

New York Legislature Approves Paid Family Leave Expansion for Bereavement and Organ Tissue Donation

By

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On the last day of the 2018 New York Legislative Session, lawmakers approved a measure that would expand access to the current New York Paid Family Leave benefit to employees experiencing bereavement due to the death of a family member.

If the Governor signs the bill (S.8380-A (Funke)/A.10639-A (Morelle)), employees may start utilizing the program for bereavement starting January 1, 2020.

The legislature also passed “The Living Donor Protection Act” (S.2496-B (Hannon)/A.297-C (Gunther)), which would grant Paid Family Leave Benefits to employees for transplant preparation and recovery from surgery related to organ or tissue donation. If signed into law by the Governor, employees may utilize the paid family leave program for such serious health conditions immediately.

Current Law

New York’s Paid Family Leave program provides employees in New York with a paid leave benefit for employees seeking to bond with a newly born, adopted, or fostered child; care for a close relative with a serious health condition; or assist loved ones when a family member is deployed abroad on active military service.

The benefit, when fully phased in by the year 2021, will allow employees to take up to 12 weeks of paid leave at 67 percent of the employee’s average weekly wage, capped at 67 percent of the state average weekly wage. The benefit is paid for through a weekly payroll deduction taken from employee paychecks, which is calculated as a percentage of the employee’s weekly wage, up to a cap set annually by state regulators. For more on program, see our article, [Final New York Paid Family Leave Regulations Released: What Employers Need to Know](#).

Paid Family Leave Bereavement Expansion

The legislation expanding paid family leave for bereavement would make leave available to employees who experience the death of a family member. As the bill is written, “family member” would utilize the current statutory definition that encompasses the employee’s child, parent, grandparent, grandchild, spouse, or domestic partner. The death certificate of the employee’s family member will be used as proof by an employee seeking bereavement leave.

Unlike other eligibility criteria (such as the birth of child, which must be used during the first 12 months after the child’s birth), leave for bereavement does not have set parameters and could be taken at any time after the death of a family member. It is also not certain if leave for bereavement must be taken consecutively or may be used intermittently over a longer period, until the full 12 weeks are exhausted.

Paid Family Leave Living Donor Protection Act Expansion

The Living Donor Protection Act, which seeks to promote organ and tissue donation, includes a provision expanding the definition of “serious health condition” to include transplant, preparation, and recovery from surgery related to organ or tissue donation. The purpose behind this expansion is to provide employees who choose to undertake such a donation the ability to utilize the state’s Paid Family Leave program.

All Eyes on the Governor

With the Governor experiencing a primary and a general election, it is not certain when the proposals will be sent to the Governor.

The Governor has three options when the legislation is sent to him. He can choose to veto, sign the legislation into law, or negotiate amendments made contingent to his signing the bill that may add clarity to the statute for both employers and disability benefit providers who sell disability and paid family leave coverage.

The Jackson Lewis Government Relations and Disability, Leave and Health Management practices will continue to monitor New York’s regulatory and legislative developments and provide updates. Please contact us if you have any questions.

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