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

3639

2013-2014 Regular Sessions

I N A S S E M B L Y

January 28, 2013

Introduced by M. of A. BOYLAND, CASTRO, WEPRIN -- read once and referred to the Committee on Labor

AN ACT to amend the labor law, in relation to establishing the New York state family care and medical leave act

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

Section 1. The labor law is amended by adding a new article 3-A to read as follows:

ARTICLE 3-A

NEW YORK STATE FAMILY CARE AND MEDICAL LEAVE ACT

SECTION 110. SHORT TITLE.
111. DEFINITIONS.
112. FAMILY CARE AND MEDICAL LEAVE.
113. EXERCISE OF RIGHTS PROTECTED; RETALIATION PROHIBITED.
114. ENFORCEMENT.
115. WAIVER BY COLLECTIVE BARGAINING.
116. MINIMUM REQUIREMENTS.
117. SEVERABILITY.

S 110. SHORT TITLE. THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS THE "NEW YORK STATE FAMILY CARE AND MEDICAL LEAVE ACT".

S 111. DEFINITIONS. FOR THE PURPOSES OF THIS ARTICLE:

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

(A) LESS THAN EIGHTEEN YEARS OF AGE; OR

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

2. "DOMESTIC PARTNER" MEANS A PERSON AT LEAST EIGHTEEN YEARS OF AGE WHO:

(A) IS DEPENDENT UPON THE EMPLOYEE FOR SUPPORT AS SHOWN BY EITHER UNILATERAL DEPENDENCE OR MUTUAL INTERDEPENDENCE, AS EVIDENCED BY A NEXUS

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

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OF FACTORS INCLUDING, BUT NOT LIMITED TO, COMMON OWNERSHIP OF REAL OR PERSONAL PROPERTY, COMMON HOUSEHOLDING, CHILDREN IN COMMON, SIGNS OF INTENT TO MARRY, SHARED BUDGETING, AND THE LENGTH OF THE PERSONAL RELATIONSHIP WITH THE EMPLOYEE; OR

(B) HAS REGISTERED AS THE DOMESTIC PARTNER OF THE EMPLOYEE WITH ANY REGISTRY OF DOMESTIC PARTNERSHIPS MAINTAINED BY THE EMPLOYER OF EITHER PARTY, THE STATE, OR ANY COUNTY, CITY, TOWN, OR VILLAGE.

(C) FOR THE PURPOSES OF THIS ARTICLE, THE DEFINITION OF DOMESTIC PARTNER MADE BY THIS SUBDIVISION SHALL SUPPLEMENT OR SUPERSEDE ANY INCONSISTENT DEFINITION OF SUCH TERM BY ANY OTHER GENERAL, SPECIAL, OR LOCAL LAW, ORDINANCE, CODE, OR CHARTER SO THAT NO PERSON QUALIFYING AS A DOMESTIC PARTNER, AS DEFINED IN THIS SUBDIVISION, WHETHER REGISTERED OR UNREGISTERED, SHALL, FOR THE PURPOSES OF THIS ARTICLE, BE DEEMED NOT TO BE A DOMESTIC PARTNER.

(D) "DOMESTIC PARTNER" SHALL NOT INCLUDE ANY PERSON WHO IS RELATED BY BLOOD TO THE EMPLOYEE IN A MANNER THAT WOULD BAR MARRIAGE TO THE EMPLOYEE IN NEW YORK STATE.

3. "EMPLOYER" MEANS EITHER OF THE FOLLOWING:

(A) ANY PERSON WHO DIRECTLY EMPLOYS ONE HUNDRED OR MORE PERSONS TO PERFORM SERVICES FOR A WAGE OR SALARY.

(B) THE STATE, AND ANY POLITICAL OR CIVIL SUBDIVISION OF THE STATE AND CITIES.

4. "EMPLOYMENT IN THE SAME OR A COMPARABLE POSITION" MEANS EMPLOYMENT IN A POSITION THAT HAS THE SAME OR SIMILAR DUTIES AND PAY THAT CAN BE PERFORMED AT THE SAME OR SIMILAR GEOGRAPHIC LOCATION AS THE POSITION HELD PRIOR TO THE LEAVE.

