

3301--A

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 -- recommitted to the Committee on Labor in accordance with Senate Rule 6, sec. 8 -- 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 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:

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

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1 A. LESS THAN EIGHTEEN YEARS OF AGE; OR

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

4 17. "DOMESTIC PARTNER" HAS THE SAME MEANING SET FORTH IN SUBDIVISION
5 ONE OF SECTION FOUR OF THIS CHAPTER.

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

8 A. REQUIRES INPATIENT CARE IN A HOSPITAL, HOSPICE OR RESIDENTIAL
9 HEALTH CARE FACILITY; OR

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

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

14 A. LESS THAN EIGHTEEN YEARS OF AGE; OR

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

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

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

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

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

29 S 3. Section 203 of the workers' compensation law, as amended by chap-
30 ter 436 of the laws of 1986, is amended to read as follows:

31 S 203. Employees eligible for benefits under section two hundred four
32 OF THIS ARTICLE. Employees in employment of a covered employer for four
33 or more consecutive weeks and employees in employment during the work
34 period usual to and available during such four or more consecutive weeks
35 in any trade or business in which they are regularly employed and in
36 which hiring from day to day of such employees is the usual employment
37 practice shall be eligible for disability AND FAMILY LEAVE benefits as
38 provided in section two hundred four OF THIS ARTICLE. EVERY SUCH
39 EMPLOYEE SHALL CONTINUE TO BE ELIGIBLE FOR FAMILY LEAVE BENEFITS ONLY
40 DURING EMPLOYMENT WITH A COVERED EMPLOYER. Every such employee shall
41 continue to be eligible FOR DISABILITY BENEFITS during such employment
42 and for a period of four weeks after such employment terminates regard-
43 less of whether the employee performs any work for remuneration or
44 profit in non-covered employment. If during such four week period the
45 employee performs any work for remuneration or profit for another
46 covered employer the employee shall become eligible for DISABILITY bene-
47 fits immediately with respect to that employment. In addition every such
48 employee who HAS PREVIOUSLY COMPLETED FOUR OR MORE CONSECUTIVE WEEKS IN
49 EMPLOYMENT WITH THE COVERED EMPLOYER AND returns to work with the same
50 employer after an agreed and specified unpaid leave of absence or vaca-
51 tion without pay shall become eligible for DISABILITY AND FAMILY LEAVE
52 benefits immediately with respect to such employment. An employee who
53 during a period in which he or she is eligible to receive benefits under
54 subdivision two of section two hundred seven OF THIS ARTICLE returns to
55 employment with a covered employer and an employee who is currently
56 receiving unemployment insurance benefits or benefits under section two

1 hundred seven OF THIS ARTICLE and who returns to employment with a
2 covered employer shall become eligible for DISABILITY benefits imme-
3 diately with respect to such employment. An employee regularly in the
4 employment of a single employer on a work schedule less than the employ-
5 er's normal work week shall become eligible for DISABILITY AND FAMILY
6 LEAVE benefits on the twenty-fifth day of such regular employment. An
7 employee who [becomes disabled while] IS eligible for DISABILITY AND
8 FAMILY LEAVE benefits in the employment of a covered employer shall not
9 be deemed, for the purposes of this article, to have such employment
10 terminated during any period he or she is eligible to receive benefits
11 under section two hundred four OF THIS ARTICLE with respect to such
12 employment.

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

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

19 2. NOTHING IN THIS SECTION SHALL BE DEEMED TO DIMINISH THE RIGHTS,
20 PRIVILEGES OR REMEDIES OF ANY EMPLOYEE UNDER ANY COLLECTIVE BARGAINING
21 AGREEMENT OR EMPLOYMENT CONTRACT; EXCEPT THAT THE INSTITUTION OF AN
22 ACTION IN ACCORDANCE WITH THIS SECTION SHALL BE DEEMED A WAIVER OF THE
23 RIGHTS AND REMEDIES AVAILABLE UNDER ANY OTHER CONTRACT OR COLLECTIVE
24 BARGAINING AGREEMENT.

