

New York Paid Family Leave Update: Additional Guidance on Tax Treatment

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The New York State Department of Finance and Taxation recently released guidelines for employers and insurers concerning tax treatment of deductions and benefits under the New York Paid Family Leave Law.

As we [previously reported](#), effective January 1, 2018, most New York employees will be able to take paid family leave to care for an ill family member, bond with a new child, or when a qualifying exigency arises under the Family and Medical Leave Act (FMLA) and an employee's family member is called to active military duty. This law operates in a similar fashion as the New York short-term disability requirements.

Overview

The benefit amounts are funded through employee payroll deductions. The deduction amount is 0.126% of the employee's average weekly wage, which is capped at the New York Average Weekly Wage (AWW). The AWW is updated in March of each year and for 2018 is set at \$1,305.92. Thus, the maximum weekly deduction per employee is \$1.65.

The benefit amount paid to an eligible employee is 50% of that employee's average weekly wages. This benefit amount also is capped at the AWW. Thus, for employees earning \$1,305.92 or more per week, the maximum benefit entitlement is \$652.96 per week. Employees may receive up to eight weeks of paid family leave benefits in 2018. The number of weeks and benefit amount will rise through 2021, when eligible employees may receive up to 12 weeks of paid family leave benefits per year, which will be paid at two-thirds of the employee's average weekly wages or the state AWW—whichever is lower.

Tax Guidance

The new guidance from the New York State Department of Taxation and Finance is intended to help employers and paid family leave insurance companies to implement these deductions and benefit payments.

The key takeaways from the guidance are the following:

- Contributions will be deducted from employees' after-tax wages.
- Benefits paid to employees are taxable non-wage income that must be included in federal gross income.
- Taxes are not automatically withheld from benefits, but employees can request a voluntary tax withholding.
- Employers should report income contributions on Form W-2 using Box 14 – State disability insurance taxes withheld.
- Benefits should be reported by the State Insurance Fund on Form 1099-G and by all other payers on Form 1099-MISC.

Implications

Given the upcoming January 1, 2018 effective date, employers should take steps to ensure that they are complying with the law's requirements. These steps may include communicating with the insurer that will be providing paid family leave administration services (unless the employer is self-insuring and will provide the benefit amounts directly), communicating with any payroll provider to begin taking deductions (and ensuring where the deduction amount is being stored), communicating to employees that these deductions will occur, drafting and/or revising paid leave policies as appropriate/applicable—including any employer policies governing federal Family Medical Leave, and providing notice to employees of their right to paid sick leave (which can be satisfied by drafting and providing employees with a paid sick leave policy).

We expect that additional regulations/guidance will be forthcoming that will clarify many of the questions raised by this newly enacted legislation, and we will continue to provide updates as additional information becomes available.

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National Law Review, Volume VII, Number 249

Source URL: <https://natlawreview.com/article/new-york-paid-family-leave-update-additional-guidance-tax-treatment>