



PHILLIPS LYTLE LLP ALERT
FOR BNHRA MEMBERS
LABOR & EMPLOYMENT

AUGUST 2017



New York State Paid Family Leave

On January 1, 2018, New York State's Paid Family Leave ("PFL") program will take effect. Accordingly, employers should be informed about the law's requirements, ensuring that they are prepared for the law's implementation.

PFL: The Basics

The PFL program has been described by the State Workers' Compensation Board as the "most robust" program in the country. PFL provides paid time off to employees for bonding with a child, family care and family issues arising from military service. The *bonding with a child* provision provides time off for both parents to bond with a child from birth, adoption or foster care. The *family care* provision provides time off for an employee to care for a family member with a serious health condition. This applies to care for an employee's spouse, domestic partner, child, parent, parent-in-law, grandparent or grandchild. These family members may live outside of New York State or the United States. The *military service* provision provides time off for an employee to provide assistance to his or her family when a family member goes into active military service. The family member may be an employee's spouse, child, domestic partner or parent.

How PFL is Funded

Employees will fully fund the program through a premium payment which employers may deduct from employees' paychecks as early as July 1, 2017. PFL will

be included in New York State Disability Benefit insurance policies that employers purchase from a private carrier or the State insurance fund, although employers will have the option of purchasing a separate PFL plan. Either way, essentially all private employers must secure PFL coverage, while public employers have the option to be covered.

PFL Eligibility and Pay Coverage

Employees become eligible for PFL after 26 weeks working at least 20 hours per week, or after 175 days working fewer than 20 hours per week. An employee who falls below this threshold may elect to waive his or her PFL benefits and will thus be exempt from making contributions to the plan. However, if the employee's schedule changes and he or she becomes ineligible for the waiver, the employee must begin making PFL payments, including any retroactive payments due.

PFL Benefits

The PFL benefits will be phased in with respect to time and payment during time off. In 2018, employees will be eligible to take 8 weeks of PFL at 50% the lesser of: (1) their weekly wage or (2) the New York State Average Weekly Wage (NYSAWW). In 2019, employees will be eligible to take 10 weeks of PFL at 55% of that amount. In 2020, employees will be eligible to take 10 weeks of PFL at 60% of that amount. By 2021, employees will be eligible to take 12 weeks of PFL at 67% of that amount. Further, employers must ensure that employees are



PHILLIPS LYTLE LLP ALERT

FOR BNHRA MEMBERS

LABOR & EMPLOYMENT

AUGUST 2017



returned to the same or similar positions they held prior to taking PFL, face no discrimination or retaliation for taking PFL, and receive continued health insurance as long as they continue to pay their share of the plan.

PFL Administration

The administrative process of PFL is fairly straightforward. When an employee has a qualifying event, the employee must notify his employer (notice in writing is not required). If the need for PFL is foreseeable, the employee must give the employer 30 days' notice. If it is not foreseeable, the employee must give as much notice as is practicable. The employee then provides the employer with a completed claim form, who enters additional information and returns the form to the employee. Finally, the employee sends the form with certification to the carrier, who must accept or deny the claim within 18 days after receipt. If the claim is denied, the employee may request a review through arbitration.

Notice to Employees

Insured employers will receive a notice of coverage from their insurance carriers. The employer must post and maintain the notice of coverage in a "conspicuous" location. Further, if an employer maintains an employee

benefit handbook, the employer must include PFL information in this handbook. If the employer does not have a handbook, the employer must provide written guidance to employees about PFL and how to file a claim.

Summary

In sum, New York's new PFL law and associated regulations address three main scenarios: (1) bonding with a child, (2) family care and (3) active military service. Although employees are responsible for funding their PFL plans, an employer has three major obligations under the PFL framework. First, employers must secure PFL coverage that will be effective on January 1, 2018. Second, employers must establish a payroll deduction process. Third, employers must notify employees about the PFL program and their rights under the program. Employers should ensure that they are familiar with the law and consult with their attorneys to ensure that they meet all of its requirements.

Additional Assistance

Should you have any questions regarding New York State Paid Family Leave, or any other labor and employment matters, please contact any of the attorneys on our Labor & Employment Practice Team. ■



PHILLIPS LYTLE LLP ALERT
FOR BNHRA MEMBERS
LABOR & EMPLOYMENT



AUGUST 2017

LABOR & EMPLOYMENT ATTORNEYS

Jennifer A. Beckage (716) 847-7093, (212) 759-4888 ext. 7093, (585) 238-2000 ext. 7093 jbeckage@phillipslytle.com

Christine Donovan Bub (716) 847-8353 cbub@phillipslytle.com

Joanna J. Chen (716) 847-5433 jchen@phillipslytle.com

James D. Donathen (716) 847-5476 jdonathen@phillipslytle.com

Alissa M. Fortuna Brennan (585) 238-2048 abrennan@phillipslytle.com

Marc H. Goldberg (518) 618-1229 mgoldberg@phillipslytle.com

James R. Grasso (716) 847-5422; (212) 508-0475 jgrasso@phillipslytle.com

Luke B. Kalamas (585) 238-2035 lkalamas@phillipslytle.com

Amanda L. Lowe (716) 504-5747 alowe@phillipslytle.com

Kevin J. Mulvehill (585) 238-2095 kmulvehill@phillipslytle.com

Linda T. Prestegaard (585) 238-2029; (212) 508-0425 lprestegaard@phillipslytle.com



Albany Omni Plaza 30 South Pearl Street Albany, NY 12207-3425 (518) 472-1224

Buffalo One Canalside 125 Main Street Buffalo, NY 14203-2887 (716) 847-8400

Chautauqua 201 West Third Street Suite 205 Jamestown, NY 14701-4907 (716) 664-3906

Garden City 1205 Franklin Avenue Plaza Suite 390 Garden City, NY 11530-1629 (516) 742-5201

New York City 340 Madison Ave 17th Floor New York, NY 10173-1922 (212) 759-4888

Rochester 28 East Main Street Suite 1400 Rochester, NY 14614-1935 (585) 238-2000

Washington, DC 800 17th Street NW Suite 450 Washington, DC 20006-3962 (202) 617-2700

Canada The Communitech Hub 151 Charles Street West Suite 152 The Tannery Kitchener, Ontario N2G 1H6 Canada (519) 570-4800

Prior results do not guarantee a future or similar outcome. The foregoing is for informational and advertising purposes only. The information provided is not legal advice for any specific matter and does not create an attorney-client relationship. The recipient of this publication cannot rely on its contents. If legal advice is required for any specific matter, please consult with qualified legal counsel. We would be pleased to assist you.

©2017 Phillips Lytle LLP
Attorney Advertising
PHILLIPSLYTLE.COM