

New Guidance for the New York Paid Family Leave Payroll Deduction

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The ever-moving target that is the New York Paid Family Leave law (“PFL”) has, unsurprisingly, shifted yet again. We recently received confirmation from the New York State regulators that employers do not need to cap the weekly employee payroll deduction for PFL at .126% of the New York State Average Weekly Wage (NYSAWW) (approximately \$1.65 per week in 2018). Rather, employers may deduct .126% of an employee’s weekly wage until the employee hits the annual cap of \$85.56, which is .126% of the annualized NYSAWW. Although the \$1.65 weekly cap was not explicitly required, per the language of the statute and regulations, it appeared that until recently, this was New York State Workers’ Compensation Board’s (WCB) position.

As a reminder, the PFL regulations state that an employer is permitted, but not required to, collect the weekly employee contribution for PFL coverage. The New York State Department of Financial Services’ (“DFS”) letter dated June 1, 2017 stated that the maximum employee contribution shall be “0.126% of an employee’s weekly wage up to and not to exceed the statewide average weekly wage.” It was not clear whether the DFS intended a weekly or annual cap of .126% of the NYSAWW. Although the DFS’ July 28, 2017 [Insurance Circular Letter](#) seemed to suggest that employers can collect .126% of an employee’s weekly wage until the employee hits the annual cap of \$85.56, it was not clear whether the WCB agreed to this position.

The State’s new position is further confirmed by its PFL weekly deduction calculator which can be found [here](#). As you can see from the calculator, if an employee’s weekly earnings are greater than the current NYSAWW (\$1,305.92), the calculator generates an estimated deduction of .126% of such earnings (prior versions of the State’s calculator capped all estimated deductions at \$1.65). This is further indicated by guidance on the State’s [website](#) which states in relevant part: “[t]he 2018 payroll contribution is 0.126% of an employee’s weekly wage and is capped at an annual maximum of \$85.56.” There is no reference to a \$1.65 cap.

This is a significant development that will better position employers to collect the full PFL premium from each employee. This is particularly helpful for employers with employees who regularly earn less than the NYSAWW but periodically receive large bonus or commission payments. Now, employers can collect .126% of an employee’s bonus or commission earnings without regard to the \$1.65 cap on weekly deductions. Using this approach, certain employees will meet their annual maximum PFL deduction of \$85.56 prior to the final week of the year.

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