

STATE OF NEW YORK

4053

2023-2024 Regular Sessions

IN ASSEMBLY

February 9, 2023

Introduced by M. of A. SOLAGES -- read once and referred to the Committee on Labor

AN ACT to amend the workers' compensation law, in relation to expanding eligibility for temporary disability insurance and paid family leave benefits and to making certain conforming technical changes

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, as amended by chapter 675 of the laws of 1977, paragraph B as
3 amended by chapter 352 of the laws of 1981, is amended to read as
4 follows:

5 9. ~~[A-]~~ (a) "Disability" during employment means the inability of an
6 employee, as a result of injury or sickness not arising out of and in
7 the course of an employment, to perform the regular duties of ~~[his]~~
8 their employment or the duties of any other employment which ~~[his]~~ their
9 employer may offer ~~[him]~~ them at ~~[his]~~ their regular wages and which
10 ~~[his]~~ their injury or sickness does not prevent ~~[him]~~ them from perform-
11 ing. "Disability" during unemployment means the inability of an employ-
12 ee, as a result of injury or sickness not arising out of and in the
13 course of an employment, to perform the duties of any employment for
14 which ~~[he is]~~ they are reasonably qualified by training and experience.
15 ~~[B-]~~ (b) "Disability" also includes disability caused by or in
16 connection with a pregnancy.

17 (c) "Disability" also includes the inability of an employee to work in
18 order to receive medical treatment for a serious health condition not
19 arising out of and in the course of employment.

20 § 2. Subdivision 20 of section 201 of the workers' compensation law,
21 as amended by chapter 550 of the laws of 2021, is amended to read as
22 follows:

23 20. "Family member" means a child, parent, grandparent, grandchild,
24 sibling, spouse, or domestic partner as defined in this section, or any
25 other individual related by blood to the employee or whose close associ-
26 ation with the employee is the equivalent of a family relationship.

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

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

§ 203. Employees eligible for benefits under section two hundred four of this article. Employees in employment of a covered employer for four or more consecutive weeks and employees in employment during the work period usual to and available during such four or more consecutive weeks in any trade or business in which they are regularly employed and in which hiring from day to day of such employees is the usual employment practice shall be eligible for disability and family leave benefits as provided in section two hundred four of this article. ~~[Employees in employment of a covered employer for twenty-six or more consecutive weeks and employees in employment during the work period usual to and available during such twenty-six or more consecutive weeks in any trade or business in which they are regularly employed and in which hiring from day to day of such employees is the usual employment practice shall be eligible for family leave benefits as provided in section two hundred four of this article. Every such employee shall continue to be eligible for family leave benefits only during employment with a covered employer.]~~ Every such employee shall continue to be eligible for disability and family leave benefits during such employment and for a period of four weeks after such employment terminates regardless of whether the employee performs any work for remuneration or profit in non-covered employment. If during such four week period the employee performs any work for remuneration or profit for another covered employer the employee shall become eligible for disability and family leave benefits immediately with respect to that employment. In addition every such employee who has previously completed four or more consecutive weeks in employment with the covered employer for purposes of disability and family leave benefits~~[, or twenty-six or more consecutive weeks in employment with the covered employer for purposes of paid family leave,]~~ and returns to work with the same employer after an agreed and specified unpaid leave of absence or vacation without pay shall become eligible for benefits immediately with respect to such employment. An employee who during a period in which ~~[he or she is]~~ they are eligible to receive benefits under subdivision two of section two hundred seven of this article returns to employment with a covered employer and an employee who is currently receiving unemployment insurance benefits or benefits under section two hundred seven of this article and who returns to employment with a covered employer shall become eligible for disability and family leave benefits immediately with respect to such employment. An employee regularly in the employment of a single employer on a work schedule less than the employer's normal work week shall become eligible for disability and family leave benefits on the twenty-fifth day of such regular employment ~~[and for purposes of paid family leave an employer shall become eligible for benefits on the one hundred seventy-fifth day of such regular employment]~~. An employee who is eligible for disability and family leave benefits in the employment of a covered employer shall not be deemed, for the purposes of this article, to have such employment terminated during any period ~~[he or she is]~~ they are eligible to receive benefits under ~~[section two hundred four of this article with respect to such employment]~~ subdivision two of section two hundred seven of this article and who returns to employment with a covered employer and an employee who is currently receiving unemployment insurance benefits or benefits under section two hundred seven of this article and who returns to employment with a covered employer shall become eligible for disabil-

ity and family leave benefits immediately with respect to such employment. An employee regularly in the employment of a single employer on a work schedule less than the employer's normal work week shall become eligible for disability and family leave benefits on the twenty-fifth day of such regular employment. An employee who is eligible for disability and family leave benefits in the employment of a covered employer shall not be deemed, for the purposes of this article, to have such employment terminated during any period they are eligible to receive benefits under section two hundred four of this article with respect to such employment.

