

7547

I N S E N A T E

June 1, 2012

Introduced by Sen. McDONALD -- 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 injury or sickness, pregnancy or family leave

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

1 Section 1. Subdivision 2 of section 76 of the workers' compensation
2 law, as added by chapter 600 of the laws of 1949, is amended to read as
3 follows:
4 2. The purposes of the state insurance fund herein created are hereby
5 enlarged to provide [for the] insurance [by the state insurance fund of]
6 FOR the payment of the benefits required by section two hundred four of
7 this chapter, INCLUDING BENEFITS FOR FAMILY CARE PROVIDED EITHER IN THE
8 SAME POLICY WITH OR IN A SEPARATE POLICY FROM BENEFITS FOR DISABILITY
9 RESULTING FROM INJURY, SICKNESS OR PREGNANCY OF AN EMPLOYEE, AND AS
10 PROVIDED PURSUANT TO SECTION TWO HUNDRED ELEVEN-A OF THIS CHAPTER. A
11 separate fund is hereby created within the state insurance fund, which
12 shall be known as the "disability benefits fund", and which shall
13 consist of all premiums received and paid into said fund on account of
14 such insurance, all securities acquired by and through the use of moneys
15 belonging to said fund and of interest earned upon moneys belonging to
16 said fund and deposited or invested as herein provided. Said disability
17 benefits fund shall be applicable to the payment of benefits, expenses
18 and assessments on account of insurance written pursuant to article nine
19 of this chapter.
20 S 2. The section heading and the first undesignated paragraph of
21 section 120 of the workers' compensation law, as amended by chapter 61
22 of the laws of 1989, are amended to read as follows:
23 Discrimination against employees [who bring proceedings]. It shall be
24 unlawful for any employer or his or her duly authorized agent to
25 discharge or in any other manner discriminate against an employee as to
26 his or her employment because such employee has claimed or attempted to
27 claim compensation from such employer, OR CLAIMED OR ATTEMPTED TO CLAIM

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

LBD09329-02-1

1 ANY BENEFITS PROVIDED UNDER THIS CHAPTER, or because he or she has
2 testified or is about to testify in a proceeding under this chapter and
3 no other valid reason is shown to exist for such action by the employer.

4 S 3. Subdivision 9 of section 201 of the workers' compensation law is
5 amended by adding two new paragraphs C and D to read as follows:

6 C. "DISABILITY" ALSO INCLUDES FAMILY CARE, AS DEFINED IN SUBDIVISION
7 FIFTEEN OF THIS SECTION.

8 D. UNLESS OTHERWISE SET FORTH IN THIS ARTICLE, ALL PROVISIONS OF THIS
9 ARTICLE APPLICABLE TO "DISABILITY" SHALL APPLY TO (I) DISABILITY ARISING
10 FROM INJURY OR SICKNESS; (II) DISABILITY CAUSED BY OR IN CONNECTION WITH
11 PREGNANCY; AND (III) DISABILITY REQUIRING FAMILY CARE.

12 S 4. Subdivision 14 of section 201 of the workers' compensation law,
13 as added by chapter 600 of the laws of 1949 and as renumbered by chapter
14 438 of the laws of 1964, is amended to read as follows:

15 14. "A day of disability" means any day on which the employee was
16 prevented from performing work because of disability, INCLUDING ANY DAY
17 WHICH THE EMPLOYEE USES FOR FAMILY CARE, and for which [he] THE EMPLOYEE
18 has not received his OR HER regular remuneration.

19 S 5. Section 201 of the workers' compensation law is amended by adding
20 ten new subdivisions 15, 16, 17, 18, 19, 20, 21, 22, 23 and 24 to read
21 as follows:

22 15. "FAMILY CARE" SHALL MEAN ANY LEAVE TAKEN BY AN EMPLOYEE FROM WORK:

23 A. TO PARTICIPATE IN PROVIDING CARE, INCLUDING PHYSICAL OR PSYCHOLOG-
24 ICAL CARE, FOR A FAMILY MEMBER OF THE EMPLOYEE MADE NECESSARY BY A SERI-
25 OUS HEALTH CONDITION OF THE FAMILY MEMBER; OR

26 B. TO BOND WITH THE EMPLOYEE'S CHILD DURING THE FIRST TWELVE MONTHS
27 AFTER THE CHILD'S BIRTH, OR THE FIRST TWELVE MONTHS AFTER THE PLACEMENT
28 OF THE CHILD FOR ADOPTION OR FOSTER CARE WITH THE EMPLOYEE.

