

3301

2015-2016 Regular Sessions

I N S E N A T E

February 4, 2015

Introduced by Sens. KLEIN, AVELLA, CARLUCCI, SAVINO, VALESKY -- 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 establishing family care benefits

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

1 Section 1. Subdivision 9 of section 201 of the workers' compensation
2 law is amended by adding a new paragraph C to read as follows:
3 C. "DISABILITY" ALSO INCLUDES FAMILY CARE.
4 S 2. Subdivision 14 of section 201 of the workers' compensation law,
5 as added by chapter 600 of the laws of 1949 and as renumbered by chapter
6 438 of the laws of 1964, is amended, and nine new subdivisions 15, 16,
7 17, 18, 19, 20, 21, 22 and 23 are added to read as follows:
8 14. "A day of disability" means any day on which the employee was
9 prevented from performing work because of disability, INCLUDING ANY DAY
10 WHICH THE EMPLOYEE USES FOR FAMILY CARE, and for which [he] THE EMPLOYEE
11 has not received his OR HER regular remuneration.
12 15. "FAMILY CARE" MEANS ANY LEAVE TAKEN BY AN EMPLOYEE FROM PERFORMING
13 WORK:
14 A. TO PARTICIPATE IN PROVIDING CARE, INCLUDING PHYSICAL OR PSYCHOLOG-
15 ICAL CARE, FOR A FAMILY MEMBER OF THE EMPLOYEE MADE NECESSARY BY A SERI-
16 OUS HEALTH CONDITION OF THE FAMILY MEMBER; OR
17 B. TO BOND WITH THE EMPLOYEE'S CHILD DURING THE FIRST TWELVE MONTHS
18 AFTER THE CHILD'S BIRTH, OR THE FIRST TWELVE MONTHS AFTER THE PLACEMENT
19 OF THE CHILD FOR ADOPTION OR FOSTER CARE WITH THE EMPLOYEE.
20 16. "CHILD" MEANS A BIOLOGICAL, ADOPTED OR FOSTER CHILD, A STEP-CHILD,
21 A LEGAL WARD OR A CHILD OF A PERSON WHO STANDS IN PARENTAL RELATIONSHIP
22 TO THE CHILD WHO IS:
23 A. LESS THAN EIGHTEEN YEARS OF AGE; OR
24 B. EIGHTEEN YEARS OF AGE OR OLDER AND INCAPABLE OF SELF-CARE BECAUSE
25 OF A MENTAL OR PHYSICAL DISABILITY.
26 17. "DOMESTIC PARTNER" HAS THE SAME MEANING SET FORTH IN SUBDIVISION
27 ONE OF SECTION FOUR OF THIS CHAPTER.

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

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

3 A. REQUIRES INPATIENT CARE IN A HOSPITAL, HOSPICE OR RESIDENTIAL
4 HEALTH CARE FACILITY; OR

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

6 19. "PARENT" MEANS A BIOLOGICAL OR ADOPTIVE PARENT OR STEP-PARENT OF
7 AN EMPLOYEE, OR A PERSON WHO STOOD IN PARENTAL RELATIONSHIP TO AN
8 EMPLOYEE WHEN THE EMPLOYEE WAS:

9 A. LESS THAN EIGHTEEN YEARS OF AGE; OR

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

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

14 21. "PERSONS WHO STAND IN PARENTAL RELATIONSHIP TO A CHILD" INCLUDE
15 THOSE WITH DAY-TO-DAY RESPONSIBILITIES TO CARE FOR AND PROVIDE FINANCIAL
16 SUPPORT OF A CHILD, OR, IN THE CASE OF AN EMPLOYEE, WHO HAD SUCH RESPON-
17 SIBILITY FOR THE EMPLOYEE WHEN THE EMPLOYEE WAS A CHILD. A BIOLOGICAL OR
18 LEGAL RELATIONSHIP SHALL NOT BE NECESSARY.

