

6289

2011-2012 Regular Sessions

I N A S S E M B L Y

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Introduced by M. of A. NOLAN, COOK, WEPRIN, JAFFEE, BARRON, GIBSON, JACOBS, CASTRO, WEISENBERG, BENEDETTO, SIMOTAS, N. RIVERA, STEVENSON, LANCMAN, CAHILL, SPANO, SCHIMEL, TITUS, MOYA -- Multi-Sponsored by -- M. of A. ABBATE, BOYLAND, BRENNAN, GLICK, GOTTFRIED, HEASTIE, McENENY, PHEFFER, SCARBOROUGH, WEINSTEIN -- read once and referred to the Committee on Labor

AN ACT to amend the workers' compensation law and the insurance law, in relation to providing benefits for injury or sickness, pregnancy or family leave

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

1 Section 1. Subdivision 2 of section 76 of the workers' compensation
2 law, as added by chapter 600 of the laws of 1949, is amended to read as
3 follows:
4 2. The purposes of the state insurance fund herein created are hereby
5 enlarged to provide [for the] insurance [by the state insurance fund of]
6 FOR the payment of the benefits required by section two hundred four of
7 this chapter, INCLUDING BENEFITS FOR FAMILY CARE PROVIDED EITHER IN THE
8 SAME POLICY WITH OR IN A SEPARATE POLICY FROM BENEFITS FOR DISABILITY
9 RESULTING FROM INJURY, SICKNESS OR PREGNANCY OF AN EMPLOYEE, AND AS
10 PROVIDED PURSUANT TO SECTION TWO HUNDRED ELEVEN-A OF THIS CHAPTER. A
11 separate fund is hereby created within the state insurance fund, which
12 shall be known as the "disability benefits fund", and which shall
13 consist of all premiums received and paid into said fund on account of
14 such insurance, all securities acquired by and through the use of moneys
15 belonging to said fund and of interest earned upon moneys belonging to
16 said fund and deposited or invested as herein provided. Said disability
17 benefits fund shall be applicable to the payment of benefits, expenses
18 and assessments on account of insurance written pursuant to article nine
19 of this chapter.

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

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1 S 2. The section heading and the first undesignated paragraph of
2 section 120 of the workers' compensation law, as amended by chapter 61
3 of the laws of 1989, are amended to read as follows:

4 Discrimination against employees [who bring proceedings]. It shall be
5 unlawful for any employer or his or her duly authorized agent to
6 discharge or in any other manner discriminate against an employee as to
7 his or her employment because such employee has claimed or attempted to
8 claim compensation from such employer, OR CLAIMED OR ATTEMPTED TO CLAIM
9 ANY BENEFITS PROVIDED UNDER THIS CHAPTER, or because he or she has
10 testified or is about to testify in a proceeding under this chapter and
11 no other valid reason is shown to exist for such action by the employer.

12 S 3. Subdivision 9 of section 201 of the workers' compensation law is
13 amended by adding two new paragraphs C and D to read as follows:

14 C. "DISABILITY" ALSO INCLUDES FAMILY CARE, AS DEFINED IN SUBDIVISION
15 FIFTEEN OF THIS SECTION.

16 D. UNLESS OTHERWISE SET FORTH IN THIS ARTICLE, ALL PROVISIONS OF THIS
17 ARTICLE APPLICABLE TO "DISABILITY" SHALL APPLY TO (I) DISABILITY ARISING
18 FROM INJURY OR SICKNESS; (II) DISABILITY CAUSED BY OR IN CONNECTION WITH
19 PREGNANCY; AND (III) DISABILITY REQUIRING FAMILY CARE.

20 S 4. Subdivision 14 of section 201 of the workers' compensation law,
21 as added by chapter 600 of the laws of 1949 and as renumbered by chapter
22 438 of the laws of 1964, is amended to read as follows:

23 14. "A day of disability" means any day on which the employee was
24 prevented from performing work because of disability, INCLUDING ANY DAY
25 WHICH THE EMPLOYEE USES FOR FAMILY CARE, and for which [he] THE EMPLOYEE
26 has not received his OR HER regular remuneration.