29 16. "CHILD" MEANS A BIOLOGICAL, ADOPTED OR FOSTER CHILD, A STEP-CHILD,
30 A LEGAL WARD OR A CHILD OF A PERSON WHO STANDS IN PARENTAL RELATIONSHIP
31 TO THE CHILD WHO IS:

32 A. LESS THAN EIGHTEEN YEARS OF AGE; OR

33 B. EIGHTEEN YEARS OF AGE OR OLDER AND INCAPABLE OF SELF-CARE BECAUSE
34 OF A MENTAL OR PHYSICAL DISABILITY.

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

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

39 A. REQUIRES INPATIENT CARE IN A HOSPITAL, HOSPICE OR RESIDENTIAL
40 HEALTH CARE FACILITY; OR

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

42 19. "PARENT" MEANS BIOLOGICAL OR ADOPTIVE PARENT, STEP-PARENT OR
43 PERSON WHO STOOD IN PARENTAL RELATIONSHIP TO AN EMPLOYEE WHEN THE
44 EMPLOYEE WAS:

45 A. LESS THAN EIGHTEEN YEARS OF AGE; OR

46 B. EIGHTEEN YEARS OF AGE OR OLDER AND INCAPABLE OF SELF-CARE BECAUSE
47 OF A MENTAL OR PHYSICAL DISABILITY.

48 20. "FAMILY MEMBER" MEANS A CHILD, SPOUSE, DOMESTIC PARTNER, PARENT,
49 GRANDCHILD, GRANDPARENT, MOTHER OR FATHER OF SPOUSE OR DOMESTIC PARTNER.

50 21. PERSONS WHO STAND IN PARENTAL RELATIONSHIP TO A CHILD INCLUDE
51 THOSE WITH DAY-TO-DAY RESPONSIBILITIES TO CARE FOR AND FINANCIALLY
52 SUPPORT A CHILD OR, IN THE CASE OF AN EMPLOYEE, WHO HAD SUCH RESPONSI-
53 BILITY FOR THE EMPLOYEE WHEN THE EMPLOYEE WAS A CHILD. A BIOLOGICAL OR
54 LEGAL RELATIONSHIP IS NOT NECESSARY.

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

23. "HEALTH CARE PROVIDER" MEANS A HEALTH CARE PRACTITIONER WHO IS LICENSED UNDER RELEVANT FEDERAL OR STATE LAWS TO PROVIDE MEDICAL, EMERGENCY OR HEALTH SERVICES AND IS TREATING AN EMPLOYEE OR A FAMILY MEMBER FOR A SERIOUS HEALTH CONDITION.

24. "FAMILY CARE COST" SHALL MEAN:

A. PRIOR TO JULY FIRST, TWO THOUSAND THIRTEEN, FORTY-FIVE CENTS PER WEEK; AND

B. DURING EVERY SUBSEQUENT YEAR COMMENCING ON JULY FIRST SUCH AMOUNT AS SHALL BE SET BY REGULATION OF THE SUPERINTENDENT OF INSURANCE FOLLOWING CONSULTATION WITH THE FAMILY CARE ADVISORY COUNCIL BY APRIL FIRST OF THE SAME YEAR BASED ON THE SUPERINTENDENT'S ACTUARIALLY SOUND ESTIMATION OF THE COST PER EMPLOYEE OF PROVIDING FAMILY CARE BENEFITS, BUT IN NO EVENT MORE THAN ONE HUNDRED FIFTEEN PERCENT OF SUCH ESTIMATION OF THE COST PER EMPLOYEE OF PROVIDING FAMILY CARE BENEFITS THROUGH THE STATE INSURANCE FUND.

