

New York Paid Family Leave: Tax Implications and Guidance

2 min read

Sep 8, 2017

The New York State Department of Taxation and Finance (“Department”) recently released its guidance on the tax implications of the New York Paid Family Leave Benefits (“PLF”) law for New York employees, employers, and insurance carriers. Effective January 1, 2018, PFL will provide eligible employees with up to 8 weeks of pay for a leave of absence when the leave is necessary to care for a family member’s serious health condition, care for or bond with a new child, or to help with family responsibilities when the employee’s spouse, domestic partner, child or parent is called to active military duty. The weeks available for paid leave will increase each year until 2021, with ten weeks available 2019-2020 and twelve in 2021 and subsequent years.

PFL will be employee funded through payroll deductions. The contribution amount is 0.126% of the employee’s average weekly wage, and capped at the New York Average Weekly Wage (AWW), which is currently \$1,305.92. An employee’s PFL benefit in 2018 will be 50% of the employee’s average weekly wage, or 50% of the AWW, whichever is less. For example, if an employee in 2018 makes \$1,000 a week, he or she would receive a benefit of \$500 a week. An employee that makes \$2,000 a week would receive a benefit of \$652.96, as the amount is capped at 50% of the State’s AWW (half of \$1,305.92). Such percentage will increase each year, as summarized below.

- **2018:** 50% of the employee’s average weekly wage, or 50% of the State AWW; 8 weeks paid leave.
- **2019:** 55% of the employee’s average weekly wage, or 55% of the State AWW; 10 weeks paid leave.
- **2020:** 60% of the employee’s average weekly wage, or 60% of the State AWW; 10 weeks paid leave.
- **2021:** 67% of the employee’s average weekly wage, or 67% of the State AWW; 12 weeks paid leave.

After reviewing applicable regulations and consulting with the Internal Revenue Service, the Department made the following determinations:

- Contributions will be deducted from employees’ after tax wages.
- PFL benefits will be treated as taxable non-wage income.
- Such benefits must be included in federal gross income.
- Taxes will not automatically be withheld from benefits, but employees can elect voluntary tax withholding.

- Employers should report employee contributions on Form W-2 using Box 14 – State disability insurance taxes withheld.
- All benefits paid to employees should be reported on Form 1099-MISC, with the exception of benefits reported by the State Insurance Fund, which should be on Form 1099-G.

As January 1, 2018 is quickly approaching, employers should make arrangements for PFL payroll deductions, revisions to their paid leave policy, and work with insurance carriers to ensure compliance with the law, as PFL requires all insurance carriers providing short-term disability benefits to provide PFL benefits. Employers also have the option to self-insure. Hinshaw will continue to monitor PFL regulations and provide guidance to New York employers regarding PFL employee eligibility, tax implications and implementation of the new law.

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