

STATE OF NEW YORK

8919

IN SENATE

August 19, 2020

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

AN ACT to amend the workers' compensation law, in relation to expanding family leave eligibility to include participation in remote learning for certain employees who are the parents or guardians of certain children

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivision 15 of section 201 of the workers' compensation
2 law, as added by section 2 of part SS of chapter 54 of the laws of 2016,
3 is amended to read as follows:

4 15. "Family leave" shall mean any leave taken by an employee from
5 work: (a) to participate in providing care, including physical or
6 psychological care, for a family member of the employee made necessary
7 by a serious health condition of the family member; or (b) to bond with
8 the employee's child during the first twelve months after the child's
9 birth, or the first twelve months after the placement of the child for
10 adoption or foster care with the employee; or (c) because of any quali-
11 fying exigency as interpreted under the family and medical leave act, 29
12 U.S.C.S § 2612(a)(1)(e) and 29 C.F.R. S.825.126(a)(1)-(8), arising out
13 of the fact that the spouse, domestic partner, child, or parent of the
14 employee is on active duty (or has been notified of an impending call or
15 order to active duty) in the armed forces of the United States; or (d)
16 to participate in remote learning where the employee has a child under
17 the age of twelve or over the age of twelve who has special learning
18 needs or has a medical or developmental disability requiring services or
19 accommodations, and the school such child attends is physically closed
20 during a pandemic or declared state disaster emergency as defined under
21 section twenty-eight of the executive law.

22 § 2. Section 203 of the workers' compensation law, as amended by
23 section 3 of part SS of chapter 54 of the laws of 2016, is amended to
24 read as follows:

25 § 203. 1. Employees eligible for benefits under section two hundred
26 four of this article. Employees in employment of a covered employer for

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

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1 four or more consecutive weeks and employees in employment during the
2 work period usual to and available during such four or more consecutive
3 weeks in any trade or business in which they are regularly employed and
4 in which hiring from day to day of such employees is the usual employ-
5 ment practice shall be eligible for disability benefits as provided in
6 section two hundred four of this article. Employees in employment of a
7 covered employer for twenty-six or more consecutive weeks and employees
8 in employment during the work period usual to and available during such
9 twenty-six or more consecutive weeks in any trade or business in which
10 they are regularly employed and in which hiring from day to day of such
11 employees is the usual employment practice shall be eligible for family
12 leave benefits as provided in section two hundred four of this article.
13 Every such employee shall continue to be eligible for family leave bene-
14 fits only during employment with a covered employer. Every such employee
15 shall continue to be eligible for disability benefits during such
16 employment and for a period of four weeks after such employment termi-
17 nates regardless of whether the employee performs any work for remunera-
18 tion or profit in non-covered employment. If during such four week peri-
19 od the employee performs any work for remuneration or profit for another
20 covered employer the employee shall become eligible for disability bene-
21 fits immediately with respect to that employment. In addition every such
22 employee who has previously completed four or more consecutive weeks in
23 employment with the covered employer for purposes of disability bene-
24 fits, or twenty-six or more consecutive weeks in employment with the
25 covered employer for purposes of paid family leave, and returns to work
26 with the same employer after an agreed and specified unpaid leave of
27 absence or vacation without pay shall become eligible for benefits imme-
28 diately with respect to such employment. An employee who during a period
29 in which he or she is eligible to receive benefits under subdivision two
30 of section two hundred seven of this article returns to employment with
31 a covered employer and an employee who is currently receiving unemploy-
32 ment insurance benefits or benefits under section two hundred seven of
33 this article and who returns to employment with a covered employer shall
34 become eligible for disability benefits immediately with respect to such
35 employment. An employee regularly in the employment of a single employer
36 on a work schedule less than the employer's normal work week shall
37 become eligible for disability leave benefits on the twenty-fifth day of
38 such regular employment and for purposes of paid family leave an employ-
39 er shall become eligible for benefits on the one hundred seventy-fifth
40 day of such regular employment. An employee who is eligible for disabil-
41 ity and family leave benefits in the employment of a covered employer
42 shall not be deemed, for the purposes of this article, to have such
43 employment terminated during any period he or she is eligible to receive
44 benefits under section two hundred four of this article with respect to
45 such employment.

46 2. The commissioner shall promulgate rules and regulations regarding
47 eligibility of an employee for family leave pursuant to paragraph (d) of
48 subdivision fifteen of section two hundred one of this article which
49 shall include but not be limited to:

50 (a) Limiting eligibility for such family leave to periods where school
51 is in session; and

52 (b) Limiting the eligibility for such family leave to one parent or
53 legal guardian per household concurrently.

54 § 3. Subdivision 2 of section 204 of the workers' compensation law is
55 amended by adding a new paragraph (a-1) to read as follows:

1 (a-1) Notwithstanding any provision of law to the contrary, family
2 leave taken pursuant to paragraph (d) of subdivision fifteen of section
3 two hundred one of this article shall be taken on an hourly basis which
4 shall not exceed a total of four hundred twenty hours in a single
5 covered period and shall be equal to the employee's current hourly wage
6 or salary equivalent.

7 § 4. Paragraph (b) of subdivision 3 of section 205 of the workers'
8 compensation law, as amended by section 6 of part SS of chapter 54 of
9 the laws of 2016, is amended to read as follows:

10 (b) for any day of disability or family leave during which the employ-
11 ee performed work for remuneration or profit, provided however, that
12 this paragraph shall not apply to family leave taken pursuant to para-
13 graph (d) of subdivision fifteen of section two hundred one of this
14 article;

15 § 5. Paragraph (d) of subdivision 3 of section 206 of the workers'
16 compensation law, as added by section 7 of part SS of chapter 54 of the
17 laws of 2016, is amended to read as follows:

18 (d) for any day in which claimant works at least part of that day for
19 remuneration or profit for the covered employer or for any other employ-
20 er while working for remuneration or profit, for him or herself, or
21 another person or entity, during the same or substantially similar work-
22 ing hours as those of the covered employer from which family leave bene-
23 fits are claimed, except that occasional scheduling adjustments with
24 respect to secondary employments shall not prevent receipt of family
25 leave benefits, provided however, that this paragraph shall not apply to
26 family leave taken pursuant to paragraph (d) of subdivision fifteen of
27 section two hundred one of this article.

28 § 6. This act shall take effect immediately.