

4074

2009-2010 Regular Sessions

I N   S E N A T E

April 9, 2009

---

Introduced by Sen. ADDABBO -- 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 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,  
5 ALL PROVISIONS OF THIS ARTICLE APPLICABLE TO DISABILITY SHALL APPLY TO  
6 BOTH 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 ten new subdivisions 15, 16, 17, 18, 19, 20, 21, 22, 23 and 24 to read  
16 as 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 PSYCHOLOGICAL  
19 CARE, FOR A FAMILY MEMBER OF THE EMPLOYEE MADE NECESSARY BY A SERIOUS  
20 HEALTH CONDITION OF THE FAMILY MEMBER; OR B. TO BOND WITH HIS OR HER  
21 CHILD DURING THE FIRST TWELVE MONTHS AFTER THE CHILD'S BIRTH, OR THE  
22 FIRST TWELVE MONTHS AFTER THE PLACEMENT OF THE CHILD FOR ADOPTION OR  
23 FOSTER CARE WITH THE EMPLOYEE.  
24     16. "CHILD" MEANS A BIOLOGICAL, ADOPTED, OR FOSTER CHILD, A STEPCHILD,  
25 A LEGAL WARD, OR A CHILD OF A PERSON STANDING IN LOCO PARENTIS, WHO IS:

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

LBD11092-02-9

1 A. UNDER EIGHTEEN YEARS OF AGE; OR B. EIGHTEEN YEARS OF AGE OR OLDER  
2 AND INCAPABLE OF SELF-CARE BECAUSE OF A MENTAL OR PHYSICAL DISABILITY.

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

5 18. "SERIOUS HEALTH CONDITION" MEANS AN ILLNESS, INJURY, IMPAIRMENT,  
6 OR PHYSICAL OR MENTAL CONDITION THAT: A. REQUIRES INPATIENT CARE IN A  
7 HOSPITAL, HOSPICE OR RESIDENTIAL HEALTH CARE FACILITY; OR B. REQUIRES  
8 CONTINUING TREATMENT BY A HEALTH CARE PROVIDER.

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

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

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

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

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

29 24. "FAMILY CARE COST" SHALL MEAN (A) PRIOR TO JULY FIRST, TWO THOU-  
30 SAND ELEVEN, FORTY-FIVE CENTS PER WEEK; AND (B) DURING EVERY SUBSEQUENT  
31 YEAR COMMENCING ON JULY FIRST, SUCH AMOUNT AS SHALL BE SET BY REGULATION  
32 OF THE SUPERINTENDENT OF INSURANCE FOLLOWING CONSULTATION WITH THE FAMI-  
33 LY CARE ADVISORY COUNCIL BY APRIL FIRST OF THE SAME YEAR BASED ON HIS OR  
34 HER ACTUARIALLY SOUND ESTIMATION OF THE COST PER EMPLOYEE OF PROVIDING  
35 FAMILY CARE BENEFITS, BUT IN NO EVENT MORE THAN ONE HUNDRED FIFTEEN  
36 PERCENT OF HIS OR HER ESTIMATION OF THE COST PER EMPLOYEE OF PROVIDING  
37 SEPARATE FAMILY CARE BENEFITS THROUGH THE STATE INSURANCE FUND.

38 S 4. Subdivision 1 of section 204 of the workers' compensation law, as  
39 added by chapter 600 of the laws of 1949, is amended to read as follows:

40 1. Disability benefits shall be payable to an eligible employee for  
41 disabilities commencing after June thirtieth, nineteen hundred fifty,  
42 beginning with the eighth consecutive day of disability and thereafter  
43 during the continuance of disability, subject to the limitations as to  
44 maximum and minimum amounts and duration and other conditions and limi-  
45 tations in this section and in sections two hundred five and two hundred  
46 six OF THIS ARTICLE. Successive periods of disability caused by the  
47 same or related injury or sickness OR REASON FOR FAMILY CARE shall be  
48 deemed a single period of disability only if separated by less than  
49 three months. FOR PURPOSES OF THIS SUBDIVISION, DAYS OF DISABILITY FOR  
50 ANY FAMILY CARE SHALL COMMENCE AT THE START OF THE LEAVE PERIOD TAKEN BY  
51 THE EMPLOYEE TO PROVIDE FAMILY CARE.

