

1252

2011-2012 Regular Sessions

I N S E N A T E

January 6, 2011

Introduced by Sen. ADDABBO -- read twice and ordered printed, and when printed to be committed to the Committee on Labor

AN ACT to amend the workers' compensation law and the insurance law, in relation to providing benefits for family care

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 Section 1. Subdivision 9 of section 201 of the workers' compensation
2 law is amended by adding a new paragraph C to read as follows:
3 C. "DISABILITY" ALSO INCLUDES FAMILY CARE, AS DEFINED IN SUBDIVISION
4 FIFTEEN OF THIS SECTION. UNLESS OTHERWISE SET FORTH IN THIS ARTICLE,
5 ALL PROVISIONS OF THIS ARTICLE APPLICABLE TO DISABILITY SHALL APPLY TO
6 BOTH DISABILITY ARISING FROM SICKNESS AND INJURY, AND TO FAMILY CARE.
7 S 2. Subdivision 14 of section 201 of the workers' compensation law,
8 as added by chapter 600 of the laws of 1949 and as renumbered by chapter
9 438 of the laws of 1964, is amended to read as follows:
10 14. "A day of disability" means any day on which the employee was
11 prevented from performing work because of disability, INCLUDING ANY DAY
12 ON WHICH THE EMPLOYEE TOOK OFF FOR FAMILY CARE, and for which [he] THE
13 EMPLOYEE has not received his OR HER regular remuneration.
14 S 3. Section 201 of the workers' compensation law is amended by adding
15 ten new subdivisions 15, 16, 17, 18, 19, 20, 21, 22, 23 and 24 to read
16 as follows:
17 15. "FAMILY CARE" SHALL MEAN ANY LEAVE TAKEN BY AN EMPLOYEE FROM WORK:
18 A. TO PARTICIPATE IN PROVIDING CARE, INCLUDING PHYSICAL OR PSYCHOLOGICAL
19 CARE, FOR A FAMILY MEMBER OF THE EMPLOYEE MADE NECESSARY BY A SERIOUS
20 HEALTH CONDITION OF THE FAMILY MEMBER; OR B. TO BOND WITH HIS OR HER
21 CHILD DURING THE FIRST TWELVE MONTHS AFTER THE CHILD'S BIRTH, OR THE
22 FIRST TWELVE MONTHS AFTER THE PLACEMENT OF THE CHILD FOR ADOPTION OR
23 FOSTER CARE WITH THE EMPLOYEE.
24 16. "CHILD" MEANS A BIOLOGICAL, ADOPTED, OR FOSTER CHILD, A STEPCHILD,
25 A LEGAL WARD, OR A CHILD OF A PERSON STANDING IN LOCO PARENTIS, WHO IS:

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets [] is old law to be omitted.

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1 A. UNDER EIGHTEEN YEARS OF AGE; OR B. EIGHTEEN YEARS OF AGE OR OLDER
2 AND INCAPABLE OF SELF-CARE BECAUSE OF A MENTAL OR PHYSICAL DISABILITY.

3 17. "DOMESTIC PARTNER" HAS THE MEANING SET FORTH IN SECTION FOUR OF
4 THIS CHAPTER.

5 18. "SERIOUS HEALTH CONDITION" MEANS AN ILLNESS, INJURY, IMPAIRMENT,
6 OR PHYSICAL OR MENTAL CONDITION THAT: A. REQUIRES INPATIENT CARE IN A
7 HOSPITAL, HOSPICE OR RESIDENTIAL HEALTH CARE FACILITY; OR B. REQUIRES
8 CONTINUING TREATMENT BY A HEALTH CARE PROVIDER.

9 19. "PARENT" MEANS THE BIOLOGICAL, ADOPTIVE, OR FOSTER PARENT OF AN
10 EMPLOYEE OR INDIVIDUAL WHO STOOD IN LOCO PARENTIS TO AN EMPLOYEE WHEN
11 THE EMPLOYEE WAS A SON OR DAUGHTER.

12 20. "FAMILY MEMBER" MEANS A CHILD, SPOUSE, DOMESTIC PARTNER, PARENT,
13 GRANDCHILD, MOTHER-IN-LAW OR FATHER-IN-LAW.

14 21. PERSONS WHO ARE "IN LOCO PARENTIS" INCLUDE THOSE WITH DAY-TO-DAY
15 RESPONSIBILITIES TO CARE FOR AND FINANCIALLY SUPPORT A CHILD OR, IN THE
16 CASE OF AN EMPLOYEE, WHO HAD SUCH RESPONSIBILITY FOR THE EMPLOYEE WHEN
17 THE EMPLOYEE WAS A CHILD. A BIOLOGICAL OR LEGAL RELATIONSHIP IS NOT
18 NECESSARY.

19 22. "GRANDCHILD" MEANS THE CHILD OF A CHILD.