27 S 5. Section 201 of the workers' compensation law is amended by adding
28 ten new subdivisions 15, 16, 17, 18, 19, 20, 21, 22, 23 and 24 to read
29 as follows:

30 15. "FAMILY CARE" SHALL MEAN ANY LEAVE TAKEN BY AN EMPLOYEE FROM WORK:

31 A. TO PARTICIPATE IN PROVIDING CARE, INCLUDING PHYSICAL OR PSYCHOLOG-
32 ICAL CARE, FOR A FAMILY MEMBER OF THE EMPLOYEE MADE NECESSARY BY A SERI-
33 OUS HEALTH CONDITION OF THE FAMILY MEMBER; OR

34 B. TO BOND WITH THE EMPLOYEE'S CHILD DURING THE FIRST TWELVE MONTHS
35 AFTER THE CHILD'S BIRTH, OR THE FIRST TWELVE MONTHS AFTER THE PLACEMENT
36 OF THE CHILD FOR ADOPTION OR FOSTER CARE WITH THE EMPLOYEE.

37 16. "CHILD" MEANS A BIOLOGICAL, ADOPTED OR FOSTER CHILD, A STEP-CHILD,
38 A LEGAL WARD OR A CHILD OF A PERSON WHO STANDS IN PARENTAL RELATIONSHIP
39 TO THE CHILD WHO IS:

40 A. LESS THAN EIGHTEEN YEARS OF AGE; OR

41 B. EIGHTEEN YEARS OF AGE OR OLDER AND INCAPABLE OF SELF-CARE BECAUSE
42 OF A MENTAL OR PHYSICAL DISABILITY.

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

45 18. "SERIOUS HEALTH CONDITION" MEANS AN ILLNESS, INJURY, IMPAIRMENT,
46 OR PHYSICAL OR MENTAL CONDITION THAT:

47 A. REQUIRES INPATIENT CARE IN A HOSPITAL, HOSPICE OR RESIDENTIAL
48 HEALTH CARE FACILITY; OR

49 B. REQUIRES CONTINUING TREATMENT BY A HEALTH CARE PROVIDER.

50 19. "PARENT" MEANS BIOLOGICAL OR ADOPTIVE PARENT, STEP-PARENT OR
51 PERSON WHO STOOD IN PARENTAL RELATIONSHIP TO AN EMPLOYEE WHEN THE
52 EMPLOYEE WAS:

53 A. LESS THAN EIGHTEEN YEARS OF AGE; OR

54 B. EIGHTEEN YEARS OF AGE OR OLDER AND INCAPABLE OF SELF-CARE BECAUSE
55 OF A MENTAL OR PHYSICAL DISABILITY.

20. "FAMILY MEMBER" MEANS A CHILD, SPOUSE, DOMESTIC PARTNER, PARENT, GRANDCHILD, GRANDPARENT, MOTHER OR FATHER OF SPOUSE OR DOMESTIC PARTNER.

21. PERSONS WHO STAND IN PARENTAL RELATIONSHIP TO A CHILD INCLUDE THOSE WITH DAY-TO-DAY RESPONSIBILITIES TO CARE FOR AND FINANCIALLY SUPPORT A CHILD OR, IN THE CASE OF AN EMPLOYEE, WHO HAD SUCH RESPONSIBILITY FOR THE EMPLOYEE WHEN THE EMPLOYEE WAS A CHILD. A BIOLOGICAL OR LEGAL RELATIONSHIP IS NOT NECESSARY.

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

23. "HEALTH CARE PROVIDER" MEANS A HEALTH CARE PRACTITIONER WHO IS LICENSED UNDER RELEVANT FEDERAL OR STATE LAWS TO PROVIDE MEDICAL, EMERGENCY OR HEALTH SERVICES AND IS TREATING AN EMPLOYEE OR A FAMILY MEMBER FOR A SERIOUS HEALTH CONDITION.