25 S 203-B. FAMILY CARE LEAVE. ANY ELIGIBLE EMPLOYEE OF A COVERED EMPLOY-
26 ER WHO TAKES FAMILY CARE LEAVE ON OR AFTER JANUARY FIRST, TWO THOUSAND
27 SEVENTEEN UNDER THIS SECTION SHALL BE ENTITLED, ON RETURN FROM SUCH
28 LEAVE, TO BE RESTORED BY HIS OR HER EMPLOYER TO THE POSITION OF EMPLOY-
29 MENT HELD BY THE EMPLOYEE WHEN THE LEAVE COMMENCED, OR TO BE RESTORED TO
30 A COMPARABLE POSITION WITH COMPARABLE EMPLOYMENT BENEFITS, PAY AND OTHER
31 TERMS AND CONDITIONS OF EMPLOYMENT. THE TAKING OF LEAVE FOR THE PURPOSE
32 OF FAMILY CARE SHALL NOT RESULT IN THE LOSS OF ANY EMPLOYMENT BENEFIT
33 ACCRUED PRIOR TO THE DATE ON WHICH THE LEAVE COMMENCED. NOTHING IN THIS
34 SECTION SHALL BE CONSTRUED TO ENTITLE ANY RESTORED EMPLOYEE TO THE
35 ACCRUAL OF ANY SENIORITY OR EMPLOYMENT BENEFITS DURING ANY PERIOD OF
36 LEAVE, OR ANY RIGHT, BENEFIT OR POSITION TO WHICH THE EMPLOYEE WOULD
37 HAVE BEEN ENTITLED HAD THE EMPLOYEE NOT TAKEN SUCH LEAVE. A VIOLATION OF
38 THIS SECTION SHALL BE A VIOLATION OF SECTION ONE HUNDRED TWENTY OF THIS
39 CHAPTER, AND ALL REMEDIES AND PENALTIES AVAILABLE UNDER SECTION ONE
40 HUNDRED TWENTY OF THIS CHAPTER SHALL BE AVAILABLE FOR VIOLATIONS OF THIS
41 SECTION AS IF FULLY SET FORTH IN THIS SECTION.

42 S 5. Subdivision 2 of section 204 of the workers' compensation law, as
43 amended by chapter 38 of the laws of 1989, is amended and a new subdivi-
44 sion 3 is added to read as follows:

45 2. [The] FOR PURPOSES OF A DISABILITY DEFINED IN PARAGRAPH A OR B OF
46 SUBDIVISION NINE OF SECTION TWO HUNDRED ONE OF THIS ARTICLE, THE weekly
47 benefit which the disabled employee is entitled to receive for disabili-
48 ty commencing on or after May first, nineteen hundred eighty-nine shall
49 be one-half of the employee's weekly wage, but in no case shall such
50 benefit exceed one hundred seventy dollars; except that if the employ-
51 ee's average weekly wage is less than twenty dollars, the benefit shall
52 be such average weekly wage. The weekly benefit which the disabled
53 employee is entitled to receive for disability commencing on or after
54 July first, nineteen hundred eighty-four shall be one-half of the
55 employee's weekly wage, but in no case shall such benefit exceed one
56 hundred forty-five dollars; except that if the employee's average weekly