5. "FAMILY CARE AND MEDICAL LEAVE" MEANS ANY OF THE FOLLOWING:

(A) LEAVE FOR REASON OF THE BIRTH OF A CHILD OF THE EMPLOYEE, THE PLACEMENT OF A CHILD WITH AN EMPLOYEE IN CONNECTION WITH THE ADOPTION OR FOSTER CARE OF THE CHILD BY THE EMPLOYEE, OR THE SERIOUS HEALTH CONDITION OF A CHILD OF THE EMPLOYEE.

(B) LEAVE TO CARE FOR A FAMILY MEMBER WHO HAS A SERIOUS HEALTH CONDITION.

(C) LEAVE BECAUSE OF AN EMPLOYEE'S OWN SERIOUS HEALTH CONDITION THAT MAKES THE EMPLOYEE UNABLE TO PERFORM THE FUNCTIONS OF THE POSITION OF THAT EMPLOYEE, EXCEPT FOR LEAVE TAKEN FOR DISABILITY ON ACCOUNT OF PREGNANCY, CHILDBIRTH, OR RELATED MEDICAL CONDITIONS.

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

7. "FMLA" MEANS THE FEDERAL FAMILY AND MEDICAL LEAVE ACT OF 1993 (P.L. 103-3).

8. "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.

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

(A) LESS THAN EIGHTEEN YEARS OF AGE; OR

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

10. PERSONS WHO STAND IN PARENTAL RELATIONSHIP TO A CHILD INCLUDE THOSE WITH DAY-TO-DAY RESPONSIBILITIES TO CARE FOR AND FINANCIALLY SUPPORT A CHILD OR, IN THE CASE OF AN EMPLOYEE, WHO HAD SUCH RESPONSIBILITY FOR THE EMPLOYEE WHEN THE EMPLOYEE WAS A CHILD. A BIOLOGICAL OR LEGAL RELATIONSHIP IS NOT NECESSARY.

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

(A) REQUIRES INPATIENT CARE IN A HOSPITAL, HOSPICE OR RESIDENTIAL HEALTH CARE FACILITY; OR

(B) REQUIRES CONTINUING TREATMENT BY A HEALTH CARE PROVIDER.

12. "SMALL BUSINESS EMPLOYER" MEANS ANY PERSON WHO DIRECTLY EMPLOYS FEWER THAN ONE HUNDRED PERSONS TO PERFORM SERVICES FOR A WAGE OR SALARY.

S 112. FAMILY CARE AND MEDICAL LEAVE. 1. (A) AN EMPLOYEE WITH MORE THAN TWELVE MONTHS OF SERVICE WITH AN EMPLOYER AND WHO HAS AT LEAST ONE THOUSAND TWO HUNDRED FIFTY HOURS OF SERVICE WITH THE EMPLOYER DURING THE PREVIOUS TWELVE-MONTH PERIOD SHALL BE ENTITLED TO TAKE UP TO A TOTAL OF TWELVE WORKWEEKS IN ANY TWELVE-MONTH PERIOD FOR FAMILY CARE AND MEDICAL LEAVE. FAMILY CARE AND MEDICAL LEAVE REQUESTED PURSUANT TO THIS SECTION SHALL NOT BE DEEMED TO HAVE BEEN GRANTED UNLESS THE EMPLOYER PROVIDES THE EMPLOYEE, UPON GRANTING THE LEAVE REQUEST, A GUARANTEE OF EMPLOYMENT IN THE SAME OR A COMPARABLE POSITION UPON THE TERMINATION OF THE LEAVE. THE COMMISSIONER SHALL ADOPT REGULATIONS SPECIFYING THE ELEMENTS OF A REASONABLE REQUEST.

(B) THE PROVISIONS OF PARAGRAPH (A) OF THIS SUBDIVISION SHALL NOT APPLY TO AN EMPLOYEE OF A SMALL BUSINESS EMPLOYER AS SUCH TERM IS DEFINED IN SECTION ONE HUNDRED ELEVEN OF THIS ARTICLE.

