

6896

I N S E N A T E

April 4, 2012

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

AN ACT to amend the labor law, the civil service law and the insurance law, in relation to establishing the New York family leave act

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

1 Section 1. Short title. This act shall be known and may be cited as
2 the "New York family leave act".

3 S 2. The labor law is amended by adding a new section 202-1 to read as
4 follows:

5 S 202-L. LEAVE OF ABSENCE UPON THE BIRTH OR ADOPTION OF A CHILD GRANT-
6 ED TO EMPLOYEES. 1. FOR THE PURPOSES OF THIS SECTION, THE FOLLOWING
7 TERMS SHALL HAVE THE FOLLOWING MEANINGS:

8 (A) "COMMENCEMENT OF THE PARENT-CHILD RELATIONSHIP" SHALL MEAN:

9 (I) WHEN THE ADOPTION OCCURS UNDER SPONSORSHIP OF AN AUTHORIZED AGEN-
10 CY, AS DEFINED IN SUBDIVISION TEN OF SECTION THREE HUNDRED SEVENTY-ONE
11 OF THE SOCIAL SERVICES LAW, THE DATE THE CHILD IS PLACED BY THE AUTHOR-
12 IZED AGENCY IN THE HOME OF THE ADOPTIVE PARENTS PURSUANT TO SECTION
13 THREE HUNDRED EIGHTY-FOUR OF THE SOCIAL SERVICES LAW.

14 (II) WHEN THE ADOPTION OCCURS WITHOUT THE SPONSORSHIP OF AN AUTHORIZED
15 AGENCY, THE DATE A PETITION FOR THE ADOPTION OF A CHILD RESIDING WITH
16 THE ADOPTIVE PARENTS IS FILED IN A COURT.

17 (B) "EMPLOYEE" MEANS A PERSON WHO PERFORMS SERVICES FOR HIRE FOR AN
18 EMPLOYER, FOR AN AVERAGE OF TWENTY OR MORE HOURS PER WEEK, AND INCLUDES
19 ALL INDIVIDUALS EMPLOYED AT ANY SITE OWNED OR OPERATED BY AN EMPLOYER
20 BUT SHALL NOT INCLUDE AN INDEPENDENT CONTRACTOR.

21 (C) "EMPLOYER" MEANS A PERSON OR ENTITY THAT EMPLOYS FIFTY OR MORE
22 EMPLOYEES AT AT LEAST ONE SITE AND INCLUDES AN INDIVIDUAL, CORPORATION,
23 PARTNERSHIP, ASSOCIATION, NONPROFIT ORGANIZATION, GROUP OF PERSONS,
24 STATE, COUNTY, TOWN, CITY, SCHOOL DISTRICT, PUBLIC AUTHORITY OR OTHER
25 GOVERNMENTAL SUBDIVISION OF ANY KIND.

26 2. (A) AN EMPLOYER SHALL PERMIT ANY EMPLOYEE, MALE OR FEMALE, TO TAKE
27 A LEAVE OF ABSENCE FROM EMPLOYMENT WITHOUT LOSS OF PAY OR DIMINUTION OF
28 ANY OTHER PRIVILEGE, BENEFIT OR RIGHT ARISING OUT OF SUCH EMPLOYMENT,

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

LBD14145-04-2

1 FOR UP TO TWELVE WEEKS UPON THE BIRTH OF SUCH EMPLOYEE'S CHILD. AN
2 ADOPTIVE PARENT, FOLLOWING THE COMMENCEMENT OF THE PARENT-CHILD
3 RELATIONSHIP, SHALL BE ENTITLED TO THE SAME LEAVE AND UPON THE SAME
4 TERMS.

5 (B) IN ADDITION TO THE LEAVE OF ABSENCE GRANTED IN PARAGRAPH (A) OF
6 THIS SUBDIVISION, AN EMPLOYER SHALL PERMIT ANY EMPLOYEE, MALE OR FEMALE,
7 TO TAKE AN ADDITIONAL TWELVE WEEKS LEAVE OF ABSENCE FROM EMPLOYMENT
8 WITHOUT PAY OR ANY OTHER PRIVILEGE, BENEFIT OR RIGHT ARISING OUT OF SUCH
9 EMPLOYMENT, BUT WITHOUT DEMOTION. AN ADOPTIVE PARENT, FOLLOWING THE
10 COMMENCEMENT OF THE PARENT-CHILD RELATIONSHIP, SHALL BE ENTITLED TO THE
11 SAME ADDITIONAL LEAVE AND UPON THE SAME TERMS.