1 wage is less than twenty dollars, the benefit shall be such average
2 weekly wage. The weekly benefit which the disabled employee is entitled
3 to receive for disability commencing on or after July first, nineteen
4 hundred eighty-three and prior to July first, nineteen hundred eighty-
5 four shall be one-half of the employee's average weekly wage, but in no
6 case shall such benefit exceed one hundred thirty-five dollars nor be
7 less than twenty dollars; except that if the employee's average weekly
8 wage is less than twenty dollars the benefit shall be such average week-
9 ly wage. The weekly benefit which the disabled employee is entitled to
10 receive for disability commencing on or after July first, nineteen
11 hundred seventy-four, and prior to July first, nineteen hundred eighty-
12 three, shall be one-half of the employee's average weekly wage, but in
13 no case shall such benefit exceed ninety-five dollars nor be less than
14 twenty dollars; except that if the employee's average weekly wage is
15 less than twenty dollars, the benefit shall be such average weekly wage.
16 The weekly benefit which the disabled employee is entitled to receive
17 for disability commencing on or after July first, nineteen hundred
18 seventy and prior to July first, nineteen hundred seventy-four shall be
19 one-half of the employee's average weekly wage, but in no case shall
20 such benefit exceed seventy-five dollars nor be less than twenty
21 dollars; except that if the employee's average weekly wage is less than
22 twenty dollars the benefit shall be such average weekly wage. For any
23 period of disability less than a full week, the benefits payable shall
24 be calculated by dividing the weekly benefit by the number of the
25 employee's normal work days per week and multiplying the quotient by the
26 number of normal work days in such period of disability. The weekly
27 benefit for a disabled employee who is concurrently eligible for bene-
28 fits in the employment of more than one covered employer shall, within
29 the maximum and minimum herein provided, be one-half of the total of the
30 employee's average weekly wages received from all such covered employ-
31 ers, and shall be allocated in the proportion of their respective aver-
32 age weekly wage payments.

33 3. FOR PURPOSES OF A DISABILITY DEFINED IN PARAGRAPH C OF SUBDIVISION
34 NINE OF SECTION TWO HUNDRED ONE OF THIS ARTICLE, THE WEEKLY BENEFIT ON
35 WHICH AN EMPLOYEE ON FAMILY CARE LEAVE IS ENTITLED TO RECEIVE FOR DISA-
36 BILITY COMMENCING ON OR AFTER JANUARY FIRST, TWO THOUSAND SEVENTEEN
37 SHALL BE TWO-THIRDS OF THE EMPLOYEE'S AVERAGE WEEKLY WAGE, BUT IN NO
38 CASE SHALL SUCH BENEFIT EXCEED THIRTY-FIVE PERCENT OF THE STATEWIDE
39 AVERAGE WEEKLY WAGE AS DETERMINED BY THE DEPARTMENT PURSUANT TO SUBDIVI-
40 SION SIXTEEN OF SECTION TWO OF THIS CHAPTER. THE WEEKLY BENEFIT WHICH
41 THE DISABLED EMPLOYEE IS ENTITLED TO RECEIVE FOR DISABILITY COMMENCING
42 ON OR AFTER APRIL FIRST, TWO THOUSAND EIGHTEEN SHALL BE SEVENTY PERCENT
43 OF THE EMPLOYEE'S AVERAGE WEEKLY WAGE, BUT IN NO CASE SHALL SUCH BENEFIT
44 EXCEED FORTY PERCENT OF THE STATEWIDE AVERAGE WEEKLY WAGE AS DETERMINED
45 BY THE DEPARTMENT PURSUANT TO SUBDIVISION SIXTEEN OF SECTION TWO OF THIS
46 CHAPTER. THE WEEKLY BENEFIT WHICH THE DISABLED EMPLOYEE IS ENTITLED TO
47 RECEIVE FOR DISABILITY COMMENCING ON OR AFTER APRIL FIRST, TWO THOUSAND
48 NINETEEN SHALL BE SEVENTY-FIVE PERCENT OF THE EMPLOYEE'S AVERAGE WEEKLY
49 WAGE BUT IN NO CASE SHALL SUCH BENEFIT EXCEED FORTY-FIVE PERCENT OF THE
50 STATEWIDE AVERAGE WEEKLY WAGE AS DETERMINED BY THE DEPARTMENT PURSUANT
51 TO SUBDIVISION SIXTEEN OF SECTION TWO OF THIS CHAPTER. THE WEEKLY BENE-
52 FIT WHICH THE DISABLED EMPLOYEE IS ENTITLED TO RECEIVE FOR DISABILITY
53 COMMENCING ON OR AFTER APRIL FIRST, TWO THOUSAND TWENTY AND SUBSEQUENTLY
54 SHALL BE EIGHTY PERCENT OF THE EMPLOYEE'S AVERAGE WEEKLY WAGE BUT IN NO
55 CASE SHALL SUCH BENEFIT EXCEED FIFTY PERCENT OF THE STATEWIDE AVERAGE