24. "FAMILY CARE COST" SHALL MEAN:

A. PRIOR TO JULY FIRST, TWO THOUSAND THIRTEEN, FORTY-FIVE CENTS PER WEEK; AND

B. DURING EVERY SUBSEQUENT YEAR COMMENCING ON JULY FIRST SUCH AMOUNT AS SHALL BE SET BY REGULATION OF THE SUPERINTENDENT OF INSURANCE FOLLOWING CONSULTATION WITH THE FAMILY CARE ADVISORY COUNCIL BY APRIL FIRST OF THE SAME YEAR BASED ON THE SUPERINTENDENT'S ACTUARIALLY SOUND ESTIMATION OF THE COST PER EMPLOYEE OF PROVIDING FAMILY CARE BENEFITS, BUT IN NO EVENT MORE THAN ONE HUNDRED FIFTEEN PERCENT OF SUCH ESTIMATION OF THE COST PER EMPLOYEE OF PROVIDING FAMILY CARE BENEFITS THROUGH THE STATE INSURANCE FUND.

S 6. The workers' compensation law is amended by adding a new section 203-a to read as follows:

S 203-A. RETALIATORY ACTION PROHIBITED. 1. THE PROVISIONS OF SECTION ONE HUNDRED TWENTY OF THIS CHAPTER AND SECTION TWO HUNDRED FORTY-ONE OF THIS ARTICLE SHALL BE APPLICABLE TO FAMILY CARE LEAVE AS FULLY AS IF SET FORTH IN THIS SECTION.

2. NOTHING IN THIS SECTION SHALL BE DEEMED TO DIMINISH THE RIGHTS, PRIVILEGES, OR REMEDIES OF ANY EMPLOYEE UNDER ANY COLLECTIVE BARGAINING AGREEMENT OR EMPLOYMENT CONTRACT; EXCEPT THAT THE INSTITUTION OF AN ACTION IN ACCORDANCE WITH THIS SECTION SHALL BE DEEMED A WAIVER OF THE RIGHTS AND REMEDIES AVAILABLE UNDER ANY OTHER CONTRACT OR COLLECTIVE BARGAINING AGREEMENT.

S 7. The workers' compensation law is amended by adding a new section 203-b to read as follows:

S 203-B. FAMILY CARE LEAVE. ANY ELIGIBLE EMPLOYEE OF A COVERED EMPLOYER WHO, AFTER JANUARY FIRST, TWO THOUSAND TWELVE, HAS IN EMPLOYMENT TWENTY-FIVE OR MORE EMPLOYEES ON EACH OF AT LEAST THIRTY DAYS IN ANY CALENDAR YEAR WHO TAKES LEAVE UNDER THIS SECTION SHALL BE ENTITLED, ON RETURN FROM SUCH LEAVE, TO BE RESTORED BY THE EMPLOYER TO THE POSITION OF EMPLOYMENT HELD BY THE EMPLOYEE WHEN THE LEAVE COMMENCED, OR TO BE RESTORED TO A COMPARABLE POSITION WITH COMPARABLE EMPLOYMENT BENEFITS, PAY AND OTHER TERMS AND CONDITIONS OF EMPLOYMENT. THE TAKING OF LEAVE FOR THE PURPOSE OF FAMILY CARE SHALL NOT RESULT IN THE LOSS OF ANY EMPLOYMENT BENEFIT ACCRUED PRIOR TO THE DATE ON WHICH THE LEAVE COMMENCED. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO ENTITLE ANY RESTORED EMPLOYEE TO THE ACCRUAL OF ANY SENIORITY OR EMPLOYMENT BENEFITS DURING ANY PERIOD OF LEAVE, OR ANY RIGHT, BENEFIT OR POSITION TO WHICH THE EMPLOYEE WOULD HAVE BEEN ENTITLED HAD THE EMPLOYEE NOT TAKEN THE LEAVE. A VIOLATION OF THIS SECTION SHALL BE A VIOLATION OF SECTION ONE HUNDRED TWENTY OF THIS CHAPTER AND ALL REMEDIES AND PENALTIES AVAILABLE UNDER SECTION ONE HUNDRED TWENTY OF THIS CHAPTER SHALL BE AVAILABLE FOR VIOLATIONS OF THIS SECTION AS FULLY AS IF SET FORTH IN THIS SECTION.

