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

5296--A

2013-2014 Regular Sessions

I N S E N A T E

May 16, 2013

Introduced by Sens. SAVINO, ADDABBO -- read twice and ordered printed, and when printed to be committed to the Committee on Labor -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the workers' compensation law and the insurance law, in relation to providing six weeks of disability benefits for the birth, adoption or placement of a child

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

Section 1. Subdivision 9 of section 201 of the workers' compensation law is amended by adding a new paragraph C to read as follows:

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

S 2. Subdivision 14 of section 201 of the workers' compensation law, as added by chapter 600 of the laws of 1949 and as renumbered by chapter 438 of the laws of 1964, is amended to read as follows:

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

S 3. Section 201 of the workers' compensation law is amended by adding two new subdivisions 15 and 16 to read as follows:

15. "CHILD CARE" SHALL MEAN ANY LEAVE TAKEN BY AN EMPLOYEE FROM WORK TO BOND WITH THE EMPLOYEE'S CHILD DURING THE FIRST TWELVE MONTHS AFTER THE CHILD'S BIRTH, OR THE FIRST TWELVE MONTHS AFTER THE PLACEMENT OF THE CHILD FOR ADOPTION OR FOSTER CARE WITH THE EMPLOYEE.

16. "CHILD" MEANS A BIOLOGICAL, ADOPTED OR FOSTER 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.

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

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S 4. Section 202 of the workers' compensation law is amended by adding a new subdivision 1-a to read as follows:

1-A. SOLELY FOR THE PURPOSES OF THE PROVISIONS OF THIS ARTICLE RELATING TO THE PROVISION OF BENEFITS, RIGHTS AND PRIVILEGES RELATING TO CHILD CARE LEAVE, "COVERED EMPLOYER" SHALL INCLUDE THE STATE OR ANY POLITICAL OR CIVIL SUBDIVISION THEREOF.

S 5. Section 204 of the workers' compensation law is amended by adding a new subdivision 3 to read as follows:

3. THE WEEKLY BENEFIT WHICH AN EMPLOYEE ON CHILD CARE LEAVE IS ENTITLED TO RECEIVE SHALL BE FIFTY PERCENT OF THE EMPLOYEE'S AVERAGE WEEKLY WAGE, BUT IN NO CASE SHALL SUCH BENEFIT EXCEED FOUR HUNDRED TWENTY DOLLARS FOR EACH WEEK DURING SUCH CHILD CARE LEAVE.

S 6. Subdivisions 1, 2, 3, 4 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 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 CHILD CARE, FOR MORE THAN SIX 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; and for any period of disability during which an employee who adheres to the faith or teachings of any church or denomination and who in accordance with its creed, tenets or principles depends for healing upon prayer through spiritual means alone in the practice of religion, is not under the care of a practitioner duly accredited by the church or denomination, and provided such employee shall submit to all physical examinations as required by this chapter[.];

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

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

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

9. FOR ANY DAY OF ABSENCE FROM WORK REQUIRED PURSUANT TO ANY DISCIPLINARY PROCESS; OR, IN REGARD TO CHILD CARE BENEFITS, ANY DAY OF ABSENCE FROM WORK RESULTING FROM INJURY, SICKNESS OR PREGNANCY OF THE EMPLOYEE, INCLUDING ANY LEAVE TAKEN UNDER SECTION SEVENTY-THREE OR SEVENTY-FIVE OF THE CIVIL SERVICE LAW.

S 7. The workers' compensation law is amended by adding a new section 205-a to read as follows:

S 205-A. RELATIONSHIP BETWEEN DISABILITY BENEFITS FOR CHILD CARE AND FOR THE EMPLOYEE'S OWN INJURY, SICKNESS OR PREGNANCY. THE RECEIPT OF BENEFITS FOR DISABILITY RESULTING FROM INJURY, SICKNESS OR PREGNANCY OF THE EMPLOYEE, SHALL NOT COUNT TOWARD ANY TIME LIMITATION UNDER SUBDIVISION ONE OF SECTION TWO HUNDRED FIVE OF THIS ARTICLE ON THE RECEIPT OF BENEFITS FOR CHILD CARE, AND THE RECEIPT OF BENEFITS FOR CHILD CARE SHALL NOT COUNT TOWARD ANY TIME LIMITATION UNDER SUBDIVISION ONE OF SECTION TWO HUNDRED FIVE OF THIS ARTICLE ON THE RECEIPT OF BENEFITS FOR DISABILITY RESULTING FROM INJURY, SICKNESS OR PREGNANCY TO THE EMPLOYEE, EXCEPT THAT AN EMPLOYEE MAY RECEIVE DISABILITY BENEFITS ON ONLY ONE CLAIM AT ANY TIME.

S 8. Subdivision 3 of section 209 of the workers' compensation law, as amended by chapter 415 of the laws of 1983, is amended to read as follows:

3. The contribution of each such employee to the cost of disability benefits provided by this article shall be one-half of one per centum of the employee's wages paid to him on and after July first, nineteen hundred fifty, but not in excess of sixty cents per week FOR THE COST OF DISABILITY BENEFITS FOR INJURY, SICKNESS OR PREGNANCY OF THE EMPLOYEE. EFFECTIVE JULY FIRST, TWO THOUSAND FOURTEEN CHILD CARE BENEFITS SHALL BE PROVIDED AT NO COST TO AN ELIGIBLE EMPLOYEE THROUGH THE NEW YORK STATE INSURANCE FUND.

S 9. Section 211 of the workers' compensation law is amended by adding two new subdivisions 7 and 8 to read as follows:

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

8. NOTHING IN THIS ARTICLE SHALL REQUIRE AN EMPLOYER TO USE THE SAME CARRIER TO PROVIDE BENEFITS REQUIRED BY OR PERMISSIBLE UNDER THIS ARTICLE FOR DISABILITY RESULTING FROM INJURY, SICKNESS OR PREGNANCY OF THE EMPLOYEE AS IT USES TO PROVIDE BENEFITS REQUIRED BY OR PERMISSIBLE UNDER THIS ARTICLE FOR CHILD CARE. AN EMPLOYER MAY USE A DIFFERENT MEANS, AMONG THOSE SET FORTH IN SUBDIVISIONS ONE THROUGH FIVE OF THIS SECTION, TO PROVIDE BENEFITS REQUIRED BY THIS ARTICLE FOR DISABILITY RESULTING FROM INJURY OR SICKNESS TO OR PREGNANCY OF THE EMPLOYEE, FROM THE MEANS USED TO PROVIDE BENEFITS REQUIRED BY THIS ARTICLE FOR CHILD CARE.

S 10. Subdivisions 1, 2, 3 and 4 of section 217 of the workers' compensation law, subdivision 1 as amended by chapter 167 of the laws of 1999, subdivisions 2 and 3 as amended by chapter 270 of the laws of 1990 and subdivision 4 as added by chapter 600 of the laws of 1949, are amended to read as follows:

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

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

(B) IN THE CASE OF CHILD 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.

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 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 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 to submit to examination by a physician or podiatrist or chiropractor or dentist or psychologist 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 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 11. Subdivision 2 of section 229 of the workers' compensation law, as added by chapter 271 of the laws of 1985, is amended to read as follows:

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

S 12. Paragraph 3 of subsection (a) of section 1113 of the insurance law is amended to read as follows:

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

S 13. This act shall take effect July 1, 2014; provided, that the addition, amendment and/or repeal of any rules or regulations necessary for the implementation of this act on its effective date are authorized and directed to be made and completed on or before such effective date.