52 S 5. Subdivisions 1, 2, 3, 4, 7 and 8 of section 205 of the workers'  
53 compensation law, subdivision 1 as amended by chapter 651 of the laws of  
54 1958, subdivision 2 as amended by chapter 270 of the laws of 1990 and  
55 subdivisions 3, 4, 7 and 8 as added by chapter 600 of the laws of 1949

1 and as renumbered by chapter 352 of the laws of 1981, are amended and a  
2 new subdivision 9 is added to read as follows:

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

6 (B) FOR FAMILY CARE, FOR MORE THAN TWELVE WEEKS DURING A PERIOD OF  
7 FIFTY-TWO CONSECUTIVE CALENDAR WEEKS OR DURING ANY ONE PERIOD OF FAMILY  
8 CARE;

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

32 3. for any disability RESULTING FROM INJURY OR SICKNESS OF AN EMPLOYEE  
33 occasioned by the wilful intention of the employee to bring about injury  
34 to or the sickness of himself or another, or resulting from any injury  
35 or sickness sustained in the perpetration by the employee of an illegal  
36 act;

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

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

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

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

1 S 6. The workers' compensation law is amended by adding a new section  
2 205-a to read as follows:

3 S 205-A. RELATIONSHIP BETWEEN DISABILITY BENEFITS FOR FAMILY CARE AND  
4 FOR THE EMPLOYEE'S OWN SICKNESS OR ILLNESS. THE RECEIPT OF BENEFITS FOR  
5 DISABILITY RESULTING FROM SICKNESS OR INJURY TO THE EMPLOYEE, INCLUDING  
6 PREGNANCY AND CHILDBIRTH, SHALL NOT COUNT TOWARD ANY TIME LIMITATION  
7 UNDER SUBDIVISION ONE OF SECTION TWO HUNDRED FIVE OF THIS ARTICLE ON THE  
8 RECEIPT OF BENEFITS FOR FAMILY CARE, AND THE RECEIPT OF BENEFITS FOR  
9 FAMILY CARE SHALL NOT COUNT TOWARD ANY TIME LIMITATION UNDER SUBDIVISION  
10 ONE OF SECTION TWO HUNDRED FIVE OF THIS ARTICLE ON THE RECEIPT OF BENE-  
11 FITS FOR DISABILITY RESULTING FROM SICKNESS OR INJURY TO THE EMPLOYEE,  
12 EXCEPT THAT AN EMPLOYEE MAY RECEIVE DISABILITY BENEFITS ON ONLY ONE  
13 CLAIM AT ANY TIME.

14 S 7. Subdivision 3 of section 209 of the workers' compensation law, as  
15 amended by chapter 415 of the laws of 1983, is amended to read as  
16 follows:

17 3. The contribution of each such employee to the cost of disability  
18 benefits provided by this article shall be one-half of one per centum of  
19 the employee's wages paid to him on and after July first, nineteen  
20 hundred fifty, but not in excess of sixty cents per week FOR THE COST OF  
21 DISABILITY BENEFITS FOR SICKNESS OR INJURY, PLUS THE FAMILY CARE COST,  
22 AS DEFINED IN SUBDIVISION TWENTY-FOUR OF SECTION TWO HUNDRED ONE OF THIS  
23 ARTICLE.

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

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

31 8. NOTHING IN THIS ARTICLE SHALL REQUIRE AN EMPLOYER TO USE THE SAME  
32 CARRIER TO PROVIDE BENEFITS REQUIRED BY OR PERMISSIBLE UNDER THIS ARTI-  
33 CLE FOR DISABILITY RESULTING FROM SICKNESS OR INJURY AS IT USES TO  
34 PROVIDE BENEFITS REQUIRED BY OR PERMISSIBLE UNDER THIS ARTICLE FOR FAMI-  
35 LY CARE. AN EMPLOYER MAY USE A DIFFERENT MEANS, AMONG THOSE SET FORTH IN  
36 SUBDIVISIONS ONE THROUGH FIVE OF THIS SECTION, TO PROVIDE BENEFITS  
37 REQUIRED BY THIS ARTICLE FOR DISABILITY RESULTING FROM SICKNESS OR INJU-  
38 RY, FROM THE MEANS USED TO PROVIDE BENEFITS REQUIRED BY THIS ARTICLE FOR  
39 FAMILY CARE.