12 3. AN EMPLOYER SHALL NOT RETALIATE AGAINST AN EMPLOYEE FOR REQUESTING
13 OR OBTAINING A LEAVE OF ABSENCE UNDER THIS SECTION.

14 4. THIS SECTION SHALL NOT PREVENT AN EMPLOYER FROM PROVIDING LEAVE
15 UPON THE BIRTH OR ADOPTION OF A CHILD IN ADDITION TO LEAVE ALLOWED UNDER
16 ANY OTHER PROVISION OF LAW. THIS SECTION SHALL NOT AFFECT AN EMPLOYEE'S
17 RIGHTS WITH RESPECT TO ANY OTHER EMPLOYEE BENEFIT OTHERWISE PROVIDED BY
18 LAW.

19 5. THE COMMISSIONER IS HEREBY AUTHORIZED AND DIRECTED TO ESTABLISH ANY
20 NECESSARY GUIDELINES, INCLUDING REQUIREMENTS FOR NOTICE, REQUEST AND
21 APPROVAL OF LEAVE, AND DOCUMENTATION, FOR THE TIMELY IMPLEMENTATION OF
22 THE PROGRAM.

23 S 3. The civil service law is amended by adding a new section 159-d to
24 read as follows:

25 S 159-D. EXCUSED LEAVE FOR THE BIRTH OR ADOPTION OF A CHILD. 1. A.
26 EVERY PUBLIC OFFICER, EMPLOYEE OF THIS STATE, EMPLOYEE OF ANY COUNTY,
27 EMPLOYEE OF ANY COMMUNITY COLLEGE, EMPLOYEE OF ANY PUBLIC AUTHORITY,
28 EMPLOYEE OF ANY PUBLIC BENEFIT CORPORATION, EMPLOYEE OF ANY BOARD OF
29 COOPERATIVE EDUCATIONAL SERVICES (BOCES), EMPLOYEE OF ANY VOCATIONAL
30 EDUCATION AND EXTENSION BOARD, OR A SCHOOL DISTRICT ENUMERATED IN
31 SECTION ONE OF CHAPTER FIVE HUNDRED SIXTY-SIX OF THE LAWS OF NINETEEN
32 HUNDRED SIXTY-SEVEN, EMPLOYEE OF ANY MUNICIPALITY, EMPLOYEE OF ANY
33 SCHOOL DISTRICT OR ANY EMPLOYEE OF A PARTICIPATING EMPLOYER IN THE NEW
34 YORK STATE AND LOCAL EMPLOYEES' RETIREMENT SYSTEM OR ANY EMPLOYEE OF A
35 PARTICIPATING EMPLOYER IN THE NEW YORK STATE TEACHERS' RETIREMENT SYSTEM
36 SHALL BE ENTITLED TO HAVE A PAID LEAVE OF ABSENCE FROM HIS OR HER DUTIES
37 OR SERVICE AS SUCH PUBLIC OFFICER, EMPLOYEE OF THIS STATE, EMPLOYEE OF
38 ANY COUNTY, EMPLOYEE OF ANY COMMUNITY COLLEGE, EMPLOYEE OF ANY PUBLIC
39 AUTHORITY, EMPLOYEE OF ANY PUBLIC BENEFIT CORPORATION, EMPLOYEE OF ANY
40 BOARD OF COOPERATIVE EDUCATIONAL SERVICES (BOCES), EMPLOYEE OF ANY VOCA-
41 TIONAL EDUCATION AND EXTENSION BOARD, OR A SCHOOL DISTRICT ENUMERATED IN
42 SECTION ONE OF CHAPTER FIVE HUNDRED SIXTY-SIX OF THE LAWS OF NINETEEN
43 HUNDRED SIXTY-SEVEN, EMPLOYEE OF ANY MUNICIPALITY, EMPLOYEE OF ANY
44 SCHOOL DISTRICT, OR ANY EMPLOYEE OF A PARTICIPATING EMPLOYER IN THE NEW
45 YORK STATE AND LOCAL EMPLOYEES' RETIREMENT SYSTEM OR ANY EMPLOYEE OF A
46 PARTICIPATING EMPLOYER IN THE NEW YORK STATE TEACHERS' RETIREMENT SYSTEM
47 FOR A SUFFICIENT PERIOD OF TIME, NOT TO EXCEED TWELVE WEEKS UPON THE
48 BIRTH OF SUCH EMPLOYEE'S CHILD, AN ADOPTIVE PARENT, FOLLOWING THE
49 COMMENCEMENT OF THE PARENT-CHILD RELATIONSHIP, SHALL BE ENTITLED TO THE
50 SAME LEAVE AND UPON THE SAME TERMS.