2. (A) AN EMPLOYER SHALL NOT BE REQUIRED TO PAY AN EMPLOYEE FOR ANY LEAVE TAKEN PURSUANT TO SUBDIVISION ONE OF THIS SECTION, EXCEPT AS REQUIRED BY PARAGRAPH (B) OF THIS SUBDIVISION.

(B) AN EMPLOYEE TAKING A LEAVE PERMITTED BY SUBDIVISION ONE OF THIS SECTION MAY ELECT, OR AN EMPLOYER MAY REQUIRE THE EMPLOYEE, TO SUBSTITUTE FOR LEAVE ALLOWED UNDER SUBDIVISION ONE OF THIS SECTION ANY OF THE EMPLOYEE'S ACCRUED VACATION LEAVE OR OTHER ACCRUED TIME OFF DURING THIS PERIOD OR ANY OTHER PAID OR UNPAID TIME OFF NEGOTIATED WITH THE EMPLOYER. IF AN EMPLOYEE TAKES A LEAVE BECAUSE OF THE EMPLOYEE'S OWN SERIOUS HEALTH CONDITION, THE EMPLOYEE MAY ALSO ELECT, OR THE EMPLOYER MAY ALSO REQUIRE THE EMPLOYEE, TO SUBSTITUTE ACCRUED SICK LEAVE DURING THE PERIOD OF THE LEAVE. HOWEVER, AN EMPLOYEE SHALL NOT USE SICK LEAVE DURING A PERIOD OF LEAVE IN CONNECTION WITH THE BIRTH, ADOPTION, OR FOSTER CARE OF A CHILD, OR TO CARE FOR A FAMILY MEMBER WITH A SERIOUS HEALTH CONDITION, UNLESS MUTUALLY AGREED TO BY THE EMPLOYER AND THE EMPLOYEE.

3. (A) DURING ANY PERIOD THAT AN ELIGIBLE EMPLOYEE TAKES LEAVE PURSUANT TO SUBDIVISION ONE OF THIS SECTION OR TAKES LEAVE THAT QUALIFIES AS LEAVE TAKEN UNDER THE FMLA, THE EMPLOYER SHALL MAINTAIN AND PAY FOR COVERAGE UNDER A "GROUP HEALTH PLAN," AS DEFINED IN SECTION 5000(B) (1) OF THE INTERNAL REVENUE CODE OF 1986, FOR THE DURATION OF THE LEAVE, NOT TO EXCEED TWELVE WORKWEEKS IN A TWELVE-MONTH PERIOD, COMMENCING ON THE DATE LEAVE TAKEN UNDER THE FMLA COMMENCES, AT THE LEVEL AND UNDER THE CONDITIONS COVERAGE WOULD HAVE BEEN PROVIDED IF THE EMPLOYEE HAD CONTINUED IN EMPLOYMENT CONTINUOUSLY FOR THE DURATION OF THE LEAVE; PROVIDED, HOWEVER, THAT NOTHING INCLUDED IN THIS SUBDIVISION SHALL PRECLUDE AN EMPLOYER FROM MAINTAINING AND PAYING FOR COVERAGE UNDER A "GROUP HEALTH PLAN" BEYOND TWELVE WORKWEEKS.

(B) AN EMPLOYER MAY RECOVER THE PREMIUM THAT THE EMPLOYER PAID AS REQUIRED BY THIS SUBDIVISION FOR MAINTAINING COVERAGE FOR THE EMPLOYEE UNDER THE GROUP HEALTH PLAN IF:

(I) THE EMPLOYEE FAILS TO RETURN FROM LEAVE AFTER THE PERIOD OF LEAVE TO WHICH THE EMPLOYEE IS ENTITLED HAS EXPIRED; AND

(II) THE EMPLOYEE'S FAILURE TO RETURN FROM LEAVE IS FOR A REASON OTHER THAN THE CONTINUATION, RECURRENCE, OR ONSET OF A SERIOUS HEALTH CONDI-

TION THAT ENTITLES THE EMPLOYEE TO LEAVE UNDER SUBDIVISION ONE OF THIS SECTION OR OTHER CIRCUMSTANCES BEYOND THE CONTROL OF THE EMPLOYEE.

