

1824

2009-2010 Regular Sessions

I N   S E N A T E

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Introduced by Sens. MORAHAN, BONACIC, VOLKER -- 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 temporary disability benefits and providing benefits for family care

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 is amended by adding a new paragraph C to read as follows:  
3     C. "DISABILITY" ALSO INCLUDES FAMILY CARE, AS DEFINED IN SUBDIVISION  
4 FIFTEEN OF THIS SECTION. UNLESS OTHERWISE SET FORTH IN THIS ARTICLE, ALL  
5 PROVISIONS OF THIS ARTICLE APPLICABLE TO DISABILITY SHALL APPLY TO BOTH  
6 DISABILITY ARISING FROM SICKNESS AND INJURY, AND TO FAMILY CARE.  
7     S 2. Subdivision 14 of section 201 of the workers' compensation law,  
8 as added by chapter 600 of the laws of 1949 and as renumbered by chapter  
9 438 of the laws of 1964, is amended to read as follows:  
10     14. "A day of disability" means any day on which the employee was  
11 prevented from performing work because of disability, INCLUDING ANY DAY  
12 ON WHICH THE EMPLOYEE TOOK OFF FOR FAMILY CARE, and for which [he] THE  
13 EMPLOYEE has not received his OR HER regular remuneration.  
14     S 3. Section 201 of the workers' compensation law is amended by adding  
15 nine new subdivisions 15, 16, 17, 18, 19, 20, 21, 22 and 23 to read as  
16 follows:  
17     15. "FAMILY CARE" SHALL MEAN ANY LEAVE TAKEN BY AN EMPLOYEE FROM WORK:  
18     A. TO PARTICIPATE IN PROVIDING CARE, INCLUDING PHYSICAL OR PSYCHOLOG-  
19 ICAL CARE, FOR A FAMILY MEMBER OF THE EMPLOYEE MADE NECESSARY BY A SERI-  
20 OUS HEALTH CONDITION OF THE FAMILY MEMBER; OR  
21     B. TO BOND WITH HIS OR HER CHILD DURING THE FIRST TWELVE MONTHS AFTER  
22 THE CHILD'S BIRTH, OR THE FIRST TWELVE MONTHS AFTER THE PLACEMENT OF THE  
23 CHILD FOR ADOPTION OR FOSTER CARE WITH THE EMPLOYEE.

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

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1 16. "CHILD" MEANS A BIOLOGICAL, ADOPTED, OR FOSTER CHILD, A STEPCHILD,  
2 A LEGAL WARD, OR A CHILD OF A PERSON STANDING IN LOCO PARENTIS, WHO IS:  
3 A. UNDER EIGHTEEN YEARS OF AGE; OR  
4 B. EIGHTEEN YEARS OF AGE OR OLDER AND INCAPABLE OF SELF-CARE BECAUSE  
5 OF A MENTAL OR PHYSICAL DISABILITY.

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

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

10 A. REQUIRES INPATIENT CARE IN A HOSPITAL, HOSPICE OR RESIDENTIAL  
11 HEALTH CARE FACILITY; OR

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

13 19. "PARENT" MEANS THE BIOLOGICAL, ADOPTIVE, OR FOSTER PARENT OF AN  
14 EMPLOYEE OR INDIVIDUAL WHO STOOD IN LOCO PARENTIS TO AN EMPLOYEE WHEN  
15 THE EMPLOYEE WAS A SON OR DAUGHTER.

16 20. "FAMILY MEMBER" MEANS A CHILD, SPOUSE, DOMESTIC PARTNER, PARENT,  
17 GRANDCHILD, MOTHER-IN-LAW OR FATHER-IN-LAW.

18 21. PERSONS WHO ARE "IN LOCO PARENTIS" INCLUDE THOSE WITH DAY-TO-DAY  
19 RESPONSIBILITIES TO CARE FOR AND FINANCIALLY SUPPORT A CHILD OR, IN THE  
20 CASE OF AN EMPLOYEE, WHO HAD SUCH RESPONSIBILITY FOR THE EMPLOYEE WHEN  
21 THE EMPLOYEE WAS A CHILD. A BIOLOGICAL OR LEGAL RELATIONSHIP IS NOT  
22 NECESSARY.