20 23. "HEALTH CARE PROVIDER" MEANS ANY PROVIDER TREATING AN EMPLOYEE'S
21 INJURY OR SICKNESS, OR A FAMILY MEMBER'S SERIOUS HEALTH CONDITION,
22 INCLUDING A PHYSICIAN, PODIATRIST, CHIROPRACTOR, DENTIST, PSYCHOLOGIST,
23 CERTIFIED NURSE MIDWIFE, OR IN THE CASE OF A FAMILY MEMBER WHO ADHERES
24 TO THE FAITH OR TEACHINGS OF ANY CHURCH OR DENOMINATION, AND WHO IN
25 ACCORDANCE WITH ITS CREED, TENETS OR PRINCIPLES DEPENDS FOR HEALING UPON
26 PRAYER THROUGH SPIRITUAL MEANS ALONE IN THE PRACTICE OF RELIGION, BY AN
27 ACCREDITED PRACTITIONER, CONTAINING FACTS AND OPINIONS AS TO SUCH HEALTH
28 CONDITION IN COMPLIANCE WITH REGULATIONS OF THE CHAIR.

29 24. "FAMILY CARE COST" SHALL MEAN (A) PRIOR TO JULY FIRST, TWO THOU-
30 SAND THIRTEEN, FORTY-FIVE CENTS PER WEEK; AND (B) DURING EVERY SUBSE-
31 QUENT YEAR COMMENCING ON JULY FIRST, SUCH AMOUNT AS SHALL BE SET BY
32 REGULATION OF THE SUPERINTENDENT OF INSURANCE FOLLOWING CONSULTATION
33 WITH THE FAMILY CARE ADVISORY COUNCIL BY APRIL FIRST OF THE SAME YEAR
34 BASED ON HIS OR HER ACTUARIALLY SOUND ESTIMATION OF THE COST PER EMPLOY-
35 EE OF PROVIDING FAMILY CARE BENEFITS, BUT IN NO EVENT MORE THAN ONE
36 HUNDRED FIFTEEN PERCENT OF HIS OR HER ESTIMATION OF THE COST PER EMPLOY-
37 EE OF PROVIDING SEPARATE FAMILY CARE BENEFITS THROUGH THE STATE INSUR-
38 ANCE FUND.

39 S 4. Subdivision 1 of section 204 of the workers' compensation law, as
40 added by chapter 600 of the laws of 1949, is amended to read as follows:

41 1. Disability benefits shall be payable to an eligible employee for
42 disabilities commencing after June thirtieth, nineteen hundred fifty,
43 beginning with the eighth consecutive day of disability and thereafter
44 during the continuance of disability, subject to the limitations as to
45 maximum and minimum amounts and duration and other conditions and limi-
46 tations in this section and in sections two hundred five and two hundred
47 six OF THIS ARTICLE. Successive periods of disability caused by the
48 same or related injury or sickness OR REASON FOR FAMILY CARE shall be
49 deemed a single period of disability only if separated by less than
50 three months. FOR PURPOSES OF THIS SUBDIVISION, DAYS OF DISABILITY FOR
51 ANY FAMILY CARE SHALL COMMENCE AT THE START OF THE LEAVE PERIOD TAKEN BY
52 THE EMPLOYEE TO PROVIDE FAMILY CARE.

53 S 5. Subdivisions 1, 2, 3, 4, 7 and 8 of section 205 of the workers'
54 compensation law, subdivision 1 as amended by chapter 651 of the laws of
55 1958, subdivision 2 as amended by chapter 270 of the laws of 1990 and
56 subdivisions 3, 4, 7 and 8 as added by chapter 600 of the laws of 1949

1 and as renumbered by chapter 352 of the laws of 1981, are amended and a
2 new subdivision 9 is added to read as follows:

3 1. [For] (A) FOR DISABILITY RESULTING FROM INJURY OR SICKNESS OF AN
4 EMPLOYEE, FOR more than twenty-six weeks during a period of fifty-two
5 consecutive calendar weeks or during any one period of disability; OR

6 (B) FOR FAMILY CARE, FOR MORE THAN TWELVE WEEKS DURING A PERIOD OF
7 FIFTY-TWO CONSECUTIVE CALENDAR WEEKS OR DURING ANY ONE PERIOD OF FAMILY
8 CARE;