1 WEEKLY WAGE AS DETERMINED BY THE DEPARTMENT PURSUANT TO SUBDIVISION
2 SIXTEEN OF SECTION TWO OF THIS CHAPTER.

3 S 6. Section 205 of the workers' compensation law, as added by chapter
4 600 of the laws of 1949, subdivision 1 as amended by chapter 651 of the
5 laws of 1958, subdivision 2 as amended by chapter 270 of the laws of
6 1990, subdivision 5 as amended by chapter 288 of the laws of 1970, and
7 subdivisions 3, 4, 5, 6, 7 and 8 as renumbered by chapter 352 of the
8 laws of 1981, is amended to read as follows:

9 S 205. Disabilities, FAMILY LEAVE and [disability] periods for which
10 benefits are not payable. 1. No employee shall be entitled to DISABILITY
11 benefits under this article:

12 [1. For] (A) FOR more than twenty-six weeks during a period of fifty-
13 two consecutive calendar weeks or during any one period of disability,
14 OR FOR MORE THAN TWENTY-SIX WEEKS MINUS ANY DAYS TAKEN FOR FAMILY LEAVE
15 DURING ANY FIFTY-TWO CONSECUTIVE CALENDAR WEEKS;

16 [2.] (B) for any period of disability during which an employee is not
17 under the care of a duly licensed [physician or with respect to disabil-
18 ity resulting from a condition of the foot which may lawfully be treated
19 by a duly registered and licensed podiatrist of the state of New York or
20 with respect to a disability resulting from a condition which may
21 lawfully be treated by a duly registered and licensed chiropractor of
22 the state of New York or with respect to a disability resulting from a
23 condition which may lawfully be treated by a duly licensed dentist of
24 the state of New York or with respect to a disability resulting from a
25 condition which may lawfully be treated by a duly registered and
26 licensed psychologist of the state of New York or with respect to a
27 disability resulting from a condition which may lawfully be treated by a
28 duly certified nurse midwife,] HEALTH CARE PROVIDER; AND for any period
29 of such disability during which an employee is neither under the care of
30 a physician nor a podiatrist, nor a chiropractor, nor a dentist, nor a
31 psychologist, nor a certified nurse midwife; and for any period of disa-
32 bility during which an employee who adheres to the faith or teachings of
33 any church or denomination and who in accordance with its creed, tenets
34 or principles depends for healing upon prayer through spiritual means
35 alone in the practice of religion, is not under the care of a practi-
36 tioner duly accredited by the church or denomination, and provided such
37 employee shall submit to all physical examinations as required by this
38 chapter.

39 2. NO EMPLOYEE SHALL BE ENTITLED TO FAMILY LEAVE BENEFITS UNDER THIS
40 ARTICLE:

41 (A) FOR MORE THAN TWELVE WEEKS DURING A PERIOD OF FIFTY-TWO CONSEC-
42 UTIVE CALENDAR WEEKS, OR WHEN AN EMPLOYEE HAS ALREADY RECEIVED
43 TWENTY-SIX WEEKS OF DISABILITY BENEFITS, OR FOR ANY PERIOD IN WHICH THE
44 FAMILY LEAVE COMBINED WITH THE DISABILITY BENEFITS PREVIOUSLY PAID
45 EXCEEDS TWENTY-SIX WEEKS DURING THE SAME FIFTY-TWO CONSECUTIVE CALENDAR
46 WEEKS;

47 (B) FOR ANY PERIOD OF FAMILY LEAVE WHEREIN THE NOTICE AND MEDICAL
48 CERTIFICATION AS PRESCRIBED BY THE CHAIR HAS NOT BEEN FILED. AT THE
49 DISCRETION OF THE CHAIR OR CHAIR'S DESIGNEE, THE FAMILY MEMBER WHO IS
50 THE RECIPIENT OF CARE MAY BE REQUIRED TO SUBMIT TO A PHYSICAL EXAMINA-
51 TION BY A QUALIFIED HEALTH CARE PROVIDER. SUCH EXAMINATION SHALL BE PAID
52 FOR BY THE CARRIER.