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

24 23. "HEALTH CARE PROVIDER" MEANS ANY PROVIDER TREATING AN EMPLOYEE'S  
25 INJURY OR SICKNESS, OR A FAMILY MEMBER'S SERIOUS HEALTH CONDITION,  
26 INCLUDING A PHYSICIAN, PODIATRIST, CHIROPRACTOR, DENTIST, PSYCHOLOGIST,  
27 CERTIFIED NURSE MIDWIFE, OR IN THE CASE OF A FAMILY MEMBER WHO ADHERES  
28 TO THE FAITH OR TEACHINGS OF ANY CHURCH OR DENOMINATION, AND WHO IN  
29 ACCORDANCE WITH ITS CREED, TENETS OR PRINCIPLES DEPENDS FOR HEALING UPON  
30 PRAYER THROUGH SPIRITUAL MEANS ALONE IN THE PRACTICE OF RELIGION, BY AN  
31 ACCREDITED PRACTITIONER, CONTAINING FACTS AND OPINIONS AS TO SUCH HEALTH  
32 CONDITION IN COMPLIANCE WITH REGULATIONS OF THE CHAIR.

33 S 4. Subdivision 6 of section 201 of the workers' compensation law is  
34 amended by adding a new paragraph E to read as follows:

35 E. BENEFITS FOR PAID FAMILY LEAVE SHALL BE PAID TO ALL ELIGIBLE  
36 EMPLOYEES IN THE SAME MANNER AS PROVIDED IN THE PRECEDING PARAGRAPHS OF  
37 THIS SUBDIVISION.

38 S 5. Section 203 of the workers' compensation law, as amended by chap-  
39 ter 436 of the laws of 1986, is amended to read as follows:

40 S 203. Employees eligible for benefits under section two hundred four.  
41 Employees in employment of a covered employer for four or more consec-  
42 utive weeks and employees in employment during the work period usual to  
43 and available during such four or more consecutive weeks in any trade or  
44 business in which they are regularly employed and in which hiring from  
45 day to day of such employees is the usual employment practice shall be  
46 eligible for disability benefits as provided in section two hundred  
47 four. Every such employee shall continue to be eligible during such  
48 employment and for a period of four weeks after such employment termi-  
49 nates regardless of whether the employee performs any work for remunera-  
50 tion or profit in non-covered employment. If during such four week peri-  
51 od the employee performs any work for remuneration or profit for another  
52 covered employer the employee shall become eligible for benefits imme-  
53 diately with respect to that employment. In addition every such employee  
54 who returns to work with the same employer after an agreed and specified  
55 unpaid leave of absence or vacation without pay shall become eligible  
56 for benefits immediately with respect to such employment. An employee

1 who during a period in which he or she is eligible to receive benefits  
2 under subdivision two of section two hundred seven returns to employment  
3 with a covered employer and an employee who is currently receiving unem-  
4 ployment insurance benefits or benefits under section two hundred seven  
5 and who returns to employment with a covered employer shall become  
6 eligible for benefits immediately with respect to such employment. An  
7 employee regularly in the employment of a single employer on a work  
8 schedule less than the employer's normal work week shall become eligible  
9 for benefits on the twenty-fifth day of such regular employment. An  
10 employee who becomes disabled while eligible for benefits in the employ-  
11 ment of a covered employer shall not be deemed, for the purposes of this  
12 article, to have such employment terminated during any period he or she  
13 is eligible to receive benefits under section two hundred four with  
14 respect to such employment. EMPLOYEES ARE ELIGIBLE FOR PAID FAMILY  
15 LEAVE BENEFITS IN THE SAME MANNER AS IS PROVIDED IN THIS SECTION FOR ALL  
16 EMPLOYEES IN EMPLOYMENT OF A COVERED EMPLOYER CLAIMING BENEFITS FOR  
17 DISABILITY.

18 S 6. The workers' compensation law is amended by adding a new section  
19 203-a to read as follows:

20 S 203-A. EMPLOYEE'S RIGHT TO RESUME EMPLOYMENT. EVERY COVERED EMPLOYEE  
21 ELIGIBLE FOR PAID FAMILY LEAVE BENEFITS SHALL HAVE AN INCONTROVERTIBLE  
22 RIGHT TO RESUME EMPLOYMENT WITH THE EMPLOYER AT THE CONCLUSION OF THE  
23 PAID FAMILY LEAVE IN THE SAME OR SUBSTANTIALLY SIMILAR EMPLOYMENT AS WAS  
24 THE CASE ON THE DAY THE PERIOD OF PAID FAMILY LEAVE COMMENCED.

