

STATE OF NEW YORK

8465

2023-2024 Regular Sessions

IN ASSEMBLY

December 29, 2023

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

AN ACT to amend the workers' compensation law, in relation to the maximum amount of family leave time

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

Section 1. Paragraph (a) of subdivision 2 of section 204 of the workers' compensation law, as added by section 5 of part SS of chapter 54 of the laws of 2016, is amended to read as follows:

(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, shall not exceed ~~twelve~~ twenty-six weeks during any fifty-two week calendar period and shall be ~~sixty-seven~~ one hundred percent of the employee's average weekly wage but shall not exceed ~~sixty-seven~~ eighty 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) 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 financial services shall consider: (1) the current cost to employees of

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

LBD13722-01-3

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

22 § 2. Subdivision 2 of section 205 of the workers' compensation law, as
23 added by section 6 of part SS of chapter 54 of the laws of 2016, is
24 amended to read as follows:

25 2. No employee shall be entitled to family leave benefits under this
26 article:

27 (a) For more than ~~[twelve]~~ **twenty-six** weeks, or the maximum duration
28 permitted as set forth in paragraph (a) of subdivision two of section
29 two hundred four of this article, during a period of fifty-two consec-
30 utive calendar weeks~~[, or for any period in which the family leave~~
31 ~~combined with the disability benefits previously paid exceeds twenty-six~~
32 ~~weeks during the same fifty-two consecutive calendar weeks]~~;

33 (b) For any period of family leave wherein the notice and medical
34 certification as prescribed by the chair has not been filed. At the
35 discretion of the chair or chair's designee pursuant to section two
36 hundred twenty-one of this article, the family member who is the recipi-
37 ent of care may be required to submit to a physical examination by a
38 qualified health care provider. Such examination shall be paid for by
39 the carrier; and

40 (c) As a condition of an employee's initial receipt of family leave
41 benefits during any fifty-two consecutive calendar weeks in which an
42 employee is eligible for these benefits, an employer may offer an
43 employee who has accrued but unused vacation time or personal leave
44 available at the time of use of available family leave to choose whether
45 to charge all or part of the family leave time to accrued but unused
46 vacation or personal leave, and receive full salary, or to not charge
47 time to accrued but unused vacation or personal leave, and receive the
48 benefit as set forth in section two hundred four of this article. An
49 employer that pays full salary during a period of family leave may
50 request reimbursement in accordance with section two hundred thirty-sev-
51 en of this article. With the election of either option, the employee
52 shall receive the full protection of the reinstatement provision set
53 forth in section two hundred three-b of this article, and shall concur-
54 rently use available family medical leave act and paid family leave
55 credits. In no event can an employee utilize family leave beyond
56 ~~[twelve]~~ **twenty-six** weeks, or the maximum duration permitted as set

1 forth in paragraph (a) of subdivision two of section two hundred four of
2 this article, per any fifty-two week period set forth in this article.
3 This paragraph may not be construed in a manner that relieves an employ-
4 er of any duty of collective bargaining the employer may have with
5 respect to the subject matter of this paragraph.
6 § 3. This act shall take effect immediately.