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

S 203-A. RETALIATORY ACTION PROHIBITED. 1. THE PROVISIONS OF SECTION ONE HUNDRED TWENTY OF THIS CHAPTER AND SECTION TWO HUNDRED FORTY-ONE OF THIS ARTICLE SHALL BE APPLICABLE TO FAMILY CARE LEAVE AS FULLY AS IF SET FORTH IN THIS SECTION.

2. NOTHING IN THIS SECTION SHALL BE DEEMED TO DIMINISH THE RIGHTS, PRIVILEGES, OR REMEDIES OF ANY EMPLOYEE UNDER ANY COLLECTIVE BARGAINING AGREEMENT OR EMPLOYMENT CONTRACT; EXCEPT THAT THE INSTITUTION OF AN ACTION IN ACCORDANCE WITH THIS SECTION SHALL BE DEEMED A WAIVER OF THE RIGHTS AND REMEDIES AVAILABLE UNDER ANY OTHER CONTRACT OR COLLECTIVE BARGAINING AGREEMENT.

S 7. The workers' compensation law is amended by adding a new section 203-b to read as follows:

S 203-B. FAMILY CARE LEAVE. ANY ELIGIBLE EMPLOYEE OF A COVERED EMPLOYER WHO, AFTER JANUARY FIRST, TWO THOUSAND TWELVE, HAS IN EMPLOYMENT TWENTY-FIVE OR MORE EMPLOYEES ON EACH OF AT LEAST THIRTY DAYS IN ANY CALENDAR YEAR WHO TAKES LEAVE UNDER THIS SECTION 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. THE TAKING OF LEAVE FOR THE PURPOSE OF FAMILY CARE 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. A VIOLATION OF THIS SECTION SHALL BE A VIOLATION OF SECTION ONE HUNDRED TWENTY OF THIS CHAPTER AND ALL REMEDIES AND PENALTIES AVAILABLE UNDER SECTION ONE HUNDRED TWENTY OF THIS CHAPTER SHALL BE AVAILABLE FOR VIOLATIONS OF THIS SECTION AS FULLY AS IF SET FORTH IN THIS SECTION.

S 8. Subdivision 1 of section 204 of the workers' compensation law, as added by chapter 600 of the laws of 1949, is amended and a new subdivision 3 is added to read as follows:

1. Disability benefits shall be payable to an eligible employee for disabilities commencing after June thirtieth, nineteen hundred fifty, beginning with the eighth consecutive day of disability and thereafter during the continuance of disability, subject to the limitations as to maximum and minimum amounts and duration and other conditions and limitations in this section and in sections two hundred five and two hundred

six OF THIS ARTICLE. Successive periods of disability caused by the same or related injury or sickness OR REASON FOR FAMILY CARE shall be deemed a single period of disability only if separated by less than three months.