§ 4. Section 203-a of the workers' compensation law, as added by section 4 of part SS of chapter 54 of the laws of 2016, is amended to read as follows:

§ 203-a. [~~Retaliatory~~] Interference and retaliatory action prohibited for disability and family leave. 1. The provisions of section one hundred twenty of this chapter and section two hundred forty-one of this article shall be applicable to disability and family leave.

2. It shall be unlawful for any employer to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided under this article, including: (a) failing to comply with the requirements of section two hundred twenty-nine of this article, such as by failing to provide an employee with the notice of rights required by such section; (b) failing to provide an employee with complete and accurate information related to the submission of a claim for disability or family leave benefits, such as by failing to inform the employee that it is the employee's responsibility to submit the completed application materials to the employer's insurance carrier or by failing or refusing to provide the employee with the name of the employer's insurance carrier and/or the employer's policy number with said insurance carrier; (c) failing to accurately complete and return to the employee the disability or family leave application paperwork within the time period specified by the chair; (d) providing the employer's insurance carrier with inaccurate information about an employee's employment as it relates to the employee's eligibility for disability or family leave benefits; (e) refusing to allow an employee who has requested disability or family leave under this article to begin leave until the employer's insurance carrier has approved the employee's claim for disability or family leave benefits; (f) failing or refusing to carry disability or family leave insurance as required by section two hundred eleven of this article; (g) threatening termination, demotion, discipline, suspension, or reduction of hours or wages, reporting or threatening to report an employee's suspected citizenship or immigration status or the suspected citizenship or immigration status of a family member of the employee to a federal, state, or local agency, or threatening any other action against an employee seeking to take disability or family leave that might reasonably deter an employee from exercising a right provided under this article; or (h) threatening or taking any other action that may have the effect of preventing or discouraging an employee from exercising a right provided under this article.

3. 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.

§ 5. Section 203-b of the workers' compensation law, as added by section 4 of part SS of chapter 54 of the laws of 2016, is amended to read as follows:

§ 203-b. Reinstatement following disability or family leave. Any eligible employee of a covered employer who takes leave, including leave due to a disability, under this article 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 family leave or leave due to a disability 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.

§ 6. Section 203-c of the workers' compensation law, as added by section 4 of part SS of chapter 54 of the laws of 2016, is amended to read as follows:

§ 203-c. Health insurance during disability or family leave. In accordance with the Family and Medical Leave Act (29 U.S.C. §§ 2601-2654), during any period of disability or family leave the employer shall maintain any existing health benefits of the employee in force for the duration of such leave as if the employee had continued to work from the date ~~[he or she]~~ they commenced disability or family leave until the date ~~[he or she returns]~~ they return to employment.

§ 7. Subdivision 2 of section 204 of the workers' compensation law, as amended by section 5 of part SS of chapter 54 of the laws of 2016, is amended to read as follows:

