Andrew M. Cuomo
Governor

Maria T. Vullo
Superintendent

Decision on Premium Rate for Family Leave Benefits and Maximum Employee Contribution for Coverage Beginning January 1, 2019

This Decision sets forth the Superintendent's determination regarding (1) the increase in Family Leave Benefits for the 2019 calendar year, pursuant to Workers Compensation Law § 204(2), and (2) the premium rate for Family Leave Benefits for the 2019 calendar year, pursuant to Insurance Law § 4235(n)(1).

Introduction

On April 4, 2016, Governor Andrew M. Cuomo signed into law New York's Paid Family Leave program, the most comprehensive paid family leave program in the United States. Under this law, commencing January 1, 2018, all eligible employees in New York have been able to take time off, while still being paid a portion of their income, to bond with a new child, to care for a family member with a serious health condition, or to handle personal matters arising from an immediate family member being called to active duty in the Armed Forces of the United States. In the first year of New York Paid Family Leave (2018), eligible employees receive 50% of their average weekly wage up to 50% of the statewide average weekly wage for up to 8 weeks of leave. In the second year of the program, which will commence on January 1, 2019, the maximum benefit will be 55% of the employee's average weekly wage, up to 55% of the statewide average weekly wage for up to 10 weeks of leave, unless the Superintendent of the Department of Financial Services ("DFS") determines to delay the increase in benefits pursuant to Workers Compensation Law § 204(2).

As provided by Insurance Law § 4235(n)(1), in a decision dated June 1, 2017, the Superintendent, in consultation with the Chair of the Workers' Compensation Board, determined that paid family leave benefits coverage issued pursuant to Article 9 of the Workers' Compensation Law ("Family Leave Benefits") shall be community rated. Community rating ensures that all employees are similarly treated and are not subject to cost variations based upon age, gender, geographic location, or any other demographic factor.

Insurance Law § 4235(n)(1) provides that the Superintendent shall establish the premium rate for community rated family leave benefits coverage, applying commonly accepted actuarial principles. Specifically, the Superintendent shall, by September 1 of each year, publish the rate for the policy period beginning on the following January 1. The Superintendent shall also set the maximum employee contribution for Family Leave Benefits pursuant to Workers' Compensation Law § 209(3)(b). The maximum employee contribution is the maximum amount a covered employer is authorized to collect from each of its employees to fund Family Leave Benefits. The maximum employee contribution shall equal the premium rate for Family Leave Benefits.

Increase in 2019 Paid Family Leave Benefits

Pursuant to Workers Compensation Law § 204 (2), Family Leave Benefits will increase to 55% of the employee's average weekly wage, up to 55% of the statewide average weekly wage, for up to 10 weeks of leave. The statute authorizes the Superintendent to delay these increases in Family Leave Benefit levels by one or more calendar years. In determining whether to delay the increases in the Family Leave Benefits for any year, the Superintendent shall consider: (1) the current cost to employees of the family leave benefit and any expected change in the cost after the benefit increase; (2) the current number of insurers issuing insurance policies with a family leave benefit and any expected change in the number of insurers issuing such policies after the benefit increase; (3) the impact of the benefit increase on employers' business and the overall stability of the program to the extent that information is readily available; (4) the impact of the benefit increase on the financial stability of the disability and family leave insurance market and carriers; and (5) any additional factors that the Superintendent deems relevant.

Based on data available to the Department regarding enrollment, claims and anticipated impact on insurers, employers and enrollees, and consideration of the factors outlined above, the Superintendent has determined to apply the statutory increases in Family Leave Benefits for calendar year 2019. Accordingly, pursuant to Workers Compensation Law § 204(2)(a), Family Leave Benefits will increase to 55% of the employee's average weekly wage, but not to exceed 55% of the statewide average weekly wage, for up to 10 weeks of leave.

2019 Premium Rate for Family Leave Benefits and Maximum Employee Contribution

New York's Paid Family Leave program was first implemented commencing on January 1, 2018. For 2018, twenty-seven insurers are offering Paid Family Leave coverage. In determining the community rate for 2019, DFS has reviewed claims, demographic, financial and other Paid Family Leave data for the first six months of 2018 for the Paid Family Leave program in New York, consistent with actuarial principles. DFS also has reviewed claims and demographic data for New York's disability coverage, as disability insurers are required to include Family Leave Benefits coverage as a rider to their disability policies. In addition, DFS has reviewed available data from other states with enacted paid family leave programs (New Jersey, California and Rhode Island), adjusting for differences between the programs in those states and New York's more robust family leave benefits program. DFS also has reviewed information and data from the New York State Department of Labor, the United States Census Bureau and other relevant sources.

To predict the Family Leave Benefits claims for the 2019 calendar year, DFS considered all relevant actuarial factors, including but not limited to:

(i) Six months of paid claims experience data from the Paid Family Leave program in New York with runout through June 30, 2018, and historical experience data from similar programs in other states with adjustments for differences in benefits and events that had occurred but were not yet reported. Data analyzed included:
   a. Average claim frequency factors;
   b. Average claim duration factors;
   c. Average weekly benefit factors; and

d. Average covered payroll of the population making payroll contributions to the program

(ii) Anticipated shift of claims in New York from disability benefits to Paid Family Leave Benefits due to the higher benefits available;

(iii) Coverage for children born in a 12 month period prior to the submission of a claim, including children born in 2018;

(iv) Calculation of aggregate claims costs for newborn, adoptive, and foster care bonding, family care and military leave; and

(v) Allocation for administrative expenses, profit and loss ratio.

The premium rate, like the Family Leave Benefits, is set as a percentage of an employee's income. Thus, the premium paid by an employee depends on how much an employee earns: those earning less will pay a lower premium, and those earning more will pay a higher premium as they are eligible for higher benefits, up to the maximum Family Leave Benefits for 2019 of 55% of the statewide average weekly wage. Employees whose income is at or above the statewide average weekly wage are eligible only for the maximum Family Leave Benefit, and therefore their premiums will be a percentage of the statewide average weekly wage.

Accordingly, based on commonly accepted actuarial principles, the Superintendent has determined that the premium rate for Family Leave Benefits for coverage beginning January 1, 2019 shall reflect the increase in benefits for 2019, determined as 0.153% of an employee's gross wages each pay period up to and not to exceed an annual maximum employee contribution of $107.97. If an employee's contributions reach the annual maximum employee contribution of $107.97 before the end of the calendar year, the employee shall not be liable for any additional contributions for that year. Employers shall collect employee contributions consistent with this Decision.

DFS reminds insurers that by law, statutory disability insurers must provide Family Leave Benefits coverage. DFS strongly encourages all statutory disability insurers to continue in the market. The Superintendent may take into account the special and unique value to the public of the combined policy for disability and Family Leave Benefits in considering whether the statutory disability loss ratio standards should be adjusted.

All relevant insurers in New York are requested to forward all Family Leave Benefits policy form and rate submissions through the SERFF filing process. Policy form and rate submissions are due October 1, 2018. Insurers are directed to the DFS website for submission instructions, Model Rider and PFL SERFF checklist.

Dated: August 31, 2018

Maria T. Vullo
Superintendent of Financial Services