25 S 7. Section 204 of the workers' compensation law, as added by chapter  
26 600 of the laws of 1949 and subdivision 2 as amended by chapter 38 of  
27 the laws of 1989, is amended to read as follows:

28 S 204. Disability during employment. 1. Disability benefits shall be  
29 payable to an eligible employee for disabilities commencing after June  
30 thirtieth, nineteen hundred fifty, beginning with the eighth consecutive  
31 day of disability and thereafter during the continuance of disability,  
32 subject to the limitations as to maximum and minimum amounts and dura-  
33 tion and other conditions and limitations in this section and in  
34 sections two hundred five and two hundred six OF THIS ARTICLE. Succes-  
35 sive periods of disability caused by the same or related injury or sick-  
36 ness OR REASON FOR FAMILY CARE shall be deemed a single period of disa-  
37 bility only if separated by less than three months. FOR PURPOSES OF  
38 THIS SUBDIVISION, DAYS OF DISABILITY FOR ANY FAMILY CARE SHALL COMMENCE  
39 AT THE START OF THE LEAVE PERIOD TAKEN BY THE EMPLOYEE TO PROVIDE FAMILY  
40 CARE.

41 2. [The weekly benefit which the disabled employee is entitled to  
42 receive for disability commencing on or after May first, nineteen  
43 hundred eighty-nine shall be one-half of the employee's weekly wage, but  
44 in no case shall such benefit exceed one hundred seventy dollars; except  
45 that if the employee's average weekly wage is less than twenty dollars,  
46 the benefit shall be such average weekly wage. The weekly benefit which  
47 the disabled employee is entitled to receive for disability commencing  
48 on or after July first, nineteen hundred eighty-four shall be one-half  
49 of the employee's weekly wage, but in no case shall such benefit exceed  
50 one hundred forty-five dollars; except that if the employee's average  
51 weekly wage is less than twenty dollars, the benefit shall be such aver-  
52 age weekly wage. The weekly benefit which the disabled employee is enti-  
53 tled to receive for disability commencing on or after July first, nine-  
54 teen hundred eighty-three and prior to July first, nineteen hundred  
55 eighty-four shall be one-half of the employee's average weekly wage, but  
56 in no case shall such benefit exceed one hundred thirty-five dollars nor

1 be less than twenty dollars; except that if the employee's average week-  
2 ly wage is less than twenty dollars the benefit shall be such average  
3 weekly wage. The weekly benefit which the disabled employee is entitled  
4 to receive for disability commencing on or after July first, nineteen  
5 hundred seventy-four, and prior to July first, nineteen hundred eighty-  
6 three, shall be one-half of the employee's average weekly wage, but in  
7 no case shall such benefit exceed ninety-five dollars nor be less than  
8 twenty dollars; except that if the employee's average weekly wage is  
9 less than twenty dollars, the benefit shall be such average weekly wage.  
10 The weekly benefit which the disabled employee is entitled to receive  
11 for disability commencing on or after July first, nineteen hundred  
12 seventy and prior to July first, nineteen hundred seventy-four shall be  
13 one-half of the employee's average weekly wage, but in no case shall  
14 such benefit exceed seventy-five dollars nor be less than twenty  
15 dollars; except that if the employee's average weekly wage is less than  
16 twenty dollars the benefit shall be such average weekly wage. For any  
17 period of disability less than a full week, the benefits payable shall  
18 be calculated by dividing the weekly benefit by the number of the  
19 employee's normal work days per week and multiplying the quotient by the  
20 number of normal work days in such period of disability. The weekly  
21 benefit for a disabled employee who is concurrently eligible for bene-  
22 fits in the employment of more than one covered employer shall, within  
23 the maximum and minimum herein provided, be one-half of the total of the  
24 employee's average weekly wages received from all such covered employ-  
25 ers, and shall be allocated in the proportion of their respective aver-  
26 age weekly wage payments] THE WEEKLY BENEFIT WHICH THE DISABLED WORKER  
27 IS ENTITLED TO RECEIVE FOR DISABILITY COMMENCING (I) ON OR AFTER OCTOBER  
28 FIRST, TWO THOUSAND TEN, AND PRIOR TO OCTOBER FIRST, TWO THOUSAND ELEVEN  
29 SHALL NOT EXCEED ONE-HALF OF THE EMPLOYEE'S WEEKLY WAGE, NOT TO EXCEED A  
30 MAXIMUM BENEFIT OF THREE HUNDRED FORTY DOLLARS AND (II) ON OR AFTER  
31 OCTOBER FIRST, TWO THOUSAND ELEVEN, AND PRIOR TO OCTOBER FIRST, TWO  
32 THOUSAND TWELVE THE WEEKLY BENEFIT SHALL NOT EXCEED HALF OF THE EMPLOY-  
33 EE'S WEEKLY WAGE, NOT TO EXCEED A MAXIMUM BENEFIT OF FIVE HUNDRED FIFTY  
34 DOLLARS, AND (III) ON OR AFTER OCTOBER FIRST, TWO THOUSAND TWELVE, AND  
35 ON OCTOBER FIRST OF EACH SUCCEEDING YEAR, THE EMPLOYEES' BENEFIT SHALL  
36 NOT EXCEED ONE-HALF OF THE EMPLOYEE'S WEEKLY WAGE, NOT TO EXCEED  
37 ONE-HALF OF THE NEW YORK STATE AVERAGE WEEKLY WAGE AS DETERMINED BY THE  
38 STATE DEPARTMENT OF LABOR ANNUALLY PURSUANT TO SUBDIVISION SIXTEEN OF  
39 SECTION TWO OF THIS CHAPTER.

