

4180

2009-2010 Regular Sessions

I N S E N A T E

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Introduced by Sens. FLANAGAN, DeFRANCISCO, O. JOHNSON, LARKIN, MORAHAN,
RANZENHOFER -- read twice and ordered printed, and when printed to be
committed to the Committee on Labor

AN ACT to amend the labor law and the tax law, in relation to establish-
ing the family and medical leave independent savings account act

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. The labor law is amended by adding a new article 32 to read
2 as follows:

3 ARTICLE 32

4 FAMILY AND MEDICAL LEAVE INDEPENDENT SAVINGS ACCOUNT ACT

5 SECTION 1000. SHORT TITLE.

6 1001. DEFINITIONS.

7 1002. ESTABLISHMENT OF PLAN.

8 1003. DISTRIBUTION REQUIREMENTS.

9 S 1000. SHORT TITLE. THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS
10 THE "FAMILY MEDICAL LEAVE INDEPENDENT SAVINGS ACCOUNT ACT".

11 S 1001. DEFINITIONS. AS USED IN THIS ARTICLE:

12 1. "COMMISSIONER" MEANS THE COMMISSIONER OF LABOR.

13 2. "EMPLOYEE" MEANS ANY PERSON EMPLOYED FOR HIRE BY AN EMPLOYER IN ANY
14 EMPLOYMENT.

15 3. "EMPLOYER" MEANS ANY PERSON, CORPORATION, LIMITED LIABILITY COMPA-
16 NY, OR ASSOCIATION EMPLOYING ANY INDIVIDUAL IN ANY OCCUPATION, INDUSTRY,
17 TRADE, BUSINESS OR SERVICE. THE TERM "EMPLOYER" SHALL ALSO MEAN: A COUN-
18 TY, CITY, TOWN, VILLAGE OR ANY OTHER POLITICAL SUBDIVISION AS DEFINED IN
19 SECTION ONE HUNDRED THIRTY-ONE OF THE RETIREMENT AND SOCIAL SECURITY LAW
20 OR CIVIL DIVISION OF THE STATE; A SCHOOL DISTRICT OR ANY GOVERNMENTAL
21 ENTITY OPERATING A PUBLIC SCHOOL, COLLEGE OR UNIVERSITY; A PUBLIC
22 IMPROVEMENT OR SPECIAL DISTRICT; A PUBLIC AUTHORITY, COMMISSION OR
23 PUBLIC BENEFIT CORPORATION; ANY OTHER PUBLIC CORPORATION, AGENCY OR
24 INSTRUMENTALITY OR UNIT OF GOVERNMENT WHICH EXERCISES GOVERNMENTAL

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

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1 POWERS UNDER THE LAWS OF THE STATE OR ANY INSTRUMENTALITY JOINTLY
2 CREATED BY THIS STATE AND ANY OTHER STATE OR STATES.

3 4. THE TERM "FINANCIAL ORGANIZATION" MEANS AN ORGANIZATION AUTHORIZED
4 TO DO BUSINESS IN THE STATE OF NEW YORK AND (A) WHICH IS AN AUTHORIZED
5 FIDUCIARY TO ACT AS A TRUSTEE PURSUANT TO THE PROVISIONS OF AN ACT OF
6 CONGRESS ENTITLED "EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974" AS
7 SUCH PROVISIONS MAY BE AMENDED FROM TIME TO TIME, OR AN INSURANCE COMPA-
8 NY; AND (B) (I) IS LICENSED OR CHARTERED BY THE STATE INSURANCE DEPART-
9 MENT, (II) IS LICENSED OR CHARTERED BY THE STATE BANKING DEPARTMENT,
10 (III) IS CHARTERED BY AN AGENCY OF THE FEDERAL GOVERNMENT, (IV) IS
11 SUBJECT TO THE JURISDICTION AND REGULATION OF THE SECURITIES AND
12 EXCHANGE COMMISSION OF THE FEDERAL GOVERNMENT, OR (V) IS ANY OTHER ENTI-
13 TY OTHERWISE AUTHORIZED TO ACT IN THIS STATE AS A TRUSTEE PURSUANT TO
14 THE PROVISIONS OF AN ACT OF CONGRESS ENTITLED "EMPLOYEE RETIREMENT
15 INCOME SECURITY ACT OF 1974" AS SUCH PROVISIONS MAY BE AMENDED FROM TIME
16 TO TIME.

17 S 1002. ESTABLISHMENT OF PLAN. 1. (A) THE COMMISSIONER SHALL ESTABLISH
18 A FAMILY AND MEDICAL LEAVE INDEPENDENT SAVINGS ACCOUNT PLAN FOR ALL
19 EMPLOYEES AND SHALL PROMULGATE ANY AND ALL RULES AND REGULATIONS NECES-
20 SARY FOR THE IMPLEMENTATION OF THIS ARTICLE.