40 S 9. The workers' compensation law is amended by adding a new section  
41 211-a to read as follows:

42 S 211-A. PUBLIC EMPLOYEES; EMPLOYEE OPT IN. 1. FOR PURPOSES OF THIS  
43 SECTION, "PUBLIC EMPLOYEE" MEANS ANY EMPLOYEE OF THE STATE, ANY POLI-  
44 TICAL SUBDIVISION OF THE STATE, A PUBLIC AUTHORITY OR ANY OTHER GOVERN-  
45 MENTAL AGENCY OR INSTRUMENTALITY. "PUBLIC EMPLOYER" MEANS THE STATE, ANY  
46 POLITICAL SUBDIVISION OF THE STATE, A PUBLIC AUTHORITY OR ANY OTHER  
47 GOVERNMENTAL AGENCY OR INSTRUMENTALITY THEREOF. "EMPLOYEE ORGANIZATION"  
48 SHALL HAVE THE MEANING SET FORTH IN SECTION TWO HUNDRED ONE OF THE CIVIL  
49 SERVICE LAW.

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

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

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

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

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

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

15 AN EMPLOYEE ORGANIZATION THAT HAS OPTED IN TO THE FAMILY CARE BENEFIT  
16 MAY OPT OUT OF IT WITHIN THE TIME PERIODS, AND EFFECTIVE UPON THE SAME  
17 DATES, SET FORTH IN THIS PARAGRAPH. THE EMPLOYEE ORGANIZATION SHALL  
18 PROVIDE NOTICE OF SUCH TO THE BOARD WITHIN SEVEN DAYS OF NOTICE TO THE  
19 EMPLOYER.

20 4. IN THE ABSENCE OF ANY CONTRARY STATEMENT IN A COLLECTIVELY NEGOTI-  
21 ATED AGREEMENT UNDER ARTICLE FOURTEEN OF THE CIVIL SERVICE LAW, A PUBLIC  
22 EMPLOYER MAY REQUIRE PUBLIC EMPLOYEES WHO OPT IN UNDER THIS SECTION TO  
23 CONTRIBUTE UP TO THE FAMILY CARE COST, AS DEFINED IN SUBDIVISION TWEN-  
24 TY-FOUR OF SECTION TWO HUNDRED ONE OF THIS ARTICLE, PER WEEK IN ACCORD-  
25 ANCE WITH THE PROCEDURE SET FORTH IN SECTION TWO HUNDRED NINE OF THIS  
26 ARTICLE.

27 S 10. Subdivision 1 of section 212 of the workers' compensation law,  
28 as amended by chapter 740 of the laws of 1960, is amended to read as  
29 follows:

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

53 S 11. Subdivision 2 of section 76 of the workers' compensation law, as  
54 added by chapter 600 of the laws of 1949, is amended to read as follows:

55 2. The purposes of the state insurance fund herein created are hereby  
56 enlarged to provide [for the] insurance [by the state insurance fund of]

1 FOR the payment of the benefits required by section two hundred four of  
2 this chapter, INCLUDING BENEFITS FOR FAMILY CARE PROVIDED EITHER IN THE  
3 SAME POLICY WITH OR IN A SEPARATE POLICY FROM BENEFITS FOR DISABILITY  
4 RESULTING FROM INJURY OR SICKNESS OF AN EMPLOYEE, AND AS PROVIDED PURSU-  
5 ANT TO SECTION TWO HUNDRED ELEVEN-A OF THIS CHAPTER. A separate fund is  
6 hereby created within the state insurance fund, which shall be known as  
7 the "disability benefits fund", and which shall consist of all premiums  
8 received and paid into said fund on account of such insurance, all secu-  
9 rities acquired by and through the use of moneys belonging to said fund  
10 and of interest earned upon moneys belonging to said fund and deposited  
11 or invested as herein provided. Said disability benefits fund shall be  
12 applicable to the payment of benefits, expenses and assessments on  
13 account of insurance written pursuant to article nine of this chapter.