40 3. THE WEEKLY BENEFIT WHICH THE EMPLOYEE UTILIZING PAID FAMILY LEAVE  
41 IS ENTITLED TO RECEIVE COMMENCING ON THE EFFECTIVE DATE OF THE CHAPTER  
42 OF THE LAWS OF TWO THOUSAND NINE WHICH ADDED THIS SUBDIVISION SHALL BE  
43 COMPUTED IN THE SAME MANNER AS THE DISABILITY BENEFIT PAYABLE PURSUANT  
44 TO SUBDIVISIONS ONE AND TWO OF THIS SECTION AND SHALL BE COMPUTED AND  
45 INCREASED AT THE SAME TIME AND IN THE SAME MANNER AS ANY SUBSEQUENT  
46 ADJUSTMENTS TO THE DISABILITY BENEFIT PROVIDED FOR IN THIS SECTION.

47 S 8. Subdivisions 1, 2, 3, 4, 7 and 8 of section 205 of the workers'  
48 compensation law, subdivision 1 as amended by chapter 651 of the laws of  
49 1958, subdivision 2 as amended by chapter 270 of the laws of 1990 and  
50 subdivisions 3, 4, 7 and 8 as added by chapter 600 of the laws of 1949  
51 and as renumbered by chapter 352 of the laws of 1981, are amended and a  
52 new subdivision 9 is added to read as follows:

53 1. [For] (A) FOR DISABILITY RESULTING FROM INJURY OR SICKNESS OF AN  
54 EMPLOYEE, FOR more than twenty-six weeks during a period of fifty-two  
55 consecutive calendar weeks or during any one period of disability; OR

1 (B) FOR FAMILY CARE, FOR MORE THAN THIRTEEN WEEKS DURING A PERIOD OF  
2 FIFTY-TWO CONSECUTIVE CALENDAR WEEKS OR DURING ANY ONE PERIOD OF FAMILY  
3 CARE;

4 2. for any period of disability RESULTING FROM THE INJURY OR SICKNESS  
5 OF AN EMPLOYEE during which an employee is not under the care of a duly  
6 licensed physician or with respect to disability resulting from a condi-  
7 tion of the foot which may lawfully be treated by a duly registered and  
8 licensed podiatrist of the state of New York or with respect to a disa-  
9 bility resulting from a condition which may lawfully be treated by a  
10 duly registered and licensed chiropractor of the state of New York or  
11 with respect to a disability resulting from a condition which may  
12 lawfully be treated by a duly licensed dentist of the state of New York  
13 or with respect to a disability resulting from a condition which may  
14 lawfully be treated by a duly registered and licensed psychologist of  
15 the state of New York or with respect to a disability resulting from a  
16 condition which may lawfully be treated by a duly certified nurse  
17 midwife, for any period of such disability during which an employee is  
18 neither under the care of a physician nor a podiatrist, nor a chiroprac-  
19 tor, nor a dentist, nor a psychologist, nor a certified nurse midwife;  
20 and for any period of disability during which an employee who adheres to  
21 the faith or teachings of any church or denomination and who in accord-  
22 ance with its creed, tenets or principles depends for healing upon pray-  
23 er through spiritual means alone in the practice of religion, is not  
24 under the care of a practitioner duly accredited by the church or denom-  
25 ination, and provided such employee shall submit to all physical exam-  
26 inations as required by this chapter[.];

27 3. for any disability RESULTING FROM INJURY OR SICKNESS OF AN EMPLOYEE  
28 occasioned by the wilful intention of the employee to bring about injury  
29 to or the sickness of himself or another, or resulting from any injury  
30 or sickness sustained in the perpetration by the employee of an illegal  
31 act;

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

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

41 8. for any disability RESULTING FROM AN INJURY OR SICKNESS TO THE  
42 EMPLOYEE commencing before the employee becomes eligible to benefits  
43 hereunder [or commencing prior to July first, nineteen hundred fifty,  
44 but this shall not preclude benefits for recurrence after July first,  
45 nineteen hundred fifty, of a disability commencing prior thereto];

46 9. FOR ANY DAY OF ABSENCE FROM WORK REQUIRED PURSUANT TO ANY DISCIPLI-  
47 NARY PROCESS; OR, IN REGARD TO FAMILY CARE BENEFITS, ANY DAY OF ABSENCE  
48 FROM WORK RESULTING FROM INJURY OR SICKNESS TO THE EMPLOYEE, INCLUDING  
49 ANY LEAVE TAKEN UNDER SECTION SEVENTY-ONE OR SEVENTY-THREE OF THE CIVIL  
50 SERVICE LAW.