2. (a) The weekly benefit for family leave that occurs (i) on or after January first, two thousand eighteen shall not exceed eight weeks during any fifty-two week calendar period and shall be fifty percent of the employee's average weekly wage but shall not exceed fifty percent of the state average weekly wage, (ii) on or after January first, two thousand nineteen shall not exceed ten weeks during any fifty-two week calendar period and shall be fifty-five percent of the employee's average weekly wage but shall not exceed fifty-five percent of the state average weekly wage, (iii) on or after January first, two thousand twenty shall not exceed ten weeks during any fifty-two week calendar period and shall be sixty percent of the employee's average weekly wage but shall not exceed sixty percent of the state average weekly wage, ~~[and]~~ (iv) on or after January first ~~[of each succeeding year]~~, two thousand twenty-two shall not exceed twelve weeks during any fifty-two week calendar period and shall be sixty-seven percent of the employee's average weekly wage but shall not exceed sixty-seven percent of the New York state average weekly wage in effect, and (v) on or after January first, two thousand twenty-five, shall not exceed twelve weeks during any fifty-two week calendar period and shall be ninety percent of the portion of the employee's average weekly wage that is equal to or less than fifty percent of the New York state average weekly wage in effect and sixty-seven percent of the portion of the employee's average weekly wage that is more than fifty percent of the New York state average weekly wage in effect but shall not exceed sixty-seven percent of the New York state average weekly wage in effect. The superintendent of financial services shall have discretion to delay the increases in the family leave benefit level provided in subparagraphs (ii), (iii), ~~[and]~~ (iv), and (v) of this paragraph by one or more calendar years. In determining whether to delay the increase in the family leave benefit for any year, the superintendent of

1 financial services shall consider: (1) the current cost to employees of
2 the family leave benefit and any expected change in the cost after the
3 benefit increase; (2) the current number of insurers issuing insurance
4 policies with a family leave benefit and any expected change in the
5 number of insurers issuing such policies after the benefit increase; (3)
6 the impact of the benefit increase on employers' business and the over-
7 all stability of the program to the extent that information is readily
8 available; (4) the impact of the benefit increase on the financial
9 stability of the disability and family leave insurance market and carri-
10 ers; and (5) any additional factors that the superintendent of financial
11 services deems relevant. If the superintendent of financial services
12 delays the increase in the family leave benefit level for one or more
13 calendar years, the family leave benefit level that shall take effect
14 immediately following the delay shall be the same benefit level that
15 would have taken effect but for the delay. The weekly benefits for fami-
16 ly leave that occurs on or after January first, two thousand eighteen
17 shall not be less than one hundred dollars per week except that if the
18 employee's wages at the time of family leave are less than one hundred
19 dollars per week, the employee shall receive [~~his or her~~] their full
20 wages. Benefits may be payable to employees for paid family leave taken
21 intermittently or for less than a full work week in increments of one
22 full day or one fifth of the weekly benefit.

23 (b) The weekly benefit which the disabled employee is entitled to
24 receive for disability commencing on or after January first, two thou-
25 sand twenty-five shall be ninety percent of the portion of the employ-
26 ee's average weekly wage that is equal to or less than fifty percent of
27 the New York state average weekly wage in effect and sixty-seven percent
28 of the portion of the employee's average weekly wage that is more than
29 fifty percent of the New York state average weekly wage in effect but
30 shall not exceed sixty-seven percent of the New York state average week-
31 ly wage in effect; except that if the employee's average weekly wage is
32 less than one hundred dollars, the benefit shall be such average weekly
33 wage. The weekly benefit which the disabled employee is entitled to
34 receive for disability commencing on or after May first, nineteen
35 hundred eighty-nine shall be one-half of the employee's weekly wage, but
36 in no case shall such benefit exceed one hundred seventy dollars; except
37 that if the employee's average weekly wage is less than twenty dollars,
38 the benefit shall be such average weekly wage. The weekly benefit which
39 the disabled employee is entitled to receive for disability commencing
40 on or after July first, nineteen hundred eighty-four shall be one-half
41 of the employee's weekly wage, but in no case shall such benefit exceed
42 one hundred forty-five dollars; except that if the employee's average
43 weekly wage is less than twenty dollars, the benefit shall be such aver-
44 age weekly wage. The weekly benefit which the disabled employee is enti-
45 tled to receive for disability commencing on or after July first, nine-
46 teen hundred eighty-three and prior to July first, nineteen hundred
47 eighty-four shall be one-half of the employee's average weekly wage, but
48 in no case shall such benefit exceed one hundred thirty-five dollars nor
49 be less than twenty dollars; except that if the employee's average week-
50 ly wage is less than twenty dollars the benefit shall be such average
51 weekly wage. The weekly benefit which the disabled employee is entitled
52 to receive for disability commencing on or after July first, nineteen
53 hundred seventy-four, and prior to July first, nineteen hundred eighty-
54 three, shall be one-half of the employee's average weekly wage, but in
55 no case shall such benefit exceed ninety-five dollars nor be less than
56 twenty dollars; except that if the employee's average weekly wage is