(C) (I) ANY EMPLOYEE TAKING LEAVE PURSUANT TO SUBDIVISION ONE OF THIS SECTION SHALL CONTINUE TO BE ENTITLED TO PARTICIPATE IN EMPLOYEE HEALTH PLANS FOR ANY PERIOD DURING WHICH COVERAGE IS NOT PROVIDED BY THE EMPLOYER UNDER PARAGRAPH (A) OF THIS SUBDIVISION, EMPLOYEE BENEFIT PLANS, INCLUDING LIFE, SHORT-TERM, OR LONG-TERM DISABILITY OR ACCIDENT INSURANCE, PENSION AND RETIREMENT PLANS, AND SUPPLEMENTAL UNEMPLOYMENT BENEFIT PLANS TO THE SAME EXTENT AND UNDER THE SAME CONDITIONS AS APPLY TO AN UNPAID LEAVE TAKEN FOR ANY PURPOSE OTHER THAN THOSE DESCRIBED IN SUBDIVISION ONE OF THIS SECTION. IN THE ABSENCE OF THESE CONDITIONS AN EMPLOYEE SHALL CONTINUE TO BE ENTITLED TO PARTICIPATE IN THESE PLANS AND, IN THE CASE OF HEALTH AND WELFARE EMPLOYEE BENEFIT PLANS, INCLUDING LIFE, SHORT-TERM, OR LONG-TERM DISABILITY OR ACCIDENT INSURANCE, OR OTHER SIMILAR PLANS, THE EMPLOYER MAY, AT HIS OR HER DISCRETION, REQUIRE THE EMPLOYEE TO PAY PREMIUMS, AT THE GROUP RATE, DURING THE PERIOD OF LEAVE NOT COVERED BY ANY ACCRUED VACATION LEAVE, OR OTHER ACCRUED TIME OFF, OR ANY OTHER PAID OR UNPAID TIME OFF NEGOTIATED WITH THE EMPLOYER, AS A CONDITION OF CONTINUED COVERAGE DURING THE LEAVE PERIOD. HOWEVER, THE NONPAYMENT OF PREMIUMS BY AN EMPLOYEE SHALL NOT CONSTITUTE A BREAK IN SERVICE, FOR PURPOSES OF LONGEVITY, SENIORITY UNDER ANY COLLECTIVE BARGAINING AGREEMENT, OR ANY EMPLOYEE BENEFIT PLAN.

(II) FOR PURPOSES OF PENSION AND RETIREMENT PLANS, AN EMPLOYER SHALL NOT BE REQUIRED TO MAKE PLAN PAYMENTS FOR AN EMPLOYEE DURING THE LEAVE PERIOD, AND THE LEAVE PERIOD SHALL NOT BE REQUIRED TO BE COUNTED FOR PURPOSES OF TIME ACCRUED UNDER THE PLAN. HOWEVER, AN EMPLOYEE COVERED BY A PENSION PLAN MAY CONTINUE TO MAKE CONTRIBUTIONS IN ACCORDANCE WITH THE TERMS OF THE PLAN DURING THE PERIOD OF THE LEAVE.

4. DURING A FAMILY CARE AND MEDICAL LEAVE PERIOD, THE EMPLOYEE SHALL RETAIN EMPLOYEE STATUS WITH THE EMPLOYER, AND THE LEAVE SHALL NOT CONSTITUTE A BREAK IN SERVICE, FOR PURPOSES OF LONGEVITY, SENIORITY UNDER ANY COLLECTIVE BARGAINING AGREEMENT, OR ANY EMPLOYEE BENEFIT PLAN. AN EMPLOYEE RETURNING FROM LEAVE SHALL RETURN WITH NO LESS SENIORITY THAN THE EMPLOYEE HAD WHEN THE LEAVE COMMENCED, FOR PURPOSES OF LAYOFF, RECALL, PROMOTION, JOB ASSIGNMENT, AND SENIORITY-RELATED BENEFITS SUCH AS VACATION.

5. (A) IF THE EMPLOYEE'S NEED FOR A LEAVE PURSUANT TO THIS SECTION IS FORESEEABLE, THE EMPLOYEE SHALL PROVIDE THE EMPLOYER WITH REASONABLE ADVANCE NOTICE OF THE NEED FOR THE LEAVE.

