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SOFTWARE

Compliance Hot Topics NYC APA Meeting

Presenter: Brian Garrett, Compliance Advisor

People first.

About me

- Worked in payroll and benefits since 1996
- Certified Public Accountant – 2002
- Certified Payroll Professional – 2012
- Previous employers include AutoNation, Royal Caribbean Cruises, Intel, NextEra Energy
- Currently the Wage and Hour Compliance Advisor for Ultimate Software



Brian Garrett, CPA, CPP

Brian_garrett@ultimatesoftware.com



Agenda

- Paid Family Leave
 - New York
 - District of Columbia
 - Washington
- Paid Sick Leave for New York City and New Jersey
- Other Hot Topics:
 - New York Overtime Updates
 - GDPR

New York Paid Family Leave

Summary

Benefit

Eligibility

Timeline

Funding

Forms



May be used for...



Baby

- Maternity & Paternity Leave (first 12 months after birth, adoption or fostering)



Close Relative

- Caring for a close relative with a serious medical condition



Military

- Active duty deployment of spouse, domestic partner, child or parent

Is PFL the same as SDI?

Not the same as employee disability leave



Note: Self-employed and public employers may opt-in to the program by submitting an application to the Workers' Comp Board



Effective and Eligible



Fulltime – employees who work 20 hours or more per week after 26 consecutive weeks



Part-time – employees who work less than 20 hours per week after 175 hours



Employees who do not meet the above conditions (e.g. seasonal or temporary) may opt-out of the benefit

Other Considerations

- Spouses who work for the same employer may not take the same time off for the same reason
- Not eligible if already taking workers comp leave of absence
- Employers who provide paid family leave benefits of “at least as favorable” as the mandated benefit may choose to opt-out of the program
- Leave may be taken in one day increments
- Undocumented workers are eligible



Employer Responsibilities

Employer Responsibilities

- Provide benefit coverage through insurance provider (generally the same as SDI)
- Update payroll to withhold employee deductions
- Post *Notice of Compliance* from insurance provider in a conspicuous place
- Inform employees of new benefit
- Maintain existing health coverage on leave
- Provide waivers to non-eligible employees so they may opt-out

Employee Responsibilities

- Non-eligible employees may opt-out, submit waiver form to provider
- If practicable, give employer 30 days notice before leave begins
- Submit forms for paid family leave

Phase-in period



| Year | Weeks Available | Max % of Employee Average Weekly Wage | Cap % of State Average Weekly Wage |
|------|-----------------|---------------------------------------|------------------------------------|
| 2018 | 8 | 50% | 50% |
| 2019 | 10 | 55% | 55% |
| 2020 | 10 | 60% | 60% |
| 2021 | 12 | 67% | 67% |

2018
\$652.96 per week

Source: New York State Paid Family Leave website

Guidance from Dept. of Taxation

- Benefits paid to employees will be taxable non-wage income that must be included in federal gross income
- Taxes will not automatically be withheld from benefits; employees can request voluntary tax withholding
- Premiums will be deducted from employees' after-tax wages
- Employers should report employee contributions on Form W-2 using Box 14 – State disability insurance taxes withheld
- Benefits should be reported by the State Insurance Fund on Form 1099-G and by all other payers on Form 1099-MISC

Source: NY Dept. of Taxation and Finance Notice N-17-12



People first.

Funding

- Employee funded
- New York State Average Weekly Wage (NYSAWW)
 - \$1,305.92 in 2016 (used for 2018 benefit calculation)
 - Adjusted each July
 - Published by the New York Department of Labor's Research and Statistics Division
- 2018 Funding Rate = .126% of NYSAWW
- **2018 Weekly Limit = \$1.65** ($\$1,305.92 \times .126\%$)
- Employers may pay for the insurance premium



