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New York paid family leave benefits are taxable, contributions must be made on after-tax basis

After discussions with the Internal Revenue Service and its review of other legal sources, the New York Department of Taxation and Finance issued guidance regarding the tax implications of its new paid family leave program, which effective January 1, 2018, establishes a system of insurance for paid family leave (PFL) with the premium paid by employees through payroll deduction. ([N-17-12](#), August 2017.)

According to the Department, the following is the tax treatment of PFL contributions and benefits:

- **Tax treatment of PFL benefits.** Benefits paid to employees are taxable wages for New York state and local income tax purposes and also must be included in federal wages subject to federal income tax, federal income tax withholding, and Social Security/Medicare (FICA) tax. (Further, PFL benefits are included in federal and New York state unemployment insurance wages since they are not exempt under IRC §105/§106, as are disability benefits.)
- **Income tax withholding from PFL benefits.** Federal and New York income tax will not automatically be withheld from PFL benefits; employees can request voluntary withholding of these taxes.
- **No pretax deductions allowed.** PFL premium payments cannot be deducted on a pretax basis from wages. They must be withheld from employees' after-tax wages
- **Form W-2, box 14 reporting.** Employers should report employee PFL contributions on Form W-2 using Box 14 - "State disability insurance taxes withheld."
- **Reporting of PFL benefits.** PFL benefits are reported by the New York State Insurance Fund on Form 1099-G while Form 1099-MISC is used by all other entities paying benefits (e.g., private insurance carrier or the employer's self-insured fund.)

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It is important that employers differentiate between New Jersey disability insurance/benefits and paid family leave insurance/benefits as their tax treatment differs. Disability benefits are subject to federal and New York income tax only to the extent that the employer pays the insurance premium. In contrast, paid family leave benefits are subject to income tax regardless of who pays the premium. See our special report on third-party sick pay [here](#).

Employers should also note that although PFL premiums are not paid with their New York payroll tax returns, they are still required to report PFL premiums they pay in Form W-2, box 14. This Form W-2 reporting should not create reconciliation issues that would result in notices from the New York Department of Taxation and Finance.

The Department's statement that it conferred with the IRS in arriving at the conclusion that PFL is taxable is instructional as it relates to the federal payroll tax treatment of PFL programs in other states (New Jersey and Washington). Employers should be certain they have a separate earning code established for PFL benefits and deduction code for PFL employee contributions.

For more on the new paid family leave program, see *EY Payroll NewsFlash* Vol. 18, #100 (6-7-2017). See also the state's paid family leave [website](#).

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