9 2. for any period of disability RESULTING FROM THE INJURY OR SICKNESS
10 OF AN EMPLOYEE during which an employee is not under the care of a duly
11 licensed physician or with respect to disability resulting from a condi-
12 tion of the foot which may lawfully be treated by a duly registered and
13 licensed podiatrist of the state of New York or with respect to a disa-
14 bility resulting from a condition which may lawfully be treated by a
15 duly registered and licensed chiropractor of the state of New York or
16 with respect to a disability resulting from a condition which may
17 lawfully be treated by a duly licensed dentist of the state of New York
18 or with respect to a disability resulting from a condition which may
19 lawfully be treated by a duly registered and licensed psychologist of
20 the state of New York or with respect to a disability resulting from a
21 condition which may lawfully be treated by a duly certified nurse
22 midwife, for any period of such disability during which an employee is
23 neither under the care of a physician nor a podiatrist, nor a chiroprac-
24 tor, nor a dentist, nor a psychologist, nor a certified nurse midwife;
25 and for any period of disability during which an employee who adheres to
26 the faith or teachings of any church or denomination and who in accord-
27 ance with its creed, tenets or principles depends for healing upon pray-
28 er through spiritual means alone in the practice of religion, is not
29 under the care of a practitioner duly accredited by the church or denom-
30 ination, and provided such employee shall submit to all physical exam-
31 inations as required by this chapter[.];

32 3. for any disability RESULTING FROM INJURY OR SICKNESS OF AN EMPLOYEE
33 occasioned by the wilful intention of the employee to bring about injury
34 to or the sickness of himself or another, or resulting from any injury
35 or sickness sustained in the perpetration by the employee of an illegal
36 act;

37 4. for any day of disability during which the employee performed work
38 for remuneration or profit; BUT NOT INCLUDING ANY REMUNERATION RECEIVED
39 FOR CARING FOR A FOSTER OR ADOPTED CHILD OR OTHER INDIVIDUAL RESIDING IN
40 THE EMPLOYEE'S PLACE OF RESIDENCE;

41 7. for any disability due to any act of war, declared or undeclared,
42 if such act shall occur after June thirtieth, nineteen hundred fifty,
43 EXCEPT THAT NOTHING IN THIS SUBDIVISION SHALL BAR AN EMPLOYEE FROM
44 RECEIVING BENEFITS UNDER THIS ARTICLE FOR CARE OF A FAMILY MEMBER DISA-
45 BLED DUE TO AN ACT OF WAR;

46 8. for any disability RESULTING FROM AN INJURY OR SICKNESS TO THE
47 EMPLOYEE commencing before the employee becomes eligible to benefits
48 hereunder [or commencing prior to July first, nineteen hundred fifty,
49 but this shall not preclude benefits for recurrence after July first,
50 nineteen hundred fifty, of a disability commencing prior thereto.];

51 9. FOR ANY DAY OF ABSENCE FROM WORK REQUIRED PURSUANT TO ANY DISCIPLI-
52 NARY PROCESS; OR, IN REGARD TO FAMILY CARE BENEFITS, ANY DAY OF ABSENCE
53 FROM WORK RESULTING FROM INJURY OR SICKNESS TO THE EMPLOYEE, INCLUDING
54 ANY LEAVE TAKEN UNDER SECTION SEVENTY-ONE OR SEVENTY-THREE OF THE CIVIL
55 SERVICE LAW.

1 S 6. The workers' compensation law is amended by adding a new section
2 205-a to read as follows:

3 S 205-A. RELATIONSHIP BETWEEN DISABILITY BENEFITS FOR FAMILY CARE AND
4 FOR THE EMPLOYEE'S OWN SICKNESS OR ILLNESS. THE RECEIPT OF BENEFITS FOR
5 DISABILITY RESULTING FROM SICKNESS OR INJURY TO THE EMPLOYEE, INCLUDING
6 PREGNANCY AND CHILDBIRTH, SHALL NOT COUNT TOWARD ANY TIME LIMITATION
7 UNDER SUBDIVISION ONE OF SECTION TWO HUNDRED FIVE OF THIS ARTICLE ON THE
8 RECEIPT OF BENEFITS FOR FAMILY CARE, AND THE RECEIPT OF BENEFITS FOR
9 FAMILY CARE SHALL NOT COUNT TOWARD ANY TIME LIMITATION UNDER SUBDIVISION
10 ONE OF SECTION TWO HUNDRED FIVE OF THIS ARTICLE ON THE RECEIPT OF BENE-
11 FITS FOR DISABILITY RESULTING FROM SICKNESS OR INJURY TO THE EMPLOYEE,
12 EXCEPT THAT AN EMPLOYEE MAY RECEIVE DISABILITY BENEFITS ON ONLY ONE
13 CLAIM AT ANY TIME.

14 S 7. Subdivision 3 of section 209 of the workers' compensation law, as
15 amended by chapter 415 of the laws of 1983, is amended to read as
16 follows:

17 3. The contribution of each such employee to the cost of disability
18 benefits provided by this article shall be one-half of one per centum of
19 the employee's wages paid to him on and after July first, nineteen
20 hundred fifty, but not in excess of sixty cents per week FOR THE COST OF
21 DISABILITY BENEFITS FOR SICKNESS OR INJURY, PLUS THE FAMILY CARE COST,
22 AS DEFINED IN SUBDIVISION TWENTY-FOUR OF SECTION TWO HUNDRED ONE OF THIS
23 ARTICLE.

