



One Minute Memo[®]



Recent Clarifications to the Workers' Compensation Board's Interpretations of New York Paid Family Leave Deductions and Voluntary Coverage

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Seyfarth Synopsis: The Board has recently clarified its interpretation of two key provisions of the New York Paid Family Leave ("PFL") Law: First, by allowing employers to use the employee's weekly wage as opposed to the average state weekly wage in calculating the employee contribution, and second, by requiring employers who voluntarily provide statutory disability to employees otherwise ineligible for such benefits to provide PFL to those employees as well.

Weekly vs. Annual Deduction Cap

In accordance with the plain reading of the PFL law, the Board initially interpreted the law to permit employers to take a maximum weekly deduction of up to \$1.65 per week. Without issuing any formal guidance, the Board is now providing employers with the **option** of meeting the annual maximum deduction of \$85.56 as follows: the employee contribution will be .126% of the employee's weekly wage (rather than the average state weekly wage, which is currently \$1,305.92). If an employee earns more wages in a particular week (due to a commission or bonus payment), then the PFL contribution would be larger for that week. Employers would continue taking the deduction until the employee reaches the annual limit of \$85.56, at which point the deductions would cease. Of course, it is possible that some employees who earn less than the state average weekly wage will never reach the annual maximum. Note that the NYS Department of Financial Services sets the annual contribution amount each year. A calculator is available [here](#).

While employers may want to take advantage of the annual deduction cap to ensure that it is more quickly recouping the entire amount of the PFL premium it is paying on behalf of that employee, it is advisable to notify employees of the change in the deduction amount before, or as soon as possible after, implementation. We understand that many payroll companies are implementing these changes very quickly, and some have stated it is mandatory, which does not appear to be the case.

Voluntary Coverage

In addition, the Board interprets N.Y. W.C.L. § 212 to **require** employers who voluntarily provide statutory disability coverage to employees not otherwise covered under the law (for example, teachers and clergy employed by private institutions), to provide PFL coverage for these employees as well. It is unclear if these provisions also apply to public employers. If the employer wishes to collect the employee contribution, then more than one-half of the employees must agree to contribute before the employer can collect the contribution and take the deduction. If an employer wishes to stop providing benefits for the affected employees, the employer may only do so after providing benefits for at least one year and after giving 90 days' notice to the Board and the employees. We will continue to monitor the Board's interpretations of PFL and provide updates as needed.

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