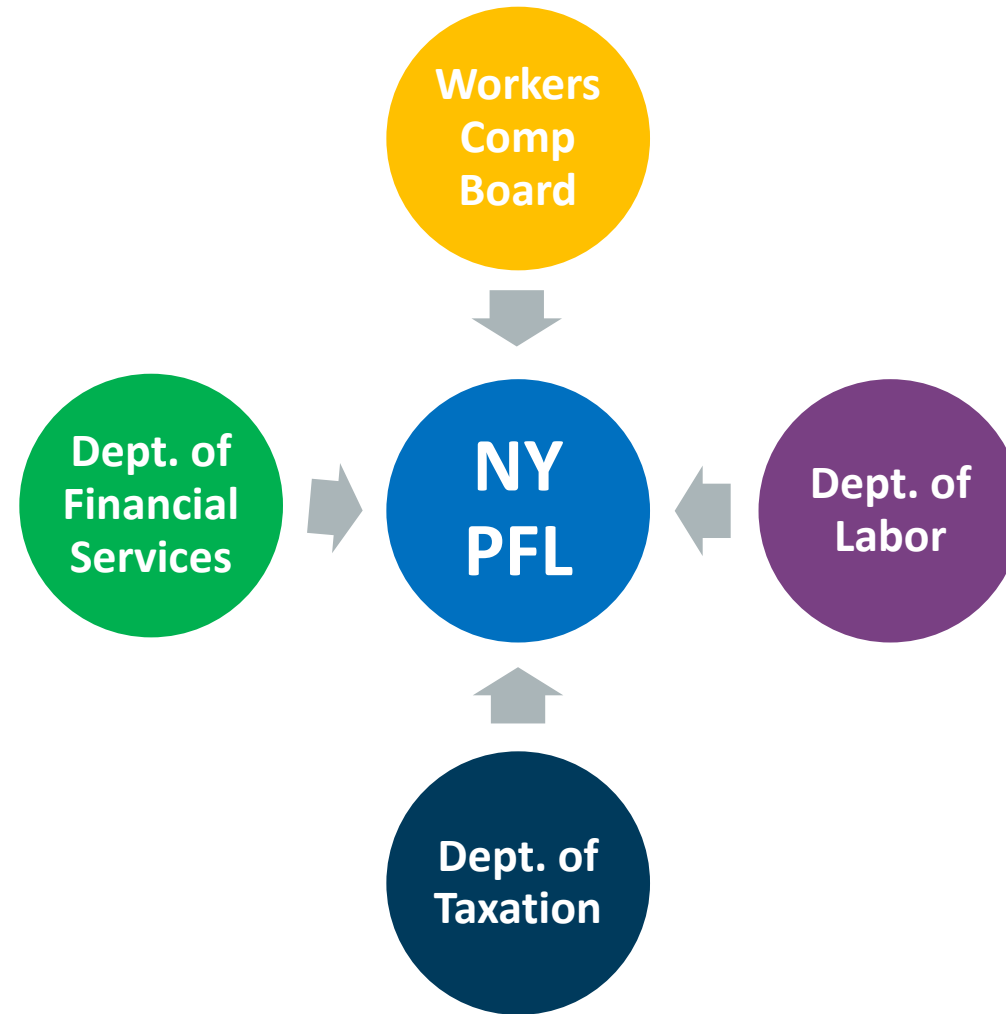
Source: https://labor.ny.gov/stats/avg_wkly_wage.shtm

Benefit Providers

- Benefit may be administered by:
 - Private insurance company (same as NY SDI provider)
 - State Insurance Fund
 - Self-insured
- Benefit paid by plan administrator



New York State



Employee Forms Available

Form PFL-1 = Request for Paid Family Leave (Part A completed by employee; Part B completed by employer)

Form PFL-2 = Bonding Certification

Form PFL-3 = Release of Personal Health Information Under the Paid Family Leave Law

Form PFL-4 = Healthcare Provider Certification for Care of Family Member with Serious Health Condition