1 less than twenty dollars, the benefit shall be such average weekly wage.
2 The weekly benefit which the disabled employee is entitled to receive
3 for disability commencing on or after July first, nineteen hundred
4 seventy and prior to July first, nineteen hundred seventy-four shall be
5 one-half of the employee's average weekly wage, but in no case shall
6 such benefit exceed seventy-five dollars nor be less than twenty
7 dollars; except that if the employee's average weekly wage is less than
8 twenty dollars the benefit shall be such average weekly wage. For any
9 period of disability less than a full week, the benefits payable shall
10 be calculated by dividing the weekly benefit by the number of the
11 employee's normal work days per week and multiplying the quotient by the
12 number of normal work days in such period of disability. The weekly
13 benefit for a disabled employee who is concurrently eligible for bene-
14 fits in the employment of more than one covered employer shall, within
15 the maximum and minimum herein provided, be (i) one-half of the total of
16 the employee's average weekly wages received from all such covered
17 employers, or (ii) for disability commencing on or after January first,
18 two thousand twenty-five, ninety percent of the portion of the employ-
19 ee's average weekly wage received from all such covered employers that
20 is equal to or less than fifty percent of the New York state average
21 weekly wage in effect and sixty-seven percent of the portion of the
22 employee's average weekly wage received from all such covered employers
23 that is more than fifty percent of the New York state average weekly
24 wage in effect, and shall be allocated in the proportion of their
25 respective average weekly wage payments.

26 § 8. Section 207 of the workers' compensation law, as added by chap-
27 ter 600 of the laws of 1949, subdivisions 1 and 2 as amended by chapter
28 438 of the laws of 1964, subdivision 4 as amended by chapter 436 of the
29 laws of 1986, and subdivision 5 as added by section 8 of part SS of
30 chapter 54 of the laws of 2016, is amended to read as follows:

31 § 207. Disability while unemployed. 1. Employees entitled to unemploy-
32 ment insurance benefits. An employee whose employment with a covered
33 employer is terminated and who during a period of unemployment within
34 twenty-six weeks immediately following such termination of employment
35 shall become ineligible for benefits currently being claimed under the
36 unemployment insurance law solely because of disability commencing after
37 June thirtieth, nineteen hundred fifty or need for family leave commenc-
38 ing after January first, two thousand twenty-five, and who on the day
39 such disability or need for family leave commences is not employed or
40 working for remuneration or profit and is not then otherwise eligible
41 for benefits under this article, shall be entitled to receive disability
42 or family leave benefits as herein provided for each week of such disa-
43 bility or need for family leave for which week ~~[he]~~ they would have
44 received unemployment insurance benefits if ~~[he]~~ they were not so disa-
45 bled or did not have such need for family leave. The weekly benefit of
46 such ~~[disabled]~~ employee shall be computed in the same manner as
47 provided in subdivision two of section two hundred four of this article,
48 and the benefits ~~[he-is]~~ they are entitled to receive shall be subject
49 to the limitations as to maximum and minimum amounts and duration and
50 other conditions and limitations prescribed in sections two hundred
51 four, two hundred five and two hundred six of this article.

52 2. Employees not eligible for unemployment insurance benefits. An
53 employee whose employment with a covered employer is terminated and who
54 was in employment of one or more covered employers and was paid wages of
55 at least thirteen dollars in such employment in each of twenty calendar
56 weeks during the thirty calendar weeks immediately preceding the date

1 [he] they last worked for such covered employer, and who during a period
2 of unemployment within twenty-six weeks immediately following such
3 termination of employment is not eligible to benefits under the unem-
4 ployment insurance law because of lack of qualifying wages but who
5 during unemployment has evidenced [his] their continued attachment to
6 the labor market, shall be eligible for benefits under the provisions of
7 this subdivision for disability commencing after June thirtieth, nine-
8 teen hundred fifty or need for family leave commencing after January
9 first, two thousand twenty-five. If such employee becomes disabled and
10 continues to be disabled for at least eight consecutive days during such
11 twenty-six week period and on the day such disability commences [he-is]
12 they are not employed or working for remuneration or profit and is not
13 then otherwise eligible for benefits under this article, [he] they shall
14 be entitled to receive disability benefits, as herein provided, begin-
15 ning with the eighth consecutive day of such disability, for each week
16 of such disability thereafter. If such employee has a need for family
17 leave during such twenty-six week period and on the day such family
18 leave commences such person is not employed or working for remuneration
19 or profit and is not then otherwise eligible for benefits under this
20 article, such person shall be entitled to receive family leave benefits,
21 as herein provided for each week of such family leave thereafter. The
22 weekly benefit of such [disabled] employee shall be computed in the same
23 manner as provided in subdivision two of section two hundred four of
24 this article, and the benefits [he-is] they are entitled to receive
25 shall be subject to the limitations as to maximum and minimum amounts
26 and duration and other conditions and limitations prescribed in sections
27 two hundred four, two hundred five and two hundred six of this article.