53 (C) AS A CONDITION OF AN EMPLOYEE'S INITIAL RECEIPT OF FAMILY LEAVE
54 BENEFITS DURING ANY TWELVE-MONTH PERIOD IN WHICH AN EMPLOYEE IS ELIGIBLE
55 FOR THESE BENEFITS, AN EMPLOYER MAY REQUIRE AN EMPLOYEE WHO HAS ACCRUED
56 BUT UNUSED VACATION TIME OR PERSONAL LEAVE AVAILABLE AT THE TIME OF USE

1 OF AVAILABLE FAMILY LEAVE TO CHOOSE WHETHER TO CHARGE TIME TO ACCRUED
2 BUT UNUSED VACATION OR PERSONAL LEAVE, AND RECEIVE FULL SALARY, OR TO
3 NOT CHARGE TIME TO ACCRUED BUT UNUSED VACATION OR PERSONAL LEAVE, AND
4 RECEIVE THE BENEFIT AS SET FORTH IN SECTION TWO HUNDRED FOUR OF THIS
5 ARTICLE. WITH THE ELECTION OF EITHER OPTION, THE EMPLOYEE SHALL RECEIVE
6 THE FULL PROTECTION OF THE REINSTATEMENT PROVISION SET FORTH IN SECTION
7 TWO HUNDRED THREE-B OF THIS ARTICLE, AND SHALL CONCURRENTLY USE AVAIL-
8 ABLE FAMILY MEDICAL LEAVE ACT AND PAID FAMILY LEAVE CREDITS. IN NO EVENT
9 CAN AN EMPLOYEE UTILIZE FAMILY LEAVE BEYOND THE TWELVE WEEKS PER ANY
10 FIFTY-TWO WEEK PERIOD SET FORTH IN THIS ARTICLE. THIS PARAGRAPH MAY NOT
11 BE CONSTRUED IN A MANNER THAT RELIEVES AN EMPLOYER OF ANY DUTY OF
12 COLLECTIVE BARGAINING THE EMPLOYER MAY HAVE WITH RESPECT TO THE SUBJECT
13 MATTER OF THIS PARAGRAPH.

14 3. NO EMPLOYEE SHALL BE ENTITLED TO DISABILITY OR FAMILY LEAVE BENE-
15 FITS UNDER THIS ARTICLE:

16 (A) for any disability occasioned by the wilful intention of the
17 employee to bring about injury to or the sickness of himself or another,
18 or resulting from any injury or sickness sustained in the perpetration
19 by the employee of an illegal act;

20 [4.] (B) for any day of disability OR FAMILY LEAVE during which the
21 employee performed work for remuneration or profit;

22 [5.] (C) for any day of disability OR FAMILY LEAVE for which the
23 employee is entitled to receive from his OR HER employer, or from a fund
24 to which the employer has contributed, remuneration or maintenance in an
25 amount equal to or greater than that to which he OR SHE would be enti-
26 tled under this article; but any voluntary contribution or aid which an
27 employer may make to an employee or any supplementary benefit paid to an
28 employee pursuant to the provisions of a collective bargaining agreement
29 or from a trust fund to which contributions are made pursuant to the
30 provisions of a collective bargaining agreement shall not be considered
31 as continued remuneration or maintenance for this purpose;

32 [6.] (D) for any period in respect to which such employee is subject
33 to suspension or disqualification of the accumulation of unemployment
34 insurance benefit rights, or would be subject if he OR SHE were eligible
35 for such benefit rights, except for ineligibility resulting from the
36 employee's disability;

37 [7.] (E) for any disability due to any act of war, declared or unde-
38 clared[, if such act shall occur after June thirtieth, nineteen hundred
39 fifty];

40 [8.] (F) for any disability OR FAMILY LEAVE commencing before the
41 employee becomes eligible to benefits [hereunder or commencing prior to
42 July first, nineteen hundred fifty, but this shall not preclude benefits
43 for recurrence after July first, nineteen hundred fifty, of a disability
44 commencing prior thereto] UNDER THIS SECTION.