24 S 8. Section 211 of the workers' compensation law is amended by adding
25 two new subdivisions 7 and 8 to read as follows:

26 7. SUCH FAMILY CARE BENEFITS AS ARE PROVIDED FOR IN THIS ARTICLE SHALL
27 BE IN ADDITION TO, AND SHALL NOT AMEND, REPEAL OR REPLACE, THE TERMS OF
28 ANY AGREEMENT THAT IS COLLECTIVELY NEGOTIATED BETWEEN AN EMPLOYER AND
29 AN EMPLOYEE ORGANIZATION, INCLUDING AGREEMENT OR INTEREST ARBITRATION
30 AWARDS MADE PURSUANT TO ARTICLE FOURTEEN OF THE CIVIL SERVICE LAW.

31 8. NOTHING IN THIS ARTICLE SHALL REQUIRE AN EMPLOYER TO USE THE SAME
32 CARRIER TO PROVIDE BENEFITS REQUIRED BY OR PERMISSIBLE UNDER THIS ARTI-
33 CLE FOR DISABILITY RESULTING FROM SICKNESS OR INJURY AS IT USES TO
34 PROVIDE BENEFITS REQUIRED BY OR PERMISSIBLE UNDER THIS ARTICLE FOR FAMI-
35 LY CARE. AN EMPLOYER MAY USE A DIFFERENT MEANS, AMONG THOSE SET FORTH IN
36 SUBDIVISIONS ONE THROUGH FIVE OF THIS SECTION, TO PROVIDE BENEFITS
37 REQUIRED BY THIS ARTICLE FOR DISABILITY RESULTING FROM SICKNESS OR INJU-
38 RY, FROM THE MEANS USED TO PROVIDE BENEFITS REQUIRED BY THIS ARTICLE FOR
39 FAMILY CARE.

40 S 9. The workers' compensation law is amended by adding a new section
41 211-a to read as follows:

42 S 211-A. PUBLIC EMPLOYEES; EMPLOYEE OPT IN. 1. FOR PURPOSES OF THIS
43 SECTION, "PUBLIC EMPLOYEE" MEANS ANY EMPLOYEE OF THE STATE, ANY POLI-
44 TICAL SUBDIVISION OF THE STATE, A PUBLIC AUTHORITY OR ANY OTHER GOVERN-
45 MENTAL AGENCY OR INSTRUMENTALITY. "PUBLIC EMPLOYER" MEANS THE STATE, ANY
46 POLITICAL SUBDIVISION OF THE STATE, A PUBLIC AUTHORITY OR ANY OTHER
47 GOVERNMENTAL AGENCY OR INSTRUMENTALITY THEREOF. "EMPLOYEE ORGANIZATION"
48 SHALL HAVE THE MEANING SET FORTH IN SECTION TWO HUNDRED ONE OF THE CIVIL
49 SERVICE LAW.

50 2. PUBLIC EMPLOYERS SHALL PROVIDE BENEFITS FOR FAMILY CARE TO PUBLIC
51 EMPLOYEES WHERE AN EMPLOYEE ORGANIZATION THAT REPRESENTS THOSE EMPLOYEES
52 OPTS IN TO FAMILY CARE IN ACCORDANCE WITH THE PROCEDURES AND TERMS SET
53 FORTH IN SUBDIVISION THREE OF THIS SECTION.

54 3. AN EMPLOYEE ORGANIZATION MAY OPT IN TO THE FAMILY CARE BENEFIT ON
55 BEHALF OF THOSE EMPLOYEES IT REPRESENTS:

1 A. UPON NOTICE GIVEN TO THE PUBLIC EMPLOYER PRIOR TO APRIL FIRST, TWO
2 THOUSAND TWELVE, WHICH OPT IN SHALL BECOME EFFECTIVE ONLY ON JULY FIRST,
3 TWO THOUSAND TWELVE;

4 B. AT ANY TIME UPON NINETY DAYS NOTICE FOR ANY EMPLOYER WHO IS NOT
5 PROVIDING DISABILITY BENEFITS FOR SICKNESS AND INJURY UNDER SECTION TWO
6 HUNDRED TWELVE OF THIS ARTICLE, OR WHO IS SELF-INSURED FOR SUCH BENE-
7 FITS;

8 C. FOR ANY EMPLOYER WHO IS PROVIDING DISABILITY BENEFITS FOR SICKNESS
9 AND INJURY UNDER SECTION TWO HUNDRED TWELVE OF THIS ARTICLE, UPON NOTICE
10 AT LEAST NINETY DAYS PRIOR TO THE EXPIRATION OF THE EMPLOYER'S INSURANCE
11 POLICY FOR SUCH BENEFITS, WHICH OPT IN SHALL BE EFFECTIVE ONLY FOR THE
12 TIME PERIOD COVERED BY ANY SUBSEQUENT POLICY OR RENEWAL; OR