1 S 8. Subdivision 1 of section 204 of the workers' compensation law, as
2 added by chapter 600 of the laws of 1949, is amended and a new subdivi-
3 sion 3 is added to read as follows:

4 1. Disability benefits shall be payable to an eligible employee for
5 disabilities commencing after June thirtieth, nineteen hundred fifty,
6 beginning with the eighth consecutive day of disability and thereafter
7 during the continuance of disability, subject to the limitations as to
8 maximum and minimum amounts and duration and other conditions and limi-
9 tations in this section and in sections two hundred five and two hundred
10 six OF THIS ARTICLE. Successive periods of disability caused by the
11 same or related injury or sickness OR REASON FOR FAMILY CARE shall be
12 deemed a single period of disability only if separated by less than
13 three months.

14 3. THE WEEKLY BENEFIT WHICH THE DISABLED EMPLOYEE IS ENTITLED TO
15 RECEIVE FOR DISABILITY COMMENCING ON OR AFTER JANUARY FIRST, TWO THOU-
16 SAND TWELVE SHALL BE FIFTY PERCENT OF THE EMPLOYEE'S AVERAGE WEEKLY
17 WAGE, BUT IN NO CASE SHALL SUCH BENEFIT EXCEED THIRTY-FIVE PERCENT OF
18 THE STATEWIDE AVERAGE WEEKLY WAGE AS DETERMINED BY THE STATE DEPARTMENT
19 OF LABOR PURSUANT TO SUBDIVISION SIXTEEN OF SECTION TWO OF THIS CHAPTER.
20 THE WEEKLY BENEFIT WHICH THE DISABLED EMPLOYEE IS ENTITLED TO RECEIVE
21 FOR DISABILITY COMMENCING ON OR AFTER APRIL FIRST, TWO THOUSAND THIRTEEN
22 SHALL BE FIFTY PERCENT OF THE EMPLOYEE'S AVERAGE WEEKLY WAGE, BUT IN NO
23 CASE SHALL SUCH BENEFIT EXCEED FORTY PERCENT OF THE STATEWIDE AVERAGE
24 WEEKLY WAGE AS DETERMINED BY THE STATE DEPARTMENT OF LABOR PURSUANT TO
25 SUBDIVISION SIXTEEN OF SECTION TWO OF THIS CHAPTER. THE WEEKLY BENEFIT
26 WHICH THE DISABLED EMPLOYEE IS ENTITLED TO RECEIVE FOR DISABILITY
27 COMMENCING ON OR AFTER APRIL FIRST, TWO THOUSAND FOURTEEN SHALL BE FIFTY
28 PERCENT OF THE EMPLOYEE'S AVERAGE WEEKLY WAGE BUT IN NO CASE SHALL SUCH
29 BENEFIT EXCEED FORTY-FIVE PERCENT OF THE STATEWIDE AVERAGE WEEKLY WAGE
30 AS DETERMINED BY THE STATE DEPARTMENT OF LABOR PURSUANT TO SUBDIVISION
31 SIXTEEN OF SECTION TWO OF THIS CHAPTER. THE WEEKLY BENEFIT WHICH THE
32 DISABLED EMPLOYEE IS ENTITLED TO RECEIVE FOR DISABILITY COMMENCING ON OR
33 AFTER APRIL FIRST, TWO THOUSAND FIFTEEN AND SUBSEQUENTLY SHALL BE FIFTY
34 PERCENT OF THE EMPLOYEE'S AVERAGE WEEKLY WAGE BUT IN NO CASE SHALL SUCH
35 BENEFIT EXCEED FIFTY PERCENT OF THE STATEWIDE AVERAGE WEEKLY WAGE AS
36 DETERMINED BY THE STATE DEPARTMENT OF LABOR PURSUANT TO SUBDIVISION
37 SIXTEEN OF SECTION TWO OF THIS CHAPTER.