21 (B) THE COMMISSIONER SHALL ENTER INTO WRITTEN AGREEMENTS WITH ONE OR
22 MORE FINANCIAL ORGANIZATIONS TO ADMINISTER THE FAMILY AND MEDICAL LEAVE
23 INDEPENDENT SAVINGS ACCOUNT PLAN FOR EMPLOYEES AND TO INVEST FUNDS HELD
24 PURSUANT TO SUCH PLAN. THE COMMISSIONER SHALL ESTABLISH REPORTING
25 REQUIREMENTS FOR SUCH FINANCIAL ORGANIZATIONS INCLUDING BUT NOT LIMITED
26 TO REPORTS TO THE COMMISSIONER, PARTICIPATING EMPLOYEES, AND PARTICIPAT-
27 ING EMPLOYERS, REGARDING THE FISCAL STATUS OF FAMILY AND MEDICAL LEAVE
28 INDEPENDENT SAVINGS ACCOUNTS.

29 (C) THE RULES AND REGULATIONS PROMULGATED BY THE COMMISSIONER SHALL
30 ESTABLISH STANDARDS FOR THE SELECTION OF FINANCIAL ORGANIZATIONS AUTHOR-
31 IZED TO DO BUSINESS IN THIS STATE TO ADMINISTER IN SUCH PLANS, INCLUD-
32 ING, BUT NOT LIMITED TO, THE FOLLOWING CRITERIA: (I) RATES OF COMMIS-
33 SION, BROKERAGE AND OTHER FEES, ADMINISTRATIVE EXPENSES AND RELATED
34 SERVICE CHARGES IMPOSED BY THE FINANCIAL ORGANIZATION; (II) VARIETY OF
35 TYPES OF INVESTMENT OPPORTUNITIES OFFERED BY THE FINANCIAL ORGANIZATION
36 AND/OR AMONG THE FINANCIAL ORGANIZATIONS SELECTED AND THE ABILITY TO
37 TRANSFER AMONG SUCH OPPORTUNITIES; (III) THE STABILITY OF THE FINANCIAL
38 ORGANIZATION AS EVIDENCED BY EXPERIENCE, REPUTATION, ASSETS AND HOLD-
39 INGS, ABILITY TO GUARANTEE SPECIFIC RATES OF RETURN; (IV) ABILITY TO
40 COMPLY WITH REPORTING REQUIREMENTS TO THE COMMISSIONER AND TO PARTIC-
41 IPANTS IN SUCH A PLAN; AND (V) SUCH OTHER FACTORS WHICH WOULD BE CONSID-
42 ERED BY A PRUDENT INVESTOR IN SUCH A PLAN.

43 (D) THE COMMISSIONER SHALL PROVIDE ASSISTANCE TO ANY EMPLOYER AS THE
44 COMMISSIONER MAY DEEM APPROPRIATE TO THE IMPLEMENTATION OF THE
45 PROVISIONS OF THIS ARTICLE.

46 2. (A) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, EVERY EMPLOYER IN
47 THE STATE MUST PROVIDE A FAMILY AND MEDICAL LEAVE INDEPENDENT SAVINGS
48 ACCOUNT PLAN FOR ITS EMPLOYEES IN ACCORDANCE WITH STANDARDS, RULES AND
49 REGULATIONS PROMULGATED BY THE COMMISSIONER.

50 (B) AT THE REQUEST OF AN EMPLOYEE OF ANY EMPLOYER, THE CHIEF FISCAL
51 OFFICER OR OTHER APPROPRIATE OFFICER OF SUCH EMPLOYER SHALL, BY PAYROLL
52 DEDUCTION, DEFER THE PAYMENT OF PART OF THE COMPENSATION OF SUCH EMPLOY-
53 EE, AS PROVIDED IN A WRITTEN STATEMENT BY THE EMPLOYEE, AND TRANSFER THE
54 AMOUNT SO DEFERRED TO THE AUTHORIZED FINANCIAL ORGANIZATION.

(C) EMPLOYERS SHALL BE GRANTED THE OPTION TO ANNUALLY ELECT TO MATCH ANY AMOUNT OF EMPLOYEE CONTRIBUTIONS TO A FAMILY AND MEDICAL LEAVE INDEPENDENT SAVINGS ACCOUNT.

3. FAMILY AND MEDICAL LEAVE INDEPENDENT SAVINGS ACCOUNTS SHALL BE MAINTAINED BY FINANCIAL ORGANIZATIONS UNDER WRITTEN AGREEMENT WITH THE COMMISSIONER. SUCH FINANCIAL ORGANIZATIONS SHALL BE SOLELY RESPONSIBLE FOR DISTRIBUTIONS TO PARTICIPANTS PURSUANT TO THIS ARTICLE.

4. NOTWITHSTANDING THE OTHER PROVISIONS OF THIS SECTION, EMPLOYEES, OTHERWISE ELIGIBLE TO PARTICIPATE IN THE FAMILY AND MEDICAL LEAVE INDEPENDENT SAVINGS ACCOUNT PLAN, WHO ARE IN A NEGOTIATING UNIT REPRESENTED BY AN EMPLOYEE ORGANIZATION WHICH NEGOTIATES PURSUANT TO ARTICLE TWENTY OF THIS CHAPTER OR ARTICLE FOURTEEN OF THE CIVIL SERVICE LAW SHALL NOT BE PERMITTED TO PARTICIPATE UNDER THE PROVISIONS OF THIS SECTION UNTIL SUCH TIME AS SUCH PARTICIPATION IS AUTHORIZED PURSUANT TO A COLLECTIVELY NEGOTIATED AGREEMENT BETWEEN THE EMPLOYER AND THE EMPLOYEE ORGANIZATION; PROVIDED, HOWEVER, THAT THE EMPLOYER NEED ONLY NEGOTIATE WHETHER OR NOT SUCH EMPLOYEES SHALL BE INCLUDED IN SUCH PLAN.

