

7547

I N S E N A T E

June 1, 2012

Introduced by Sen. McDONALD -- 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 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.

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

23 Discrimination against employees [who bring proceedings]. It shall be  
24 unlawful for any employer or his or her duly authorized agent to  
25 discharge or in any other manner discriminate against an employee as to  
26 his or her employment because such employee has claimed or attempted to  
27 claim compensation from such employer, OR CLAIMED OR ATTEMPTED TO CLAIM

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

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1 ANY BENEFITS PROVIDED UNDER THIS CHAPTER, or because he or she has  
2 testified or is about to testify in a proceeding under this chapter and  
3 no other valid reason is shown to exist for such action by the employer.

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

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

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

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

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

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

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

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

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

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

32 A. LESS THAN EIGHTEEN YEARS OF AGE; OR

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

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

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

39 A. REQUIRES INPATIENT CARE IN A HOSPITAL, HOSPICE OR RESIDENTIAL  
40 HEALTH CARE FACILITY; OR

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

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

45 A. LESS THAN EIGHTEEN YEARS OF AGE; OR

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

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

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

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

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

5 24. "FAMILY CARE COST" SHALL MEAN:

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

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

16 S 6. The workers' compensation law is amended by adding a new section  
17 203-a to read as follows:

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

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

28 S 7. The workers' compensation law is amended by adding a new section  
29 203-b to read as follows:

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

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

51 1. Disability benefits shall be payable to an eligible employee for  
52 disabilities commencing after June thirtieth, nineteen hundred fifty,  
53 beginning with the eighth consecutive day of disability and thereafter  
54 during the continuance of disability, subject to the limitations as to  
55 maximum and minimum amounts and duration and other conditions and limi-  
56 tations in this section and in sections two hundred five and two hundred

1 six OF THIS ARTICLE. Successive periods of disability caused by the  
2 same or related injury or sickness OR REASON FOR FAMILY CARE shall be  
3 deemed a single period of disability only if separated by less than  
4 three months.

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

29 S 9. Subdivisions 1, 2, 3, 4, 7 and 8 of section 205 of the workers'  
30 compensation law, subdivision 1 as amended by chapter 651 of the laws of  
31 1958, subdivision 2 as amended by chapter 270 of the laws of 1990 and  
32 subdivisions 3, 4, 7 and 8 as added by chapter 600 of the laws of 1949  
33 and as renumbered by chapter 352 of the laws of 1981, are amended and a  
34 new subdivision 9 is added to read as follows:

35 1. (A) For DISABILITY RESULTING FROM INJURY, SICKNESS OR PREGNANCY OF  
36 AN EMPLOYEE, FOR more than twenty-six weeks during a period of fifty-two  
37 consecutive calendar weeks or during any one period of disability; OR  
38 (B) FOR FAMILY CARE, FOR MORE THAN TWELVE WEEKS DURING A PERIOD OF  
39 FIFTY-TWO CONSECUTIVE CALENDAR WEEKS OR DURING ANY ONE PERIOD OF FAMILY  
40 CARE;

41 2. for any period of disability RESULTING FROM THE INJURY, SICKNESS OR  
42 PREGNANCY OF AN EMPLOYEE during which an employee is not under the care  
43 of a duly licensed physician or with respect to disability resulting  
44 from a condition of the foot which may lawfully be treated by a duly  
45 registered and licensed podiatrist of the state of New York or with  
46 respect to a disability resulting from a condition which may lawfully be  
47 treated by a duly registered and licensed chiropractor of the state of  
48 New York or with respect to a disability resulting from a condition  
49 which may lawfully be treated by a duly licensed dentist of the state of  
50 New York or with respect to a disability resulting from a condition  
51 which may lawfully be treated by a duly registered and licensed psychol-  
52 ogist of the state of New York or with respect to a disability resulting  
53 from a condition which may lawfully be treated by a duly certified nurse  
54 midwife, for any period of such disability during which an employee is  
55 neither under the care of a physician nor a podiatrist, nor a chiroprac-  
56 tor, nor a dentist, nor a psychologist, nor a certified nurse midwife;

1 and for any period of disability during which an employee who adheres to  
2 the faith or teachings of any church or denomination and who in accord-  
3 ance with its creed, tenets or principles depends for healing upon pray-  
4 er through spiritual means alone in the practice of religion, is not  
5 under the care of a practitioner duly accredited by the church or denom-  
6 ination, and provided such employee shall submit to all physical exam-  
7 inations as required by this chapter[.];

8 3. for any disability RESULTING FROM INJURY OR SICKNESS OF AN EMPLOYEE  
9 occasioned by the wilful intention of the employee to bring about injury  
10 to or the sickness of himself or another, or resulting from any injury  
11 or sickness sustained in the perpetration by the employee of an illegal  
12 act;