38 S 9. Subdivisions 1, 2, 3, 4, 7 and 8 of section 205 of the workers'
39 compensation law, subdivision 1 as amended by chapter 651 of the laws of
40 1958, subdivision 2 as amended by chapter 270 of the laws of 1990 and
41 subdivisions 3, 4, 7 and 8 as added by chapter 600 of the laws of 1949
42 and as renumbered by chapter 352 of the laws of 1981, are amended and a
43 new subdivision 9 is added to read as follows:

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

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

50 2. for any period of disability RESULTING FROM THE INJURY, SICKNESS OR
51 PREGNANCY OF AN EMPLOYEE during which an employee is not under the care
52 of a duly licensed physician or with respect to disability resulting
53 from a condition of the foot which may lawfully be treated by a duly
54 registered and licensed podiatrist of the state of New York or with
55 respect to a disability resulting from a condition which may lawfully be
56 treated by a duly registered and licensed chiropractor of the state of

1 New York or with respect to a disability resulting from a condition
2 which may lawfully be treated by a duly licensed dentist of the state of
3 New York or with respect to a disability resulting from a condition
4 which may lawfully be treated by a duly registered and licensed psychol-
5 ogist of the state of New York or with respect to a disability resulting
6 from a condition which may lawfully be treated by a duly certified nurse
7 midwife, for any period of such disability during which an employee is
8 neither under the care of a physician nor a podiatrist, nor a chiroprac-
9 tor, nor a dentist, nor a psychologist, nor a certified nurse midwife;
10 and for any period of disability during which an employee who adheres to
11 the faith or teachings of any church or denomination and who in accord-
12 ance with its creed, tenets or principles depends for healing upon pray-
13 er through spiritual means alone in the practice of religion, is not
14 under the care of a practitioner duly accredited by the church or denom-
15 ination, and provided such employee shall submit to all physical exam-
16 inations as required by this chapter[.];

17 3. for any disability RESULTING FROM INJURY OR SICKNESS OF AN EMPLOYEE
18 occasioned by the wilful intention of the employee to bring about injury
19 to or the sickness of himself or another, or resulting from any injury
20 or sickness sustained in the perpetration by the employee of an illegal
21 act;

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

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

31 8. for any disability RESULTING FROM AN INJURY, SICKNESS OR PREGNANCY
32 OF THE EMPLOYEE commencing before the employee becomes eligible to bene-
33 fits hereunder [or commencing prior to July first, nineteen hundred
34 fifty, but this shall not preclude benefits for recurrence after July
35 first, nineteen hundred fifty, of a disability commencing prior there-
36 to.];

37 9. FOR ANY DAY OF ABSENCE FROM WORK REQUIRED PURSUANT TO ANY DISCIPLI-
38 NARY PROCESS; OR, IN REGARD TO FAMILY CARE BENEFITS, ANY DAY OF ABSENCE
39 FROM WORK RESULTING FROM INJURY, SICKNESS OR PREGNANCY OF THE EMPLOYEE,
40 INCLUDING ANY LEAVE TAKEN UNDER SECTION SEVENTY-ONE OR SEVENTY-THREE OF
41 THE CIVIL SERVICE LAW.

42 S 10. The workers' compensation law is amended by adding a new section
43 205-a to read as follows:

44 S 205-A. RELATIONSHIP BETWEEN DISABILITY BENEFITS FOR FAMILY CARE AND
45 FOR THE EMPLOYEE'S OWN INJURY, SICKNESS OR PREGNANCY. THE RECEIPT OF
46 BENEFITS FOR DISABILITY RESULTING FROM INJURY, SICKNESS OR PREGNANCY OF
47 THE EMPLOYEE, SHALL NOT COUNT TOWARD ANY TIME LIMITATION UNDER SUBDIVI-
48 SION ONE OF SECTION TWO HUNDRED FIVE OF THIS ARTICLE ON THE RECEIPT OF
49 BENEFITS FOR FAMILY CARE, AND THE RECEIPT OF BENEFITS FOR FAMILY CARE
50 SHALL NOT COUNT TOWARD ANY TIME LIMITATION UNDER SUBDIVISION ONE OF
51 SECTION TWO HUNDRED FIVE OF THIS ARTICLE ON THE RECEIPT OF BENEFITS FOR
52 DISABILITY RESULTING FROM INJURY, SICKNESS OR PREGNANCY TO THE EMPLOYEE,
53 EXCEPT THAT AN EMPLOYEE MAY RECEIVE DISABILITY BENEFITS ON ONLY ONE
54 CLAIM AT ANY TIME.

