

# Management Alert



## Family Matters: New York State Minimum Wage Increase & Paid Family Leave

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**Seyfarth Synopsis:** New York will increase its minimum wage to \$15.00 an hour in gradual increases, beginning December 31, 2016. In keeping with the wave of new legislation in states and cities across the country, New York also passed the Paid Family Leave law as a part of its existing state disability law, requiring employers with one or more employees to obtain insurance that covers paid family leave. The law offers up to 12 weeks of paid leave to care for a covered family member with a serious health condition, to bond with a child within the first 12 months of birth or adoption, or in situations where a covered family member is called to active duty in the military, starting in 2018.

Earlier this month, the New York State Assembly and Governor Andrew Cuomo passed game-changing legislation that will significantly impact employers throughout the state.

Beginning on December 31, 2016, New York will implement gradual increases to the state minimum wage, to an apex of \$15.00 an hour.

In a controversial move, the legislature passed the Paid Family Leave Benefits Law (“PFL”), which amends the Disability Benefits Law to require that an employer’s state disability insurance policy also cover paid family leave. PFL, which applies to employers of all sizes, is effective January 1, 2018.

### Minimum Wage

The minimum wage increase will take effect gradually, with increases dependent on where employees work and on the size of the employer, as follows.

City of New York, 11 or more employees	
Effective Date	Minimum Wage
Dec. 31, 2016	\$11.00
Dec. 31, 2017	\$13.00
Dec. 31, 2018	\$15.00

City of New York, 10 or fewer employees	
Effective Date	Minimum Wage
Dec. 31, 2016	\$10.50
Dec. 31, 2017	\$12.00
Dec. 31, 2018	\$13.50
Dec. 31, 2019	\$15.00

<b>Nassau, Suffolk, and Westchester counties, regardless of size of employer</b>	
<b>Effective Date</b>	<b>Minimum Wage</b>
Dec. 31, 2016	\$10.00
Dec. 31, 2017	\$11.00
Dec. 31, 2018	\$12.00
Dec. 31, 2019	\$13.00
Dec. 31, 2020	\$14.00
Dec. 31, 2021	\$15.00

<b>Remainder of state, regardless of size of employer</b>	
<b>Effective Date</b>	<b>Minimum Wage</b>
Dec. 31, 2016	\$9.70
Dec. 31, 2017	\$10.40
Dec. 31, 2018	\$11.10
Dec. 31, 2019	\$11.80
Dec. 31, 2020	\$12.50
Dec. 31, 2021	To be set annually, by October 1 of each successive year, in the discretion of Commissioner of Labor, not to exceed \$15.00/hour.

Beginning in 2019, and annually until the minimum wage becomes \$15.00 in all areas of the state, the law allows for an analysis to be conducted to evaluate whether there should be a temporary suspension in wage increases or delay in any of the scheduled increases.

### Hospitality Industry

The increase also applies to tipped food service workers, whose wages must be at least (i) two-thirds (2/3) of the applicable minimum wage rate, rounded to the nearest five cents or (ii) \$7.50, whichever is higher, provided the wages and tips of the employee equal the minimum wage. The law also provides new requirements for meal and lodging deductions.

### Paid Family Leave Benefits Law

Although PFL does not go into effect until January 1, 2018, employers should be aware of the administrative and financial adjustments to their business practices and potential revisions to internal policies that the law will require. The PFL's requirements should be considered well in advance of the effective date to ease implementation.

### Costs to Employers

Employers are not required to directly fund any portion of the family leave benefit, but are required to obtain insurance through either a private company or the state insurance program that covers both disability benefits and paid family leave.

The contribution amount will be set on or before June 1, 2017. Employers have the option to begin collecting employee contributions on July 1. Employees will be required to make contributions towards the cost of PFL insurance, beginning on January 1, 2018.

### Coverage

Employers who employ one or more employees on each of the last 30 days in any calendar year are required to carry PFL insurance.

### Eligibility for PFL

Generally, employees are eligible to take PFL if they have been employed by a covered employer for 26 consecutive weeks. If the employee is working less than the employer's normal work-week (e.g., regular part-time employees), then the employee is eligible to use benefits on the 175th day of regular employment. Unlike disability benefits, employees are not eligible for PFL after termination of employment.