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

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

24 S 3. Section 202 of the workers' compensation law is amended by adding
25 a new subdivision 1-a to read as follows:

26 1-A. SOLELY FOR THE PURPOSES OF THE PROVISIONS OF THIS ARTICLE RELAT-
27 ING TO THE PROVISION OF BENEFITS, RIGHTS AND PRIVILEGES RELATING TO
28 FAMILY CARE LEAVE, "COVERED EMPLOYER" SHALL INCLUDE THE STATE OR ANY
29 POLITICAL OR CIVIL SUBDIVISION THEREOF, AND EMPLOYERS WITH TWENTY-FIVE
30 OR MORE EMPLOYEES.

31 S 4. The workers' compensation law is amended by adding two new
32 sections 203-a and 203-b to read as follows:

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

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

43 S 203-B. FAMILY CARE LEAVE. ANY ELIGIBLE EMPLOYEE OF A COVERED EMPLOY-
44 ER WHO TAKES FAMILY CARE LEAVE ON OR AFTER JANUARY FIRST, TWO THOUSAND
45 SIXTEEN UNDER THIS SECTION SHALL BE ENTITLED, ON RETURN FROM SUCH LEAVE,
46 TO BE RESTORED BY HIS OR HER EMPLOYER TO THE POSITION OF EMPLOYMENT HELD
47 BY THE EMPLOYEE WHEN THE LEAVE COMMENCED, OR TO BE RESTORED TO A COMPA-
48 RABLE POSITION WITH COMPARABLE EMPLOYMENT BENEFITS, PAY AND OTHER TERMS
49 AND CONDITIONS OF EMPLOYMENT. THE TAKING OF LEAVE FOR THE PURPOSE OF
50 FAMILY CARE SHALL NOT RESULT IN THE LOSS OF ANY EMPLOYMENT BENEFIT
51 ACCRUED PRIOR TO THE DATE ON WHICH THE LEAVE COMMENCED. NOTHING IN THIS
52 SECTION SHALL BE CONSTRUED TO ENTITLE ANY RESTORED EMPLOYEE TO THE
53 ACCRUAL OF ANY SENIORITY OR EMPLOYMENT BENEFITS DURING ANY PERIOD OF
54 LEAVE, OR ANY RIGHT, BENEFIT OR POSITION TO WHICH THE EMPLOYEE WOULD
55 HAVE BEEN ENTITLED HAD THE EMPLOYEE NOT TAKEN SUCH LEAVE. A VIOLATION OF
56 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 IF FULLY SET FORTH IN THIS SECTION.

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 FAMILY CARE LEAVE IS ENTITLED TO RECEIVE FOR DISABILITY COMMENCING ON OR AFTER JANUARY FIRST, TWO THOUSAND SIXTEEN, BUT BEFORE JANUARY FIRST, TWO THOUSAND SEVENTEEN, 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 DEPARTMENT 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 JANUARY FIRST, TWO THOUSAND SEVENTEEN, BUT BEFORE JANUARY FIRST, TWO THOUSAND EIGHTEEN, 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 DEPARTMENT 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 JANUARY FIRST, TWO THOUSAND EIGHTEEN 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 DEPARTMENT PURSUANT TO SUBDIVISION SIXTEEN OF SECTION TWO OF THIS CHAPTER.

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 FAMILY 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

1 under the care of a practitioner duly accredited by the church or denom-
2 ination, and provided such employee shall submit to all physical exam-
3 inations as required by this chapter[.];

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

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

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

19 9. FOR ANY DAY OF ABSENCE FROM WORK REQUIRED PURSUANT TO ANY DISCIPLI-
20 NARY PROCESS, OR, WITH REGARD TO FAMILY CARE BENEFITS, ANY DAY OF
21 ABSENCE FROM WORK RESULTING FOR INJURY, SICKNESS OR PREGNANCY OF THE
22 EMPLOYEE, INCLUDING ANY LEAVE TAKEN UNDER SECTION SEVENTY-THREE OR
23 SEVENTY-FIVE OF THE CIVIL SERVICE LAW.