Form PFL-5 = Military Qualifying Event

Form PFL-Waiver = Employee Opt-out of Paid Family Leave Benefits

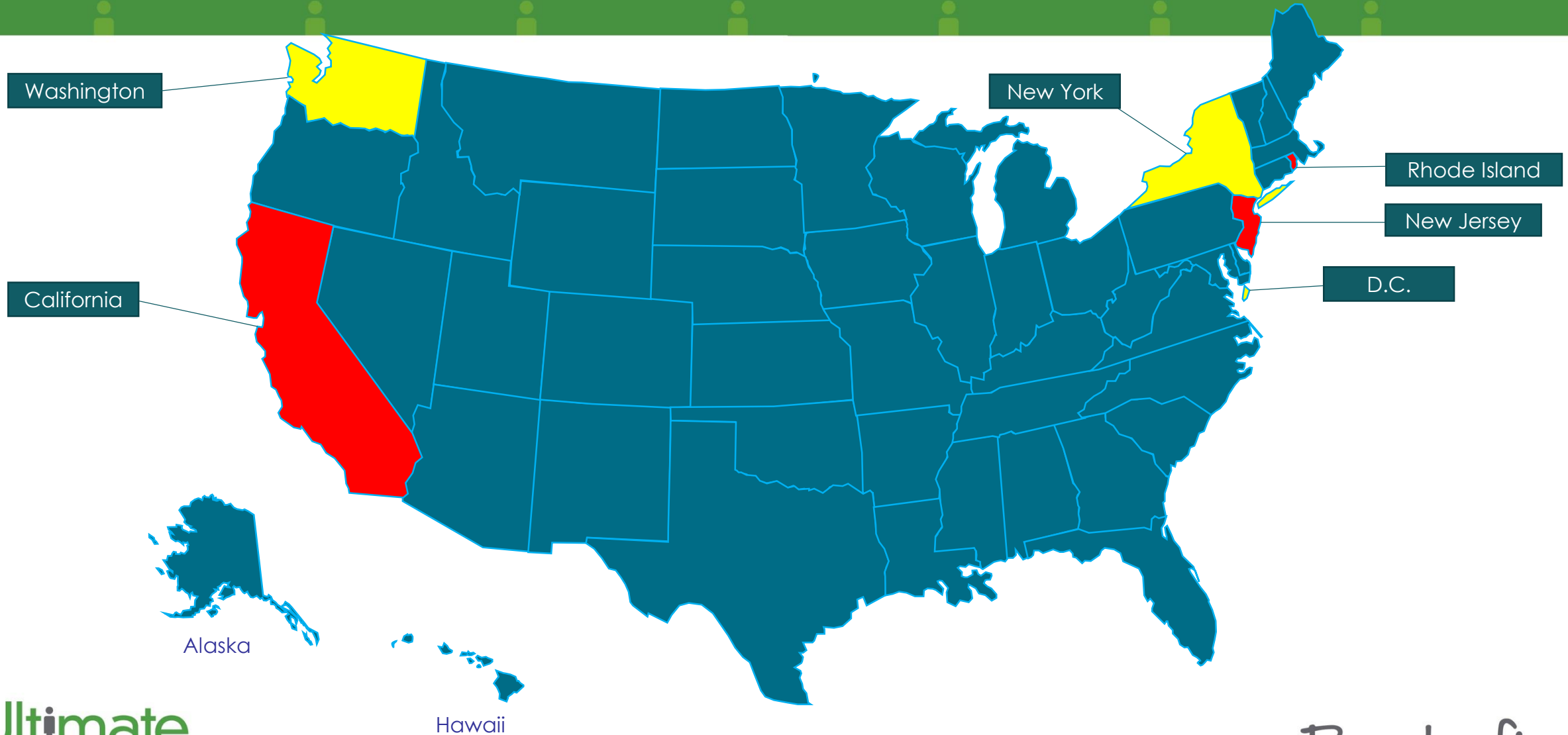
Employer Forms Available

Form PFL-135 =
Employer's Application
for Voluntary Coverage
(No Employee
Contribution)

Form PFL-136 =
Employer's Application
for Voluntary Coverage
(Employee
Contribution Required)

Resource: <https://www.ny.gov/new-york-state-paid-family-leave/paid-family-leave-employer-and-employee-forms-0>

States with Paid Family Leave Laws



D.C. Universal Paid Family Leave

Summary

Benefit

Eligibility

Next Steps



Summary



Baby

- Birth of a child, adoption or permanent assumption of parental responsibilities