1 S 11. Subdivision 3 of section 209 of the workers' compensation law,
2 as amended by chapter 415 of the laws of 1983, is amended to read as
3 follows:

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

11 S 12. Section 211 of the workers' compensation law is amended by
12 adding two new subdivisions 7 and 8 to read as follows:

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

18 8. NOTHING IN THIS ARTICLE SHALL REQUIRE AN EMPLOYER TO USE THE SAME
19 CARRIER TO PROVIDE BENEFITS REQUIRED BY OR PERMISSIBLE UNDER THIS ARTI-
20 CLE FOR DISABILITY RESULTING FROM INJURY, SICKNESS OR PREGNANCY OF THE
21 EMPLOYEE AS IT USES TO PROVIDE BENEFITS REQUIRED BY OR PERMISSIBLE UNDER
22 THIS ARTICLE FOR FAMILY CARE. AN EMPLOYER MAY USE A DIFFERENT MEANS,
23 AMONG THOSE SET FORTH IN SUBDIVISIONS ONE THROUGH FIVE OF THIS SECTION,
24 TO PROVIDE BENEFITS REQUIRED BY THIS ARTICLE FOR DISABILITY RESULTING
25 FROM INJURY, SICKNESS OR PREGNANCY OF THE EMPLOYEE, FROM THE MEANS USED
26 TO PROVIDE BENEFITS REQUIRED BY THIS ARTICLE FOR FAMILY CARE.

27 S 13. The workers' compensation law is amended by adding a new section
28 211-a to read as follows:

29 S 211-A. PUBLIC EMPLOYEES; EMPLOYEE OPT IN. 1. FOR PURPOSES OF THIS
30 SECTION, "PUBLIC EMPLOYEE" MEANS ANY EMPLOYEE OF THE STATE, ANY POLI-
31 TICAL SUBDIVISION OF THE STATE, A PUBLIC AUTHORITY OR ANY OTHER GOVERN-
32 MENTAL AGENCY OR INSTRUMENTALITY. "PUBLIC EMPLOYER" MEANS THE STATE, ANY
33 POLITICAL SUBDIVISION OF THE STATE, A PUBLIC AUTHORITY OR ANY OTHER
34 GOVERNMENTAL AGENCY OR INSTRUMENTALITY THEREOF. "EMPLOYEE ORGANIZATION"
35 SHALL HAVE THE MEANING SET FORTH IN SECTION TWO HUNDRED ONE OF THE CIVIL
36 SERVICE LAW.

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

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

43 A. UPON NOTICE GIVEN PRIOR TO APRIL FIRST, TWO THOUSAND TWELVE, WHICH
44 OPT IN SHALL BECOME EFFECTIVE ONLY ON JULY FIRST, TWO THOUSAND TWELVE;

45 B. AT ANY TIME UPON NINETY DAYS NOTICE FOR ANY EMPLOYER WHO IS NOT
46 PROVIDING DISABILITY BENEFITS FOR INJURY, SICKNESS OR PREGNANCY OF AN
47 EMPLOYEE UNDER SECTION TWO HUNDRED TWELVE OF THIS ARTICLE, OR WHO IS
48 SELF-INSURED FOR SUCH BENEFITS;

49 C. FOR ANY EMPLOYER WHO IS PROVIDING DISABILITY BENEFITS FOR INJURY,
50 SICKNESS OR PREGNANCY OF AN EMPLOYEE UNDER SECTION TWO HUNDRED TWELVE OF
51 THIS ARTICLE, UPON NOTICE AT LEAST NINETY DAYS PRIOR TO THE EXPIRATION
52 OF THE EMPLOYER'S INSURANCE POLICY FOR SUCH BENEFITS, WHICH OPT IN SHALL
53 BE EFFECTIVE ONLY FOR THE TIME PERIOD COVERED BY ANY SUBSEQUENT POLICY
54 OR RENEWAL; OR

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

1 AN EMPLOYEE ORGANIZATION THAT HAS OPTED IN TO THE FAMILY CARE BENEFIT
2 MAY OPT OUT OF IT WITHIN THE TIME PERIODS, AND EFFECTIVE UPON THE SAME
3 DATES, SET FORTH IN THIS PARAGRAPH.