3. THE WEEKLY BENEFIT WHICH THE DISABLED EMPLOYEE IS ENTITLED TO RECEIVE FOR DISABILITY COMMENCING ON OR AFTER JANUARY FIRST, TWO THOUSAND TWELVE SHALL BE FIFTY PERCENT OF THE EMPLOYEE'S AVERAGE WEEKLY WAGE, BUT IN NO CASE SHALL SUCH BENEFIT EXCEED THIRTY-FIVE PERCENT OF THE STATEWIDE AVERAGE WEEKLY WAGE AS DETERMINED BY THE STATE DEPARTMENT OF LABOR PURSUANT TO SUBDIVISION SIXTEEN OF SECTION TWO OF THIS CHAPTER. THE WEEKLY BENEFIT WHICH THE DISABLED EMPLOYEE IS ENTITLED TO RECEIVE FOR DISABILITY COMMENCING ON OR AFTER APRIL FIRST, TWO THOUSAND THIRTEEN SHALL BE FIFTY PERCENT OF THE EMPLOYEE'S AVERAGE WEEKLY WAGE, BUT IN NO CASE SHALL SUCH BENEFIT EXCEED FORTY PERCENT OF THE STATEWIDE AVERAGE WEEKLY WAGE AS DETERMINED BY THE STATE DEPARTMENT OF LABOR PURSUANT TO SUBDIVISION SIXTEEN OF SECTION TWO OF THIS CHAPTER. THE WEEKLY BENEFIT WHICH THE DISABLED EMPLOYEE IS ENTITLED TO RECEIVE FOR DISABILITY COMMENCING ON OR AFTER APRIL FIRST, TWO THOUSAND FOURTEEN SHALL BE FIFTY PERCENT OF THE EMPLOYEE'S AVERAGE WEEKLY WAGE BUT IN NO CASE SHALL SUCH BENEFIT EXCEED FORTY-FIVE PERCENT OF THE STATEWIDE AVERAGE WEEKLY WAGE AS DETERMINED BY THE STATE DEPARTMENT OF LABOR PURSUANT TO SUBDIVISION SIXTEEN OF SECTION TWO OF THIS CHAPTER. THE WEEKLY BENEFIT WHICH THE DISABLED EMPLOYEE IS ENTITLED TO RECEIVE FOR DISABILITY COMMENCING ON OR AFTER APRIL FIRST, TWO THOUSAND FIFTEEN AND SUBSEQUENTLY SHALL BE FIFTY PERCENT OF THE EMPLOYEE'S AVERAGE WEEKLY WAGE BUT IN NO CASE SHALL SUCH BENEFIT EXCEED FIFTY PERCENT OF THE STATEWIDE AVERAGE WEEKLY WAGE AS DETERMINED BY THE STATE DEPARTMENT OF LABOR PURSUANT TO SUBDIVISION SIXTEEN OF SECTION TWO OF THIS CHAPTER.

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

1. (A) For DISABILITY RESULTING FROM INJURY, SICKNESS OR PREGNANCY OF AN EMPLOYEE, FOR more than twenty-six weeks during a period of fifty-two consecutive calendar weeks or during any one period of disability; OR (B) FOR FAMILY CARE, FOR MORE THAN TWELVE WEEKS DURING A PERIOD OF FIFTY-TWO CONSECUTIVE CALENDAR WEEKS OR DURING ANY ONE PERIOD OF FAMILY CARE;

2. for any period of disability RESULTING FROM THE INJURY, SICKNESS OR PREGNANCY OF AN EMPLOYEE during which an employee is not under the care of a duly licensed physician or with respect to disability resulting from a condition of the foot which may lawfully be treated by a duly registered and licensed podiatrist of the state of New York or with respect to a disability resulting from a condition which may lawfully be treated by a duly registered and licensed chiropractor of the state of New York or with respect to a disability resulting from a condition which may lawfully be treated by a duly licensed dentist of the state of New York or with respect to a disability resulting from a condition which may lawfully be treated by a duly registered and licensed psychologist of the state of New York or with respect to a disability resulting from a condition which may lawfully be treated by a duly certified nurse midwife, for any period of such disability during which an employee is neither under the care of a physician nor a podiatrist, nor a chiropractor, nor a dentist, nor a psychologist, nor a certified nurse midwife;

1 and for any period of disability during which an employee who adheres to
2 the faith or teachings of any church or denomination and who in accord-
3 ance with its creed, tenets or principles depends for healing upon pray-
4 er through spiritual means alone in the practice of religion, is not
5 under the care of a practitioner duly accredited by the church or denom-
6 ination, and provided such employee shall submit to all physical exam-
7 inations as required by this chapter[.];

8 3. for any disability RESULTING FROM INJURY OR SICKNESS OF AN EMPLOYEE
9 occasioned by the wilful intention of the employee to bring about injury
10 to or the sickness of himself or another, or resulting from any injury
11 or sickness sustained in the perpetration by the employee of an illegal
12 act;

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

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

22 8. for any disability RESULTING FROM AN INJURY, SICKNESS OR PREGNANCY
23 OF THE EMPLOYEE commencing before the employee becomes eligible to bene-
24 fits hereunder [or commencing prior to July first, nineteen hundred
25 fifty, but this shall not preclude benefits for recurrence after July
26 first, nineteen hundred fifty, of a disability commencing prior there-
27 to.];

28 9. FOR ANY DAY OF ABSENCE FROM WORK REQUIRED PURSUANT TO ANY DISCIPLI-
29 NARY PROCESS; OR, IN REGARD TO FAMILY CARE BENEFITS, ANY DAY OF ABSENCE
30 FROM WORK RESULTING FROM INJURY, SICKNESS OR PREGNANCY OF THE EMPLOYEE,
31 INCLUDING ANY LEAVE TAKEN UNDER SECTION SEVENTY-ONE OR SEVENTY-THREE OF
32 THE CIVIL SERVICE LAW.