(B) IF THE EMPLOYEE'S NEED FOR LEAVE PURSUANT TO THIS SECTION IS FORESEEABLE DUE TO A PLANNED MEDICAL TREATMENT OR SUPERVISION, THE EMPLOYEE SHALL MAKE A REASONABLE EFFORT TO SCHEDULE THE TREATMENT OR SUPERVISION TO AVOID DISRUPTION TO THE OPERATIONS OF THE EMPLOYER, SUBJECT TO THE APPROVAL OF THE HEALTH CARE PROVIDER OF THE INDIVIDUAL REQUIRING THE TREATMENT OR SUPERVISION.

6. (A) AN EMPLOYER MAY REQUIRE THAT AN EMPLOYEE'S REQUEST FOR LEAVE TO CARE FOR A FAMILY MEMBER WHO HAS A SERIOUS HEALTH CONDITION BE SUPPORTED BY A CERTIFICATION ISSUED BY THE HEALTH CARE PROVIDER OF THE INDIVIDUAL REQUIRING CARE. SUCH CERTIFICATION SHALL STATE:

(I) THE DATE ON WHICH THE SERIOUS HEALTH CONDITION COMMENCED;

(II) THE PROBABLE DURATION OF THE CONDITION;

(III) AN ESTIMATE OF THE AMOUNT OF TIME THAT THE HEALTH CARE PROVIDER BELIEVES THE EMPLOYEE NEEDS TO CARE FOR THE INDIVIDUAL REQUIRING THE CARE; AND

(IV) A STATEMENT THAT THE SERIOUS HEALTH CONDITION WARRANTS THE PARTICIPATION OF A FAMILY MEMBER TO PROVIDE CARE DURING A PERIOD OF THE TREATMENT OR SUPERVISION OF THE INDIVIDUAL REQUIRING CARE.

(B) UPON EXPIRATION OF THE TIME ESTIMATED BY THE HEALTH CARE PROVIDER IN SUBPARAGRAPH (III) OF PARAGRAPH (A) OF THIS SUBDIVISION, THE EMPLOYER MAY REQUIRE THE EMPLOYEE TO OBTAIN RECERTIFICATION, IN ACCORDANCE WITH THE PROCEDURE PROVIDED IN SUCH PARAGRAPH (A), IF ADDITIONAL LEAVE IS REQUIRED.

7. (A) AN EMPLOYER MAY REQUIRE THAT AN EMPLOYEE'S REQUEST FOR LEAVE BECAUSE OF THE EMPLOYEE'S OWN SERIOUS HEALTH CONDITION BE SUPPORTED BY A CERTIFICATION ISSUED BY HIS OR HER HEALTH CARE PROVIDER. SUCH CERTIFICATION SHALL STATE:

(I) THE DATE ON WHICH THE SERIOUS HEALTH CONDITION COMMENCED;

(II) THE PROBABLE DURATION OF THE CONDITION; AND

(III) A STATEMENT THAT, DUE TO THE SERIOUS HEALTH CONDITION, THE EMPLOYEE IS UNABLE TO PERFORM THE FUNCTION OF HIS OR HER POSITION.

(B) THE EMPLOYER MAY REQUIRE THAT THE EMPLOYEE OBTAIN SUBSEQUENT RECERTIFICATION REGARDING THE EMPLOYEE'S SERIOUS HEALTH CONDITION ON A REASONABLE BASIS, IN ACCORDANCE WITH THE PROCEDURE PROVIDED IN PARAGRAPH (A) OF THIS SUBDIVISION, IF ADDITIONAL LEAVE IS REQUIRED.

(C) (I) IN ANY CASE IN WHICH THE EMPLOYER HAS REASON TO DOUBT THE VALIDITY OF THE CERTIFICATION PROVIDED PURSUANT TO THIS SECTION, THE EMPLOYER MAY REQUIRE, AT THE EMPLOYER'S EXPENSE, THAT THE EMPLOYEE OBTAIN THE OPINION OF A SECOND HEALTH CARE PROVIDER, DESIGNATED OR APPROVED BY THE EMPLOYER, CONCERNING ANY INFORMATION CERTIFIED UNDER PARAGRAPH (A) OF THIS SUBDIVISION.

