

## COMMENTARY

# Firms should prepare now for state's paid family leave



Jessica M.  
**BAQUET**

Last year, Gov. Cuomo signed the New York Paid Family Leave Benefits Law, which takes effect on Jan. 1, 2018. Because New York employers with at least one employee are subject to the law, virtually all business owners will need to familiarize themselves with it and be prepared to implement it.

This is especially important for small employers who do not currently have family leave protocol in place because they are not subject to the federal Family Medical Leave Act ("FMLA").

The PFLBL provides eligible employees with paid, job protected leave in order to:

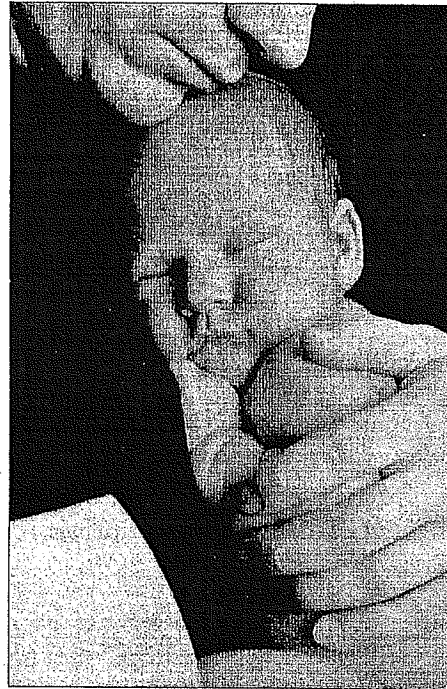
- care for a newborn, adopted child or foster child within the first 12 months after birth, adoption or placement
- provide physical or psychological care for the serious health condition of the employee's child, spouse, domestic partner, parent (including step-parent or legal guardian), parent-in-law, sibling, grandchild, or grandparent; or
- deal with certain issues arising when a spouse, domestic partner, child, or par-

ent of the employee is called to active military service.

In this regard, the PFLBL is different from the FMLA in important respects; the PFLBL provides for paid rather than unpaid leave, and it does not entitle an employee to take leave to deal with her own medical issues.

Employees who will be covered by the PFLBL include those who have been employed full-time for at least 26 weeks and those who have been employed part-time for at least 175 days. This includes non-U.S. citizens and undocumented workers. The benefits that eligible employees are entitled to receive will phase in over time. Beginning on Jan. 1, eligible employees will be entitled to eight weeks of paid leave at a rate of 50 percent of the employee's average weekly wage, or 50 percent of New York State's average weekly wage, whichever is less.

The average weekly wage is determined by the state each year, and is currently \$1,296.48. The amount of pay and the duration of leave that employees are entitled to will increase annually until Jan. 1, 2021, when employees will be entitled to a maximum of 12 weeks of paid leave at a rate of 67 percent of the smaller of the employee's average weekly wage and New York State's average weekly wage. Employers are also obligated to maintain an employee's health insurance coverage during leave.



Paid leave benefits under the PFLBL are financed by employee payroll deductions. Almost all employees' wages will be subject to the deduction with very limited exceptions. Employers can use those deductions to purchase family leave insurance or to self-insure. Employers may implement this withholding beginning on July 1, 2017, although the State has not yet announced the exact amount of the

deduction.

This brief summary of what is required by the PFLBL only scratches the surface. It is important for employers to spend the next several months preparing for the changes that the law will bring. For example, employers must update their handbooks and prepare to post the legally required PFLBL notices in the workplace. They should also coordinate with their insurance carriers and payroll administrators to obtain and pay for family leave insurance.

Human Resources professionals will also need to be trained in processing requests for leave under the PFLBL, and coordinating benefits available to employees under the PFLBL, FMLA and, in some cases, New York State disability laws and regulations. Failure to comply with the law carries financial consequences, as employers may be subject to civil penalties and may be liable to their employees. Consulting with competent and experienced employment counsel can help avoid such exposure.

Baquet is a partner in the Litigation, Appellate and Labor and Employment Practice Groups of Jaspán Schlessinger LLP. She focuses her practice in the areas of employment law and commercial and business litigation.