51 B. IN ADDITION TO THE LEAVE OF ABSENCE GRANTED IN PARAGRAPH A OF THIS
52 SUBDIVISION, EVERY PUBLIC OFFICER, EMPLOYEE OF THIS STATE, EMPLOYEE OF
53 ANY COUNTY, EMPLOYEE OF ANY COMMUNITY COLLEGE, EMPLOYEE OF ANY PUBLIC
54 AUTHORITY, EMPLOYEE OF ANY PUBLIC BENEFIT CORPORATION, EMPLOYEE OF ANY
55 BOARD OF COOPERATIVE EDUCATIONAL SERVICES (BOCES), EMPLOYEE OF ANY VOCA-
56 TIONAL EDUCATION AND EXTENSION BOARD, OR A SCHOOL DISTRICT ENUMERATED IN

1 SECTION ONE OF CHAPTER FIVE HUNDRED SIXTY-SIX OF THE LAWS OF NINETEEN
2 HUNDRED SIXTY-SEVEN, EMPLOYEE OF ANY MUNICIPALITY, EMPLOYEE OF ANY
3 SCHOOL DISTRICT OR ANY EMPLOYEE OF A PARTICIPATING EMPLOYER IN THE NEW
4 YORK STATE AND LOCAL EMPLOYEES' RETIREMENT SYSTEM OR ANY EMPLOYEE OF A
5 PARTICIPATING EMPLOYER IN THE NEW YORK STATE TEACHERS' RETIREMENT SYSTEM
6 SHALL BE ENTITLED TO HAVE A PERIOD OF UNPAID LEAVE OF ABSENCE FROM HIS
7 OR HER DUTIES OR SERVICE AS SUCH PUBLIC OFFICER, EMPLOYEE OF THIS STATE,
8 EMPLOYEE OF ANY COUNTY, EMPLOYEE OF ANY COMMUNITY COLLEGE, EMPLOYEE OF
9 ANY PUBLIC AUTHORITY, EMPLOYEE OF ANY PUBLIC BENEFIT CORPORATION,
10 EMPLOYEE OF ANY BOARD OF COOPERATIVE EDUCATIONAL SERVICES (BOCES),
11 EMPLOYEE OF ANY VOCATIONAL EDUCATION AND EXTENSION BOARD, OR A SCHOOL
12 DISTRICT ENUMERATED IN SECTION ONE OF CHAPTER FIVE HUNDRED SIXTY-SIX OF
13 THE LAWS OF NINETEEN HUNDRED SIXTY-SEVEN, EMPLOYEE OF ANY MUNICIPALITY,
14 EMPLOYEE OF ANY SCHOOL DISTRICT, OR ANY EMPLOYEE OF A PARTICIPATING
15 EMPLOYER IN THE NEW YORK STATE AND LOCAL EMPLOYEES' RETIREMENT SYSTEM OR
16 ANY EMPLOYEE OF A PARTICIPATING EMPLOYER IN THE NEW YORK STATE TEACHERS'
17 RETIREMENT SYSTEM FOR A SUFFICIENT PERIOD OF TIME, NOT TO EXCEED AN
18 ADDITIONAL TWELVE WEEKS UPON THE BIRTH OF SUCH EMPLOYEE'S CHILD, AN
19 ADOPTIVE PARENT, FOLLOWING THE COMMENCEMENT OF THE PARENT-CHILD
20 RELATIONSHIP, SHALL BE ENTITLED TO THE SAME LEAVE AND UPON THE SAME
21 TERMS.

22 2. THE ENTIRE PERIOD OF THE LEAVE OF ABSENCE GRANTED PURSUANT TO THIS
23 SECTION SHALL BE EXCUSED LEAVE AND SHALL NOT BE CHARGED AGAINST ANY
24 OTHER LEAVE SUCH PUBLIC OFFICER, EMPLOYEE OF THIS STATE, EMPLOYEE OF ANY
25 COUNTY, EMPLOYEE OF ANY COMMUNITY COLLEGE, EMPLOYEE OF ANY PUBLIC
26 AUTHORITY, EMPLOYEE OF ANY PUBLIC BENEFIT CORPORATION, EMPLOYEE OF ANY
27 BOARD OF COOPERATIVE EDUCATIONAL SERVICES (BOCES), EMPLOYEE OF ANY Voca-
28 tional Education and Extension Board, OR A SCHOOL DISTRICT ENUMERATED IN
29 SECTION ONE OF CHAPTER FIVE HUNDRED SIXTY-SIX OF THE LAWS OF NINETEEN
30 HUNDRED SIXTY-SEVEN, EMPLOYEE OF ANY MUNICIPALITY, EMPLOYEE OF ANY
31 SCHOOL DISTRICT OR ANY EMPLOYEE OF A PARTICIPATING EMPLOYER IN THE NEW
32 YORK STATE AND LOCAL EMPLOYEES' RETIREMENT SYSTEM OR ANY EMPLOYEE OF A
33 PARTICIPATING EMPLOYER IN THE NEW YORK STATE TEACHERS' RETIREMENT SYSTEM
34 IS OTHERWISE ENTITLED TO.

