

# STATE OF NEW YORK

10639--A

## IN ASSEMBLY

May 10, 2018

Introduced by M. of A. MORELLE, D'URSO, DE LA ROSA, HEVESI, MAGNARELLI, COLTON, GOTTFRIED, BARRON, ABBATE, GALEF, JAFFEE, L. ROSENTHAL, ROZIC, BRONSON, M. L. MILLER -- Multi-Sponsored by -- M. of A. EPSTEIN, GIGLIO, SIMON, THIELE -- read once and referred to the Committee on Labor -- reported and referred to the Committee on Ways and Means -- 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 §  
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 § 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

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

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1 been filed. At the discretion of the chair or chair's designee pursuant  
2 to section two hundred twenty-one of this article, the family member who  
3 is the recipient of care may be required to submit to a physical exam-  
4 ination by a qualified health care provider unless such family member is  
5 unable to be examined due to death. Such examination shall be paid for  
6 by the carrier; and

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

10 5. In any case in which the necessity for family leave is foreseeable  
11 based on an expected birth or placement, the employee shall provide the  
12 employer with not less than thirty days notice before the date the leave  
13 is to begin, of the employee's intention to take family leave under this  
14 article, except that if the date of the birth or placement requires  
15 leave to begin in less than thirty days, the employee shall provide such  
16 notice as is practicable. In any case in which the necessity for family  
17 leave is foreseeable based on planned medical treatment, the employee  
18 shall provide the employer with not less than thirty days notice, before  
19 the date the leave is to begin, of the employees intention to take fami-  
20 ly leave under this article, except that if the date of the treatment  
21 requires leave to begin in less than thirty days, the employee shall  
22 provide such notice as is practicable. In the case of family leave due  
23 to bereavement notice shall be provided as soon as practicable.

24 § 4. Subdivision 1 of section 217 of the workers' compensation law, as  
25 amended by section 16 of part SS of chapter 54 of the laws of 2016, is  
26 amended to read as follows:

27 1. Written notice and proof of disability or proof of need for family  
28 leave shall be furnished to the employer by or on behalf of the employee  
29 claiming benefits or, in the case of a claimant under section two  
30 hundred seven of this article, to the chair, within thirty days after  
31 commencement of the period of disability. Additional proof shall be  
32 furnished thereafter from time to time as the employer or carrier or  
33 chair may require but not more often than once each week. Such proof  
34 shall include a statement of disability by the employee's attending  
35 physician or attending podiatrist or attending chiropractor or attending  
36 dentist or attending psychologist or attending certified nurse midwife  
37 or family leave care recipient's health care provider, or in the case of  
38 an employee who adheres to the faith or teachings of any church or  
39 denomination, and who in accordance with its creed, tenets or principles  
40 depends for healing upon prayer through spiritual means alone in the  
41 practice of religion, by an accredited practitioner, containing facts  
42 and opinions as to such disability in compliance with regulations of the  
43 chair. In the event that the claimant is eligible for family leave due  
44 to bereavement, a death certificate shall serve as proof of need of  
45 leave. Failure to furnish notice or proof within the time and in the  
46 manner above provided shall not invalidate the claim but no benefits  
47 shall be required to be paid for any period more than two weeks prior to  
48 the date on which the required proof is furnished unless it shall be  
49 shown to the satisfaction of the chair not to have been reasonably  
50 possible to furnish such notice or proof and that such notice or proof  
51 was furnished as soon as possible; provided, however, that no benefits  
52 shall be paid unless the required proof of disability is furnished with-  
53 in the period of actual disability or family leave that does not exceed  
54 the statutory maximum period permitted under section two hundred four of  
55 this article. No limitation of time provided in this section shall run  
56 as against any disabled employee who is mentally incompetent, or phys-

1 ically incapable of providing such notice as a result of a serious  
2 medical condition, or a minor so long as such person has no guardian of  
3 the person and/or property.

4 § 5. Subdivisions 3 and 4 of section 217 of the workers' compensation  
5 law, as amended by section 16 of part SS of chapter 54 of the laws of  
6 2016, are amended to read as follows:

7 3. The chair or chair's designee, pursuant to section two hundred  
8 twenty-one of this article, may direct the claimant or family leave care  
9 recipient to submit to examination by a health care provider designated  
10 by him or her in any case in which the claim to disability or family  
11 leave benefits is contested and in claims arising under section two  
12 hundred seven of this article, and in other cases as the chair or board  
13 may require. In the event that the family member or the family leave  
14 care recipient is unable to be examined due to death, this section shall  
15 not apply.

16 4. Refusal of the claimant or family leave care recipient without good  
17 cause to submit to any such examination shall disqualify the claimant or  
18 employee from all benefits hereunder for the period of such refusal,  
19 except as to benefits already paid. In the event that the family member  
20 or family leave care recipient is unable to be examined due to death,  
21 this section shall not apply.

22 § 6. This act shall take effect immediately and shall apply to all  
23 policies or contracts issued, renewed, modified, altered or amended on  
24 or after January 1, 2020.