

New York Releases Paid Family Leave Tax Guidance

On August 25, the New York State Department of Taxation and Finance issued guidance on the tax treatment of family leave contributions and benefits under the state’s paid family leave program, which will go into effect on January 1, 2018. The guidance confirms that employee contributions should be made on an after-tax basis, and paid family leave benefits that employees receive will be taxable income. Employers should review their payroll and reporting practices to ensure compliance.

Background

Enacted in 2016, New York’s Paid Family Leave Law (PFL) will go into effect January 1, 2018. When fully phased in, the PFL program will provide eligible employees up to 12 weeks of PFL benefits in a 52-week period to: care for a family member with a serious health condition; bond with a child; or deal with a qualifying exigency arising from a family member’s active military duty. Benefits will be employee-funded and administered through the state’s temporary disability insurance program. (See our [April 26, 2016](#) *For Your Information*.)

In June, the New York State Department of Financial Services set the premium rate for PFL benefits and the maximum employee contribution for the 2018 calendar year. (See our [June 19, 2017](#) *For Your Information*.) The following month the New York Workers’ Compensation Board finalized regulations implementing the new benefit. Among other things, the final regulations confirmed that employers could – but were not required to – begin collecting employee contributions for 2018 coverage as early as July 1, 2017. (See our [July 28, 2017](#) *For Your Information*.)

Notice N-17-12

On August 25, the New York State Department of Taxation and Finance issued Notice [N-17-12](#), providing guidance on the tax treatment of employee contributions and benefits under the state’s PFL program. The guidance, which was developed in consultation with the IRS, summarizes the program’s tax implications for New York employees and employers, as well as insurance carriers, self-insured employers, employer plans, approved third-party insurers, and the State Insurance Fund.



The guidance provides that:

- PFL benefits will be treated as taxable non-wage income that must be included in employees' federal gross income
- Taxes will not automatically be withheld from PFL benefits, but employees may request voluntary withholding
- Premiums will be deducted from employees' wages on an after-tax basis
- Employers should report employee contributions on IRS Form W-2 using Box 14 – State disability insurance taxes withheld
- PFL benefits should be reported by the State Insurance Fund on Form 1099-G and by all other payers (including self-insured employers) on Form 1099-MISC

Finally, the Department of Taxation and Finance reminds both employers and carriers that it is their responsibility to consult with their tax advisors.

In Closing

The New York State Department of Taxation and Finance guidance on the tax treatment of PFL contributions and benefits will be helpful to employers (including self-insured employers) and to others as they prepare for coverage in 2018. Employers should review their payroll and reporting practices and consult with their tax advisors to ensure compliance.

Authors

Nancy Vary, JD
Abe Dubin, JD

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