Close Relative

- Caring for a close relative with a serious medical condition

Employer payroll tax of .62%

Effective July 1, 2020

Benefits capped at \$3,000 per week indexed to inflation

Provides up to 16-weeks of PFL within a 12-month period



Controversies

- Law is vehemently opposed by business organizations
- Mayor Muriel Bowser did not sign the bill; law was made final after the U.S. Congress allowed the review period to lapse
- Possible changes may be enacted before the laws' implementation



Next Steps

Mayor's office has the responsibility to provide guidance and regulations on the administration of the new law including providing enrollment forms

Employers should keep an eye on changes in 2018 and plan to implement the new payroll tax of .62% beginning July 2019

Employers will need to update their employee handbooks with the new benefit once it is in effect

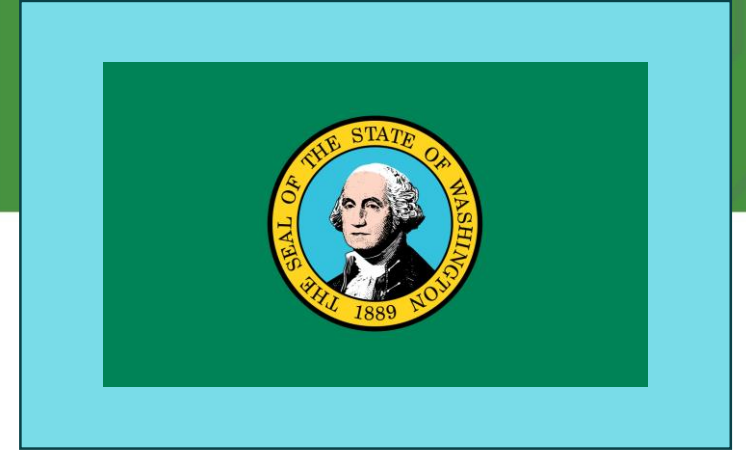


Washington Paid Family Leave

Summary



Summary



- Effective January 1, 2020
- May be used for:
 - ✓ Birth of a child, adoption or permanent assumption of parental responsibilities
 - ✓ Caring for a close relative with a serious medical condition
 - ✓ Care for own serious health condition
 - ✓ Active duty deployment of spouse, domestic partner, child or parent
- Provides up to 12-weeks of PFL within a 12-month period
- Premium rate is .4% of employee taxable wage base
- Maximum benefit is \$1,000 per week, adjusted annually

NYC Paid Sick Leave

- Summary
- Benefit

New Jersey Paid Sick Leave

- Jurisdictions
- Summary
- Benefit

Paid Sick Leave for NYC and NJ

New York City Paid Sick Leave

New York - New York City

The following information provides a brief overview of paid sick time legislation.

New York City's Earned Sick Time Act

<http://www1.nyc.gov/site/dca/about/paid-sick-leave-law.page>

| | |
|----------------|--|
| Effective Date | 7/1/2015 |
| Eligibility | Eligible when working more than 80 hours within a year in the locality. Part time and temporary employees are eligible. Keep employee records for three years. |
| Waiting Period | Begin using sick time 120 days after hire date. |
| Rehire | If rehired within six months, unused accrued sick time is reinstated. |
| Accrual | Accrue one hour for every 30 hours worked. |
| Plan Limits | Employers can require a maximum of 40 accrued per year. Employers can require the incremental use of four hours or less per request. |
| Carry Over | Carry over up to 40 hours per year. |
| Payout Rate | Payout sick time at the regular hourly rate at the time of the request. Tipped employees payout sick time at the minimum wage. Commissioned employees are paid out at the base wage or minimum wage. |



New Jersey Paid Sick Leave

Statewide
in 2018?

New Jersey

Bloomfield

East Orange

Elizabeth

Irvington

Jersey City

Montclair

Morristown

Newark

Passaic

Paterson

Trenton 26



Newark Paid Sick Leave

New Jersey - Newark

The following information provides a brief overview of paid sick time legislation.

