S T A T E O F N E W Y O R K

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2013-2014 Regular Sessions

I N A S S E M B L Y

January 17, 2013

Introduced by M. of A. SIMOTAS, JACOBS, ROSENTHAL, MONTESANO, TITUS, DINOWITZ, AUBRY, WEPRIN, WRIGHT, CASTRO -- Multi-Sponsored by -- M. of A. GIBSON, GLICK, GOTTFRIED, RA -- read once and referred 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:

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

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

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

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

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

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

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

(C) "EMPLOYER" MEANS A PERSON OR ENTITY THAT EMPLOYS FIFTY OR MORE EMPLOYEES AT AT LEAST ONE SITE AND INCLUDES AN INDIVIDUAL, CORPORATION, PARTNERSHIP, ASSOCIATION, NONPROFIT ORGANIZATION, GROUP OF PERSONS,

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

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STATE, COUNTY, TOWN, CITY, SCHOOL DISTRICT, PUBLIC AUTHORITY OR OTHER GOVERNMENTAL SUBDIVISION OF ANY KIND.

2. (A) AN EMPLOYER SHALL PERMIT ANY EMPLOYEE, MALE OR FEMALE, TO TAKE A LEAVE OF ABSENCE FROM EMPLOYMENT WITHOUT LOSS OF PAY OR DIMINUTION OF ANY OTHER PRIVILEGE, BENEFIT OR RIGHT ARISING OUT OF SUCH EMPLOYMENT, FOR UP TO TWELVE WEEKS UPON THE BIRTH OF SUCH EMPLOYEE'S CHILD. AN ADOPTIVE PARENT, FOLLOWING THE COMMENCEMENT OF THE PARENT-CHILD RELATIONSHIP, SHALL BE ENTITLED TO THE SAME LEAVE AND UPON THE SAME TERMS.

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

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

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

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

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

S 159-D. EXCUSED LEAVE FOR THE BIRTH OR ADOPTION OF A CHILD. 1. A. EVERY PUBLIC OFFICER, EMPLOYEE OF THIS STATE, EMPLOYEE OF ANY COUNTY, EMPLOYEE OF ANY COMMUNITY COLLEGE, EMPLOYEE OF ANY PUBLIC AUTHORITY, EMPLOYEE OF ANY PUBLIC BENEFIT CORPORATION, EMPLOYEE OF ANY BOARD OF COOPERATIVE EDUCATIONAL SERVICES (BOCES), EMPLOYEE OF ANY VOCATIONAL EDUCATION AND EXTENSION BOARD, OR A SCHOOL DISTRICT ENUMERATED IN SECTION ONE OF CHAPTER FIVE HUNDRED SIXTY-SIX OF THE LAWS OF NINETEEN HUNDRED SIXTY-SEVEN, EMPLOYEE OF ANY MUNICIPALITY, EMPLOYEE OF ANY SCHOOL DISTRICT OR ANY EMPLOYEE OF A PARTICIPATING EMPLOYER IN THE NEW YORK STATE AND LOCAL EMPLOYEES' RETIREMENT SYSTEM OR ANY EMPLOYEE OF A PARTICIPATING EMPLOYER IN THE NEW YORK STATE TEACHERS' RETIREMENT SYSTEM SHALL BE ENTITLED TO HAVE A PAID LEAVE OF ABSENCE FROM HIS OR HER DUTIES OR SERVICE AS SUCH PUBLIC OFFICER, EMPLOYEE OF THIS STATE, EMPLOYEE OF ANY COUNTY, EMPLOYEE OF ANY COMMUNITY COLLEGE, EMPLOYEE OF ANY PUBLIC AUTHORITY, EMPLOYEE OF ANY PUBLIC BENEFIT CORPORATION, EMPLOYEE OF ANY BOARD OF COOPERATIVE EDUCATIONAL SERVICES (BOCES), EMPLOYEE OF ANY VOCATIONAL EDUCATION AND EXTENSION BOARD, OR A SCHOOL DISTRICT ENUMERATED IN SECTION ONE OF CHAPTER FIVE HUNDRED SIXTY-SIX OF THE LAWS OF NINETEEN HUNDRED SIXTY-SEVEN, EMPLOYEE OF ANY MUNICIPALITY, EMPLOYEE OF ANY SCHOOL DISTRICT, OR ANY EMPLOYEE OF A PARTICIPATING EMPLOYER IN THE NEW YORK STATE AND LOCAL EMPLOYEES' RETIREMENT SYSTEM OR ANY EMPLOYEE OF A PARTICIPATING EMPLOYER IN THE NEW YORK STATE TEACHERS' RETIREMENT SYSTEM FOR A SUFFICIENT PERIOD OF TIME, NOT TO EXCEED TWELVE WEEKS UPON THE BIRTH OF SUCH EMPLOYEE'S CHILD, AN ADOPTIVE PARENT, FOLLOWING THE COMMENCEMENT OF THE PARENT-CHILD RELATIONSHIP, SHALL BE ENTITLED TO THE SAME LEAVE AND UPON THE SAME TERMS.