33 S 10. The workers' compensation law is amended by adding a new section
34 205-a to read as follows:

35 S 205-A. RELATIONSHIP BETWEEN DISABILITY BENEFITS FOR FAMILY CARE AND
36 FOR THE EMPLOYEE'S OWN INJURY, SICKNESS OR PREGNANCY. THE RECEIPT OF
37 BENEFITS FOR DISABILITY RESULTING FROM INJURY, SICKNESS OR PREGNANCY OF
38 THE EMPLOYEE, SHALL NOT COUNT TOWARD ANY TIME LIMITATION UNDER SUBDIVI-
39 SION ONE OF SECTION TWO HUNDRED FIVE OF THIS ARTICLE ON THE RECEIPT OF
40 BENEFITS FOR FAMILY CARE, AND THE RECEIPT OF BENEFITS FOR FAMILY CARE
41 SHALL NOT COUNT TOWARD ANY TIME LIMITATION UNDER SUBDIVISION ONE OF
42 SECTION TWO HUNDRED FIVE OF THIS ARTICLE ON THE RECEIPT OF BENEFITS FOR
43 DISABILITY RESULTING FROM INJURY, SICKNESS OR PREGNANCY TO THE EMPLOYEE,
44 EXCEPT THAT AN EMPLOYEE MAY RECEIVE DISABILITY BENEFITS ON ONLY ONE
45 CLAIM AT ANY TIME.

46 S 11. Subdivision 3 of section 209 of the workers' compensation law,
47 as amended by chapter 415 of the laws of 1983, is amended to read as
48 follows:

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

1 S 12. Section 211 of the workers' compensation law is amended by
2 adding two new subdivisions 7 and 8 to read as follows:

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

8 8. NOTHING IN THIS ARTICLE SHALL REQUIRE AN EMPLOYER TO USE THE SAME
9 CARRIER TO PROVIDE BENEFITS REQUIRED BY OR PERMISSIBLE UNDER THIS ARTI-
10 CLE FOR DISABILITY RESULTING FROM INJURY, SICKNESS OR PREGNANCY OF THE
11 EMPLOYEE AS IT USES TO PROVIDE BENEFITS REQUIRED BY OR PERMISSIBLE UNDER
12 THIS ARTICLE FOR FAMILY CARE. AN EMPLOYER MAY USE A DIFFERENT MEANS,
13 AMONG THOSE SET FORTH IN SUBDIVISIONS ONE THROUGH FIVE OF THIS SECTION,
14 TO PROVIDE BENEFITS REQUIRED BY THIS ARTICLE FOR DISABILITY RESULTING
15 FROM INJURY, SICKNESS OR PREGNANCY OF THE EMPLOYEE, FROM THE MEANS USED
16 TO PROVIDE BENEFITS REQUIRED BY THIS ARTICLE FOR FAMILY CARE.

17 S 13. The workers' compensation law is amended by adding a new section
18 211-a to read as follows:

19 S 211-A. PUBLIC EMPLOYEES; EMPLOYEE OPT IN. 1. FOR PURPOSES OF THIS
20 SECTION, "PUBLIC EMPLOYEE" MEANS ANY EMPLOYEE OF THE STATE, ANY POLI-
21 TICAL SUBDIVISION OF THE STATE, A PUBLIC AUTHORITY OR ANY OTHER GOVERN-
22 MENTAL AGENCY OR INSTRUMENTALITY. "PUBLIC EMPLOYER" MEANS THE STATE, ANY
23 POLITICAL SUBDIVISION OF THE STATE, A PUBLIC AUTHORITY OR ANY OTHER
24 GOVERNMENTAL AGENCY OR INSTRUMENTALITY THEREOF. "EMPLOYEE ORGANIZATION"
25 SHALL HAVE THE MEANING SET FORTH IN SECTION TWO HUNDRED ONE OF THE CIVIL
26 SERVICE LAW.

