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I N S E N A T E

May 4, 2018

Introduced by Sen. FUNKE -- 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, in relation to paid family leave and bereavement

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

1 Section 1. Subdivision 15 of section 201 of the workers' compensation
2 law, as added by section 2 of part SS of chapter 54 of the laws of 2016,
3 is amended to read as follows:

4 15. "Family leave" shall mean any leave taken by an employee from
5 work: (a) to participate in providing care, including physical or
6 psychological care, for a family member of the employee made necessary
7 by a serious health condition of the family member INCLUDING BEREAVEMENT
8 UPON THE DEATH OF SUCH FAMILY MEMBER; or (b) to bond with the employee's
9 child during the first twelve months after the child's birth, or the
10 first twelve months after the placement of the child for adoption or
11 foster care with the employee; or (c) because of any qualifying exigency
12 as interpreted under the family and medical leave act, 29 U.S.C.S S
13 2612(a)(1)(e) and 29 C.F.R. S.825.126(a)(1)-(8), arising out of the fact
14 that the spouse, domestic partner, child, or parent of the employee is
15 on active duty (or has been notified of an impending call or order to
16 active duty) in the armed forces of the United States; OR (D) LEAVE
17 TAKEN FOR THE PURPOSES OF BEREAVEMENT DUE TO THE DEATH OF A FAMILY
18 MEMBER.

19 S 2. Paragraph (b) of subdivision 2 of section 205 of the workers'
20 compensation law, as added by section 6 of part SS of chapter 54 of the
21 laws of 2016, is amended to read as follows:

22 (b) For any period of family leave wherein the notice and medical
23 certification, OR DEATH CERTIFICATE, as prescribed by the chair has not
24 been filed. At the discretion of the chair or chair's designee pursuant
25 to section two hundred twenty-one of this article, the family member who
26 is the recipient of care may be required to submit to a physical exam-

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

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1 ination by a qualified health care provider UNLESS SUCH FAMILY MEMBER IS
2 UNABLE TO BE EXAMINED DUE TO DEATH. Such examination shall be paid for
3 by the carrier; and

4 S 3. Subdivision 5 of section 205 of the workers' compensation law, as
5 added by section 6 of part SS of chapter 54 of the laws of 2016, is
6 amended to read as follows:

7 5. In any case in which the necessity for family leave is foreseeable
8 based on an expected birth or placement, the employee shall provide the
9 employer with not less than thirty days notice before the date the leave
10 is to begin, of the employee's intention to take family leave under this
11 article, except that if the date of the birth or placement requires
12 leave to begin in less than thirty days, the employee shall provide such
13 notice as is practicable. In any case in which the necessity for family
14 leave is foreseeable based on planned medical treatment, the employee
15 shall provide the employer with not less than thirty days notice, before
16 the date the leave is to begin, of the employees intention to take fami-
17 ly leave under this article, except that if the date of the treatment
18 requires leave to begin in less than thirty days, the employee shall
19 provide such notice as is practicable. IN THE CASE OF FAMILY LEAVE DUE
20 TO BEREAVEMENT NOTICE SHALL BE PROVIDED AS SOON AS PRACTICABLE.

21 S 4. Subdivision 1 of section 217 of the workers' compensation law, as
22 amended by section 16 of part SS of chapter 54 of the laws of 2016, is
23 amended to read as follows:

24 1. Written notice and proof of disability or proof of need for family
25 leave shall be furnished to the employer by or on behalf of the employee
26 claiming benefits or, in the case of a claimant under section two
27 hundred seven of this article, to the chair, within thirty days after
28 commencement of the period of disability. Additional proof shall be
29 furnished thereafter from time to time as the employer or carrier or
30 chair may require but not more often than once each week. Such proof
31 shall include a statement of disability by the employee's attending
32 physician or attending podiatrist or attending chiropractor or attending
33 dentist or attending psychologist or attending certified nurse midwife
34 or family leave care recipient's health care provider, or in the case of
35 an employee who adheres to the faith or teachings of any church or
36 denomination, and who in accordance with its creed, tenets or principles
37 depends for healing upon prayer through spiritual means alone in the
38 practice of religion, by an accredited practitioner, containing facts
39 and opinions as to such disability in compliance with regulations of the
40 chair. IN THE EVENT THAT THE CLAIMANT IS ELIGIBLE FOR FAMILY LEAVE DUE
41 TO BEREAVEMENT, A DEATH CERTIFICATE SHALL SERVE AS PROOF OF NEED OF
42 LEAVE. Failure to furnish notice or proof within the time and in the
43 manner above provided shall not invalidate the claim but no benefits
44 shall be required to be paid for any period more than two weeks prior to
45 the date on which the required proof is furnished unless it shall be
46 shown to the satisfaction of the chair not to have been reasonably
47 possible to furnish such notice or proof and that such notice or proof
48 was furnished as soon as possible; provided, however, that no benefits
49 shall be paid unless the required proof of disability is furnished with-
50 in the period of actual disability or family leave that does not exceed
51 the statutory maximum period permitted under section two hundred four of
52 this article. No limitation of time provided in this section shall run
53 as against any disabled employee who is mentally incompetent, or phys-
54 ically incapable of providing such notice as a result of a serious
55 medical condition, or a minor so long as such person has no guardian of
56 the person and/or property.

1 S 5. Subdivisions 3 and 4 of section 217 of the workers' compensation
2 law, as amended by section 16 of part SS of chapter 54 of the laws of
3 2016, are amended to read as follows:

4 3. The chair or chair's designee, pursuant to section two hundred
5 twenty-one of this article, may direct the claimant or family leave care
6 recipient to submit to examination by a health care provider designated
7 by him or her in any case in which the claim to disability or family
8 leave benefits is contested and in claims arising under section two
9 hundred seven of this article, and in other cases as the chair or board
10 may require. IN THE EVENT THAT THE FAMILY MEMBER OR THE FAMILY LEAVE
11 CARE RECIPIENT IS UNABLE TO BE EXAMINED DUE TO DEATH, THIS SECTION SHALL
12 NOT APPLY.

13 4. Refusal of the claimant or family leave care recipient without good
14 cause to submit to any such examination shall disqualify the claimant or
15 employee from all benefits hereunder for the period of such refusal,
16 except as to benefits already paid. IN THE EVENT THAT THE FAMILY MEMBER
17 OR FAMILY LEAVE CARE RECIPIENT IS UNABLE TO BE EXAMINED DUE TO DEATH,
18 THIS SECTION SHALL NOT APPLY.

19 S 6. This act shall take effect immediately and shall apply to all
20 policies or contracts issued, renewed, modified, altered or amended on
21 or after January 1, 2020.