(II) THE HEALTH CARE PROVIDER DESIGNATED OR APPROVED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH SHALL NOT BE EMPLOYED ON A REGULAR BASIS BY THE EMPLOYER.

(III) IN ANY CASE IN WHICH THE SECOND OPINION DESCRIBED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH DIFFERS FROM THE OPINION IN THE ORIGINAL CERTIFICATION, THE EMPLOYER MAY REQUIRE, AT THE EMPLOYER'S EXPENSE, THAT THE EMPLOYEE OBTAIN THE OPINION OF A THIRD HEALTH CARE PROVIDER, DESIGNATED OR APPROVED JOINTLY BY THE EMPLOYER AND THE EMPLOYEE, CONCERNING THE INFORMATION CERTIFIED UNDER PARAGRAPH (A) OF THIS SUBDIVISION.

(IV) THE OPINION OF THE THIRD HEALTH CARE PROVIDER CONCERNING THE INFORMATION CERTIFIED UNDER PARAGRAPH (A) OF THIS SUBDIVISION SHALL BE CONSIDERED TO BE FINAL AND SHALL BE BINDING ON THE EMPLOYER AND THE EMPLOYEE.

(D) AS A CONDITION OF AN EMPLOYEE'S RETURN FROM LEAVE TAKEN BECAUSE OF THE EMPLOYEE'S OWN SERIOUS HEALTH CONDITION, THE EMPLOYER MAY HAVE A UNIFORMLY APPLIED PRACTICE OR POLICY THAT REQUIRES THE EMPLOYEE TO OBTAIN CERTIFICATION FROM HIS OR HER HEALTH CARE PROVIDER THAT THE EMPLOYEE IS ABLE TO RESUME WORK. NOTHING IN THIS PARAGRAPH SHALL SUPERSEDE A VALID COLLECTIVE BARGAINING AGREEMENT THAT GOVERNS THE RETURN TO WORK OF THAT EMPLOYEE.

8. IN ANY CASE IN WHICH BOTH PARENTS ENTITLED TO LEAVE UNDER PARAGRAPH (A) OF SUBDIVISION ONE OF THIS SECTION ARE EMPLOYED BY THE SAME EMPLOYER, THE EMPLOYER SHALL NOT BE REQUIRED TO GRANT LEAVE IN CONNECTION WITH THE BIRTH, ADOPTION, OR FOSTER CARE OF A CHILD THAT WOULD ALLOW THE PARENTS FAMILY CARE AND MEDICAL LEAVE TOTALING MORE THAN THE AMOUNT SPECIFIED IN SUCH PARAGRAPH.

9. (A) NOTWITHSTANDING PARAGRAPH (A) OF SUBDIVISION ONE OF THIS SECTION, AN EMPLOYER MAY REFUSE TO REINSTATE AN EMPLOYEE RETURNING FROM LEAVE TO THE SAME OR A COMPARABLE POSITION IF:

(I) THE EMPLOYEE IS A SALARIED EMPLOYEE WHO IS AMONG THE HIGHEST PAID TEN PERCENT OF THE EMPLOYER'S EMPLOYEES WHO ARE EMPLOYED WITHIN SEVENTY-FIVE MILES OF THE WORKSITE AT WHICH THAT EMPLOYEE IS EMPLOYED;

(II) THE REFUSAL IS NECESSARY TO PREVENT SUBSTANTIAL AND GRIEVOUS ECONOMIC INJURY TO THE OPERATIONS OF THE EMPLOYER; AND

(III) THE EMPLOYER NOTIFIES THE EMPLOYEE OF THE INTENT TO REFUSE REINSTATEMENT AT THE TIME THE EMPLOYER DETERMINES THE REFUSAL IS NECESSARY UNDER SUBPARAGRAPH (II) OF THIS PARAGRAPH.

(B) IN ANY CASE IN WHICH THE LEAVE HAS ALREADY COMMENCED, THE EMPLOYER SHALL GIVE THE EMPLOYEE A REASONABLE OPPORTUNITY TO RETURN TO WORK FOLLOWING THE NOTICE PRESCRIBED BY SUBPARAGRAPH (III) OF PARAGRAPH (A) OF THIS SUBDIVISION.