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

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

33 A. UPON NOTICE GIVEN PRIOR TO APRIL FIRST, TWO THOUSAND TWELVE, WHICH
34 OPT IN SHALL BECOME EFFECTIVE ONLY ON JULY FIRST, TWO THOUSAND TWELVE;

35 B. AT ANY TIME UPON NINETY DAYS NOTICE FOR ANY EMPLOYER WHO IS NOT
36 PROVIDING DISABILITY BENEFITS FOR INJURY, SICKNESS OR PREGNANCY OF AN
37 EMPLOYEE UNDER SECTION TWO HUNDRED TWELVE OF THIS ARTICLE, OR WHO IS
38 SELF-INSURED FOR SUCH BENEFITS;

39 C. FOR ANY EMPLOYER WHO IS PROVIDING DISABILITY BENEFITS FOR INJURY,
40 SICKNESS OR PREGNANCY OF AN EMPLOYEE UNDER SECTION TWO HUNDRED TWELVE OF
41 THIS ARTICLE, UPON NOTICE AT LEAST NINETY DAYS PRIOR TO THE EXPIRATION
42 OF THE EMPLOYER'S INSURANCE POLICY FOR SUCH BENEFITS, WHICH OPT IN SHALL
43 BE EFFECTIVE ONLY FOR THE TIME PERIOD COVERED BY ANY SUBSEQUENT POLICY
44 OR RENEWAL; OR

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

47 AN EMPLOYEE ORGANIZATION THAT HAS OPTED IN TO THE FAMILY CARE BENEFIT
48 MAY OPT OUT OF IT WITHIN THE TIME PERIODS, AND EFFECTIVE UPON THE SAME
49 DATES, SET FORTH IN THIS PARAGRAPH.

50 4. IN THE ABSENCE OF ANY CONTRARY STATEMENT IN A COLLECTIVELY NEGOTI-
51 ATED AGREEMENT UNDER ARTICLE FOURTEEN OF THE CIVIL SERVICE LAW, A PUBLIC
52 EMPLOYER MAY REQUIRE PUBLIC EMPLOYEES WHO OPT IN UNDER THIS SECTION TO
53 CONTRIBUTE UP TO THE FAMILY CARE COST, AS DEFINED IN SUBDIVISION TWEN-
54 TY-FOUR OF SECTION TWO HUNDRED ONE OF THIS ARTICLE, PER WEEK IN ACCORD-
55 ANCE WITH THE PROCEDURE SET FORTH IN SECTION TWO HUNDRED NINE OF THIS
56 ARTICLE.

1 S 14. Subdivisions 1 and 2 of section 212 of the workers' compensation
2 law, subdivision 1 as amended by chapter 740 of the laws of 1960 and
3 subdivision 2 as amended by chapter 120 of the laws of 1969, are amended
4 to read as follows:

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

29 2. Notwithstanding the definition of "employer" and "employment" in
30 section two hundred one of this article, THE STATE, a public authority,
31 a municipal corporation or a fire district or other political subdivi-
32 sion may become a covered employer under this article by complying with
33 the provisions of subdivision one of this section and may discontinue
34 such status only as provided in [that] SUCH subdivision.

35 S 15. Subdivisions 1, 2, 3 and 4 of section 217 of the workers'
36 compensation law, subdivision 1 as amended by chapter 167 of the laws of
37 1999, subdivisions 2 and 3 as amended by chapter 270 of the laws of 1990
38 and subdivision 4 as added by chapter 600 of the laws of 1949, are
39 amended to read as follows:

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

47 (A) IN THE CASE OF DISABILITY RESULTING FROM INJURY, SICKNESS OR PREG-
48 NANCY OF THE EMPLOYEE, a statement of disability by the employee's
49 attending [physician or attending podiatrist or attending chiropractor
50 or attending dentist or attending psychologist or attending certified
51 nurse midwife, or in the case of an employee who adheres to the faith or
52 teachings of any church or denomination, and who in accordance with its
53 creed, tenets or principles depends for healing upon prayer through
54 spiritual means alone in the practice of religion, by an accredited
55 practitioner, containing facts and opinions as to such disability in
56 compliance with regulations of the chair.] HEALTH CARE PROVIDER;

