

# A Heads-Up on Employment Issues Confronting the Investment Management Industry

January 4, 2018

## Key Points

- New York's Paid Family Leave Law went into effect on January 1, 2018.
- All New York employers are impacted.
- New York employers have an obligation to notify employees of their right to paid family leave.
- Firms should modify their family leave policies to reflect the new law.



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## Friendly Reminder: New York Paid Family Leave Law Effective January 1, 2018

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In [April 2016](#), Gov. Cuomo signed into law New York's Paid Family Leave Law. The law went into effect on January 1, 2018. Below are some anticipated questions and answers to help guide firms in complying with the law's requirements.

### Is My Firm Impacted by the Paid Family Leave Law?

If your firm is based in New York and has at least one employee, then yes.

### When Are Employees Eligible for Paid Family Leave?

Employees who are regularly scheduled to work at least 20 hours per week are eligible to take paid family leave once they have worked for a firm for 26 weeks. Additionally, part-time employees who work less than 20 hours per week are eligible for paid family leave once they have worked for a firm for 175 days over a consecutive 52-week period.

### Under What Circumstances Can Employees Take Paid Family Leave?

Employees can take paid family leave for the following reasons:

- to care for a close relative with a serious health condition
- to bond with a newborn child or newly placed adoptive/foster child within the first 12 months; and
- to assist family members in certain circumstances when another family member is on, or called to, active military duty.

Unlike under the Family and Medical Leave Act (FMLA), employees are not entitled to paid family leave due to their own medical conditions.

## **What Benefits Does the Paid Family Leave Law Provide to Employees?**

In 2018, an eligible employee will be entitled to eight weeks of paid family leave at 50 percent of the employee's average weekly wage, capped at \$653 per week. (The annual cap is equal to 50 percent of the New York State Average Weekly Wage, which, in 2018, is approximately \$1,306 (50 percent of \$1,306 equals \$653)). The number of weeks of paid leave and the percentage of wages noted above will increase annually until 2021, when the law will provide 12 weeks of paid family leave at 67 percent of an employee's average weekly wage, capped at 67 percent of the New York State Average Weekly Wage. Employees are entitled to take the maximum benefit of paid family leave entitlement in any 52-week period. Firms must also maintain an employee's existing health benefits for the duration of leave.

## **What Other Rights Do Employees Have Under the Law?**

At the end of leave, an employee must be returned to a comparable position with comparable pay, benefits, and other terms and conditions of employment. Additionally, firms are prohibited from retaliating against employees for taking paid family leave.

## **Who Pays for Benefits Under the Law?**

Paid family leave is funded by a mandatory employee payroll deduction. The deduction is 0.126 percent of an employee's weekly wage. In 2018, these deductions are capped at 0.126 percent of the New York State Average Weekly Wage, or \$1.65 per week.

## **What About Employees Who Are Not Eligible for Leave?**

Where employees will not be eligible for paid family leave benefits, firms must offer them the option to sign an acknowledgment to that effect, and to be relieved of the obligation to make the paid family leave contributions via payroll deduction. A waiver form is available [here](#).

## **How Far in Advance Must Employees Provide Notice of Their Intent to Take Paid Family Leave?**

When the need for paid family leave is foreseeable, employees must provide the firm with at least 30 days' notice. If the need for paid family leave is not foreseeable, employees must provide as much advance notice as is practicable.

## **How Does Paid Family Leave Interact with Other Leave?**

Firms may require paid family leave to run concurrently with FMLA leave where applicable, provided that firms notify employees of such leaves running concurrently. An employee may elect for paid family leave to run concurrently with other paid time off, including vacation or paid sick leave, to receive his/her full salary. In cases where employees opt to supplement their paid family leave benefits with paid time off and firms pay employees their full salary/wages, firms can request reimbursement from their insurance carrier for any paid family leave benefits (so that employees receive only 100 percent of their regular salary/wages and not more). An employee may not receive short-term disability and paid family leave benefits at the same time, but may receive them consecutively where applicable as permitted by law. An employee who is eligible for both short-term disability benefits and paid family leave benefits during the

same 52-week period cannot receive more than 26 total weeks combined of disability and family leave benefits during that period of time.

### **My Firm Already Offers Paid Parental Leave. Does the Paid Family Leave Law Still Apply?**

Yes. The law covers circumstances beyond the birth, adoption or foster placement of a child where employees are entitled to paid leave. Where both paid family leave and parental leave policies are applicable, firms may require their paid parental leave policies to run concurrently with paid family leave. If an employee is entitled to receive payment under a firm policy, as well as paid family leave benefits, firms may request reimbursement from their insurance carrier for any paid family leave benefits (so that employees receive only 100 percent of their regular salary/wages and not more).

### **How Does My Firm Obtain Paid Family Leave Coverage?**

Firms are required to obtain paid family leave coverage or to self-insure. Paid family leave coverage will be automatically added to New York State Insurance Fund disability benefits policies effective January 1, 2018. Firms can choose to deduct the premium cost for their paid family leave policies from employees through a payroll deduction, or they can choose to cover the cost themselves.

### **Are There Notice Requirements?**

Yes. Firms are required to post notice of their compliance with paid family leave law. A printed notice describing paid family leave should be displayed in plain view, where employees and applicants can readily observe it. This notice will be provided by a firm's insurance carrier. For firms who choose to self-insure, this notice can be obtained by contacting [Certificates@wcb.ny.gov](mailto:Certificates@wcb.ny.gov). Firms should also update their employee handbooks to include a paid family leave policy and distribute the revised handbooks, highlighting the new law and policy in a cover letter or email to employees.

### **Where Can I Find Other Paid Family Leave Forms?**

Other paid family leave forms are available [here](#). Firms should make certain that they are familiar with these forms and policies.

**Contact Information**

If you have any questions regarding this alert, please contact the Akin Gump Strauss Hauer & Feld LLP lawyer with whom you usually work or:

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