14 S 12. Subdivisions 1, 2, 3 and 4 of section 217 of the workers'  
15 compensation law, subdivision 1 as amended by chapter 167 of the laws of  
16 1999, subdivisions 2 and 3 as amended by chapter 270 of the laws of 1990  
17 and subdivision 4 as added by chapter 600 of the laws of 1949, are  
18 amended to read as follows:

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

26 (A) IN THE CASE OF DISABILITY RESULTING FROM SICKNESS OR INJURY TO THE  
27 EMPLOYEE, a statement of disability by the employee's attending [physi-  
28 cian or attending podiatrist or attending chiropractor or attending  
29 dentist or attending psychologist or attending certified nurse midwife,  
30 or in the case of an employee who adheres to the faith or teachings of  
31 any church or denomination, and who in accordance with its creed, tenets  
32 or principles depends for healing upon prayer through spiritual means  
33 alone in the practice of religion, by an accredited practitioner,  
34 containing facts and opinions as to such disability in compliance with  
35 regulations of the chair.] HEALTH CARE PROVIDER;

36 (B) IN THE CASE OF FAMILY CARE FOR BONDING WITH A NEW CHILD, A BIRTH  
37 CERTIFICATE, CERTIFICATE OF ADOPTION, OR OTHER COMPETENT EVIDENCE SHOW-  
38 ING THAT THE EMPLOYEE IS THE PARENT OF A CHILD WITHIN TWELVE MONTHS OF  
39 THAT CHILD'S BIRTH OR PLACEMENT FOR ADOPTION OR FOSTER CARE WITH THE  
40 EMPLOYEE;

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

43 (I) A STATEMENT BY THE FAMILY MEMBER'S HEALTH CARE PROVIDER, CONTAIN-  
44 ING FACTS AND OPINIONS AS TO SUCH HEALTH CONDITION IN COMPLIANCE WITH  
45 REGULATIONS OF THE CHAIR; AND

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

50 Failure to furnish notice or proof within the time and in the manner  
51 above provided shall not invalidate the claim but no benefits shall be  
52 required to be paid for any period more than two weeks prior to the date  
53 on which the required proof is furnished unless it shall be shown to the  
54 satisfaction of the chair not to have been reasonably possible to  
55 furnish such notice or proof and that such notice or proof was furnished  
56 as soon as possible; provided, however, that no benefits shall be paid

1 unless the required proof of disability is furnished within twenty-six  
2 weeks after commencement of the period of disability. No limitation of  
3 time provided in this section shall run as against any person who is  
4 mentally incompetent, or physically incapable of providing such notice  
5 as a result of a serious medical condition, or a minor so long as such  
6 person has no guardian of the person and/or property.

7 2. An employee claiming benefits FOR HIS OR HER SICKNESS OR INJURY, OR  
8 THE FAMILY MEMBER OF SUCH EMPLOYEE IN ANY CASE WHERE THE EMPLOYEE CLAIMS  
9 FAMILY CARE BENEFITS FOR PROVIDING CARE TO THAT FAMILY MEMBER shall, as  
10 requested by the employer or carrier, submit himself or herself at  
11 intervals, but not more than once a week, for examination by a [physi-  
12 cian or podiatrist or chiropractor or dentist or psychologist or certi-  
13 fied nurse midwife] RELEVANT HEALTH CARE PROVIDER designated by the  
14 employer or carrier. All such examinations shall be without cost to the  
15 employee OR FAMILY MEMBER and shall be held at a reasonable time and  
16 place.

17 3. The chair may direct the claimant WHO SEEKS DISABILITY BENEFITS FOR  
18 HIS OR HER SICKNESS OR INJURY, OR THE CLAIMANT'S FAMILY MEMBER WHERE THE  
19 CLAIMANT SEEKS DISABILITY BENEFITS FOR FAMILY LEAVE TO PROVIDE CARE TO  
20 THAT FAMILY MEMBER to submit to examination by a [physician or podia-  
21 trist or chiropractor or dentist or psychologist] RELEVANT HEALTH CARE  
22 PROVIDER designated by him or her in any case in which the claim to  
23 disability benefits is contested and in claims arising under section two  
24 hundred seven OF THIS ARTICLE, and in other cases as the chair or board  
25 may require.

26 4. Refusal of the claimant OR FAMILY MEMBER without good cause to  
27 submit to any such examination shall disqualify [him] THE CLAIMANT from  
28 all benefits hereunder for the period of such refusal, except as to  
29 benefits already paid.