51 S 9. The workers' compensation law is amended by adding a new section  
52 205-a to read as follows:

53 S 205-A. RELATIONSHIP BETWEEN DISABILITY BENEFITS FOR FAMILY CARE AND  
54 FOR THE EMPLOYEE'S OWN SICKNESS OR ILLNESS. THE RECEIPT OF BENEFITS FOR  
55 DISABILITY RESULTING FROM SICKNESS OR INJURY TO THE EMPLOYEE, INCLUDING  
56 PREGNANCY AND CHILDBIRTH, SHALL NOT COUNT TOWARD ANY TIME LIMITATION

1 UNDER SUBDIVISION ONE OF SECTION TWO HUNDRED FIVE OF THIS ARTICLE ON THE  
2 RECEIPT OF BENEFITS FOR FAMILY CARE, AND THE RECEIPT OF BENEFITS FOR  
3 FAMILY CARE SHALL NOT COUNT TOWARD ANY TIME LIMITATION UNDER SUBDIVISION  
4 ONE OF SECTION TWO HUNDRED FIVE OF THIS ARTICLE ON THE RECEIPT OF BENE-  
5 FITS FOR DISABILITY RESULTING FROM SICKNESS OR INJURY TO THE EMPLOYEE,  
6 EXCEPT THAT AN EMPLOYEE MAY RECEIVE DISABILITY BENEFITS ON ONLY ONE  
7 CLAIM AT ANY TIME.

8 S 10. Section 209 of the workers' compensation law is amended by  
9 adding a new subdivision 3-a to read as follows:

10 3-A. THE CONTRIBUTION OF EACH EMPLOYEE TO THE COST OF FAMILY LEAVE  
11 SHALL BE CALCULATED IN THE SAME MANNER AND IN THE SAME AMOUNT OF THE  
12 CONTRIBUTION DESCRIBED IN SUBDIVISION THREE OF THIS SECTION.

13 S 11. Section 211 of the workers' compensation law is amended by  
14 adding two new subdivisions 7 and 8 to read as follows:

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

20 8. NOTHING IN THIS ARTICLE SHALL REQUIRE AN EMPLOYER TO USE THE SAME  
21 CARRIER TO PROVIDE BENEFITS REQUIRED BY OR PERMISSIBLE UNDER THIS ARTI-  
22 CLE FOR DISABILITY RESULTING FROM SICKNESS OR INJURY AS IT USES TO  
23 PROVIDE BENEFITS REQUIRED BY OR PERMISSIBLE UNDER THIS ARTICLE FOR FAMI-  
24 LY CARE. AN EMPLOYER MAY USE A DIFFERENT MEANS, AMONG THOSE SET FORTH IN  
25 SUBDIVISIONS ONE THROUGH FIVE OF THIS SECTION, TO PROVIDE BENEFITS  
26 REQUIRED BY THIS ARTICLE FOR DISABILITY RESULTING FROM SICKNESS OR INJU-  
27 RY, FROM THE MEANS USED TO PROVIDE BENEFITS REQUIRED BY THIS ARTICLE FOR  
28 FAMILY CARE.

29 S 12. The workers' compensation law is amended by adding a new section  
30 211-a to read as follows:

31 S 211-A. PUBLIC EMPLOYEES; EMPLOYEE OPT IN. 1. FOR PURPOSES OF THIS  
32 SECTION, "PUBLIC EMPLOYEE" MEANS ANY EMPLOYEE OF THE STATE, ANY POLI-  
33 TICAL SUBDIVISION OF THE STATE, A PUBLIC AUTHORITY OR ANY OTHER GOVERN-  
34 MENTAL AGENCY OR INSTRUMENTALITY. "PUBLIC EMPLOYER" MEANS THE STATE, ANY  
35 POLITICAL SUBDIVISION OF THE STATE, A PUBLIC AUTHORITY OR ANY OTHER  
36 GOVERNMENTAL AGENCY OR INSTRUMENTALITY THEREOF. "EMPLOYEE ORGANIZATION"  
37 SHALL HAVE THE MEANING SET FORTH IN SECTION TWO HUNDRED ONE OF THE CIVIL  
38 SERVICE LAW.