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

11 S 14. Subdivisions 1 and 2 of section 212 of the workers' compensation
12 law, subdivision 1 as amended by chapter 740 of the laws of 1960 and
13 subdivision 2 as amended by chapter 120 of the laws of 1969, are amended
14 to read as follows:

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

39 2. Notwithstanding the definition of "employer" and "employment" in
40 section two hundred one of this article, THE STATE, a public authority,
41 a municipal corporation or a fire district or other political subdivi-
42 sion may become a covered employer under this article by complying with
43 the provisions of subdivision one of this section and may discontinue
44 such status only as provided in [that] SUCH subdivision.

45 S 15. Subdivisions 1, 2, 3 and 4 of section 217 of the workers'
46 compensation law, subdivision 1 as amended by chapter 167 of the laws of
47 1999, subdivisions 2 and 3 as amended by chapter 270 of the laws of 1990
48 and subdivision 4 as added by chapter 600 of the laws of 1949, are
49 amended to read as follows:

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

1 (A) IN THE CASE OF DISABILITY RESULTING FROM INJURY, SICKNESS OR PREG-
2 NANCY OF THE EMPLOYEE, a statement of disability by the employee's
3 attending [physician or attending podiatrist or attending chiropractor
4 or attending dentist or attending psychologist or attending certified
5 nurse midwife, or in the case of an employee who adheres to the faith or
6 teachings of any church or denomination, and who in accordance with its
7 creed, tenets or principles depends for healing upon prayer through
8 spiritual means alone in the practice of religion, by an accredited
9 practitioner, containing facts and opinions as to such disability in
10 compliance with regulations of the chair.] HEALTH CARE PROVIDER;

11 (B) IN THE CASE OF FAMILY CARE FOR BONDING WITH A NEW CHILD, A BIRTH
12 CERTIFICATE, CERTIFICATE OF ADOPTION, OR OTHER COMPETENT EVIDENCE SHOW-
13 ING THAT THE EMPLOYEE IS THE PARENT OF A CHILD WITHIN TWELVE MONTHS OF
14 THAT CHILD'S BIRTH OR PLACEMENT FOR ADOPTION OR FOSTER CARE WITH THE
15 EMPLOYEE;

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

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

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

25 Failure to furnish notice or proof within the time and in the manner
26 above provided shall not invalidate the claim but no benefits shall be
27 required to be paid for any period more than two weeks prior to the date
28 on which the required proof is furnished unless it shall be shown to the
29 satisfaction of the chair not to have been reasonably possible to
30 furnish such notice or proof and that such notice or proof was furnished
31 as soon as possible; provided, however, that no benefits shall be paid
32 unless the required proof of disability is furnished within twenty-six
33 weeks after commencement of the period of disability. No limitation of
34 time provided in this section shall run as against any person who is
35 mentally incompetent, or physically incapable of providing such notice
36 as a result of a serious medical condition, or a minor so long as such
37 person has no guardian of the person and/or property.

38 2. An employee claiming benefits FOR THE EMPLOYEE'S INJURY, SICKNESS
39 OR PREGNANCY, OR THE FAMILY MEMBER OF SUCH EMPLOYEE IN ANY CASE WHERE
40 THE EMPLOYEE CLAIMS FAMILY CARE BENEFITS FOR PROVIDING CARE TO THAT
41 FAMILY MEMBER shall, as requested by the employer or carrier, submit
42 himself or herself at intervals, but not more than once a week, for
43 examination by a [physician or podiatrist or chiropractor or dentist or
44 psychologist or certified nurse midwife] RELEVANT HEALTH CARE PROVIDER
45 designated by the employer or carrier. All such examinations shall be
46 without cost to the employee OR FAMILY MEMBER and shall be held at a
47 reasonable time and place.

48 3. The chair may direct the claimant WHO SEEKS DISABILITY BENEFITS FOR
49 HIS OR HER INJURY, SICKNESS OR PREGNANCY, OR THE CLAIMANT'S FAMILY
50 MEMBER WHERE THE CLAIMANT SEEKS DISABILITY BENEFITS FOR FAMILY LEAVE TO
51 PROVIDE CARE TO THAT FAMILY MEMBER to submit to examination by a [physi-
52 cian or podiatrist or chiropractor or dentist or psychologist] RELEVANT
53 HEALTH CARE PROVIDER designated by him or her in any case in which the
54 claim to disability benefits is contested and in claims arising under
55 section two hundred seven OF THIS ARTICLE, and in other cases as the
56 chair or board may require.

