

STATE OF NEW YORK

1027

2023-2024 Regular Sessions

IN SENATE

January 9, 2023

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

AN ACT to amend the workers' compensation law, in relation to paid family medical leave

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

1 Section 1. Section 120 of the workers' compensation law, as amended by
2 chapter 61 of the laws of 1989, the section heading as amended by
3 section 31 of part SS of chapter 54 of the laws of 2016, the opening
4 paragraph as amended by chapter 105 of the laws of 2019, is amended to
5 read as follows:

6 § 120. Discrimination against employees. 1. It shall be unlawful for
7 any employer or his or her duly authorized agent to discharge or fail to
8 reinstate pursuant to section two hundred three-b of this chapter, or in
9 any other manner discriminate against an employee as to his or her
10 employment because such employee has claimed or attempted to claim
11 compensation from such employer, requested a claim form for injuries
12 received in the course of employment, or claimed or attempted to claim
13 any benefits provided under this chapter or because he or she has testi-
14 fied or is about to testify in a proceeding under this chapter and no
15 other valid reason is shown to exist for such action by the employer.

16 2. Any complaint alleging such an unlawful discriminatory practice
17 must be filed within two years of the commission of such practice. Upon
18 finding that an employer has violated this section, the board shall make
19 an order that any employee so discriminated against shall be restored to
20 employment or otherwise restored to the position or privileges he or she
21 would have had but for the discrimination, if such reinstatement is
22 requested by such employee, and shall be compensated by his or her
23 employer for any loss of compensation arising out of such discrimination
24 together with such fees or allowances for services rendered by an attor-
25 ney or licensed representative as fixed by the board. Any employer who

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

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violates this section shall be liable to a penalty of not less than one hundred dollars or more than five hundred dollars, as may be determined by the board. All such penalties shall be paid into the state treasury. All penalties, compensation and fees or allowances shall be paid solely by the employer. The employer alone and not his or her carrier shall be liable for such penalties and payments. Any provision in an insurance policy undertaking to relieve the employer from liability for such penalties and payments shall be void.

3. An employer found to be in violation of this section and the aggrieved employee must report to the board as to the manner of the employer's compliance within thirty days of receipt of a final determination. In case of failure to report on compliance, or failure to comply with an order or penalty of the board within thirty days after the order or notice of penalty is served, except where timely application to the board for a modification, rescission or review of such order or penalty has been filed under section twenty-three of this chapter, the chair in any such case or, on the chair's consent, any party may enforce the order or penalty in a like manner as an award of compensation.

4. Pursuant with the provisions of section two hundred three-b of this chapter, an employee shall not be required to request reinstatement to such employee's former position of employment before filing a complaint of unlawful discriminatory practice as described in this section.

§ 2. Section 203-a of the workers' compensation law is amended by adding a new subdivision 3 to read as follows:

3. An action may be brought against any covered employer, as described in section two hundred two of this article, who violates the provisions of section one hundred twenty or two hundred three-b of this chapter, by or on behalf of an employee, as that term is defined in subdivision five of section two hundred one of this article, who has claimed or attempted to claim paid family leave benefits. A plaintiff who prevails on a claim alleging a violation of section one hundred twenty or two hundred three-b of this chapter with regards to paid family leave shall be entitled to compensatory, actual, and punitive damages, injunctive relief, reasonable attorneys' fees and costs, and other such remedies as a court may deem appropriate.

§ 3. 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 family leave. Any eligible employee of a covered employer who takes leave 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, provided, however, that such eligible employee shall not be required to request reinstatement to any such position. The taking of family leave 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. Furthermore, nothing in this section shall be construed to require an employee to request reinstatement to his or her former position of employment, or to a comparable position with comparable employment benefits, pay, and other terms and conditions of employ-

1 ment, before initiating a complaint against a covered employer pursuant
2 to the provisions of section one hundred twenty of this chapter.

3 § 4. Subdivision 3 of section 212-b of the workers' compensation law,
4 as added by section 14 of part SS of chapter 54 of the laws of 2016, is
5 amended to read as follows:

6 3. (a) An employee organization may, pursuant to collective bargain-
7 ing, opt in to paid family leave benefits on behalf of those public
8 employees it is either certified or recognized to represent, within the
9 meaning of article fourteen of the civil service law. Nothing in this
10 section shall prohibit an agreement to opt in to paid family leave
11 between the employee organization and any public employer. An employee
12 organization that has opted in to paid family leave benefits may, pursu-
13 ant to collective bargaining, opt out of it as is mutually agreed upon
14 between the employee organization and any public employer.

15 [~~b-~~] (b) For public employees who are not represented by an employee
16 organization, the public employer [~~may opt in to paid family leave bene-~~
17 ~~fits within ninety days notice to such public employees. Following opt-~~
18 ~~in by a public employer for public employees not represented by an~~
19 ~~employee organization, the public employer may opt out of paid family~~
20 ~~leave benefits with twelve months notice to those public employees]~~
21 shall provide paid family leave benefits in accordance with the
22 provisions of section two hundred eight of this article.

23 § 5. This act shall take effect on the one hundred eightieth day after
24 it shall have become a law.