City of Newark Paid Leave Law

<http://www.ci.newark.nj.us/government/departments/health-and-community-wellness/>

| | |
|----------------|--|
| Effective Date | 5/28/2014 |
| Eligibility | Eligible when working 80 or more hours within a year in the locality. Part time and temporary employees are eligible. |
| Waiting Period | Begin using sick time 90 days after hire date ←NYC=120 Days |
| Rehire | If rehired within six months, unused accrued sick time is reinstated. |
| Accrual | Accrue one hour for every 30 hours worked. |
| Plan Limits | Employers with less than 10 employees can require an accrual limit of 24 hours per year. Employers with 10 or more employees can require a maximum of 40 hours accrued per year. Employers can require the incremental use of one hour or less per request |
| Carry Over | Carry over up to 40 hours per year. ↑ NYC=allow max 40 hour accrued; min 4 hour incremental use |
| Payout Rate | Payout sick time at the regular hourly rate or minimum wage, whichever is greater. ↑NYC=payout at regular hourly rate at time of request, tipped employees at min wage, commissioned employees at base or minimum wage |

Federal Parental Leave Efforts

- Pres. Trump's 2018 budget proposal for a 6-week paid parental leave benefit championed by Ivanka Trump
- Paid Family Leave Tax Credit - championed by Nebraska GOP Sen. Deb Fischer - included in the latest senate tax bill making its way through Congress

Ex: If a worker is being paid 50 percent of his or her normal wages, for example, the credit would be 12.5 percent. That percentage would rise with the rate of pay, up to a maximum of 25 percent.

New Paid Sick Leave Legislation

S. 337 - Family and Medical Insurance Leave Act or the FAMILY Act – Sponsor: Senator Kirsten E. Gillibrand (D) N.Y.



- The bill entitles every individual to a family and medical leave insurance (FMLI) benefit payment for each month beginning on the first day of the month in which the individual meets the criteria specified below and ending 365 days later (benefit period), not to exceed 60 qualified caregiving days per period.

1% chance

Source: Skopos Labs

29



Other Hot Topics

- NY Overtime Updates
- GDPR

NYC Overtime Updates

(I) New York City for

(i) Large employers of eleven or more employees

\$825.00 per week on and after December 31, 2016;
\$975.00 per week on and after December 31, 2017;
\$1,125.00 per week on and after December 31, 2018;

(ii) Small employers of ten or fewer employees

\$787.50 per week on and after December 31, 2016;
\$900.00 per week on and after December 31, 2017;
\$1,012.50 per week on and after December 31, 2018;
\$1,125.00 per week on and after December 31, 2019;



Source: New York Wage Order 12 NYCRR 142

NYS Overtime Updates

(2) Remainder of downstate (Nassau, Suffolk and Westchester counties)

\$750.00 per week on and after December 31, 2016;
\$825.00 per week on and after December 31, 2017;
\$900.00 per week on and after December 31, 2018;
\$975.00 per week on and after December 31, 2019;
\$1,050.00 per week on and after December 31, 2020;
\$1,125.00 per week on and after December 31, 2021;

(3) Remainder of state (outside of New York City, Nassau, Suffolk and Westchester counties)

\$727.50 per week on and after December 31, 2016;
\$780.00 per week on and after December 31, 2017;
\$832.00 per week on and after December 31, 2018;
\$885.00 per week on and after December 31, 2019;
\$937.50 per week on and after December 31, 2020.

Source: New York Wage Order 12 NYCRR 142

GDPR



What is GDPR?

**General Data Protection
Regulation**



When is it effective?

May 25th, 2018



Why is it important?

Penalty up to 20M EUR or
4% company revenue



Who is Covered?

EU residents

GDPR Details



Consent

Data subject provides a clear, voluntary affirmative action signifying agreement to the processing of personal data relating to him or her. Consent is given to the company (controller), not Ultimate (processor).



Data Portability

Controllers must provide the data in a commonly used and “machine readable” format, and data subjects have the right to transmit that data to any other controller.



Right to be Forgotten

Individuals have a right to have personal data erased and to prevent processing in specific circumstances. Data retention laws take precedence over the request.

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QUESTIONS?