24 S 7. The workers' compensation law is amended by adding a new section
25 205-a to read as follows:

26 S 205-A. RELATIONSHIP BETWEEN DISABILITY BENEFITS FOR FAMILY CARE AND
27 FOR THE EMPLOYEE'S OWN INJURY, SICKNESS OR PREGNANCY. THE RECEIPT OF
28 BENEFITS FOR DISABILITY RESULTING FROM INJURY, SICKNESS OR PREGNANCY OF
29 THE EMPLOYEE, SHALL NOT COUNT TOWARD ANY TIME LIMITATION UNDER SUBDIVI-
30 SION ONE OF SECTION TWO HUNDRED FIVE OF THIS ARTICLE ON THE RECEIPT OF
31 BENEFITS FOR FAMILY CARE, AND THE RECEIPT OF BENEFITS FOR FAMILY CARE
32 SHALL NOT COUNT TOWARD ANY TIME LIMITATION UNDER SUBDIVISION ONE OF
33 SECTION TWO HUNDRED FIVE OF THIS ARTICLE ON THE RECEIPT OF BENEFITS FOR
34 DISABILITY RESULTING FROM INJURY, SICKNESS OR PREGNANCY TO THE EMPLOYEE,
35 EXCEPT THAT AN EMPLOYEE MAY RECEIVE DISABILITY BENEFITS ON ONLY ONE
36 CLAIM AT ANY TIME.

37 S 8. Subdivision 3 of section 209 of the workers' compensation law, as
38 amended by chapter 415 of the laws of 1983, is amended and a new subdi-
39 vision 6 is added to read as follows:

40 3. The contribution of each such employee to the cost of disability
41 benefits provided by this article shall be one-half of one per centum of
42 the employee's wages paid to him on and after July first, nineteen
43 hundred fifty, but not in excess of sixty cents per week FOR THE COST OF
44 DISABILITY BENEFITS FOR INJURY, SICKNESS OR PREGNANCY OF THE EMPLOYEE.

45 6. EFFECTIVE DURING THE TWO THOUSAND SIXTEEN CALENDAR YEAR FAMILY CARE
46 BENEFITS SHALL BE PROVIDED AT NO COST TO AN ELIGIBLE EMPLOYEE THROUGH
47 THE STATE GENERAL FUND. THIS EXACT LEVEL OF FUNDING SHALL BE PROVIDED BY
48 THE STATE EACH CALENDAR YEAR FOR FAMILY CARE BENEFITS. DURING EVERY
49 SUBSEQUENT CALENDAR YEAR, THE CONTRIBUTION OF EACH SUCH EMPLOYEE TO THE
50 COST OF FAMILY CARE BENEFITS SHALL BE SET BY REGULATION OF THE SUPER-
51 INTENDENT OF FINANCIAL SERVICES. EMPLOYERS SHALL NOT CONTRIBUTE TOWARD
52 THE COST OF FAMILY CARE BENEFITS.

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

55 7. SUCH FAMILY CARE BENEFITS AS ARE PROVIDED FOR IN THIS ARTICLE SHALL
56 BE IN ADDITION TO, AND SHALL NOT AMEND, REPEAL OR REPLACE, THE TERMS OF

1 ANY AGREEMENT THAT IS COLLECTIVELY NEGOTIATED BETWEEN AN EMPLOYER AND AN
2 EMPLOYEE ORGANIZATION, INCLUDING AGREEMENT OR INTEREST ARBITRATION
3 AWARDS MADE PURSUANT TO ARTICLE FOURTEEN OF THE CIVIL SERVICE LAW.

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

14 S 10. The workers' compensation law is amended by adding a new section
15 211-a to read as follows:

16 S 211-A. PUBLIC EMPLOYEES; EMPLOYEE OPTION. 1. FOR PURPOSES OF THIS
17 SECTION:

18 (A) "PUBLIC EMPLOYEE" MEANS ANY EMPLOYEE OF THE STATE, ANY POLITICAL
19 SUBDIVISION OF THE STATE, A PUBLIC AUTHORITY, OR ANY OTHER GOVERNMENTAL
20 AGENCY OR INSTRUMENTALITY.

21 (B) "PUBLIC EMPLOYER" MEANS THE STATE, ANY POLITICAL SUBDIVISION OF
22 THE STATE, A PUBLIC AUTHORITY, OR ANY OTHER GOVERNMENTAL AGENCY OR
23 INSTRUMENTALITY THEREOF.

24 (C) "EMPLOYEE ORGANIZATION" SHALL HAVE THE MEANING SET FORTH IN
25 SECTION TWO HUNDRED ONE OF THE CIVIL SERVICE LAW.