35 3. FOR THE PURPOSES OF THIS SECTION, THE TERM "COMMENCEMENT OF THE
36 PARENT-CHILD RELATIONSHIP" SHALL MEAN:

37 A. WHEN THE ADOPTION OCCURS UNDER SPONSORSHIP OF AN AUTHORIZED AGENCY,
38 AS DEFINED IN SUBDIVISION TEN OF SECTION THREE HUNDRED SEVENTY-ONE OF
39 THE SOCIAL SERVICES LAW, THE DATE THE CHILD IS PLACED BY THE AUTHORIZED
40 AGENCY IN THE HOME OF THE ADOPTIVE PARENTS PURSUANT TO SECTION THREE
41 HUNDRED EIGHTY-FOUR OF THE SOCIAL SERVICES LAW.

42 B. WHEN THE ADOPTION OCCURS WITHOUT THE SPONSORSHIP OF AN AUTHORIZED
43 AGENCY, THE DATE A PETITION FOR THE ADOPTION OF A CHILD RESIDING WITH
44 THE ADOPTIVE PARENTS IS FILED IN A COURT.

45 S 4. Subsection (a) of section 3221 of the insurance law is amended
46 by adding a new paragraph 17 to read as follows:

47 (17) THAT A GROUP OR BLANKET POLICY ISSUED PURSUANT TO THIS ARTICLE
48 SHALL CONTAIN A PROVISION TO THE EFFECT THAT ANY MEMBER OF THE GROUP WHO
49 TAKES A LEAVE OF ABSENCE AS PROVIDED FOR IN PARAGRAPH (B) OF SUBDIVISION
50 TWO OF SECTION TWO HUNDRED TWO-L OF THE LABOR LAW OR PARAGRAPH B OF
51 SUBDIVISION ONE OF SECTION ONE HUNDRED FIFTY-NINE-D OF THE CIVIL SERVICE
52 LAW MAY CONTINUE TO MAINTAIN SUCH POLICY UPON THE PAYMENT OF APPROPRIATE
53 PREMIUMS UNTIL SUCH MEMBER RESUMES EMPLOYMENT WITH HIS OR HER EMPLOYER.

54 S 5. Section 4305 of the insurance law is amended by adding a new
55 subsection (i) to read as follows:

1 (I) A GROUP CONTRACT ISSUED PURSUANT TO THIS SECTION SHALL CONTAIN A
2 PROVISION TO THE EFFECT THAT IN CASE OF ANY MEMBER OF THE GROUP WHO
3 TAKES A LEAVE OF ABSENCE AS PROVIDED FOR IN PARAGRAPH (B) OF SUBDIVISION
4 TWO OF SECTION TWO HUNDRED TWO-L OF THE LABOR LAW OR PARAGRAPH B OF
5 SUBDIVISION ONE OF SECTION ONE HUNDRED FIFTY-NINE-D OF THE CIVIL SERVICE
6 LAW, SHALL BE ENTITLED TO MAINTAIN, WITHOUT EVIDENCE OF INSURABILITY,
7 UPON APPLICATION THEREFOR AND PAYMENT OF THE FIRST PREMIUM MADE TO THE
8 CORPORATION WITHIN AN APPROPRIATE TIME AFTER TAKING SUCH LEAVE OF
9 ABSENCE, A CONTINUATION OF SUCH CONTRACT, COVERING SUCH MEMBER AND HIS
10 OR HER ELIGIBLE DEPENDENTS WHO WERE COVERED BY THE GROUP CONTRACT UNTIL
11 SUCH MEMBER RESUMES EMPLOYMENT WITH HIS OR HER EMPLOYER.

12 S 6. This act shall take effect on the one hundred twentieth day
13 after it shall have become a law. Effective immediately, the addition,
14 amendment and/or repeal of any rule or regulation necessary for the
15 implementation of this act on its effective date is authorized to be
16 made on or before such date.