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

5 S 16. Section 221 of the workers' compensation law, as separately
6 amended by chapters 425 and 500 of the laws of 1985, is amended to read
7 as follows:

8 S 221. Determination of contested claims for disability benefits.
9 Within twenty-six weeks of written notice of rejection of claim, DENIAL
10 OF RIGHTS UNDER SECTION TWO HUNDRED THREE-A OR TWO HUNDRED THREE-B OF
11 THIS ARTICLE, the employee may file with the [chairman] CHAIR a notice
12 that his or her claim for disability benefits has not been paid, [and]
13 OR THAT THE EMPLOYEE HAS BEEN DENIED RIGHTS GUARANTEED BY SECTION TWO
14 HUNDRED THREE-A OR TWO HUNDRED THREE-B OF THIS ARTICLE. IN CASES OF
15 DENIAL OF BENEFITS, the employee shall submit proof of disability OR
16 ELIGIBILITY FOR FAMILY CARE and of his or her employment, wages and
17 other facts reasonably necessary for determination of the employee's
18 right to such benefits OR PROOF OF DENIAL OF RIGHTS UNDER SECTION TWO
19 HUNDRED THREE-A OR TWO HUNDRED THREE-B OF THIS ARTICLE OR OF
20 RETALIATION. Failure to file such notice within the time provided, may
21 be excused by the [chairman] CHAIR if it can be shown to the satisfac-
22 tion of the [chairman] CHAIR not to have been reasonably possible to
23 furnish such notice and that such notice was furnished as soon as possi-
24 ble. On demand of the [chairman] CHAIR the employer or carrier shall
25 forthwith deliver to the [chairman] CHAIR PROOF OF DISABILITY, INCLUDING
26 IF RELEVANT the original or a true copy of the attending physician's or
27 attending podiatrist's or accredited practitioner's statement, wage and
28 employment data and all other papers in the possession of the employer
29 or carrier with respect to such claim OR COMPLAINT.

30 The board shall have full power and authority to determine all issues
31 in relation to every such claim for disability OR FAMILY CARE benefits
32 required or provided under this article, OR WITH RESPECT TO DENIAL OF
33 RIGHTS UNDER SECTION TWO HUNDRED THREE-A OR TWO HUNDRED THREE-B OF THIS
34 ARTICLE OR INCLUDING ORDERING PAYMENT OF BENEFITS, DAMAGES AND REIN-
35 STATEMENT and shall file its decision in the office of the [chairman]
36 CHAIR. Upon such filing, the [chairman] CHAIR shall send to the parties
37 a copy of the decision. Either party may present evidence and be repres-
38 ented by counsel at any hearing on such claim. The decision of the
39 board shall be final as to all questions of fact and, except as provided
40 in section twenty-three of this chapter, as to all questions of law.
41 Every decision of the board shall be complied with in accordance with
42 its terms within ten days thereafter except in case of appeal, and any
43 payments due under such decision shall draw simple interest from thirty
44 days after the making thereof at the rate provided in section five thou-
45 sand four of the civil practice law and rules.

46 S 17. Subdivision 2 of section 229 of the workers' compensation law,
47 as added by chapter 271 of the laws of 1985, is amended to read as
48 follows:

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

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

11 S 18. 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 DEPARTMENT OF
14 INSURANCE 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 19. Paragraph 3 of subsection (a) of section 1113 of the insurance
50 law is amended to read 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 INJURY, SICKNESS OR PREGNANCY OF AN EMPLOYEE, OR ALL, except as
2 specified in item (ii) [hereof] OF THIS PARAGRAPH; and (ii) non-cancell-
3 able disability insurance, meaning insurance against disability result-
4 ing from sickness, ailment or bodily injury (but excluding insurance
5 solely against accidental injury) under any contract which does not give
6 the insurer the option to cancel or otherwise terminate the contract at
7 or after one year from its effective date or renewal date.

8 S 20. This act shall take effect immediately; provided, however, that:

9 (a) Sections two, three, four, five, six, seven, eight, nine, ten,
10 eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen and
11 nineteen of this act shall take effect January 1, 2012.

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

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