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

31 3. AN EMPLOYEE ORGANIZATION MAY ELECT TO HAVE FAMILY CARE BENEFITS
32 PROVIDED ON BEHALF OF THE PUBLIC EMPLOYEES IT REPRESENTS:

33 (A) AT ANY TIME UPON NINETY DAYS NOTICE TO ANY PUBLIC EMPLOYER WHICH
34 IS NOT PROVIDING DISABILITY BENEFITS FOR INJURY, SICKNESS OR PREGNANCY
35 OF A PUBLIC EMPLOYEE UNDER SECTION TWO HUNDRED TWELVE OF THIS ARTICLE,
36 OR WHICH IS SELF-INSURED FOR SUCH BENEFITS;

37 (B) FOR ANY PUBLIC EMPLOYER WHICH IS PROVIDING DISABILITY BENEFITS FOR
38 INJURY, SICKNESS OR PREGNANCY OF A PUBLIC EMPLOYEE UNDER SECTION TWO
39 HUNDRED TWELVE OF THIS ARTICLE, UPON NOTICE AT LEAST NINETY DAYS PRIOR
40 TO THE EXPIRATION OF THE PUBLIC EMPLOYER'S INSURANCE POLICY FOR SUCH
41 BENEFITS, WHICH ELECTION SHALL BE EFFECTIVE ONLY FOR THE TIME PERIOD
42 COVERED BY ANY SUBSEQUENT POLICY OR RENEWAL; OR

43 (C) AT ANY TIME AS IS MUTUALLY AGREED UPON BETWEEN THE EMPLOYEE ORGAN-
44 IZATION AND ANY PUBLIC EMPLOYER. AN EMPLOYEE ORGANIZATION THAT HAS
45 ELECTED TO HAVE THE FAMILY CARE BENEFIT PROVIDED MAY OPT OUT OF IT WITH-
46 IN THE TIME PERIODS, AND EFFECTIVE UPON THE SAME DATES, SET FORTH IN
47 THIS PARAGRAPH.

48 4. IN THE ABSENCE OF ANY CONTRARY STATEMENT IN A COLLECTIVELY NEGOTI-
49 ATED AGREEMENT UNDER ARTICLE FOURTEEN OF THE CIVIL SERVICE LAW, A PUBLIC
50 EMPLOYER MAY REQUIRE PUBLIC EMPLOYEES WHO OPT IN UNDER THIS SECTION TO
51 CONTRIBUTE THE FAMILY CARE COST AS SET FORTH IN SECTION TWO HUNDRED NINE
52 OF THIS ARTICLE.

53 S 11. Subdivisions 1, 2, 3 and 4 of section 217 of the workers'
54 compensation law, subdivision 1 as amended by chapter 167 of the laws of
55 1999, subdivisions 2 and 3 as amended by chapter 270 of the laws of

1 1990, and subdivision 4 as added by chapter 600 of the laws of 1949, are
2 amended to read as follows:

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

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

20 (II) IN THE CASE OF FAMILY CARE FOR BONDING WITH A NEW CHILD, A BIRTH
21 CERTIFICATE, CERTIFICATE OF ADOPTION, OR OTHER COMPETENT EVIDENCE SHOW-
22 ING THAT THE EMPLOYEE IS THE PARENT OF A CHILD WITHIN TWELVE MONTHS OF
23 THAT CHILD'S BIRTH OR PLACEMENT FOR ADOPTION OR FOSTER CARE WITH THE
24 EMPLOYEE.

25 (B) Failure to furnish notice or proof within the time and in the
26 manner [above] provided IN PARAGRAPH (A) OF THIS SUBDIVISION shall not
27 invalidate the claim but no benefits shall be required to be paid for
28 any period more than two weeks prior to the date on which the required
29 proof is furnished unless it shall be shown to the satisfaction of the
30 chair not to have been reasonably possible to furnish such notice or
31 proof and that such notice or proof was furnished as soon as possible;
32 provided, however, that no benefits shall be paid unless the required
33 proof of disability is furnished within twenty-six weeks after commence-
34 ment of the period of disability. No limitation of time provided in
35 this section shall run as against any person who is mentally incompe-
36 tent, or physically incapable of providing such notice as a result of a
37 serious medical condition, or a minor so long as such person has no
38 guardian of the person and/or property.