10. LEAVE TAKEN BY AN EMPLOYEE PURSUANT TO THIS SECTION SHALL RUN CONCURRENTLY WITH LEAVE TAKEN PURSUANT TO THE FMLA, EXCEPT FOR ANY LEAVE TAKEN UNDER THE FMLA FOR DISABILITY ON ACCOUNT OF PREGNANCY, CHILDBIRTH, OR RELATED MEDICAL CONDITIONS. THE AGGREGATE AMOUNT OF LEAVE TAKEN UNDER THIS SECTION OR THE FMLA, OR BOTH, EXCEPT FOR LEAVE TAKEN FOR DISABILITY ON ACCOUNT OF PREGNANCY, CHILDBIRTH, OR RELATED MEDICAL CONDITIONS, SHALL NOT EXCEED TWELVE WORKWEEKS IN A TWELVE-MONTH PERIOD.

11. LEAVE PROVIDED FOR PURSUANT TO THIS SECTION MAY BE TAKEN IN ONE OR MORE PERIODS. THE TWELVE-MONTH PERIOD DURING WHICH TWELVE WORKWEEKS OF LEAVE MAY BE TAKEN UNDER THIS SECTION SHALL RUN CONCURRENTLY WITH THE TWELVE-MONTH PERIOD UNDER THE FMLA, AND SHALL COMMENCE THE DATE LEAVE TAKEN UNDER THE FMLA COMMENCES.

12. NOTHING CONTAINED WITHIN THIS SECTION SHALL BE CONSTRUED TO REQUIRE ANY CHANGES IN EXISTING COLLECTIVE BARGAINING AGREEMENTS DURING THE LIFE OF THE CONTRACT.

S 113. EXERCISE OF RIGHTS PROTECTED; RETALIATION PROHIBITED. 1. IT SHALL BE UNLAWFUL FOR ANY EMPLOYER OR ANY OTHER PERSON TO INTERFERE WITH, RESTRAIN, OR DENY THE USE OF OR THE ATTEMPTED USE OF ANY FAMILY CARE AND MEDICAL LEAVE REQUIRED BY THIS ARTICLE.

2. NO EMPLOYER OR ANY OTHER PERSON SHALL DISCHARGE, THREATEN TO DISCHARGE, DEMOTE, SUSPEND, OR IN ANY OTHER MANNER DISCRIMINATE OR TAKE ADVERSE ACTION AGAINST ANY EMPLOYEE IN RETALIATION FOR EXERCISING ANY RIGHT GRANTED BY THIS ARTICLE. SUCH RIGHTS SHALL INCLUDE, BUT NOT BE LIMITED TO, THE USE OF FAMILY CARE AND MEDICAL LEAVE, THE FILING OF A COMPLAINT OR INFORMING ANY PERSON ABOUT ANY VIOLATION OF THIS ARTICLE, THE COOPERATION WITH THE DEPARTMENT IN THE INVESTIGATION OF ANY ALLEGED VIOLATION OF THIS ARTICLE, AND THE INFORMING OF ANY PERSON OF HIS OR HER RIGHTS PURSUANT TO THIS ARTICLE.

3. NO EMPLOYER SHALL CONSIDER OR USE FAMILY CARE AND MEDICAL LEAVE TAKEN PURSUANT TO THIS ARTICLE AS AN ABSENCE THAT MAY LEAD TO OR RESULT IN THE DISCIPLINE OF, THE DISCHARGE OF, THE DEMOTION OF, THE SUSPENSION OF OR ANY OTHER ACTION AGAINST ANY EMPLOYEE.