45 4. AN EMPLOYEE WHO HAS GIVEN BIRTH SHALL SELECT WHETHER SHE WILL SEEK
46 BENEFITS PURSUANT TO SUBDIVISION ONE OR TWO OF THIS SECTION. AN EMPLOYEE
47 MAY NOT SEEK BENEFITS CONCURRENTLY UNDER BOTH SUBDIVISIONS ONE AND TWO
48 OF THIS SECTION FOLLOWING CHILDBIRTH.

49 S 7. Section 209 of the workers' compensation law, as added by chapter
50 600 of the laws of 1949, subdivision 3 as amended by chapter 415 of the
51 laws of 1983 and subdivision 4 as amended by chapter 134 of the laws of
52 1952, is amended to read as follows:

53 S 209. Contribution of employees for disability AND FAMILY LEAVE bene-
54 fits. 1. Every employee in the employment of a covered employer shall[,
55 on and after January first, nineteen hundred fifty,] contribute to the
56 cost of providing disability AND AFTER JANUARY FIRST, TWO THOUSAND

1 SEVENTEEN, FAMILY LEAVE benefits under this article, to the extent and
2 in the manner herein provided.

3 2. The special contribution of each such employee to the accumulation
4 of funds to provide benefits for disabled unemployed shall be as
5 provided in subdivision one of section two hundred fourteen OF THIS
6 ARTICLE.

7 3. (A) DISABILITY BENEFITS. The contribution of each such employee to
8 the cost of disability benefits provided by this article shall be one-
9 half of one per centum of the employee's wages paid to him OR HER on and
10 after July first, nineteen hundred fifty, but not in excess of sixty
11 cents per week.

12 (B) FAMILY LEAVE BENEFITS. ON SEPTEMBER FIRST, TWO THOUSAND SIXTEEN
13 AND ANNUALLY THEREAFTER THE SUPERINTENDENT OF FINANCIAL SERVICES SHALL
14 SET THE MAXIMUM EMPLOYEE CONTRIBUTION, USING THE REPORTS PROVIDED IN
15 SECTION TWO HUNDRED EIGHT OF THIS ARTICLE, AND CONSISTENT WITH THE PRIN-
16 CIPLE THAT THE COSTS OF FAMILY LEAVE SHOULD BE FUNDED ONE HUNDRED
17 PERCENT BY EMPLOYEE PAYROLL CONTRIBUTION.

18 4. Notwithstanding any other provision of law, the employer is author-
19 ized to collect from his employees, except as otherwise provided in any
20 plan or agreement under the provisions of subdivisions four or five of
21 section two hundred eleven, the contribution provided under subdivisions
22 two and three, through payroll deductions. If the employer shall not
23 make deduction for any payroll period he may thereafter, but not later
24 than one month after payment of wages, collect such contribution through
25 payroll deduction.

26 5. In collecting employee contributions through payroll deductions,
27 the employer shall act as the agent of his employees and shall use the
28 contributions only to provide disability benefits as required by this
29 article. After June thirtieth, nineteen hundred fifty, if the employer
30 is not providing, or to the extent that he is not then providing, for
31 the payment of disability benefits to his employees by insuring with the
32 state fund or with another insurance carrier, he shall keep the contrib-
33 utions of his employees as trust funds separate and apart from all other
34 funds of the employer. The payment of such contributions by the employer
35 to a carrier providing for the payment of such benefits shall discharge
36 the employer from responsibility with respect to such contributions.

