid Family Leave

## Eligible Employees

- ▼ Employees whose regular employment schedule is at least 20 hours per week and have worked at least 26 consecutive weeks before the first full day of family leave begins
- ▼ Part-time employees whose regular employment schedule is less than 20 hours per week are eligible once they have worked 175 days for the employer – 175 work days (not calendar days)
- ▼ Effect of built-in breaks
- ▼ Mandatory *Optional* Waiver for Temporary or Seasonal Employees
  - ▼ Employers must provide employees the option to sign a waiver if their regular work schedule will never achieve the period required to become eligible for PFL (26 weeks or 175 days in a 52 consecutive week period)

# **New York Paid Family Leave**

## **Qualifying Reasons**

- ▼ **To provide care, including physical or psychological care, to their family members due to a family member's serious health condition;**
- ▼ **To bond with a newborn child during the first year of the child's life, or, in the case of adoption or foster care placement, for the first year after the placement of a child with the employee; and**
- ▼ **For any qualifying reason as provided for under the FMLA arising from the employee's spouse, domestic partner, child, or parent being on active military duty, or, alternatively, being notified of an impending call or order to active military duty**

# **New York Paid Family Leave**

## **Benefits**

- ▼ **January 1, 2018: 8 weeks paid at 50% of the employee's average weekly wage or 50% of the NYSAWW,\* whichever is less;**
- ▼ **January 1, 2019: 10 weeks paid at 55% of the employee's average weekly wage or 55% of the NYSAWW, whichever is less;**
- ▼ **January 1, 2020: 10 weeks paid at 60% of the employee's average weekly wage or 60% of the NYSAWW, whichever is less; and**
- ▼ **January 1, 2021: 12 weeks paid at 67% of the employee's average weekly wage or 67% of the NYSAWW, whichever is less.**

**\*NYSAWW for calendar year 2016 to be \$1,305.92**

# **New York Paid Family Leave**

## **Benefits**

### **▼ Concurrent Use of FMLA**

- ▼ Employer may require that FMLA leave run concurrently with PFL**
- ▼ Provided the employer gives the employee the required FMLA notices, including notice that the leave is designated as FMLA leave**

### **▼ Concurrent use of sick or vacation pay**

- ▼ An employer may permit, but cannot require, employees to use vacation or sick leave so that the employee can earn a full salary during their leave**
- ▼ Employer may apply for reimbursement from insurance carrier if it pays sick/vacation pay during PFL (only if employee receives full salary during PFL)**

# **New York Paid Family Leave**

## **Other Benefits and Protections**

### **▼ Continued Health Insurance**

- ▼ Just as with the FMLA, employers must maintain the employee's existing health benefits for the duration of PFL as if the employee had continued to work**
- ▼ Employers may require employees to pay premiums**

### **▼ Job Protection**

- ▼ Employers are required to reinstate employees returning from PFL to the prior position of employment (or to a comparable position with comparable pay, benefits, and other terms and conditions of employment)**
- ▼ Taking PFL may not result in a reduction of any of the employee's accrued benefits at the time of taking such leave**

# **New York Paid Family Leave**

## **Restrictions on Leave**

- ▼ **Employees may not collect benefits for short-term disability required by New York State law and PFL concurrently**
- ▼ **Employees who also are eligible for disability benefits may receive only a combined amount of 26 weeks of disability benefits and PFL benefits in a 52-consecutive calendar week period**
- ▼ **Other situations in which PFL benefits may not be payable include when the employee is:**
  - ▼ **Receiving total disability payments pursuant to a claim for workers' compensation, volunteer firefighters' benefits, or volunteer ambulance workers' benefits;**
  - ▼ **Not employed or is on administrative leave from his or her employment;**
  - ▼ **Collecting sick pay or paid time off from the employer;**
  - ▼ **Works at least part of that day with pay for the employer or for any other employer; and/or**
  - ▼ **Using the same time for the same family member in question if spouses are employed by same employer.**

# **New York Paid Family Leave**

## **Notice Obligations**

### **▼ Employer Notice Obligations**

- ▼ Employers must provide written guidance to all employees regarding their rights and obligations under the PFL, including how to file a claim for PFL. Such guidance must be contained in an employee handbook if an employer maintains one**
- ▼ By January 1, 2018, employers must display or post a PFL notice in the form prescribed by the Workers' Compensation Board Chair**
  - ▼ Poster may be obtained from insurance carrier**

# **New York Paid Family Leave**

## **Notice Obligations**

### **▼ Employee Notice Obligations**

- ▼ Foreseeable PFL – Employees must provide the employer at least 30 days’ advance notice of their intention to take family leave**
  - ▼ Foreseeable qualifying events generally include expected birth of a child, placement of a child for adoption or foster care, planned medical treatment, or military exigency**
- ▼ Unforeseeable PFL – If giving 30 days’ advance notice is not practicable because of a lack of knowledge of the approximate date leave will need to begin, a change in circumstances, or a medical emergency, employees must notify their employer as soon as it is practicable**
  - ▼ It should generally be practicable to advise an employer of the need within the time prescribed by the employer’s usual and customary notice requirements (similar to the FMLA)**

# **New York Paid Family Leave**

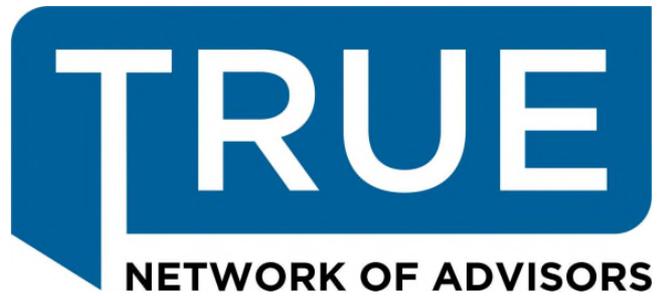
## **Enforcement**

- ▼ **An employer may not discriminate or retaliate against employees for taking or inquiring about PFL**
- ▼ **Employees who feel their rights under the PFL law were violated (for example, they were denied health insurance coverage while on leave), or who claim they have been discriminated or retaliated against for taking PFL, may file a discrimination claim with the NY Workers' Compensation Board under Section 120 of the Workers' Compensation Law**

# **New York Paid Family Leave**

## **Action Items**

- ▼ **Work with Insurance Carrier**
- ▼ **Adopt PFL Policy**
  - ▼ Plan for higher usage versus (unpaid) FMLA
  - ▼ Prepare to manage concurrent and non-concurrent leaves of absence
  - ▼ Train HR and Benefits Employees
- ▼ **Employee communications**
  - ▼ Educate employees on PFL and concurrent use of available FMLA leave and sick/vacation pay
- ▼ **Notices**
  - ▼ Add notice information to employee handbooks and post required notice
- ▼ **Amend benefit plans? Health Plan? Cafeteria Plan?**



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