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, 2018.

Introduction

On April 4, 2016, Governor Andrew M. Cuomo signed into law the legislation enacting New York's Paid Family Leave program, the most comprehensive paid family leave program in the United States. Commencing January 1, 2018, all eligible employees will be able to take time off, while still being paid a portion of their income, to bond with a new child, care for a family member or 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 will receive 50% of their average weekly wage up to 50% of the statewide average weekly wage for up to 8 weeks of leave. When the program is fully phased in, the maximum benefit will be 67% of the employee's average weekly wage, up to 67% of the statewide average weekly wage for up to 12 weeks of leave.

As provided by Insurance Law §4235(n)(1), the Superintendent of the Department of Financial Services ("DFS"), in consultation with the Chair of the Workers' Compensation Board, has 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 also establish the premium rate for community rated family leave benefits coverage, applying commonly accepted actuarial principles. Specifically, the Superintendent shall, by June 1, 2017 and on September 1 each year thereafter, 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. This Decision sets forth the Superintendent's determination of the premium rate for Family Leave Benefits for the 2018 calendar year.

Methodology

Since New York's Paid Family Leave program will first be implemented effective January 1, 2018, DFS does not have actual claims data for the New York program. Accordingly, in determining the community rate for the first year of the program, DFS has reviewed claims and demographic data from New York's statutory disability insurers, which will be required to include Family Leave Benefits coverage as a rider to their disability policies. DFS also 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 has also reviewed information and data from the New York State Workers' Compensation Board, the New York State Department of Health, the New York State Department of Labor, the United States Census Bureau, the Centers for Disease Control and Prevention and other relevant sources.

Following this review, DFS used claims data from New York statutory disability insurers and from the New Jersey paid family leave program – which was determined to be the most analogous in benefits, geography and demography to New York's program – as the starting point for establishing the community rate for 2018. To predict the Family Leave Benefits claims for the 2018 calendar year, the New York and New Jersey data was then adjusted to take into account all of the relevant differences between the two programs and actuarial factors, including but not limited to:

(i) Anticipated shift of claims in New York from disability benefits to Family Leave Benefits due to the higher benefits available;
(ii) Average claim frequency factors, including newborn claims from females (higher in New York), birth rates, level of wage replacement, family care by grandparents for grandchildren (only in New York), job protection provisions (only in New York) and claims approval rates and claims management practices;
(iii) Average claim duration factors, including maximum duration of benefits allowed (longer in New York), no waiting period before claims can be filed (only in New York), variation in claims by gender and no employer-required paid leave requirements (only in New York);
(iv) Average weekly benefit adjustment factors;
(v) Inclusion of benefits arising from a family member's service in the military (only in New York);
(vi) Inclusion of coverage for children born in 2017;
(vii) Calculation of aggregate claims costs for newborn and adoptive bonding, family care and military leave; and
(viii) Allocation for administrative expenses, profit and loss ratio.

2018 Premium Rate for Family Leave Benefits and Maximum Employee Contribution

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 (as a percentage of their income), up to the maximum Family Leave Benefits of 50% of the statewide average weekly wage in the first year of the program. 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 and the maximum employee contribution for coverage beginning January 1, 2018 shall be 0.126% of an employee's weekly wage up to and not to exceed the statewide average weekly wage.

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 and add the Family Leave Benefits rider to their current offerings. 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 submissions through the SERFF filing process. DFS expects that policy form submissions will be due in August 2017 and will provide further guidance in the near future.

By: ______________________ Dated: June 1, 2017

Maria T. Vullo
Superintendent of Financial Services