30 S 13. The opening paragraph of section 221 of the workers' compen-  
31 sation law, as separately amended by chapters 425 and 500 of the laws of  
32 1985, is amended to read as follows:

33 Within twenty-six weeks of written notice of rejection of claim, the  
34 employee may file with the chairman a notice that his or her claim for  
35 disability benefits has not been paid, and the employee shall submit  
36 proof of disability and of his or her employment, wages and other facts  
37 reasonably necessary for determination of the employee's right to such  
38 benefits. Failure to file such notice within the time provided, may be  
39 excused by the chairman if it can be shown to the satisfaction of the  
40 chairman not to have been reasonably possible to furnish such notice and  
41 that such notice was furnished as soon as possible. On demand of the  
42 chairman the employer or carrier shall forthwith deliver to the chairman  
43 PROOF OF DISABILITY, INCLUDING IF RELEVANT the original or a true copy  
44 of the attending physician's or attending podiatrist's or accredited  
45 practitioner's statement, wage and employment data and all other papers  
46 in the possession of the employer or carrier with respect to such claim.

47 S 14. Subdivision 2 of section 229 of the workers' compensation law,  
48 as added by chapter 271 of the laws of 1985, is amended to read as  
49 follows:

50 2. Whenever an employee of a covered employer who is eligible for  
51 benefits under section two hundred four of this article shall be absent  
52 from work due to a disability as defined in subdivision nine of section  
53 two hundred one of this article for more than seven consecutive days,  
54 the employer shall provide the employee with a written statement of the  
55 employee's rights under this article in a form prescribed by the chair-  
56 man. The statement shall be provided to the employee within five busi-

1 ness days after the employee's seventh consecutive day of absence due to  
2 disability or within five business days after the employer knows or  
3 should know that the employee's absence is due to disability, whichever  
4 is later. EACH COVERED EMPLOYER SHALL PROVIDE EACH EMPLOYEE WITH A TYPE-  
5 WRITTEN, PRINTED OR ELECTRONIC NOTICE IN A FORM PRESCRIBED BY THE CHAIR,  
6 STATING THAT THE EMPLOYER HAS PROVIDED FOR THE PAYMENT OF DISABILITY  
7 BENEFITS AS REQUIRED BY THIS ARTICLE WITHIN THIRTY DAYS OF THE EFFECTIVE  
8 DATE OF THE CHAPTER OF THE LAWS OF TWO THOUSAND NINE WHICH AMENDED THIS  
9 SUBDIVISION. EACH COVERED EMPLOYER SHALL PROVIDE SUCH NOTICE TO ALL NEW  
10 EMPLOYEES WITHIN THIRTY DAYS OF THEIR FIRST DAY OF WORK.

11 S 15. The workers' compensation law is amended by adding a new section  
12 239-a to read as follows:

13 S 239-A. FAMILY CARE STUDY AND MONITORING. 1. THE INSURANCE DEPART-  
14 MENT SHALL STUDY, AND REPORT TO THE GOVERNOR AND BOTH HOUSES OF THE  
15 LEGISLATURE BY APRIL FIRST, TWO THOUSAND TEN, ON THE FEASIBILITY AND  
16 IMPACT OF COMMUNITY RATING DISABILITY INSURANCE OR ANY ASPECT THEREOF.