13 D. AT ANY TIME AS IS MUTUALLY AGREED UPON BETWEEN THE EMPLOYEE ORGAN-
14 IZATION AND ANY PUBLIC EMPLOYER.

15 AN EMPLOYEE ORGANIZATION THAT HAS OPTED IN TO THE FAMILY CARE BENEFIT
16 MAY OPT OUT OF IT WITHIN THE TIME PERIODS, AND EFFECTIVE UPON THE SAME
17 DATES, SET FORTH IN THIS PARAGRAPH. THE EMPLOYEE ORGANIZATION SHALL
18 PROVIDE NOTICE OF SUCH TO THE BOARD WITHIN SEVEN DAYS OF NOTICE TO THE
19 EMPLOYER.

20 4. IN THE ABSENCE OF ANY CONTRARY STATEMENT IN A COLLECTIVELY NEGOTI-
21 ATED AGREEMENT UNDER ARTICLE FOURTEEN OF THE CIVIL SERVICE LAW, A PUBLIC
22 EMPLOYER MAY REQUIRE PUBLIC EMPLOYEES WHO OPT IN UNDER THIS SECTION TO
23 CONTRIBUTE UP TO THE FAMILY CARE COST, AS DEFINED IN SUBDIVISION TWEN-
24 TY-FOUR OF SECTION TWO HUNDRED ONE OF THIS ARTICLE, PER WEEK IN ACCORD-
25 ANCE WITH THE PROCEDURE SET FORTH IN SECTION TWO HUNDRED NINE OF THIS
26 ARTICLE.

27 S 10. Subdivision 1 of section 212 of the workers' compensation law,
28 as amended by chapter 740 of the laws of 1960, is amended to read as
29 follows:

30 1. Any employer not required by this article to provide for the
31 payment of disability benefits to his employees, or to any class or
32 classes thereof, may become a covered employer or bring within the
33 provisions of this article such employees or class or classes thereof by
34 voluntarily electing to provide for payment of [such] benefits FOR DISA-
35 BILITY RESULTING FROM SICKNESS OR INJURY, FOR FAMILY CARE, OR BOTH, in
36 one or more of the ways set forth in section two hundred eleven OF THIS
37 ARTICLE; but such election shall be subject to the approval of the
38 chairman, and if the employees are required to contribute to the cost of
39 such benefits the assent within thirty days before such approval is
40 granted, of more than one-half of such employees shall be evidenced to
41 the satisfaction of the chairman. On approval by the chairman of such
42 election to provide benefits, all the provisions of this article shall
43 become and continue applicable as if the employer were a covered employ-
44 er as defined in this article. The obligation to continue as a covered
45 employer with respect to employees for whom provision of benefits is not
46 required under this article, may be discontinued by such employer on
47 ninety days notice to the chairman in writing and to his employees,
48 after he has provided for payment of benefits for not less than one year
49 and with such provision for payment of obligations incurred on and prior
50 to the termination date as the chairman may approve. ANY ELECTION BY A
51 PUBLIC EMPLOYER TO PROVIDE FAMILY CARE BENEFITS MADE PRIOR TO JULY
52 FIRST, TWO THOUSAND TWELVE SHALL BE EFFECTIVE ON THAT DATE.

53 S 11. Subdivision 2 of section 76 of the workers' compensation law, as
54 added by chapter 600 of the laws of 1949, is amended to read as follows:

55 2. The purposes of the state insurance fund herein created are hereby
56 enlarged to provide [for the] insurance [by the state insurance fund of]

1 FOR the payment of the benefits required by section two hundred four of
2 this chapter, INCLUDING BENEFITS FOR FAMILY CARE PROVIDED EITHER IN THE
3 SAME POLICY WITH OR IN A SEPARATE POLICY FROM BENEFITS FOR DISABILITY
4 RESULTING FROM INJURY OR SICKNESS OF AN EMPLOYEE, AND AS PROVIDED PURSU-
5 ANT TO SECTION TWO HUNDRED ELEVEN-A OF THIS CHAPTER. A separate fund is
6 hereby created within the state insurance fund, which shall be known as
7 the "disability benefits fund", and which shall consist of all premiums
8 received and paid into said fund on account of such insurance, all secu-
9 rities acquired by and through the use of moneys belonging to said fund
10 and of interest earned upon moneys belonging to said fund and deposited
11 or invested as herein provided. Said disability benefits fund shall be
12 applicable to the payment of benefits, expenses and assessments on
13 account of insurance written pursuant to article nine of this chapter.