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

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

44 8. NOTHING IN THIS ARTICLE SHALL REQUIRE AN EMPLOYER TO USE THE SAME
45 CARRIER TO PROVIDE BENEFITS REQUIRED BY OR PERMISSIBLE UNDER THIS ARTI-
46 CLE FOR DISABILITY RESULTING FROM INJURY, SICKNESS TO OR PREGNANCY OF
47 THE EMPLOYEE AS IT USES TO PROVIDE BENEFITS REQUIRED BY OR PERMISSIBLE
48 UNDER THIS ARTICLE FOR FAMILY CARE. AN EMPLOYER MAY USE A DIFFERENT
49 MEANS, AMONG THOSE SET FORTH IN SUBDIVISIONS ONE THROUGH FIVE OF THIS
50 SECTION, TO PROVIDE BENEFITS REQUIRED BY THIS ARTICLE FOR DISABILITY
51 RESULTING FROM INJURY OR SICKNESS TO OR PREGNANCY OF THE EMPLOYEE, FROM
52 THE MEANS USED TO PROVIDE BENEFITS REQUIRED BY THIS ARTICLE FOR FAMILY
53 CARE.

54 S 9. The workers' compensation law is amended by adding a new section
55 211-a to read as follows:

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

3 (A) "PUBLIC EMPLOYEE" MEANS ANY EMPLOYEE OF THE STATE, ANY POLITICAL
4 SUBDIVISION OF THE STATE, A PUBLIC AUTHORITY, OR ANY OTHER GOVERNMENTAL
5 AGENCY OR INSTRUMENTALITY.

6 (B) "PUBLIC EMPLOYER" MEANS THE STATE, ANY POLITICAL SUBDIVISION OF
7 THE STATE, A PUBLIC AUTHORITY, OR ANY OTHER GOVERNMENTAL AGENCY OR
8 INSTRUMENTALITY THEREOF.

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

11 2. PUBLIC EMPLOYERS SHALL PROVIDE BENEFITS FOR FAMILY CARE TO PUBLIC
12 EMPLOYEES WHERE AN EMPLOYEE ORGANIZATION THAT REPRESENTS THOSE PUBLIC
13 EMPLOYEES ELECTS TO HAVE FAMILY CARE BENEFITS PROVIDED IN ACCORDANCE
14 WITH THE PROCEDURES AND TERMS SET FORTH IN SUBDIVISION THREE OF THIS
15 SECTION.

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

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

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

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

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

38 S 10. Subdivisions 1, 2, 3 and 4 of section 217 of the workers'
39 compensation law, subdivision 1 as amended by chapter 167 of the laws of
40 1999, subdivisions 2 and 3 as amended by chapter 270 of the laws of
41 1990, and subdivision 4 as added by chapter 600 of the laws of 1949, are
42 amended to read as follows:

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

50 (I) IN THE CASE OF DISABILITY RESULTING FROM INJURY, SICKNESS OR PREG-
51 NANCY OF THE EMPLOYEE, a statement of disability by the employee's
52 attending [physician or attending podiatrist or attending chiropractor
53 or attending dentist or attending psychologist or attending certified
54 nurse midwife, or in the case of an employee who adheres to the faith or
55 teachings of any church or denomination, and who in accordance with its
56 creed, tenets or principles depends for healing upon prayer through

1 spiritual means alone in the practice of religion, by an accredited
2 practitioner, containing facts and opinions as to such disability in
3 compliance with regulations of the chair.] HEALTH CARE PROVIDER; AND

4 (II) IN THE CASE OF FAMILY CARE FOR BONDING WITH A NEW CHILD, A BIRTH
5 CERTIFICATE, CERTIFICATE OF ADOPTION, OR OTHER COMPETENT EVIDENCE SHOW-
6 ING THAT THE EMPLOYEE IS THE PARENT OF A CHILD WITHIN TWELVE MONTHS OF
7 THAT CHILD'S BIRTH OR PLACEMENT FOR ADOPTION OR FOSTER CARE WITH THE
8 EMPLOYEE.