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

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

45 A. UPON NOTICE GIVEN TO THE PUBLIC EMPLOYER PRIOR TO APRIL FIRST, TWO  
46 THOUSAND TEN, WHICH OPT IN SHALL BECOME EFFECTIVE ONLY ON JULY FIRST,  
47 TWO THOUSAND TEN;

48 B. AT ANY TIME UPON NINETY DAYS NOTICE FOR ANY EMPLOYER WHO IS NOT  
49 PROVIDING DISABILITY BENEFITS FOR SICKNESS AND INJURY UNDER SECTION TWO  
50 HUNDRED TWELVE OF THIS ARTICLE, OR WHO IS SELF-INSURED FOR SUCH BENE-  
51 FITS;

52 C. FOR ANY EMPLOYER WHO IS PROVIDING DISABILITY BENEFITS FOR SICKNESS  
53 AND INJURY UNDER SECTION TWO HUNDRED TWELVE OF THIS ARTICLE, UPON NOTICE  
54 AT LEAST NINETY DAYS PRIOR TO THE EXPIRATION OF THE EMPLOYER'S INSURANCE  
55 POLICY FOR SUCH BENEFITS, WHICH OPT IN SHALL BE EFFECTIVE ONLY FOR THE  
56 TIME PERIOD COVERED BY ANY SUBSEQUENT POLICY OR RENEWAL; OR

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

3 AN EMPLOYEE ORGANIZATION THAT HAS OPTED IN TO THE FAMILY CARE BENEFIT  
4 MAY OPT OUT OF IT WITHIN THE TIME PERIODS, AND EFFECTIVE UPON THE SAME  
5 DATES, SET FORTH IN THIS SUBDIVISION. THE EMPLOYEE ORGANIZATION SHALL  
6 PROVIDE NOTICE OF SUCH TO THE BOARD WITHIN SEVEN DAYS OF NOTICE TO THE  
7 EMPLOYER.

8 4. IN THE ABSENCE OF ANY CONTRARY STATEMENT IN A COLLECTIVELY NEGOTI-  
9 ATED AGREEMENT UNDER ARTICLE FOURTEEN OF THE CIVIL SERVICE LAW, A PUBLIC  
10 EMPLOYER MAY REQUIRE PUBLIC EMPLOYEES WHO OPT IN UNDER THIS SECTION TO  
11 CONTRIBUTE UP TO THE AMOUNT REQUIRED TO PROVIDE THE BENEFIT IN ACCORD-  
12 ANCE WITH THE PROCEDURE SET FORTH IN SECTION TWO HUNDRED NINE OF THIS  
13 ARTICLE.

14 S 13. Subdivision 1 of section 212 of the workers' compensation law,  
15 as amended by chapter 740 of the laws of 1960, is amended to read as  
16 follows:

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

40 S 14. Subdivision 2 of section 76 of the workers' compensation law, as  
41 added by chapter 600 of the laws of 1949, is amended to read as follows:

42 2. The purposes of the state insurance fund herein created are hereby  
43 enlarged to provide [for the] insurance [by the state insurance fund of]  
44 FOR the payment of the benefits required by section two hundred four of  
45 this chapter, INCLUDING BENEFITS FOR FAMILY CARE PROVIDED EITHER IN THE  
46 SAME POLICY WITH OR IN A SEPARATE POLICY FROM BENEFITS FOR DISABILITY  
47 RESULTING FROM INJURY OR SICKNESS OF AN EMPLOYEE, AND AS PROVIDED PURSU-  
48 ANT TO SECTION TWO HUNDRED ELEVEN-A OF THIS CHAPTER. A separate fund is  
49 hereby created within the state insurance fund, which shall be known as  
50 the "disability benefits fund", and which shall consist of all premiums  
51 received and paid into said fund on account of such insurance, all secu-  
52 rities acquired by and through the use of moneys belonging to said fund  
53 and of interest earned upon moneys belonging to said fund and deposited  
54 or invested as herein provided. Said disability benefits fund shall be  
55 applicable to the payment of benefits, expenses and assessments on  
56 account of insurance written pursuant to article nine of this chapter.

