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Genesee Valley SHRM Paid Family Leave Update

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Paid Family Leave

- The act applies to nearly all private sector employers of one or more employees
 - Leave may be taken to participate in providing care, including physical or psychological care for a family member, to bond with the employee's child during the first twelve months after the child's birth, or the first twelve months after the placement of the child for adoption or foster care; or to prepare for a qualified military exigency as defined by the FMLA
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Family Member

- **Family member** means a spouse, child, parent, grandparent*, grandchild*, or domestic partner*
- **Child** means a biological, adopted, or foster son or daughter, a stepson or stepdaughter, a legal ward, a son or daughter of a domestic partner, or the person to whom the employee stands in loco parentis.



Family Member

- **Parent** means a biological, foster, or adoptive parent, a parent-in-law, a stepparent, a legal guardian, or other person who stood in loco parentis to the employee when the employee was a child
- **Grandparent** means a parent of the employee's parent
- **Grandchild** means a child of the employee's child
- **Spouse/Domestic Partner**



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Paid Family Leave

- January 1, 2018; up to 8 weeks of leave at 50% of the employees average weekly wage to a maximum of 50% of the state's average weekly wage;
 - January 1, 2019; up to 10 weeks of leave at 55% of the employees average weekly wage to a maximum of 55% of the state's average weekly wage;
 - January 1, 2020; up to 10 weeks of leave at 60% of the employees average weekly wage to a maximum of 60% of the state's average weekly wage;
 - January 1, 2021 and thereafter; up to 12 weeks of leave at 67% of the employees average weekly wage to a maximum of 67% of the state's average weekly wage.
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Employee Eligibility

- Full Time: Defined as those regularly working 20 or more hours per week
 - *After 26 weeks of employment*
 - Part Time: Defined as those regularly working less than 20 hours per week
 - *After 175 days of employment*
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Who's Covered?

- Public Entities
 - Out-of-State Employees
 - Collective Bargaining
 - Multiple Employers
 - Termination/Change of Employers
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Waivers

- Waivers
 - An employee whose regular work schedule is 20 hours or more per week but will not work 26 consecutive weeks
 - An employee whose regular work schedule is less than 20 hours per week and will not work 175 days in a consecutive 52-week period
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Employee Contribution

- June 1, 2017 (and September 1 thereafter); Superintendent of Financial Services shall set the maximum employee contribution
 - 2018: 0.126% of an employee's weekly wage up to the maximum of the state's average weekly wage ($\$1,305.92 \times 0.126\% = \1.65)
 - Employers may begin deducting employee contributions July 1, 2017
 - Taxability?
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Forms/Notices

- Poster
 - Handbook Language
 - Forms
 - Request for leave
 - Medical/Bonding certification
 - Release of information (HIPAA)
 - Military Exigency
 - Waiver
-



Employee Notice

- Foreseeable Leave – 30 days notice
 - Expected birth, placement
 - Planned medical treatment
 - Known military exigency
- Not foreseeable
 - “As soon as practicable”
 - Same or next business day
- Advance notice to carrier not required



Intermittent Leave

- “Day of Paid Family Leave” – any full day in which the employee was prevented from working because the employee used PFL
 - If an employer designates a period of family leave to be covered by the FMLA for a reason also covered by PFL - if the employer informs the employee of their eligibility for family leave benefits and the employee declines to apply for PFL payment - the employer and its insurance carrier may count the leave against the employee’s maximum duration of family leave in a 52 week period
 - Total of FMLA intermittent hours up to usual day of work when the employee is paid for hours of FMLA.
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PFL vs. FMLA

- PFL can run concurrently with FMLA
 - Cannot receive PFL and DBL benefits at the same time
 - “Child”
 - Bonding Leave
 - Intermittent
 - Limitations
 - Spouses working for same employer
 - Substitution of Paid Leave
 - Military Exigencies
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Leave for Birth, Adoption, or Foster Care

- Birth – leave to be taken within 52 weeks of date of birth
- **Including children born/placed prior to 1/1/2018**



Returning From Leave

- Employees returning from leave are entitled to return to their same or comparable position without loss of benefits they would have accrued otherwise
- Employers must continue the employees' health insurance during leave as if they were not on leave
- Denied Claims



Substitution of Paid Leave

- Maximum combined DBL and PFL leave is 26 weeks in 52 week period.
- An employer may offer an employee who has accrued but unused vacation/personal leave to choose whether to charge all or part of the family leave time to this unused time and receive full salary; or, to not charge benefit time and receive the benefit provided.



Medical Certification

- Health Care Provider information
- Date commenced/Probable duration
- Certification of patients health condition
- Estimate of frequency and duration of required leave
- Employee's responsibility to provide complete information to carrier



Serious Health Condition

An illness, injury, impairment, or physical or mental condition that involves:

- Inpatient care in a hospital, hospice or residential health care facility; or continuing treatment or continuing supervision by a health care provider



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Serious Health Condition

Continuing treatment/supervision:

- 3 or more continuous days unable to work, attend school, perform regular daily activities; plus...
 - Treatment two or more times by a HCP
 - At least one treatment that results in a regimen of continuing treatment under the supervision of a HCP

OR...



Serious Health Condition

Any period in which a family member is unable to work, attend school, perform regular daily activities due to a chronic serious health condition

- Continues over an extended period of time
- Requires periodic treatment by HCP
- May cause episodic rather than continuing incapacity (e.g. asthma, diabetes, epilepsy)

OR...



Serious Health Condition

- A long-term or permanent period during which a family member is unable to work, attend school, perform regular daily activities due to illness, injury, impairment, or physical or mental condition for which treatment may not be effective
- Under continuing supervision, though need not be receiving treatment (e.g. Alzheimer's, a severe stroke, or terminal stages of disease)

OR...



Serious Health Condition

A period during which a family member is unable to work, attend school, perform regular daily activities, or is otherwise incapacitated because he or she is receiving treatment (including any period of recovery therefrom) by a HCP for:

- Restorative surgery after an accident or other injury;
- A condition that would result in incapacity of more than 3 consecutive days in the absence of treatment (e.g. Cancer-chemotherapy/radiation, severe arthritis (PT), or kidney disease (dialysis))
- “Treatment”



Providing Care

- Close and continuing proximity
- Physical care, emotional support, visitation
- Assistance in treatment; transportation
- Arranging for a change in care
- Assistance with essential daily living matters and personal attendant services



Military Exigency

- As interpreted under FMLA
 - Spouse, domestic partner, parent, child
- Short notice deployment
- Financial/Legal arrangements
- Counseling
- Attend military events/activities
- Up to 15 calendar days for R&R leave
- Certain child care activities
- Post-deployment activities
- Parental care activities
- Military caregiver leave (26 weeks)



Resources

PFL Website

<https://www.ny.gov/programs/new-york-state-paid-family-leave>

Workers' Compensation Board Rules

<http://www.wcb.ny.gov/PFL/pfl-regs-text.jsp>