B. IN ADDITION TO THE LEAVE OF ABSENCE GRANTED IN PARAGRAPH A OF THIS SUBDIVISION, EVERY PUBLIC OFFICER, EMPLOYEE OF THIS STATE, EMPLOYEE OF ANY COUNTY, EMPLOYEE OF ANY COMMUNITY COLLEGE, EMPLOYEE OF ANY PUBLIC AUTHORITY, EMPLOYEE OF ANY PUBLIC BENEFIT CORPORATION, EMPLOYEE OF ANY BOARD OF COOPERATIVE EDUCATIONAL SERVICES (BOCES), EMPLOYEE OF ANY VOCATIONAL EDUCATION AND EXTENSION BOARD, OR A SCHOOL DISTRICT ENUMERATED IN SECTION ONE OF CHAPTER FIVE HUNDRED SIXTY-SIX OF THE LAWS OF NINETEEN HUNDRED SIXTY-SEVEN, EMPLOYEE OF ANY MUNICIPALITY, EMPLOYEE OF ANY SCHOOL DISTRICT OR ANY EMPLOYEE OF A PARTICIPATING EMPLOYER IN THE NEW YORK STATE AND LOCAL EMPLOYEES' RETIREMENT SYSTEM OR ANY EMPLOYEE OF A PARTICIPATING EMPLOYER IN THE NEW YORK STATE TEACHERS' RETIREMENT SYSTEM SHALL BE ENTITLED TO HAVE A PERIOD OF UNPAID LEAVE OF ABSENCE FROM HIS OR HER DUTIES OR SERVICE AS SUCH PUBLIC OFFICER, EMPLOYEE OF THIS STATE, EMPLOYEE OF ANY COUNTY, EMPLOYEE OF ANY COMMUNITY COLLEGE, EMPLOYEE OF ANY PUBLIC AUTHORITY, EMPLOYEE OF ANY PUBLIC BENEFIT CORPORATION, EMPLOYEE OF ANY BOARD OF COOPERATIVE EDUCATIONAL SERVICES (BOCES), EMPLOYEE OF ANY VOCATIONAL EDUCATION AND EXTENSION BOARD, OR A SCHOOL DISTRICT ENUMERATED IN SECTION ONE OF CHAPTER FIVE HUNDRED SIXTY-SIX OF THE LAWS OF NINETEEN HUNDRED SIXTY-SEVEN, EMPLOYEE OF ANY MUNICIPALITY, EMPLOYEE OF ANY SCHOOL DISTRICT, OR ANY EMPLOYEE OF A PARTICIPATING EMPLOYER IN THE NEW YORK STATE AND LOCAL EMPLOYEES' RETIREMENT SYSTEM OR ANY EMPLOYEE OF A PARTICIPATING EMPLOYER IN THE NEW YORK STATE TEACHERS' RETIREMENT SYSTEM FOR A SUFFICIENT PERIOD OF TIME, NOT TO EXCEED AN ADDITIONAL TWELVE WEEKS UPON THE BIRTH OF SUCH EMPLOYEE'S CHILD, AN ADOPTIVE PARENT, FOLLOWING THE COMMENCEMENT OF THE PARENT-CHILD RELATIONSHIP, SHALL BE ENTITLED TO THE SAME LEAVE AND UPON THE SAME TERMS.

2. THE ENTIRE PERIOD OF THE LEAVE OF ABSENCE GRANTED PURSUANT TO THIS SECTION SHALL BE EXCUSED LEAVE AND SHALL NOT BE CHARGED AGAINST ANY OTHER LEAVE SUCH PUBLIC OFFICER, EMPLOYEE OF THIS STATE, EMPLOYEE OF ANY COUNTY, EMPLOYEE OF ANY COMMUNITY COLLEGE, EMPLOYEE OF ANY PUBLIC AUTHORITY, EMPLOYEE OF ANY PUBLIC BENEFIT CORPORATION, EMPLOYEE OF ANY BOARD OF COOPERATIVE EDUCATIONAL SERVICES (BOCES), EMPLOYEE OF ANY VOCATIONAL EDUCATION AND EXTENSION BOARD, OR A SCHOOL DISTRICT ENUMERATED IN SECTION ONE OF CHAPTER FIVE HUNDRED SIXTY-SIX OF THE LAWS OF NINETEEN HUNDRED SIXTY-SEVEN, EMPLOYEE OF ANY MUNICIPALITY, EMPLOYEE OF ANY SCHOOL DISTRICT OR ANY EMPLOYEE OF A PARTICIPATING EMPLOYER IN THE NEW YORK STATE AND LOCAL EMPLOYEES' RETIREMENT SYSTEM OR ANY EMPLOYEE OF A PARTICIPATING EMPLOYER IN THE NEW YORK STATE TEACHERS' RETIREMENT SYSTEM IS OTHERWISE ENTITLED TO.

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

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

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

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

(17) THAT A GROUP OR BLANKET POLICY ISSUED PURSUANT TO THIS ARTICLE SHALL CONTAIN A PROVISION TO THE EFFECT THAT ANY MEMBER OF THE GROUP WHO TAKES A LEAVE OF ABSENCE AS PROVIDED FOR IN PARAGRAPH (B) OF SUBDIVISION TWO OF SECTION TWO HUNDRED TWO-L OF THE LABOR LAW OR PARAGRAPH B OF

SUBDIVISION ONE OF SECTION ONE HUNDRED FIFTY-NINE-D OF THE CIVIL SERVICE LAW MAY CONTINUE TO MAINTAIN SUCH POLICY UPON THE PAYMENT OF APPROPRIATE PREMIUMS UNTIL SUCH MEMBER RESUMES EMPLOYMENT WITH HIS OR HER EMPLOYER.

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

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

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