

## New York prenatal leave law raises employer questions

■ JARED SCOTT CONTRIBUTOR

Over the past 10 years, New York State has issued a series of mandates concerning paid leave for private sector employees, becoming a national leader in paid leave provisions for workers as a result. This year's addition of a first-of-its-kind Paid Prenatal Leave program expands the state's employee leave policy, providing for those in the workforce who will soon become parents.

In the wake of the changes, Long Island attorneys are helping to keep employers compliant, and their employees informed of their rights.

"New York has been one of states that has led the way in paid leave for employees," says Jessica Moller, a partner at Bond, Schoenck & King's Long Island office in Melville. She alludes to the enactment of New York State's Paid Family Leave policy in 2016, which allowed private sector employees paid time off to bond with newly born, adopted or fostered children, care for injured or sick family members, or assist family members whose spouse, partner, child or parent is deployed for active military service, as one example of the state's progress on the issue.

"The state's paid family leave policy was an effort to help working families by not forcing them 'to choose between caring for their loved ones and risking their economic security,'" Moller says, paraphrasing New York's own website, [paidfamilyleave.ny.gov](http://paidfamilyleave.ny.gov).

During the pandemic, New York State paid leave policy was updated once again in an effort to keep infections down. "Paid leave laws are often driven by public health initiatives," says Lisa Casa, a partner at Forchelli Deegan Terrana in Uniondale. "The New York State Sick Leave Law, which took effect in 2021, was a COVID-era response to ensure that employees, regardless of their employer or employer size, could receive between 40 and 56 hours of sick leave, which encouraged employees to stay home when they were ill and to slow down the spread of communicable diseases," she explains.

Most recently, the state issued a mandate establishing a paid leave policy for employees who are expectant parents. On Jan. 1, 2025, New York State began its Paid Prenatal Leave program, becoming the first state in the nation to provide paid time off for prenatal care.

"New York employees who work in the private sector are now entitled to up to 20 hours of paid prenatal leave, which eligible employees can use to attend prenatal doctors appointments and other medical care related to pregnancy, including fertility treatments and end of pregnancy care," says Moller. "This leave is only available to the employee that is receiving the care, and is in addition to paid sick leave or other forms of PTO that the employer may provide to its employees."

Even though fair paid leave policies are mutually beneficial for businesses and their employees, it is still necessary for the government to mandate clear work absence policies for all private entities to follow.



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"Employers will generally not be motivated to spend money unless they have to," explains Rachel Demarest Gold, partner and director of employment law practice at Abrams Fensterman LLP in Lake Success. "This is particularly true because corporate fiduciary laws put profits above all other responsibilities... It is, quite frankly, also in the best interest of employers to have employees who have the time they need to handle their personal lives."

Once a paid leave policy is established, businesses relay information about the policies to their employees, often through company literature. "Employers often use employee handbooks, personnel policy manuals or other such documents to inform employees about the various paid leave benefits available to them," Moller says. "These types of documents are generally distributed to new employees upon being hired, and redistributed to current employees on an annual or other periodic basis. The laws that provide for certain paid leave benefits require employers to include information about the paid leave benefit in an employee handbook."

No matter how clearly the policy is communicated, there are still potential discrepancies involving employee leave, especially among businesses that employ people who work remotely. "Employees who are working out-of-state for a New York employer are not necessarily entitled to the paid leave benefits provided under New York law," explains Moller. "It is important to remember that the law in the jurisdiction where the employee physically sits will apply to the employee, not the law applicable in the home state of the company."

Casa says that cases typically arise in situations where employees who have exhausted paid time off ask to extend their leave due to a disability. "Whether an employee may be entitled to an unpaid leave to accommodate a disability or for complications from pregnancy or other disabilities is often a fact-intensive inquiry, and an employer should consult with counsel before immediately denying the request for additional leave or terminating the employee," she advises.

In general, legal experts discourage receiving legal counsel regarding paid leave policy from anyone except professionals. "Many employers are turning to payroll companies who offer compliance services to help navigate the ever-changing landscape," says Demarest Gold. "Unfortunately, that is not legal advice, so when it does not work out, employers are left with expensive mistakes and no recourse."