

LEGAL ALERT
COSTELLO, COONEY & FEARON, PLLC

BILL PASSED BY NEW YORK STATE SENATE AND ASSEMBLY WOULD PROVIDE
UP TO TWELVE WEEKS PAID BEREAVEMENT LEAVE TO NEW YORK
WORKERS

On the last day of the June legislative session, the New York State Senate passed a bill that would permit New York workers to utilize up to 12 weeks of paid bereavement leave from the Paid Family Leave (“PFL”) benefit that went into effect 5 months ago. The bill (S.8380A/A10639A) promises to expand the PFL to provide access to paid bereavement leave following the death of a family member. PFL benefit coverage is mandatory for private employers with more than one employee, unless an exception applies. Public sector employers are generally exempt from the mandate to provide paid family leave to their employees; however, public employers may elect to provide voluntary coverage to employees and are obligated to negotiate with any unions over the extension of such benefits.

The bill defines “family member” to include children, parents, parents-in-law, spouses, grandchildren, grandparents, or domestic partners. While the extension of family leave access purports to increase employee morale, loyalty, and productiveness, businesses in New York State are concerned that the law will make it increasingly difficult to contain costs and ensure productivity. Unlike paid leave for child birth or adoption, which must take place within in the first 12 months following the child’s birth or placement, there is no timetable set for the bereavement leave.

For those workers that apply for PFL for bereavement, a death certificate serves as satisfactory proof for the need for bereavement leave. In addition to leave for bereavement, if signed by Gov. Cuomo, the act would take effect January 1, 2020.

Under the PFL, employees in New York State will be entitled to 12 weeks, paid at a rate proportional to the employee’s typical compensation. For example, if a worker’s average weekly wage is \$600, the worker will be eligible for 50% of the weekly wage, or \$300. The weekly PFL benefit is capped at 50% of the New York State weekly average, of \$652.96. As the law phases in, the percent of benefits to which workers are entitled will increase to 67% by 2021. In addition to compensation, the employee is guaranteed a comparable employment position upon his or her return, and the employer may not interrupt the employee’s health benefits during the paid leave.

This leaves few options for an employer seeking to replace lost productivity while an employee is on bereavement leave. Other employees may have to work overtime to pick up the duties and responsibilities of the employee on leave. Alternatively, the business may hire a temporary replacement, especially if the employer is a small business owner that provides a type of service. These alternative measures may be costly and time-consuming.

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