14 S 12. Subdivisions 1, 2, 3 and 4 of section 217 of the workers'
15 compensation law, subdivision 1 as amended by chapter 167 of the laws of
16 1999, subdivisions 2 and 3 as amended by chapter 270 of the laws of 1990
17 and subdivision 4 as added by chapter 600 of the laws of 1949, are
18 amended to read as follows:

19 1. Written notice and proof of disability shall be furnished to the
20 employer by or on behalf of the employee claiming benefits or, in the
21 case of a claimant under section two hundred seven of this article, to
22 the chair, within thirty days after commencement of the period of disa-
23 bility. Additional proof shall be furnished thereafter from time to time
24 as the employer or carrier or chair may require but not more often than
25 once each week. Such proof shall include:

26 (A) IN THE CASE OF DISABILITY RESULTING FROM SICKNESS OR INJURY TO THE
27 EMPLOYEE, a statement of disability by the employee's attending [physi-
28 cian or attending podiatrist or attending chiropractor or attending
29 dentist or attending psychologist or attending certified nurse midwife,
30 or in the case of an employee who adheres to the faith or teachings of
31 any church or denomination, and who in accordance with its creed, tenets
32 or principles depends for healing upon prayer through spiritual means
33 alone in the practice of religion, by an accredited practitioner,
34 containing facts and opinions as to such disability in compliance with
35 regulations of the chair.] HEALTH CARE PROVIDER;

36 (B) IN THE CASE OF FAMILY CARE FOR BONDING WITH A NEW CHILD, A BIRTH
37 CERTIFICATE, CERTIFICATE OF ADOPTION, OR OTHER COMPETENT EVIDENCE SHOW-
38 ING THAT THE EMPLOYEE IS THE PARENT OF A CHILD WITHIN TWELVE MONTHS OF
39 THAT CHILD'S BIRTH OR PLACEMENT FOR ADOPTION OR FOSTER CARE WITH THE
40 EMPLOYEE;

41 (C) IN THE CASE OF BENEFITS FOR CARE OF A FAMILY MEMBER WITH A SERIOUS
42 HEALTH CONDITION:

43 (I) A STATEMENT BY THE FAMILY MEMBER'S HEALTH CARE PROVIDER, CONTAIN-
44 ING FACTS AND OPINIONS AS TO SUCH HEALTH CONDITION IN COMPLIANCE WITH
45 REGULATIONS OF THE CHAIR; AND

46 (II) A STATEMENT SUBSCRIBED BY THE EMPLOYEE AND AFFIRMED BY HIM OR HER
47 AS TRUE UNDER PENALTIES OF PERJURY, OR OTHER EQUIVALENT DOCUMENTARY
48 PROOF, THAT THE EMPLOYEE IS A PRIMARY CARE GIVER FOR THE FAMILY MEMBER
49 DURING THE TIME OF DISABILITY.

50 Failure to furnish notice or proof within the time and in the manner
51 above provided shall not invalidate the claim but no benefits shall be
52 required to be paid for any period more than two weeks prior to the date
53 on which the required proof is furnished unless it shall be shown to the
54 satisfaction of the chair not to have been reasonably possible to
55 furnish such notice or proof and that such notice or proof was furnished
56 as soon as possible; provided, however, that no benefits shall be paid

1 unless the required proof of disability is furnished within twenty-six
2 weeks after commencement of the period of disability. No limitation of
3 time provided in this section shall run as against any person who is
4 mentally incompetent, or physically incapable of providing such notice
5 as a result of a serious medical condition, or a minor so long as such
6 person has no guardian of the person and/or property.

7 2. An employee claiming benefits FOR HIS OR HER SICKNESS OR INJURY, OR
8 THE FAMILY MEMBER OF SUCH EMPLOYEE IN ANY CASE WHERE THE EMPLOYEE CLAIMS
9 FAMILY CARE BENEFITS FOR PROVIDING CARE TO THAT FAMILY MEMBER shall, as
10 requested by the employer or carrier, submit himself or herself at
11 intervals, but not more than once a week, for examination by a [physi-
12 cian or podiatrist or chiropractor or dentist or psychologist or certi-
13 fied nurse midwife] RELEVANT HEALTH CARE PROVIDER designated by the
14 employer or carrier. All such examinations shall be without cost to the
15 employee OR FAMILY MEMBER and shall be held at a reasonable time and
16 place.

17 3. The chair may direct the claimant WHO SEEKS DISABILITY BENEFITS FOR
18 HIS OR HER SICKNESS OR INJURY, OR THE CLAIMANT'S FAMILY MEMBER WHERE THE
19 CLAIMANT SEEKS DISABILITY BENEFITS FOR FAMILY LEAVE TO PROVIDE CARE TO
20 THAT FAMILY MEMBER to submit to examination by a [physician or podia-
21 trist or chiropractor or dentist or psychologist] RELEVANT HEALTH CARE
22 PROVIDER designated by him or her in any case in which the claim to
23 disability benefits is contested and in claims arising under section two
24 hundred seven OF THIS ARTICLE, and in other cases as the chair or board
25 may require.