## Use of PFL

PFL provides that employees may take time off of work, up to a maximum of 12 weeks in a year, to:

- Care for a covered family member when the family member has a serious health condition;
- Bond with his or her child the first year of birth or adoption; or
- For any “qualified emergency” under the federal Family Medical Leave Act, where the covered family member is on active duty or has been notified of an order to resume active duty in the military.

A “covered family member” is a biological, adoptive, or foster child, the employee’s spouse or domestic partner, the employee’s parent (including parent-in-law, stepparent or guardian while the employee was a child), or grandchild and grandparent of the employee.

A “serious health condition” is a condition that involves in-patient care in a healthcare facility, continuing treatment, or “continuing supervision” by a healthcare provider.

“Continuing supervision” includes a period of incapacity which is permanent or long term due to a condition for which treatment may not be effective, and so need not be receiving active treatment by a healthcare provider.

## No Double Benefits

The law provides that as a condition of taking PFL, an employer may offer an employee who has accrued but unused vacation or personal leave balances “to choose whether” to charge all or part of their family leave against their paid balances, and therefore receive full pay, or to receive PFL pay-out under the insurance policy.

Based on the wording of the statute, the law is ambiguous as to whether employer FMLA policies which require use of all accrued but unused leave balances before taking unpaid leave, may violate PFL. We anticipate further guidance will be issued in advance of the law’s effective date of January 1, 2018.

## Length of Leave

Similar to the minimum wage framework, the law provides an increasing scale for the amount of paid leave available to employees, not to exceed 12 weeks.

Disability leave and leave taken under PFL, when combined, cannot exceed 26 weeks in any year. Further, FMLA leave and PFL must be taken concurrently.

Effective Date	Length of Leave	Amount of Pay During Leave
January 1, 2018	8 weeks	50% of employee’s average weekly wage, but not more than 50% of the state average weekly wage <sup>1</sup>
January 1, 2019	10 weeks	55% of employee’s average weekly wage, but not more than 55% of the state average weekly wage
January 1, 2020	10 weeks	60% of employee’s average weekly wage, but not more than 60% of the state average weekly wage
January 1, 2021	12 weeks	67% of employee’s average weekly wage, but not more than 67% of the state average weekly wage

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<sup>1</sup> The minimum benefit to be paid for employees taking PFL is \$100 per week, except if employee’s wages are less than \$100 per week, the employee will receive his or her full wages.

## Job Protection

Employees that take PFL must be reinstated to the same position or a comparable position with comparable benefits, pay, and other terms and conditions of employment. Taking family leave may not result in the loss of any benefit accrued prior to the date the leave commenced. Similarly, for the duration of leave, an employer must maintain any existing health benefits of the employee as if the employee had continued to work for that entire block of time.

## Notice Obligations

Employers are permitted to obtain proof of need for leave, in the form of notice and medical certification of the family member's condition. Absent such proof, employers are empowered to request the family member submit to a physical examination by a qualified health care provider, to be paid for by the carrier. Proof of the leave is required within the period of actual family leave.

Additionally, where the need for leave is foreseeable, employees must provide employers with at least 30 days' notice before the leave is to begin, or as soon as practicable.

## Penalties

Penalties for failure to provide required PFL include a maximum fine of a sum of .5% of the weekly payroll for the period of such failure and a \$500 maximum fine to be paid into the state Uninsured Insurance Fund.

## Planning for the Future

The Superintendent of Financial Services is empowered to delay the increases, length, and amount of the family leave benefit by one or more calendar years, if necessary due to economic conditions.

If you would like further information, please contact your Seyfarth attorney, [Meredith-Anne Berger](mailto:Meredith-Anne.Berger@seyfarth.com) at [mberger@seyfarth.com](mailto:mberger@seyfarth.com), or [Gena B. Usenheimer](mailto:Gena.B.Usenheimer@seyfarth.com) at [gusenheimer@seyfarth.com](mailto:gusenheimer@seyfarth.com).

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