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

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

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

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

33 S 10. The workers' compensation law is amended by adding a new section  
34 205-a to read as follows:

35 S 205-A. RELATIONSHIP BETWEEN DISABILITY BENEFITS FOR FAMILY CARE AND  
36 FOR THE EMPLOYEE'S OWN INJURY, SICKNESS OR PREGNANCY. THE RECEIPT OF  
37 BENEFITS FOR DISABILITY RESULTING FROM INJURY, SICKNESS OR PREGNANCY OF  
38 THE EMPLOYEE, SHALL NOT COUNT TOWARD ANY TIME LIMITATION UNDER SUBDIVI-  
39 SION ONE OF SECTION TWO HUNDRED FIVE OF THIS ARTICLE ON THE RECEIPT OF  
40 BENEFITS FOR FAMILY CARE, AND THE RECEIPT OF BENEFITS FOR FAMILY CARE  
41 SHALL NOT COUNT TOWARD ANY TIME LIMITATION UNDER SUBDIVISION ONE OF  
42 SECTION TWO HUNDRED FIVE OF THIS ARTICLE ON THE RECEIPT OF BENEFITS FOR  
43 DISABILITY RESULTING FROM INJURY, SICKNESS OR PREGNANCY TO THE EMPLOYEE,  
44 EXCEPT THAT AN EMPLOYEE MAY RECEIVE DISABILITY BENEFITS ON ONLY ONE  
45 CLAIM AT ANY TIME.

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

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

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

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

8 8. NOTHING IN THIS ARTICLE SHALL REQUIRE AN EMPLOYER TO USE THE SAME  
9 CARRIER TO PROVIDE BENEFITS REQUIRED BY OR PERMISSIBLE UNDER THIS ARTI-  
10 CLE FOR DISABILITY RESULTING FROM INJURY, SICKNESS OR PREGNANCY OF THE  
11 EMPLOYEE AS IT USES TO PROVIDE BENEFITS REQUIRED BY OR PERMISSIBLE UNDER  
12 THIS ARTICLE FOR FAMILY CARE. AN EMPLOYER MAY USE A DIFFERENT MEANS,  
13 AMONG THOSE SET FORTH IN SUBDIVISIONS ONE THROUGH FIVE OF THIS SECTION,  
14 TO PROVIDE BENEFITS REQUIRED BY THIS ARTICLE FOR DISABILITY RESULTING  
15 FROM INJURY, SICKNESS OR PREGNANCY OF THE EMPLOYEE, FROM THE MEANS USED  
16 TO PROVIDE BENEFITS REQUIRED BY THIS ARTICLE FOR FAMILY CARE.

17 S 13. The workers' compensation law is amended by adding a new section  
18 211-a to read as follows:

19 S 211-A. PUBLIC EMPLOYEES; EMPLOYEE OPT IN. 1. FOR PURPOSES OF THIS  
20 SECTION, "PUBLIC EMPLOYEE" MEANS ANY EMPLOYEE OF THE STATE, ANY POLI-  
21 TICAL SUBDIVISION OF THE STATE, A PUBLIC AUTHORITY OR ANY OTHER GOVERN-  
22 MENTAL AGENCY OR INSTRUMENTALITY. "PUBLIC EMPLOYER" MEANS THE STATE, ANY  
23 POLITICAL SUBDIVISION OF THE STATE, A PUBLIC AUTHORITY OR ANY OTHER  
24 GOVERNMENTAL AGENCY OR INSTRUMENTALITY THEREOF. "EMPLOYEE ORGANIZATION"  
25 SHALL HAVE THE MEANING SET FORTH IN SECTION TWO HUNDRED ONE OF THE CIVIL  
26 SERVICE LAW.

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

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

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

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

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

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

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

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

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

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

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

35 S 15. Subdivisions 1, 2, 3 and 4 of section 217 of the workers'  
36 compensation law, subdivision 1 as amended by chapter 167 of the laws of  
37 1999, subdivisions 2 and 3 as amended by chapter 270 of the laws of 1990  
38 and subdivision 4 as added by chapter 600 of the laws of 1949, are  
39 amended to read as follows:

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

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

1 (B) IN THE CASE OF FAMILY CARE FOR BONDING WITH A NEW CHILD, A BIRTH  
2 CERTIFICATE, CERTIFICATE OF ADOPTION, OR OTHER COMPETENT EVIDENCE SHOW-  
3 ING THAT THE EMPLOYEE IS THE PARENT OF A CHILD WITHIN TWELVE MONTHS OF  
4 THAT CHILD'S BIRTH OR PLACEMENT FOR ADOPTION OR FOSTER CARE WITH THE  
5 EMPLOYEE;