17 2. THERE SHALL BE CREATED THE FAMILY CARE ADVISORY COUNCIL, WHICH  
18 SHALL CONSIST OF FIFTEEN MEMBERS TO BE APPOINTED BY THE GOVERNOR AS  
19 FOLLOWS: TWO ON RECOMMENDATION BY THE NEW YORK STATE AMERICAN FEDERATION  
20 OF LABOR-CONGRESS OF INDUSTRIAL ORGANIZATIONS, ONE OF WHOM SHALL BE  
21 REPRESENTATIVE OF PUBLIC EMPLOYEE ORGANIZATIONS CERTIFIED UNDER ARTICLE  
22 FOURTEEN OF THE CIVIL SERVICE LAW, PARTICIPATING IN THE PAID FAMILY CARE  
23 PLAN, ONE OF WHOM IS REPRESENTATIVE OF UNIONS REPRESENTING WORKERS  
24 EMPLOYED IN THE PRIVATE SECTOR; TWO WHO ARE REPRESENTATIVES OF ORGANIZA-  
25 TIONS THAT REPRESENT EITHER COVERED BUSINESS OR PUBLIC EMPLOYERS IN NEW  
26 YORK STATE PARTICIPATING IN THE PAID FAMILY LEAVE PLAN; TWO ON NOMI-  
27 NATION OF THE SPEAKER OF THE ASSEMBLY; ONE ON NOMINATION BY THE MINORITY  
28 LEADER OF THE ASSEMBLY; TWO ON NOMINATION BY THE TEMPORARY PRESIDENT OF  
29 THE SENATE; ONE ON NOMINATION BY THE MINORITY LEADER OF THE SENATE; AND  
30 THE SUPERINTENDENT OF INSURANCE, COMMISSIONER OF LABOR AND CHAIR OF THE  
31 WORKERS' COMPENSATION BOARD, WHO SHALL SERVE AS MEMBERS EX OFFICIO. THE  
32 COMMISSIONER OF LABOR SHALL SERVE AS CHAIR OF THE COUNCIL. THE SUPER-  
33 INTENDENT OF INSURANCE AND CHAIR OF THE WORKERS' COMPENSATION BOARD  
34 SHALL CONSULT REGULARLY WITH THE COUNCIL ON THE IMPLEMENTATION OF THE  
35 FAMILY CARE BENEFIT. THE DEPARTMENT OF LABOR, THE INSURANCE DEPARTMENT  
36 AND THE WORKERS' COMPENSATION BOARD SHALL PROVIDE ALL NECESSARY PERSON-  
37 NEL AND LOGISTICAL SUPPORT AS MAY BE NECESSARY TO COMPLETE THE DUTIES OF  
38 THE ADVISORY COUNCIL. THE COUNCIL OR ANY OF ITS MEMBERS MAY ISSUE SUCH  
39 RECOMMENDATIONS OR REPORTS AS THEY DEEM WARRANTED ON THE FAMILY CARE  
40 BENEFIT, INCLUDING ON THE SCOPE OF THE BENEFIT, PROBLEMS WITH THE BENE-  
41 FIT; FUNDING OF THE BENEFIT INCLUDING PASS-THROUGH COSTS; POSSIBLE  
42 STATUTORY AMENDMENTS AND REGULATORY CHANGES; USAGE RATES; OUTREACH; AND  
43 COMMUNITY RATING. ANY SUCH RECOMMENDATIONS OR REPORTS SHALL BE PROVIDED  
44 TO THE GOVERNOR, SUPERINTENDENT OF INSURANCE, SPEAKER OF THE ASSEMBLY,  
45 TEMPORARY PRESIDENT OF THE SENATE AND MINORITY LEADERS OF THE SENATE AND  
46 ASSEMBLY. EACH MEMBER OF THE COMMISSION SHALL SERVE A TERM OF THREE  
47 YEARS. AN APPOINTMENT TO FILL A VACANCY SHALL BE MADE FOR THE REMAINDER  
48 OF THE AFFECTED TERM. MEMBERS SHALL RECEIVE NO COMPENSATION.

49 S 16. Paragraph 3 of subsection (a) of section 1113 of the insurance  
50 law is amended as follows:

51 (3) "Accident and health insurance," means (i) insurance against death  
52 or personal injury by accident or by any specified kind or kinds of  
53 accident and insurance against sickness, ailment or bodily injury,  
54 including insurance providing disability benefits pursuant to article  
55 nine of the workers' compensation law, INCLUDING ANY INSURANCE UNDER  
56 THAT ARTICLE FOR FAMILY CARE BENEFITS, DISABILITY BENEFITS RESULTING



1 FROM SICKNESS OR INJURY, OR BOTH, except as specified in item (ii) here-  
2 of; and (ii) non-cancellable disability insurance, meaning insurance  
3 against disability resulting from sickness, ailment or bodily injury  
4 (but excluding insurance solely against accidental injury) under any  
5 contract which does not give the insurer the option to cancel or other-  
6 wise terminate the contract at or after one year from its effective date  
7 or renewal date.

8 S 17. This act shall take effect immediately; provided, however, that:  
9 (a) Sections one, two, three, four, five, six, seven, eight, nine,  
10 ten, twelve, thirteen, fourteen and sixteen of this act shall take  
11 effect on July 1, 2010.

12 (b) Paragraph a of subdivision 3 of section 211-a of the workers'  
13 compensation law, as added by section nine of this act allowing public  
14 employees to opt in to family care benefits prior to July 1, 2010 and  
15 paragraph (b) of subdivision 1 of section 212 of the workers' compen-  
16 sation law as added by section ten of this act allowing public employers  
17 to opt in to family care benefits prior to July 1, 2010, shall take  
18 effect immediately.

19 (c) Effective immediately, the addition, amendment and/or repeal of  
20 any rules or regulations necessary for the implementation of this act  
21 and any administrative steps necessary to effectuate the purposes of  
22 this act on its effective date are authorized and directed to be made  
23 and completed on or before such effective date.