39 2. An employee claiming benefits FOR THE EMPLOYEE'S INJURY, SICKNESS
40 OR PREGNANCY shall, as requested by the employer or carrier, submit
41 himself or herself at intervals, but not more than once a week, for
42 examination by a [physician or podiatrist or chiropractor or dentist or
43 psychologist or certified nurse midwife] RELEVANT HEALTH CARE PROVIDER
44 designated by the employer or carrier. All such examinations shall be
45 without cost to the employee and shall be held at a reasonable time and
46 place.

47 3. The chair may direct the claimant WHO SEEKS DISABILITY BENEFITS FOR
48 HIS OR HER INJURY, SICKNESS OR PREGNANCY to submit to examination by a
49 [physician or podiatrist or chiropractor or dentist or psychologist]
50 RELEVANT HEALTH CARE PROVIDER designated by him or her in any case in
51 which the claim to disability benefits is contested and in claims aris-
52 ing under section two hundred seven OF THIS ARTICLE, and in other cases
53 as the chair or board may require.

54 4. Refusal of the claimant without good cause to submit to any such
55 examination shall disqualify [him] THE CLAIMANT from all benefits here-

1 under for the period of such refusal, except as to benefits already
2 paid.

3 S 12. Subdivision 2 of section 229 of the workers' compensation law,
4 as added by chapter 271 of the laws of 1985, is amended to read as
5 follows:

6 2. (A) Whenever an employee of a covered employer who is eligible for
7 benefits under section two hundred four of this article shall be absent
8 from work due to a disability as defined in subdivision nine of section
9 two hundred one of this article for more than seven consecutive days,
10 the employer shall provide the employee with a written statement of the
11 employee's rights under this article in a form prescribed by [the chair-
12 man] CHAIR. The statement shall be provided to the employee within five
13 business days after the employee's seventh consecutive day of absence
14 due to disability or within five business days after the employer knows
15 or should know that the employee's absence is due to disability, which-
16 ever is later.

17 (B) EACH COVERED EMPLOYER SHALL PROVIDE EACH EMPLOYEE WITH A TYPEWRIT-
18 TEN, PRINTED OR ELECTRONIC NOTICE IN A FORM PRESCRIBED BY THE CHAIR,
19 STATING THAT THE EMPLOYER HAS PROVIDED FOR THE PAYMENT OF DISABILITY
20 BENEFITS AS REQUIRED BY THIS ARTICLE WITHIN THIRTY DAYS OF THE EFFECTIVE
21 DATE OF THIS PARAGRAPH. EACH COVERED EMPLOYER SHALL PROVIDE SUCH NOTICE
22 TO ALL NEW EMPLOYEES WITHIN THIRTY DAYS OF THEIR FIRST DAY OF WORK.

23 S 13. Subdivision 2 of section 76 of the workers' compensation law, as
24 added by chapter 600 of the laws of 1949, is amended to read as follows:

25 2. The purposes of the state insurance fund herein created are hereby
26 enlarged to provide [for the] insurance [by the state insurance fund of]
27 FOR the payment of the benefits required by section two hundred four of
28 this chapter, INCLUDING BENEFITS FOR FAMILY CARE PROVIDED EITHER IN THE
29 SAME POLICY WITH OR IN A SEPARATE POLICY FROM BENEFITS FOR DISABILITY
30 RESULTING FROM INJURY OR SICKNESS TO OR PREGNANCY OF AN EMPLOYEE, AND AS
31 PROVIDED PURSUANT TO SECTION TWO HUNDRED ELEVEN-A OF THIS CHAPTER. A
32 separate fund is hereby created within the state insurance fund, which
33 shall be known as the "disability benefits fund", and which shall
34 consist of all premiums received and paid into said fund on account of
35 such insurance, all securities acquired by and through the use of moneys
36 belonging to said fund and of interest earned upon moneys belonging to
37 said fund and deposited or invested as herein provided. Said disability
38 benefits fund shall be applicable to the payment of benefits, expenses
39 and assessments on account of insurance written pursuant to article nine
40 of this chapter.

41 S 14. Paragraph 3 of subsection (a) of section 1113 of the insurance
42 law is amended to read as follows:

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

56 S 15. This act shall take effect immediately.