1 S 15. Subdivision 1 of section 217 of the workers' compensation law,  
2 as amended by chapter 167 of the laws of 1999, is amended to read as  
3 follows:

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

11 (A) IN THE CASE OF DISABILITY RESULTING FROM SICKNESS OR INJURY TO THE  
12 EMPLOYEE, a statement of disability by the employee's attending [physi-  
13 cian or attending podiatrist or attending chiropractor or attending  
14 dentist or attending psychologist or attending certified nurse midwife,  
15 or in the case of an employee who adheres to the faith or teachings of  
16 any church or denomination, and who in accordance with its creed, tenets  
17 or principles depends for healing upon prayer through spiritual means  
18 alone in the practice of religion, by an accredited practitioner,  
19 containing facts and opinions as to such disability] HEALTH CARE PROVID-  
20 ER;

21 (B) IN THE CASE OF FAMILY CARE FOR BONDING WITH A NEW CHILD, A BIRTH  
22 CERTIFICATE, CERTIFICATE OF ADOPTION, OR OTHER COMPETENT EVIDENCE SHOW-  
23 ING THAT THE EMPLOYEE IS THE PARENT OF A CHILD WITHIN TWELVE MONTHS OF  
24 THAT CHILD'S BIRTH OR PLACEMENT FOR ADOPTION OR FOSTER CARE WITH THE  
25 EMPLOYEE;

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

28 (I) A STATEMENT BY THE FAMILY MEMBER'S HEALTH CARE PROVIDER, CONTAIN-  
29 ING FACTS AND OPINIONS AS TO SUCH HEALTH CONDITION in compliance with  
30 regulations of the chair; AND

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

35 Failure to furnish notice or proof within the time and in the manner  
36 above provided shall not invalidate the claim but no benefits shall be  
37 required to be paid for any period more than two weeks prior to the date  
38 on which the required proof is furnished unless it shall be shown to the  
39 satisfaction of the chair not to have been reasonably possible to  
40 furnish such notice or proof and that such notice or proof was furnished  
41 as soon as possible; provided, however, that no benefits shall be paid  
42 unless the required proof of disability is furnished within twenty-six  
43 weeks after commencement of the period of disability. No limitation of  
44 time provided in this section shall run as against any person who is  
45 mentally incompetent, or physically incapable of providing such notice  
46 as a result of a serious medical condition, or a minor so long as such  
47 person has no guardian of the person and/or property.

48 S 16. The opening paragraph of section 221 of the workers' compen-  
49 sation law, as separately amended by chapters 425 and 500 of the laws of  
50 1985, is amended to read as follows:

51 Within twenty-six weeks of written notice of rejection of claim, the  
52 employee may file with the chairman a notice that his or her claim for  
53 disability benefits has not been paid, and the employee shall submit  
54 proof of disability and of his or her employment, wages and other facts  
55 reasonably necessary for determination of the employee's right to such  
56 benefits. Failure to file such notice within the time provided, may be

excused by the chairman if it can be shown to the satisfaction of the chairman not to have been reasonably possible to furnish such notice and that such notice was furnished as soon as possible. On demand of the chairman the employer or carrier shall forthwith deliver to the chairman PROOF OF DISABILITY, INCLUDING IF RELEVANT the original or a true copy of the attending [physician's or attending podiatrist's or accredited practitioner's] HEALTH CARE PROVIDER'S statement, wage and employment data and all other papers in the possession of the employer or carrier with respect to such claim.

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

2. Whenever an employee of a covered employer who is eligible for benefits under section two hundred four of this article shall be absent from work due to a disability as defined in subdivision nine of section two hundred one of this article for more than seven consecutive days, the employer shall provide the employee with a written statement of the employee's rights under this article in a form prescribed by the chairman. The statement shall be provided to the employee within five business days after the employee's seventh consecutive day of absence due to disability or within five business days after the employer knows or should know that the employee's absence is due to disability, whichever is later. EACH COVERED EMPLOYER SHALL PROVIDE EACH EMPLOYEE WITH A TYPEWRITTEN, PRINTED OR ELECTRONIC NOTICE IN A FORM PRESCRIBED BY THE CHAIR, STATING THAT THE EMPLOYER HAS PROVIDED FOR THE PAYMENT OF DISABILITY BENEFITS AS REQUIRED BY THIS ARTICLE WITHIN THIRTY DAYS OF THE EFFECTIVE DATE OF THE CHAPTER OF THE LAWS OF TWO THOUSAND NINE WHICH AMENDED THIS SUBDIVISION. EACH COVERED EMPLOYER SHALL PROVIDE SUCH NOTICE TO ALL NEW EMPLOYEES WITHIN THIRTY DAYS OF THEIR FIRST DAY OF WORK.