28 3. Payment of benefits. The benefits payable under this section shall
29 be subject to the provisions and limitations generally applicable to
30 disability and family leave benefits payable under this article, and
31 shall be paid by the [chairman] chair out of any assets in the fund
32 created by section two hundred fourteen of this article. The [chairman]
33 chair may require an employee claiming benefits under this section to
34 file proofs of disability or need for family leave and of [his] their
35 employment and wages, and other proofs reasonably necessary for the
36 [chairman] chair to make in the first instance the determination of
37 eligibility and benefit rights under this section; and may require [his]
38 their employer or [his] their former employer or employers to file
39 reports of employment and wages and other information reasonably neces-
40 sary for such determination. The [chairman] chair may make administra-
41 tive regulations for such determinations. The [chairman] chair may also
42 by regulation establish reasonable procedures for determining pro rata
43 benefits payable with respect to disability or family leave periods of
44 less than one week. Any employee claiming benefits under this section
45 whose claim is rejected in whole or in part by the [chairman] chair,
46 shall be entitled to request a review by the board and shall have all
47 the rights with respect to contested claims provided in this article.

48 4. Qualification notwithstanding casual non-covered employment. An
49 employment of not more than four weeks with a non-covered employer or
50 employers occurring within such twenty-six weeks period shall not
51 disqualify an employee from benefits provided such employee was other-
52 wise eligible to receive benefits under this section at the time such
53 employment for a non-covered employer commenced.

54 ~~[5. The foregoing provisions of this section shall not apply to family~~
55 ~~leave benefits, as family leave benefits are not available to employees~~

~~that are not employed at the time family leave is requested by filing the notice and medical certification required by the chair.]~~

§ 9. Paragraph (b) of subdivision 4 of section 212 of the workers' compensation law, as added by section 13 of part SS of chapter 54 of the laws of 2016, is amended to read as follows:

(b) Notwithstanding the definition of "employer" in section two hundred one of this article, a sole proprietor, member of a limited liability company or limited liability partnership, or other self-employed person may become a covered employer under this article for a period of at least one year by complying with the provisions of subdivision one of this section. A self-employed person who becomes a covered employer under this section shall become eligible for disability and family leave benefits no later than four weeks after the purchase of a policy of insurance under this article.

§ 10. Section 229 of the workers' compensation law is amended by adding a new subdivision 3 to read as follows:

3. Materials related to paid family leave and temporary disability insurance, including application forms, shall be considered vital documents under section two hundred two-a of the executive law.

§ 11. Subdivision 2 of section 2 of the workers' compensation law, as amended by chapter 717 of the laws of 2021, is amended to read as follows:

2. (a) "Department" means the department of labor of the state of New York;

(b) "Chairman" or "chair" means the [~~chairman~~] chair of the workers' compensation board of the state of New York;

(c) "Commissioner" means the industrial commissioner of the state of New York;

(d) "Board" means the workers' compensation board of the state of New York;

(e) "Commissioners" means the commissioners of the state insurance fund of the department of labor of the state of New York.

§ 12. Subdivision 2 of section 201 of the workers' compensation law, as amended by chapter 717 of the laws of 2021, is amended to read as follows:

2. "Chairman" or "chair" means the [~~chairman~~] chair of the workers' compensation board of the state of New York.

§ 13. Subdivision 6 of section 302 of the workers' compensation law, as amended by chapter 717 of the laws of 2021, is amended to read as follows:

6. "Chairman" or "chair" shall mean the [~~chairman~~] chair of the workers' compensation board.

§ 14. Severability. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

§ 15. This act shall take effect on the sixtieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.