26 4. Refusal of the claimant OR FAMILY MEMBER without good cause to
27 submit to any such examination shall disqualify [him] THE CLAIMANT from
28 all benefits hereunder for the period of such refusal, except as to
29 benefits already paid.

30 S 13. The opening paragraph of section 221 of the workers' compen-
31 sation law, as separately amended by chapters 425 and 500 of the laws of
32 1985, is amended to read as follows:

33 Within twenty-six weeks of written notice of rejection of claim, the
34 employee may file with the chairman a notice that his or her claim for
35 disability benefits has not been paid, and the employee shall submit
36 proof of disability and of his or her employment, wages and other facts
37 reasonably necessary for determination of the employee's right to such
38 benefits. Failure to file such notice within the time provided, may be
39 excused by the chairman if it can be shown to the satisfaction of the
40 chairman not to have been reasonably possible to furnish such notice and
41 that such notice was furnished as soon as possible. On demand of the
42 chairman the employer or carrier shall forthwith deliver to the chairman
43 PROOF OF DISABILITY, INCLUDING IF RELEVANT the original or a true copy
44 of the attending physician's or attending podiatrist's or accredited
45 practitioner's statement, wage and employment data and all other papers
46 in the possession of the employer or carrier with respect to such claim.

47 S 14. Subdivision 2 of section 229 of the workers' compensation law,
48 as added by chapter 271 of the laws of 1985, is amended to read as
49 follows:

50 2. Whenever an employee of a covered employer who is eligible for
51 benefits under section two hundred four of this article shall be absent
52 from work due to a disability as defined in subdivision nine of section
53 two hundred one of this article for more than seven consecutive days,
54 the employer shall provide the employee with a written statement of the
55 employee's rights under this article in a form prescribed by the chair-
56 man. The statement shall be provided to the employee within five busi-

1 ness days after the employee's seventh consecutive day of absence due to
2 disability or within five business days after the employer knows or
3 should know that the employee's absence is due to disability, whichever
4 is later. EACH COVERED EMPLOYER SHALL PROVIDE EACH EMPLOYEE WITH A TYPE-
5 WRITTEN, PRINTED OR ELECTRONIC NOTICE IN A FORM PRESCRIBED BY THE CHAIR,
6 STATING THAT THE EMPLOYER HAS PROVIDED FOR THE PAYMENT OF DISABILITY
7 BENEFITS AS REQUIRED BY THIS ARTICLE WITHIN THIRTY DAYS OF THE EFFECTIVE
8 DATE OF THE CHAPTER OF THE LAWS OF TWO THOUSAND ELEVEN WHICH AMENDED
9 THIS SUBDIVISION. EACH COVERED EMPLOYER SHALL PROVIDE SUCH NOTICE TO
10 ALL NEW EMPLOYEES WITHIN THIRTY DAYS OF THEIR FIRST DAY OF WORK.

11 S 15. The workers' compensation law is amended by adding a new section
12 239-a to read as follows:

13 S 239-A. FAMILY CARE STUDY AND MONITORING. 1. THE INSURANCE DEPART-
14 MENT SHALL STUDY, AND REPORT TO THE GOVERNOR AND BOTH HOUSES OF THE
15 LEGISLATURE BY APRIL FIRST, TWO THOUSAND TWELVE, ON THE FEASIBILITY AND
16 IMPACT OF COMMUNITY RATING DISABILITY INSURANCE OR ANY ASPECT THEREOF.