(B) IN THE CASE OF FAMILY CARE FOR BONDING WITH A NEW CHILD, A BIRTH CERTIFICATE, CERTIFICATE OF ADOPTION, OR OTHER COMPETENT EVIDENCE SHOWING THAT THE EMPLOYEE IS THE PARENT OF A CHILD WITHIN TWELVE MONTHS OF THAT CHILD'S BIRTH OR PLACEMENT FOR ADOPTION OR FOSTER CARE WITH THE EMPLOYEE;

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

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

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

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

2. An employee claiming benefits FOR THE EMPLOYEE'S INJURY, SICKNESS OR PREGNANCY, OR THE FAMILY MEMBER OF SUCH EMPLOYEE IN ANY CASE WHERE THE EMPLOYEE CLAIMS FAMILY CARE BENEFITS FOR PROVIDING CARE TO THAT FAMILY MEMBER shall, as requested by the employer or carrier, submit himself or herself at intervals, but not more than once a week, for examination by a [physician or podiatrist or chiropractor or dentist or psychologist or certified nurse midwife] RELEVANT HEALTH CARE PROVIDER designated by the employer or carrier. All such examinations shall be without cost to the employee OR FAMILY MEMBER and shall be held at a reasonable time and place.

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

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

S 16. Section 221 of the workers' compensation law, as separately amended by chapters 425 and 500 of the laws of 1985, is amended to read as follows:

S 221. Determination of contested claims for disability benefits. Within twenty-six weeks of written notice of rejection of claim, DENIAL OF RIGHTS UNDER SECTION TWO HUNDRED THREE-A OR TWO HUNDRED THREE-B OF

1 THIS ARTICLE, the employee may file with the [chairman] CHAIR a notice
2 that his or her claim for disability benefits has not been paid, [and]
3 OR THAT THE EMPLOYEE HAS BEEN DENIED RIGHTS GUARANTEED BY SECTION TWO
4 HUNDRED THREE-A OR TWO HUNDRED THREE-B OF THIS ARTICLE. IN CASES OF
5 DENIAL OF BENEFITS, the employee shall submit proof of disability OR
6 ELIGIBILITY FOR FAMILY CARE and of his or her employment, wages and
7 other facts reasonably necessary for determination of the employee's
8 right to such benefits OR PROOF OF DENIAL OF RIGHTS UNDER SECTION TWO
9 HUNDRED THREE-A OR TWO HUNDRED THREE-B OF THIS ARTICLE OR OF
10 RETALIATION. Failure to file such notice within the time provided, may
11 be excused by the [chairman] CHAIR if it can be shown to the satisfac-
12 tion of the [chairman] CHAIR not to have been reasonably possible to
13 furnish such notice and that such notice was furnished as soon as possi-
14 ble. On demand of the [chairman] CHAIR the employer or carrier shall
15 forthwith deliver to the [chairman] CHAIR PROOF OF DISABILITY, INCLUDING
16 IF RELEVANT the original or a true copy of the attending physician's or
17 attending podiatrist's or accredited practitioner's statement, wage and
18 employment data and all other papers in the possession of the employer
19 or carrier with respect to such claim OR COMPLAINT.

20 The board shall have full power and authority to determine all issues
21 in relation to every such claim for disability OR FAMILY CARE benefits
22 required or provided under this article, OR WITH RESPECT TO DENIAL OF
23 RIGHTS UNDER SECTION TWO HUNDRED THREE-A OR TWO HUNDRED THREE-B OF THIS
24 ARTICLE OR INCLUDING ORDERING PAYMENT OF BENEFITS, DAMAGES AND REIN-
25 STATEMENT and shall file its decision in the office of the [chairman]
26 CHAIR. Upon such filing, the [chairman] CHAIR shall send to the parties
27 a copy of the decision. Either party may present evidence and be repres-
28 ented by counsel at any hearing on such claim. The decision of the
29 board shall be final as to all questions of fact and, except as provided
30 in section twenty-three of this chapter, as to all questions of law.
31 Every decision of the board shall be complied with in accordance with
32 its terms within ten days thereafter except in case of appeal, and any
33 payments due under such decision shall draw simple interest from thirty
34 days after the making thereof at the rate provided in section five thou-
35 sand four of the civil practice law and rules.

