

# STATE OF NEW YORK

8380

## IN SENATE

May 4, 2018

Introduced by Sen. FUNKE -- read twice and ordered printed, and when printed to be committed to the Committee on Labor

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 (a) of subdivision 2 of section 204 of the workers'  
20 compensation law, as added by section 5 of part SS of chapter 54 of the  
21 laws of 2016, is amended to read as follows:

22 (a) The weekly benefit for family leave that occurs (i) on or after  
23 January first, two thousand eighteen shall not exceed eight weeks during  
24 any fifty-two week calendar period and shall be fifty percent of the  
25 employee's average weekly wage but shall not exceed fifty percent of the  
26 state average weekly wage, (ii) on or after January first, two thousand  
27 nineteen shall not exceed ten weeks during any fifty-two week calendar  
28 period and shall be fifty-five percent of the employee's average weekly

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

LBD15544-02-8

1 wage but shall not exceed fifty-five percent of the state average weekly  
2 wage, (iii) on or after January first, two thousand twenty shall not  
3 exceed ten weeks during any fifty-two week calendar period, not includ-  
4 ing family leave due to bereavement, and shall be sixty percent of the  
5 employee's average weekly wage but shall not exceed sixty percent of the  
6 state average weekly wage, and (iv) on or after January first of each  
7 succeeding year, shall not exceed twelve weeks during any fifty-two week  
8 calendar period, not including family leave due to bereavement, and  
9 shall be sixty-seven percent of the employee's average weekly wage but  
10 shall not exceed sixty-seven percent of the New York state average week-  
11 ly wage in effect. On or after January first, two thousand twenty  
12 claimants who are eligible for family leave due to bereavement shall  
13 receive up to two weeks of family leave for bereavement during any  
14 fifty-two week calendar period and shall be sixty percent of the employ-  
15 ee's average weekly wage but shall not exceed sixty percent of the state  
16 average weekly wage, on or after January first, two thousand twenty-one  
17 claimants who are eligible for family leave due to bereavement shall  
18 receive up to four weeks of family leave for bereavement during any  
19 fifty-two week calendar period and shall be sixty-seven percent of the  
20 employee's average weekly wage but shall not exceed sixty-seven percent  
21 of the state average weekly wage, on or after January first of each  
22 succeeding year, claimants who are eligible for family leave due to  
23 bereavement shall receive up to six weeks of family leave for bereave-  
24 ment during any fifty-two week calendar period and shall be sixty-seven  
25 percent of the employee's average weekly wage but shall not exceed  
26 sixty-seven percent of the state average weekly wage in effect each  
27 year. The superintendent of financial services shall have discretion to  
28 delay the increases in the family leave benefit level provided in  
29 subparagraphs (ii), (iii), and (iv) of this paragraph by one or more  
30 calendar years. In determining whether to delay the increase in the  
31 family leave benefit for any year, the superintendent of financial  
32 services shall consider: (1) the current cost to employees of the family  
33 leave benefit and any expected change in the cost after the benefit  
34 increase; (2) the current number of insurers issuing insurance policies  
35 with a family leave benefit and any expected change in the number of  
36 insurers issuing such policies after the benefit increase; (3) the  
37 impact of the benefit increase on employers' business and the overall  
38 stability of the program to the extent that information is readily  
39 available; (4) the impact of the benefit increase on the financial  
40 stability of the disability and family leave insurance market and carri-  
41 ers; and (5) any additional factors that the superintendent of financial  
42 services deems relevant. If the superintendent of financial services  
43 delays the increase in the family leave benefit level for one or more  
44 calendar years, the family leave benefit level that shall take effect  
45 immediately following the delay shall be the same benefit level that  
46 would have taken effect but for the delay. The weekly benefits for fami-  
47 ly leave that occurs on or after January first, two thousand eighteen  
48 shall not be less than one hundred dollars per week except that if the  
49 employee's wages at the time of family leave are less than one hundred  
50 dollars per week, the employee shall receive his or her full wages.  
51 Benefits may be payable to employees for paid family leave taken inter-  
52 mittently or for less than a full work week in increments of one full  
53 day or one fifth of the weekly benefit.

54 § 3. Paragraphs (a) and (b) of subdivision 2 of section 205 of the  
55 workers' compensation law, as added by section 6 of part SS of chapter  
56 54 of the laws of 2016, are amended to read as follows:

(a) For more than [~~twelve weeks, or~~] the maximum duration permitted as set forth in paragraph (a) of subdivision two of section two hundred four of this article, during a period of fifty-two consecutive calendar weeks, or for any period in which the family leave combined with the disability benefits previously paid exceeds twenty-six weeks during the same fifty-two consecutive calendar weeks plus any family leave due to bereavement;

(b) For any period of family leave wherein the notice and medical certification, or death certificate, as prescribed by the chair has not been filed. At the discretion of the chair or chair's designee pursuant to section two hundred twenty-one of this article, the family member who is the recipient of care may be required to submit to a physical examination by a qualified health care provider unless such family member is unable to be examined due to death. Such examination shall be paid for by the carrier; and

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

5. In any case in which the necessity for family leave is foreseeable based on an expected birth or placement, the employee shall provide the employer with not less than thirty days notice before the date the leave is to begin, of the employee's intention to take family leave under this article, except that if the date of the birth or placement requires leave to begin in less than thirty days, the employee shall provide such notice as is practicable. In any case in which the necessity for family leave is foreseeable based on planned medical treatment, the employee shall provide the employer with not less than thirty days notice, before the date the leave is to begin, of the employees intention to take family leave under this article, except that if the date of the treatment requires leave to begin in less than thirty days, the employee shall provide such notice as is practicable. In the case of family leave due to bereavement notice shall be provided as soon as practicable.

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

1. Written notice and proof of disability or proof of need for family leave 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 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 family leave care recipient's health care provider, 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. In the event that the claimant is eligible for family leave due to bereavement, a death certificate shall serve as proof of need of leave. 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

1 the date on which the required proof is furnished unless it shall be  
2 shown to the satisfaction of the chair not to have been reasonably  
3 possible to furnish such notice or proof and that such notice or proof  
4 was furnished as soon as possible; provided, however, that no benefits  
5 shall be paid unless the required proof of disability is furnished with-  
6 in the period of actual disability or family leave that does not exceed  
7 the statutory maximum period permitted under section two hundred four of  
8 this article. No limitation of time provided in this section shall run  
9 as against any disabled employee who is mentally incompetent, or phys-  
10 ically incapable of providing such notice as a result of a serious  
11 medical condition, or a minor so long as such person has no guardian of  
12 the person and/or property.

13 § 6. Subdivisions 3 and 4 of section 217 of the workers' compensation  
14 law, as amended by section 16 of part SS of chapter 54 of the laws of  
15 2016, are amended to read as follows:

16 3. The chair or chair's designee, pursuant to section two hundred  
17 twenty-one of this article, may direct the claimant or family leave care  
18 recipient to submit to examination by a health care provider designated  
19 by him or her in any case in which the claim to disability or family  
20 leave benefits is contested and in claims arising under section two  
21 hundred seven of this article, and in other cases as the chair or board  
22 may require. In the event that the family member or the family leave  
23 care recipient is unable to be examined due to death, this section shall  
24 not apply.

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

31 § 7. This act shall take effect immediately and shall apply to all  
32 policies or contracts issued, renewed, modified, altered or amended on  
33 or after January 1, 2020.