

## LABOR & EMPLOYMENT LAW ALERT

### UPDATED: Governor Signs Paid Family Leave Policy into Law

On April 4, 2016, Governor Cuomo signed legislation as part of the State's 2016-2017 budget to phase in a plan to require certain employers to provide employees with up to 12 weeks of paid family leave when caring for an employee's infant, a family member with a serious health condition or to relieve family pressures when a family member (including a spouse, domestic partner, child or parent) is called to military active services. Paid leave to care for a family member includes leave to care for a child, parent, grandchild, grandparent, spouse or domestic partner.

Employers should note that the new paid family leave benefit will be phased in gradually. Beginning in 2018, benefits will be phased in to provide up to 8 weeks of paid leave at 50% of an employee's average weekly wage, capped at 50% of the statewide average weekly wage. Benefits will be fully implemented in 2021 at 67% of an employee's average weekly wage, capped at 67% of the statewide average weekly wage.

This new benefit will be funded by a weekly employee payroll deduction of about \$1 per employee.

**Covered Employers:** As with New York State statutory short-term disability benefits, the paid family leave requirements pertain only to "any person, partnership, association, corporation, legal representative of a deceased employer, or the receiver or trustee of a person, partnership, association or corporation, who has persons in employment" and, as a general rule, not to the state, municipal corporations, local governmental agencies, other political subdivisions or public authorities.

Non-covered employers, including governmental employers, may voluntarily elect coverage in the manner described by the law. However, specific provisions of the statute apply to the election of family leave benefits for public employees who are represented by employee organizations (unions). Those terms include:

- Public employers and public employee organizations may collectively bargain, or "opt-in" to paid family leave benefits for public employees the organization represents; and

- In the absence of any contrary statement in a collective bargaining agreement, public employers may require public employees who are opted in to paid family leave benefits to pay the maximum employee contribution.

For public employees who are not represented by a union, the public employer may opt in to paid family leave benefits on a 90-day notice to such employees.

Employees are eligible to participate after having worked for their employer for a period of six months. Unlike short-term disability benefits, there is no waiting period; that is, family leave benefits are payable to eligible employees running from the first full day when family leave is required. Benefits may also be payable to an employee for paid family leave taken intermittently or for less than a full work week in increments of one fifth of the weekly benefit. The law permits employers to offer eligible employees taking paid family leave the option to charge all or part of such leave to accrued vacation or personal leave, subject to the employer's right to request reimbursement.

The law also provides that unless an employer expressly permits otherwise, the FMLA leave and paid family leave benefits must be used concurrently. Note, however, that this provision of the law does not relieve an employer from any collective bargaining duty with respect to such leave terms.

The legislation also prohibits retaliation against employees for use of paid family leave.

*Given the length of the phase-in period, no significant guidance exists yet regarding the paid family leave legislation. Eventually, employers will need to adjust their leave policies and practices to address this new form of paid leave. We will keep our clients abreast of developments in this area as they arise.*

**Please do not hesitate to contact one of our Firm's labor and employment law attorneys identified below if you would like more information on this issue.**

Melinda Burdick Bowe	315.565.4507	<a href="mailto:mbowe@hancocklaw.com">mbowe@hancocklaw.com</a>
John F. Corcoran	315.565.4515	<a href="mailto:jcorcoran@hancocklaw.com">jcorcoran@hancocklaw.com</a>
Lindsey H. Hazelton	315.565.4527	<a href="mailto:lhazelton@hancocklaw.com">lhazelton@hancocklaw.com</a>
Whitney M. Kummerow*	315.565.4517	<a href="mailto:wkummerow@hancocklaw.com">wkummerow@hancocklaw.com</a>
John T. McCann	315.565.4540	<a href="mailto:jmccann@hancocklaw.com">jmccann@hancocklaw.com</a>
Robert J. Thorpe	315.565.4555	<a href="mailto:rthorpe@hancocklaw.com">rthorpe@hancocklaw.com</a>
Robert C. Whitaker, Jr.	315.565.4557	<a href="mailto:rwhitaker@hancocklaw.com">rwhitaker@hancocklaw.com</a>

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\*Admitted to practice in NJ and PA only