9 (B) Failure to furnish notice or proof within the time and in the
10 manner [above] provided IN PARAGRAPH (A) OF THIS SUBDIVISION shall not
11 invalidate the claim but no benefits shall be required to be paid for
12 any period more than two weeks prior to the date on which the required
13 proof is furnished unless it shall be shown to the satisfaction of the
14 chair not to have been reasonably possible to furnish such notice or
15 proof and that such notice or proof was furnished as soon as possible;
16 provided, however, that no benefits shall be paid unless the required
17 proof of disability is furnished within twenty-six weeks after commence-
18 ment of the period of disability. No limitation of time provided in
19 this section shall run as against any person who is mentally incompe-
20 tent, or physically incapable of providing such notice as a result of a
21 serious medical condition, or a minor so long as such person has no
22 guardian of the person and/or property.

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

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

38 4. Refusal of the claimant without good cause to submit to any such
39 examination shall disqualify [him] THE CLAIMANT from all benefits here-
40 under for the period of such refusal, except as to benefits already
41 paid.

42 S 11. Subdivision 2 of section 229 of the workers' compensation law,
43 as added by chapter 271 of the laws of 1985, is amended to read as
44 follows:

45 2. (A) Whenever an employee of a covered employer who is eligible for
46 benefits under section two hundred four of this article shall be absent
47 from work due to a disability as defined in subdivision nine of section
48 two hundred one of this article for more than seven consecutive days,
49 the employer shall provide the employee with a written statement of the
50 employee's rights under this article in a form prescribed by the [chair-
51 man] CHAIR. The statement shall be provided to the employee within five
52 business days after the employee's seventh consecutive day of absence
53 due to disability or within five business days after the employer knows
54 or should know that the employee's absence is due to disability, which-
55 ever is later.

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

7 S 12. Subdivision 2 of section 76 of the workers' compensation law, as
8 added by chapter 600 of the laws of 1949, is amended to read as follows:

9 2. The purposes of the state insurance fund herein created are hereby
10 enlarged to provide [for the] insurance [by the state insurance fund of]
11 FOR the payment of the benefits required by section two hundred four of
12 this chapter, INCLUDING BENEFITS FOR FAMILY CARE PROVIDED EITHER IN THE
13 SAME POLICY WITH OR IN A SEPARATE POLICY FROM BENEFITS FOR DISABILITY
14 RESULTING FROM INJURY OR SICKNESS TO OR PREGNANCY OF AN EMPLOYEE, AND AS
15 PROVIDED PURSUANT TO SECTION TWO HUNDRED ELEVEN-A OF THIS CHAPTER. A
16 separate fund is hereby created within the state insurance fund, which
17 shall be known as the "disability benefits fund", and which shall
18 consist of all premiums received and paid into said fund on account of
19 such insurance, all securities acquired by and through the use of moneys
20 belonging to said fund and of interest earned upon moneys belonging to
21 said fund and deposited or invested as herein provided. Said disability
22 benefits fund shall be applicable to the payment of benefits, expenses
23 and assessments on account of insurance written pursuant to article nine
24 of this chapter.

25 S 13. Paragraph 3 of subsection (a) of section 1113 of the insurance
26 law is amended to read as follows:

27 (3) "Accident and health insurance," means (i) insurance against death
28 or personal injury by accident or by any specified kind or kinds of
29 accident and insurance against sickness, ailment or bodily injury,
30 including insurance providing disability benefits pursuant to article
31 nine of the workers' compensation law, INCLUDING ANY INSURANCE UNDER
32 SUCH ARTICLE FOR FAMILY CARE BENEFITS, AND/OR DISABILITY BENEFITS
33 RESULTING FROM INJURY, SICKNESS OR PREGNANCY OF AN EMPLOYEE, except as
34 specified in item (ii) [hereof] OF THIS PARAGRAPH; and (ii) non-cancell-
35 able disability insurance, meaning insurance against disability result-
36 ing from sickness, ailment or bodily injury (but excluding insurance
37 solely against accidental injury) under any contract which does not give
38 the insurer the option to cancel or otherwise terminate the contract at
39 or after one year from its effective date or renewal date.

40 S 14. This act shall take effect immediately.