5. ANY COMPENSATION DEFERRED BY AN EMPLOYEE UNDER A FAMILY AND MEDICAL LEAVE INDEPENDENT SAVINGS ACCOUNT PLAN ESTABLISHED PURSUANT TO THIS SECTION SHALL BE CONSIDERED PART OF ANNUAL COMPENSATION BY ANY RETIREMENT SYSTEM OR PLAN TO WHICH THE STATE OR EMPLOYER CONTRIBUTIONS ON BEHALF OF SAID EMPLOYEE. HOWEVER, THIS IN NO WAY SHALL BE CONSTRUED TO SUPERSEDE THE PROVISION OF SECTION FOUR HUNDRED THIRTY-ONE OF THE RETIREMENT AND SOCIAL SECURITY LAW OR ANY OTHER SIMILAR PROVISION OF STATE OR FEDERAL LAW WHICH LIMITS THE SALARY BASE FOR COMPUTING RETIREMENT BENEFITS PAYABLE BY A RETIREMENT SYSTEM OR PLAN.

S 1003. DISTRIBUTION REQUIREMENTS. 1. DURING PERIODS OF APPROVED FAMILY AND MEDICAL LEAVE, EMPLOYEE PARTICIPANTS SHALL BE ELIGIBLE FOR A DISTRIBUTION FROM THE ACCUMULATED FUNDS DEFERRED TO THEIR FAMILY AND MEDICAL LEAVE INDEPENDENT SAVINGS ACCOUNT ESTABLISHED PURSUANT TO THIS ARTICLE, IN FULL AND PARTIAL DISBURSEMENT OPTIONS TO BE DETERMINED BY THE COMMISSIONER.

2. UNDER THE FAMILY AND MEDICAL LEAVE INDEPENDENT SAVINGS ACCOUNT PLAN, AMOUNTS WILL NOT BE MADE AVAILABLE TO EMPLOYEE PARTICIPANTS OR BENEFICIARIES EARLIER THAN: (I) WHEN THE PARTICIPANT IS ON PERIODS OF APPROVED JOB PROTECTED LEAVE PURSUANT TO THE PROVISIONS OF THE FEDERAL FAMILY AND MEDICAL LEAVE ACT; (II) THE CALENDAR YEAR IN WHICH THE PARTICIPANT ATTAINS AGE SEVENTY AND ONE-HALF; (III) WHEN THE PARTICIPANT HAS A SEVERANCE FROM EMPLOYMENT WITH THE EMPLOYER; OR (IV) WHEN THE PARTICIPANT IS FACED WITH AN UNFORESEEABLE EMERGENCY DETERMINED IN A MANNER PRESCRIBED BY THE COMMISSIONER.

3. (A) WHEN AN EMPLOYEE PARTICIPANT BECOMES SEPARATED FROM EMPLOYMENT, ANY UNUSED FUNDS ACCUMULATED IN A FAMILY AND MEDICAL LEAVE INDEPENDENT SAVINGS ACCOUNT MAY BE DISTRIBUTED TO SUCH PARTICIPANT IN A MANNER PRESCRIBED BY THE COMMISSIONER, OR ROLLED OVER TO OTHER DEFERRED COMPENSATION PLANS OR INDIVIDUAL RETIREMENT ACCOUNTS IN ACCORDANCE WITH STATE AND FEDERAL TAX LAWS.

(B) ANY UNUSED BENEFIT FROM A FAMILY AND MEDICAL LEAVE INDEPENDENT SAVINGS ACCOUNT PLAN ESTABLISHED PURSUANT TO THIS ARTICLE SHALL BE IN ADDITION TO ANY RETIREMENT BENEFITS PROVIDED AN EMPLOYEE UNDER ANY OTHER PROVISION OF LAW.

S 2. Subsection (c) of section 612 of the tax law is amended by adding a new paragraph 39 to read as follows:

(39) THE AMOUNT DEDUCTED OR DEFERRED, DURING A TAXABLE YEAR, FROM AN EMPLOYEE'S SALARY UNDER A FAMILY AND MEDICAL LEAVE INDEPENDENT SAVINGS

1 ACCOUNT PLAN ESTABLISHED PURSUANT TO SECTION TEN HUNDRED TWO OF THE
2 LABOR LAW.
3 S 3. This act shall take effect on the one hundred eightieth day after
4 it shall have become a law; provided, however, that effective immediate-
5 ly, the addition, amendment and/or repeal of any rule or regulations
6 necessary for the implementation of this act on its effective date are
7 authorized and directed to be made and completed on or before such
8 effective date.