



New York Farm Bureau • 159 Wolf Road P.O. Box 5330 • Albany, New York 12205 • (518) 436-8495 Fax: (518) 431-5656 • www.nyfb.org

April 7, 2017

Ms. Laura Evangelista  
NYS Department of Financial Services  
One State Street  
New York, NY 10004

RE: Proposed Rule Making: Chapter XIV of 11 NYCRR, Addition of Part 363, Minimum Standards for the Form and Rating of Family Leave Benefits Coverage, Including the Establishment and Operation of a Risk Adjustment Mechanism, DFS-08-17-00009-P

Dear Ms. Evangelista,

New York Farm Bureau (NYFB), the State's largest general agricultural advocacy organization, appreciates the opportunity to comment on the Department of Financial Services' proposed rules on Paid Family Leave that outlines the regulations on how the program will function and outlines the eligibility requirements in order to take paid family leave. NYFB seeks clarification and guidance on several aspects of the proposed rule.

NYFB would like to note that those employees defined as "farm laborer" would be exempt from Paid Family Leave payroll deductions and benefits based on the definition of employment from Section 201 of the Worker's Compensation Law and 12 NYCRR 355.3.

Workers' Compensation Law § 201. Definitions. As used in this article:  
6. "Employment." A. "Employment" means employment in any trade, business or occupation carried on by an employer, **except that the following shall not be deemed employment under this article:** services performed for the state, a municipal corporation, local governmental agency, other political subdivision or public authority; employment subject to the federal railroad unemployment insurance act; service performed on or as an officer or member of the crew of a vessel on the navigable water of the United States or outside the United States; **service as farm laborers;** casual employment and the first forty-five days of extra employment of employees not regularly in employment as otherwise defined herein; service as golf caddies; and service during all or any part of the school year or regular vacation periods as a part-time worker of any person actually in regular attendance during the day time as a student in an elementary or secondary school.

#### 12 CRR-NY 355.3- Employment

(g) The following are excluded from the definition of employment:

- (1) Services performed for the State, a municipal corporation, a local governmental agency or other political subdivision or public authority, except that, pursuant to section 212 of the Workers' Compensation Law, a public authority, municipal corporation, fire district or other political subdivision may elect to become a covered employer.

- (2) Employment subject to the Federal Railroad Unemployment Insurance Act.
- (3) Service performed as an officer or member of the crew of a vessel and service performed on a vessel by any other person who is also eligible for wages, maintenance and care under the General Maritime Law.
- (4) Service as a farm laborer.
- (5) Services as golf caddies.
- (6) Casual employment.

Even though farm laborers are exempt from Paid Family Leave, farm employers often have employees that conduct other duties including retail or clerical staff that would be subject to Paid Family Leave. In addition, some farm employers may elect to have their employees covered by Paid Family Leave. NYFB seeks clarification on different parts of the regulation that will impact these employers.

#### **Section 363.4 Community Rating and Procedures for Establishing Rates**

NYFB would like to request that the premium rates be published as soon as possible to ensure that employers have adequate time to notify employees of the rates that will be deducted from their payroll. This will enable employers to have an open discussion with its employees regarding the reasoning for the deductions as well as the use of leave time.

NYFB has concerns regarding the Classification Methodologies that would provide three separate rates depending on the employee's average weekly wage. Those employees that earn more would pay more into the fund than those who earn less, but the benefit rates do not change based on employee contribution. In essence, those who earn more are paying more than their fair share into the fund. This section also grants discretion to the Superintendent to choose which methodology that premiums will be based on instead of having a fixed method. NYFB requests that one methodology be chosen for premium calculation so that employers and employees have stability when it comes to premiums being deducted from paychecks.

#### **Section 363.5 Risk Adjustment**

NYFB seeks clarification on Part g (1) which creates three separate group sizes and whether or not the number of employees will be calculated using both exempt and non-exempt employees. Some farms may employ 60 employees but 45 of those employees are exempt from leave benefits because they are farm laborers. Would the farmer be considered part of the Small Group because there are only 15 employees that qualify for leave benefits or would the employer be considered to be in the Medium group because the total number of employees exceed 50? Any guidance on how the number of employees is to be calculated would be appreciated.

NYFB thanks the Department of Financial Services for the opportunity to submit these comments on the proposed regulations on Paid Family Leave.

Sincerely,



Lauren Williams  
Associate Director of Public Policy