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New York Releases Guidance on Paid Prenatal Leave Law Taking Effect January 1, 2025

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The New York State Department of Labor (NYDOL) has issued informal guidance regarding the Paid Prenatal Leave benefit that will be available to New York employees beginning January 1, 2025. The guidance includes general information about the new benefit, as well as a Frequently Asked Questions page.

As we previously reported, the State's 2025 fiscal year budget expanded the New York State Paid Sick Leave Law to include a requirement for employers to provide up to 20 hours of paid leave during any 52-week period for employees to attend prenatal appointments or obtain health care services during or related to their pregnancy. Paid Prenatal Leave does not accrue and is available to employees immediately upon a covered need for same. Paid Prenatal Leave may be taken in 1 hour increments.

The newly issued guidance provides some additional details around the new benefit. Some key points from the guidance are as follows:

Employer and Employee Coverage

The guidance emphasizes that Paid Prenatal Leave is available to all private sector employees regardless of employer size and without regard to full-time/part-time or overtime exempt/non-exempt status.

Employees may begin using Paid Prenatal Leave at any time and do not need to have worked for their employer for a minimum amount of time before accessing the benefit.

Using Paid Prenatal Leave

The guidance provides that Paid Prenatal Leave covers health care services received by an employee during their pregnancy or related to such pregnancy, including physical examinations, medical procedures, monitoring and testing, and discussions with a health care provider related to the pregnancy. This includes fertility treatment or care appointments (including in vitro fertilization) and end-of-pregnancy care appointments.

However, Paid Prenatal Leave may not be used:

- by an employee other than the employee directly receiving prenatal health care services (e.g., the benefit does not cover spouses or partners of the pregnant person); or
- for post-natal or postpartum appointments.

The 20 hours of Paid Prenatal Leave are available once in a 52-week period, measured forward from the date an employee first uses Paid Prenatal Leave time. In the event of multiple pregnancies in a single 52-week period, only a total of 20 hours of Paid Prenatal Leave time may be taken across all pregnancies.

Interplay of Paid Prenatal Leave and Other Leave Benefits

An open question following enactment of the Paid Prenatal Leave Law was whether employers that already provide paid time off beyond what is statutorily required under the New York State Paid Sick Leave Law (*i.e.*, either 40 or 56 hours of sick leave depending on employer size) are required to provide an additional bank of 20 hours for prenatal care purposes. To that end, the guidance states that Paid Prenatal Leave is "in addition to existing leave policies and the NYS Sick Leave Law" and "provides a separate benefit from other leave policies and laws." Therefore "[e]mployees are entitled to 20 hours of Paid Prenatal Leave in addition to any other available leave options."

The guidance also emphasizes that while prenatal health care and appointments may also be a covered reason for leave under the New York State Paid Sick Leave Law or other existing employer leave policies, an employer cannot require an employee to choose one leave type over another or require an employee to exhaust one type of leave before using Paid Prenatal Leave.

Requiring Medical Documentation Not Permitted

The guidance states that employers cannot ask employees to disclose confidential information about their health conditions in order to use Paid Prenatal Leave, nor can employers require employees to submit medical records or documents in connection with their use of the benefit.

Employees should request Paid Prenatal Leave “like any other time off by using existing notification/request procedures within their workplaces.” The guidance also states that the NYDOL “encourages employees to give employers advanced notice of leave requests and encourages employers to communicate how to request leave to their employees.”

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New York employers are advised to review their leave policies to ensure that eligible employees have access to the new Paid Prenatal Leave benefit beginning on January 1.

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