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

S 239-A. FAMILY CARE STUDY AND MONITORING. THERE SHALL BE CREATED THE FAMILY CARE ADVISORY COUNCIL, WHICH SHALL CONSIST OF FIFTEEN MEMBERS TO BE APPOINTED BY THE GOVERNOR AS FOLLOWS: TWO ON RECOMMENDATION BY THE NEW YORK STATE AMERICAN FEDERATION OF LABOR-CONGRESS OF INDUSTRIAL ORGANIZATIONS, ONE OF WHOM SHALL BE REPRESENTATIVE OF PUBLIC EMPLOYEE ORGANIZATIONS CERTIFIED UNDER ARTICLE FOURTEEN OF THE CIVIL SERVICE LAW, PARTICIPATING IN THE PAID FAMILY CARE PLAN, ONE OF WHOM IS REPRESENTATIVE OF UNIONS REPRESENTING WORKERS EMPLOYED IN THE PRIVATE SECTOR; TWO WHO ARE REPRESENTATIVES OF ORGANIZATIONS THAT REPRESENT EITHER COVERED BUSINESS OR PUBLIC EMPLOYERS IN NEW YORK STATE PARTICIPATING IN THE PAID FAMILY LEAVE PLAN; TWO ON NOMINATION OF THE SPEAKER OF THE ASSEMBLY; ONE ON NOMINATION BY THE MINORITY LEADER OF THE ASSEMBLY; TWO ON NOMINATION BY THE TEMPORARY PRESIDENT OF THE SENATE; ONE ON NOMINATION BY THE MINORITY LEADER OF THE SENATE; AND THE SUPERINTENDENT OF INSURANCE, COMMISSIONER OF LABOR AND CHAIR OF THE WORKERS' COMPENSATION BOARD, WHO SHALL SERVE AS MEMBERS EX OFFICIO. THE COMMISSIONER OF LABOR SHALL SERVE AS CHAIR OF THE COUNCIL. THE SUPERINTENDENT OF INSURANCE AND CHAIR OF THE WORKERS' COMPENSATION BOARD SHALL CONSULT REGULARLY WITH THE COUNCIL ON THE IMPLEMENTATION OF THE FAMILY CARE BENEFIT. THE DEPARTMENT OF LABOR, THE INSURANCE DEPARTMENT AND THE WORKERS' COMPENSATION BOARD SHALL PROVIDE ALL NECESSARY PERSONNEL AND LOGISTICAL SUPPORT AS MAY BE NECESSARY TO COMPLETE THE DUTIES OF THE ADVISORY COUNCIL. THE COUNCIL MAY ISSUE SUCH RECOMMENDATIONS OR REPORTS AS THEY DEEM WARRANTED ON THE FAMILY CARE BENEFIT, INCLUDING ON THE SCOPE OF THE

1 BENEFIT, PROBLEMS WITH THE BENEFIT; FUNDING OF THE BENEFIT INCLUDING  
2 PASS-THROUGH COSTS; POSSIBLE STATUTORY AMENDMENTS AND REGULATORY CHANG-  
3 ES; USAGE RATES; OUTREACH. ANY SUCH RECOMMENDATIONS OR REPORTS SHALL BE  
4 PROVIDED TO THE GOVERNOR, SPEAKER OF THE ASSEMBLY, TEMPORARY PRESIDENT  
5 OF THE SENATE AND MINORITY LEADERS OF THE SENATE AND ASSEMBLY. EACH  
6 MEMBER OF THE COMMISSION SHALL SERVE A TERM OF THREE YEARS. AN APPOINT-  
7 MENT TO FILL A VACANCY SHALL BE MADE FOR THE REMAINDER OF THE AFFECTED  
8 TERM. MEMBERS SHALL RECEIVE NO COMPENSATION.

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

11 (3) "Accident and health insurance," means (i) insurance against death  
12 or personal injury by accident or by any specified kind or kinds of  
13 accident and insurance against sickness, ailment or bodily injury,  
14 including insurance providing disability benefits pursuant to article  
15 nine of the workers' compensation law, INCLUDING ANY INSURANCE UNDER  
16 THAT ARTICLE FOR FAMILY CARE BENEFITS, DISABILITY BENEFITS RESULTING  
17 FROM SICKNESS OR INJURY, OR BOTH, except as specified in item (ii) here-  
18 of; and (ii) non-cancellable disability insurance, meaning insurance  
19 against disability resulting from sickness, ailment or bodily injury  
20 (but excluding insurance solely against accidental injury) under any  
21 contract which does not give the insurer the option to cancel or other-  
22 wise terminate the contract at or after one year from its effective date  
23 or renewal date.

24 S 20. This act shall take effect October 1, 2009; provided, however,  
25 that:

26 (a) paragraph a of subdivision 3 of section 211-a of the workers'  
27 compensation law, as added by section twelve of this act allowing public  
28 employees to opt in to family care benefits prior to July 1, 2010, shall  
29 take effect immediately; and

30 (b) effective immediately, the addition, amendment and/or repeal of  
31 any rules or regulations necessary for the implementation of this act  
32 and any administrative steps necessary to effectuate the purposes of  
33 this act on its effective date are authorized and directed to be made  
34 and completed on or before such effective date.