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

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

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

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

28 2. An employee claiming benefits FOR THE EMPLOYEE'S INJURY, SICKNESS  
29 OR PREGNANCY, OR THE FAMILY MEMBER OF SUCH EMPLOYEE IN ANY CASE WHERE  
30 THE EMPLOYEE CLAIMS FAMILY CARE BENEFITS FOR PROVIDING CARE TO THAT  
31 FAMILY MEMBER shall, as requested by the employer or carrier, submit  
32 himself or herself at intervals, but not more than once a week, for  
33 examination by a [physician or podiatrist or chiropractor or dentist or  
34 psychologist or certified nurse midwife] RELEVANT HEALTH CARE PROVIDER  
35 designated by the employer or carrier. All such examinations shall be  
36 without cost to the employee OR FAMILY MEMBER and shall be held at a  
37 reasonable time and place.

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

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

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

54 S 221. Determination of contested claims for disability benefits.  
55 Within twenty-six weeks of written notice of rejection of claim, DENIAL  
56 OF RIGHTS UNDER SECTION TWO HUNDRED THREE-A OR TWO HUNDRED THREE-B OF



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

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

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

39 2. Whenever an employee of a covered employer who is eligible for  
40 benefits under section two hundred four of this article shall be absent  
41 from work due to a disability as defined in subdivision nine of section  
42 two hundred one of this article for more than seven consecutive days,  
43 the employer shall provide the employee with a written statement of the  
44 employee's rights under this article in a form prescribed by the [chair-  
45 man] CHAIR. The statement shall be provided to the employee within five  
46 business days after the employee's seventh consecutive day of absence  
47 due to disability or within five business days after the employer knows  
48 or should know that the employee's absence is due to disability, which-  
49 ever is later. EACH COVERED EMPLOYER SHALL PROVIDE EACH EMPLOYEE WITH A  
50 TYPEWRITTEN, PRINTED OR ELECTRONIC NOTICE IN A FORM PRESCRIBED BY THE  
51 CHAIR, STATING THAT THE EMPLOYER HAS PROVIDED FOR THE PAYMENT OF DISA-  
52 BILITY BENEFITS AS REQUIRED BY THIS ARTICLE WITHIN THIRTY DAYS OF THE  
53 EFFECTIVE DATE OF THE CHAPTER OF THE LAWS OF TWO THOUSAND ELEVEN WHICH  
54 AMENDED THIS SUBDIVISION. EACH COVERED EMPLOYER SHALL PROVIDE SUCH  
55 NOTICE TO ALL NEW EMPLOYEES WITHIN THIRTY DAYS OF THEIR FIRST DAY OF  
56 WORK.

1 S 18. The workers' compensation law is amended by adding a new section  
2 239-a to read as follows:

3 S 239-A. FAMILY CARE STUDY AND MONITORING. 1. THE DEPARTMENT OF  
4 INSURANCE SHALL STUDY, AND REPORT TO THE GOVERNOR AND BOTH HOUSES OF THE  
5 LEGISLATURE BY APRIL FIRST, TWO THOUSAND TWELVE, ON THE FEASIBILITY AND  
6 IMPACT OF COMMUNITY RATING DISABILITY INSURANCE OR ANY ASPECT THEREOF.

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

39 S 19. Paragraph 3 of subsection (a) of section 1113 of the insurance  
40 law is amended to read as follows:

41 (3) "Accident and health insurance," means (i) insurance against death  
42 or personal injury by accident or by any specified kind or kinds of  
43 accident and insurance against sickness, ailment or bodily injury,  
44 including insurance providing disability benefits pursuant to article  
45 nine of the workers' compensation law, INCLUDING ANY INSURANCE UNDER  
46 THAT ARTICLE FOR FAMILY CARE BENEFITS, DISABILITY BENEFITS RESULTING  
47 FROM INJURY, SICKNESS OR PREGNANCY OF AN EMPLOYEE, OR ALL, except as  
48 specified in item (ii) [hereof] OF THIS PARAGRAPH; and (ii) non-cancell-  
49 able disability insurance, meaning insurance against disability result-  
50 ing from sickness, ailment or bodily injury (but excluding insurance  
51 solely against accidental injury) under any contract which does not give  
52 the insurer the option to cancel or otherwise terminate the contract at  
53 or after one year from its effective date or renewal date.

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

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

4 (b) Paragraph a of subdivision 3 of section 211-a of the workers'  
5 compensation law, as added by section thirteen of this act allowing  
6 public employees to opt in to family care benefits prior to July 1, 2012  
7 and subdivision 1 of section 212 of the workers' compensation law as  
8 amended by section fourteen of this act allowing public employers to opt  
9 in to family care benefits prior to July 1, 2012, shall take effect  
10 immediately.

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