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

39 2. Whenever an employee of a covered employer who is eligible for
40 benefits under section two hundred four of this article shall be absent
41 from work due to a disability as defined in subdivision nine of section
42 two hundred one of this article for more than seven consecutive days,
43 the employer shall provide the employee with a written statement of the
44 employee's rights under this article in a form prescribed by the [chair-
45 man] CHAIR. The statement shall be provided to the employee within five
46 business days after the employee's seventh consecutive day of absence
47 due to disability or within five business days after the employer knows
48 or should know that the employee's absence is due to disability, which-
49 ever is later. EACH COVERED EMPLOYER SHALL PROVIDE EACH EMPLOYEE WITH A
50 TYPEWRITTEN, PRINTED OR ELECTRONIC NOTICE IN A FORM PRESCRIBED BY THE
51 CHAIR, STATING THAT THE EMPLOYER HAS PROVIDED FOR THE PAYMENT OF DISA-
52 BILITY BENEFITS AS REQUIRED BY THIS ARTICLE WITHIN THIRTY DAYS OF THE
53 EFFECTIVE DATE OF THE CHAPTER OF THE LAWS OF TWO THOUSAND ELEVEN WHICH
54 AMENDED THIS SUBDIVISION. EACH COVERED EMPLOYER SHALL PROVIDE SUCH
55 NOTICE TO ALL NEW EMPLOYEES WITHIN THIRTY DAYS OF THEIR FIRST DAY OF
56 WORK.

1 S 18. The workers' compensation law is amended by adding a new section
2 239-a to read as follows:

3 S 239-A. FAMILY CARE STUDY AND MONITORING. 1. THE DEPARTMENT OF
4 INSURANCE SHALL STUDY, AND REPORT TO THE GOVERNOR AND BOTH HOUSES OF THE
5 LEGISLATURE BY APRIL FIRST, TWO THOUSAND TWELVE, ON THE FEASIBILITY AND
6 IMPACT OF COMMUNITY RATING DISABILITY INSURANCE OR ANY ASPECT THEREOF.

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

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

41 (3) "Accident and health insurance," means (i) insurance against death
42 or personal injury by accident or by any specified kind or kinds of
43 accident and insurance against sickness, ailment or bodily injury,
44 including insurance providing disability benefits pursuant to article
45 nine of the workers' compensation law, INCLUDING ANY INSURANCE UNDER
46 THAT ARTICLE FOR FAMILY CARE BENEFITS, DISABILITY BENEFITS RESULTING
47 FROM INJURY, SICKNESS OR PREGNANCY OF AN EMPLOYEE, OR ALL, except as
48 specified in item (ii) [hereof] OF THIS PARAGRAPH; and (ii) non-cancell-
49 able disability insurance, meaning insurance against disability result-
50 ing from sickness, ailment or bodily injury (but excluding insurance
51 solely against accidental injury) under any contract which does not give
52 the insurer the option to cancel or otherwise terminate the contract at
53 or after one year from its effective date or renewal date.

54 S 20. This act shall take effect immediately; provided, however, that:

1 (a) Sections two, three, four, five, six, seven, eight, nine, ten,
2 eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen and
3 nineteen of this act shall take effect January 1, 2012.

4 (b) Paragraph a of subdivision 3 of section 211-a of the workers'
5 compensation law, as added by section thirteen of this act allowing
6 public employees to opt in to family care benefits prior to July 1, 2012
7 and subdivision 1 of section 212 of the workers' compensation law as
8 amended by section fourteen of this act allowing public employers to opt
9 in to family care benefits prior to July 1, 2012, shall take effect
10 immediately.

11 (c) Effective immediately, the addition, amendment and/or repeal of
12 any rules or regulations necessary for the implementation of this act on
13 its effective date are authorized and directed to be made and completed
14 on or before such effective date.