

Employers frustrated with family leave law

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Promoted as an innovative employee benefit, New York's new Paid Family Leave law will go into effect in January.

The law, which supplements the federal Family Medical Leave Act, requires employers to give workers up to 12 weeks off to bond with a child, care for a close relative or help relieve family pressures when a family member is called to military service.

State officials call it the nation's most robust law for paid family leave, providing wage replacement and job protection.

But employers aren't as positive about the benefit.

Many who attended a Business First Power Breakfast on the topic described it as another regulation that will cost them more to do business in New York state.

Besides the expense of providing the benefit, which is regulated by the state Workers' Compensation Board, some of the 80 company owners and HR managers who attended the event had specific concerns about holding jobs for workers and finding replacements during their time out.

That was especially evident for Susan Blackburn, who runs Baskin Livestock Inc. in Batavia with her husband, Bill Baskin. With 52 employees, the dairy farm and feed mill also qualifies for the federal FMLA, which provides 12 weeks of leave.

"Who is going to do the work? As a farming entity, we can't just cross-train. Not everyone can drive a tractor; not everyone can run a mill. So what do we do?" she said.

Panelists who work in the legal profession were sympathetic. They've been reviewing the basics of the new law with clients for months since the state law was enacted. Still, there are lots of questions and uncertainty about how the state law meshes with the existing federal law.

"I think this was a well-intended but awful idea for New York state employers," said James Donathen, a partner focused on workplace law and litigation at Phillips Lytle LLP, which hosted the event.



MARK WEBSTER
A Buffalo Business First Power Breakfast brought together experts in employment law to discuss New York's new paid family leave law. From left, Ellen Lisa of Gibraltar, Brian Murphy of Lawley Benefits Group, James Donathen and James Grasso of Phillips Lytle LLP and David Wertheim of NYS Workers Compensation.

"I share your frustration," he said. "I've had discussions in the last two weeks with two different businesspeople with options to move or put more jobs in New York. I was asked why should we come to New York with the minimum wage and now this."

Ellen Lista is director of community resources at Gibraltar Industries Inc., which has faced some of the same issues via its location in California, another state where a paid family leave law has been on the books for more than a decade.

"We have not really seen a major disruption in business," she said. "If California is any predictor of how it's going to play out in New York, it's not as bad as what we anticipated."

David Wertheim, general counsel for the Workers' Compensation Board, said other states such as Rhode Island and New Jersey pay for their programs through a trust. New York will fund its program by charging workers through payroll deduction of up to \$1.65 per week based on the average compensation. Employers can begin deducting from worker paychecks as early as July.

"Ours will be an insurance, which makes us unique and presents some challenges, as well," Wertheim said. "As the general counsel, the idea of adding perhaps tens of thousands of disputes onto our docket scares me: We do 275,000 hearings a year. It conforms with the underlying theme of PFL, which is it should be viewed as an employee benefit more than a claim."

Because the state and federal benefits could be stacked, employers could be faced with holding a position open for up to 24 weeks. And employers can be penalized if they discriminate against a worker for taking advantage of the paid family leave benefit.

"We're going to have to see how that plays out," said James Grasso, a partner at Phillips Lytle who specializes in labor and employment law. "You could have situations where someone has 24 weeks of leave, so it's going to be that interaction that's going to be the hardest part. As employers, you're concerned with how much time will employees have off and how much time will I have to fill in."

Brian Murphy, a partner at Lawley Benefits Group, recommended employers learn the ins and outs and start educating their workforce now — or at the very least this fall as they get into planning for the 2018 benefits cycle.

"Like with the rest of the benefits package, they (workers) are looking at this as an employee benefit and employers should, as well, just like an insurance product," Murphy said.



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