4. THE PROVISIONS OF THIS SECTION SHALL APPLY TO ANY PERSON WHO, IN GOOD FAITH, ALLEGES A VIOLATION OF THIS ARTICLE.

5. THE TAKING OF ANY ADVERSE ACTION AGAINST AN EMPLOYEE WITHIN NINETY DAYS OF ANY PERSON FILING A COMPLAINT WITH THE DEPARTMENT OR A COURT ALLEGING A VIOLATION OF THE PROVISIONS OF THIS ARTICLE, INFORMING ANY OTHER PERSON RELATING TO AN ALLEGED VIOLATION OF THIS ARTICLE BY AN EMPLOYER, COOPERATING WITH THE DEPARTMENT OR ANY OTHER PERSON IN THE INVESTIGATION OR PROSECUTION OF ANY ALLEGED VIOLATION OF THIS ARTICLE OR INFORMING ANY PERSON OF THE PROVISIONS OF THIS ARTICLE, SHALL ESTABLISH A REBUTTABLE PRESUMPTION THAT SUCH ADVERSE ACTION WAS TAKEN IN RETALIATION FOR EXERCISING THE RIGHTS GRANTED PURSUANT TO THIS ARTICLE.

S 114. ENFORCEMENT. 1. THE DEPARTMENT IS CHARGED WITH THE DUTY TO ENFORCE THE PROVISIONS OF THIS ARTICLE. FURTHERMORE, THE COMMISSIONER IS AUTHORIZED AND DIRECTED TO PROMULGATE ANY RULES AND REGULATIONS NECESSARY TO IMPLEMENT THE PROVISIONS OF THIS ARTICLE.

2. FOR ANY VIOLATION OF THIS ARTICLE THE DEPARTMENT MAY ORDER AN EMPLOYER TO GRANT REINSTATEMENT, BACK PAY, THE PAYMENT FOR ANY PAID FAMILY CARE AND MEDICAL LEAVE WITHHELD AND/OR THE PAYMENT OF A PENALTY TO THE AFFECTED EMPLOYEE. FURTHERMORE, THE DEPARTMENT SHALL IMPOSE A CIVIL PENALTY, FOR ANY VIOLATION OF THIS ARTICLE, EQUAL TO TRIPLE THE MONETARY VALUE OF THE PAID FAMILY CARE AND MEDICAL LEAVE DENIED OR TWO HUNDRED DOLLARS, WHICHEVER SHALL BE GREATER.

S 115. WAIVER BY COLLECTIVE BARGAINING. ALL OR ANY PORTION OF THE PROVISIONS OF THIS ARTICLE MAY BE WAIVED WITH REGARD TO ANY EMPLOYEES AND EMPLOYERS WHO ARE SUBJECT TO A BONA FIDE COLLECTIVE BARGAINING AGREEMENT TO THE EXTENT THAT SUCH PROVISIONS ARE EXPRESSLY WAIVED IN SUCH AGREEMENT IN CLEAR AND UNAMBIGUOUS TERMS.

S 116. MINIMUM REQUIREMENTS. THE PROVISIONS OF THIS ARTICLE SHALL CONSTITUTE THE MINIMUM REQUIREMENTS OF THE PROVISION OF FAMILY CARE AND MEDICAL LEAVE TO EMPLOYEES. NO PROVISION OF THIS ARTICLE SHALL BE DEEMED TO PROHIBIT ANY EMPLOYER FROM GRANTING GREATER FAMILY CARE AND MEDICAL LEAVE BENEFITS THAN THOSE REQUIRED BY THIS ARTICLE.

S 117. SEVERABILITY. IF ANY CLAUSE, SENTENCE, PARAGRAPH, SECTION OR PART OF THIS ARTICLE SHALL BE ADJUDGED BY ANY COURT OF COMPETENT JURISDICTION TO BE INVALID AND AFTER EXHAUSTION OF ALL FURTHER JUDICIAL REVIEW, THE JUDGEMENT SHALL NOT AFFECT, IMPAIR OR INVALIDATE THE REMAINDER THEREOF, BUT SHALL BE CONFINED IN THIS OPERATION TO THE CLAUSE, SENTENCE, PARAGRAPH, SECTION OR PART OF THIS ACT DIRECTLY INVOLVED IN THE CONTROVERSY IN WHICH THE JUDGEMENT SHALL HAVE BEEN RENDERED.

S 2. This act shall take effect on the first of January next succeeding the date on which it shall have become a law; provided, however, that, effective immediately, any rules and regulations necessary to implement the provisions of this act on its effective date are authorized and directed to be completed on or before such date.