17 2. THERE SHALL BE CREATED THE FAMILY CARE ADVISORY COUNCIL, WHICH
18 SHALL CONSIST OF FIFTEEN MEMBERS TO BE APPOINTED BY THE GOVERNOR AS
19 FOLLOWS: TWO ON RECOMMENDATION BY THE NEW YORK STATE AMERICAN FEDERATION
20 OF LABOR-CONGRESS OF INDUSTRIAL ORGANIZATIONS, ONE OF WHOM SHALL BE
21 REPRESENTATIVE OF PUBLIC EMPLOYEE ORGANIZATIONS CERTIFIED UNDER ARTICLE
22 FOURTEEN OF THE CIVIL SERVICE LAW, PARTICIPATING IN THE PAID FAMILY CARE
23 PLAN, ONE OF WHOM IS REPRESENTATIVE OF UNIONS REPRESENTING WORKERS
24 EMPLOYED IN THE PRIVATE SECTOR; TWO WHO ARE REPRESENTATIVES OF ORGANIZA-
25 TIONS THAT REPRESENT EITHER COVERED BUSINESS OR PUBLIC EMPLOYERS IN NEW
26 YORK STATE PARTICIPATING IN THE PAID FAMILY LEAVE PLAN; TWO ON NOMI-
27 NATION OF THE SPEAKER OF THE ASSEMBLY; ONE ON NOMINATION BY THE MINORITY
28 LEADER OF THE ASSEMBLY; TWO ON NOMINATION BY THE TEMPORARY PRESIDENT OF
29 THE SENATE; ONE ON NOMINATION BY THE MINORITY LEADER OF THE SENATE; AND
30 THE SUPERINTENDENT OF INSURANCE, COMMISSIONER OF LABOR AND CHAIR OF THE
31 WORKERS' COMPENSATION BOARD, WHO SHALL SERVE AS MEMBERS EX OFFICIO. THE
32 COMMISSIONER OF LABOR SHALL SERVE AS CHAIR OF THE COUNCIL. THE SUPER-
33 INTENDENT OF INSURANCE AND CHAIR OF THE WORKERS' COMPENSATION BOARD
34 SHALL CONSULT REGULARLY WITH THE COUNCIL ON THE IMPLEMENTATION OF THE
35 FAMILY CARE BENEFIT. THE DEPARTMENT OF LABOR, THE INSURANCE DEPARTMENT
36 AND THE WORKERS' COMPENSATION BOARD SHALL PROVIDE ALL NECESSARY PERSON-
37 NEL AND LOGISTICAL SUPPORT AS MAY BE NECESSARY TO COMPLETE THE DUTIES OF
38 THE ADVISORY COUNCIL. THE COUNCIL OR ANY OF ITS MEMBERS MAY ISSUE SUCH
39 RECOMMENDATIONS OR REPORTS AS THEY DEEM WARRANTED ON THE FAMILY CARE
40 BENEFIT, INCLUDING ON THE SCOPE OF THE BENEFIT, PROBLEMS WITH THE BENE-
41 FIT; FUNDING OF THE BENEFIT INCLUDING PASS-THROUGH COSTS; POSSIBLE
42 STATUTORY AMENDMENTS AND REGULATORY CHANGES; USAGE RATES; OUTREACH; AND
43 COMMUNITY RATING. ANY SUCH RECOMMENDATIONS OR REPORTS SHALL BE PROVIDED
44 TO THE GOVERNOR, SUPERINTENDENT OF INSURANCE, SPEAKER OF THE ASSEMBLY,
45 TEMPORARY PRESIDENT OF THE SENATE AND MINORITY LEADERS OF THE SENATE AND
46 ASSEMBLY. EACH MEMBER OF THE COMMISSION SHALL SERVE A TERM OF THREE
47 YEARS. AN APPOINTMENT TO FILL A VACANCY SHALL BE MADE FOR THE REMAINDER
48 OF THE AFFECTED TERM. MEMBERS SHALL RECEIVE NO COMPENSATION.

49 S 16. Paragraph 3 of subsection (a) of section 1113 of the insurance
50 law is amended as follows:

51 (3) "Accident and health insurance," means (i) insurance against death
52 or personal injury by accident or by any specified kind or kinds of
53 accident and insurance against sickness, ailment or bodily injury,
54 including insurance providing disability benefits pursuant to article
55 nine of the workers' compensation law, INCLUDING ANY INSURANCE UNDER
56 THAT ARTICLE FOR FAMILY CARE BENEFITS, DISABILITY BENEFITS RESULTING

1 FROM SICKNESS OR INJURY, OR BOTH, except as specified in item (ii) here-
2 of; and (ii) non-cancellable disability insurance, meaning insurance
3 against disability resulting from sickness, ailment or bodily injury
4 (but excluding insurance solely against accidental injury) under any
5 contract which does not give the insurer the option to cancel or other-
6 wise terminate the contract at or after one year from its effective date
7 or renewal date.

8 S 17. This act shall take effect immediately; provided, however, that:
9 (a) Sections one, two, three, four, five, six, seven, eight, nine,
10 ten, twelve, thirteen, fourteen and sixteen of this act shall take
11 effect July 1, 2012.

12 (b) Paragraph a of subdivision 3 of section 211-a of the workers'
13 compensation law, as added by section nine of this act allowing public
14 employees to opt in to family care benefits prior to July 1, 2012 and
15 paragraph (b) of subdivision 1 of section 212 of the workers' compen-
16 sation law as added by section ten of this act allowing public employers
17 to opt in to family care benefits prior to July 1, 2012, shall take
18 effect immediately.

19 (c) Effective immediately, the addition, amendment and/or repeal of
20 any rules or regulations necessary for the implementation of this act
21 and any administrative steps necessary to effectuate the purposes of
22 this act on its effective date are authorized and directed to be made
23 and completed on or before such effective date.