STATE OF NEW YORK

10152

IN ASSEMBLY

March 17, 2020

Introduced by M. of A. NOLAN, CRESPO, HEASTIE, PEOPLES-STOKES, WEINSTEIN, ABBATE, AUBRY, BARRETT, BLAKE, BUCHWALD, BURKE, BUTTENSCHON, CAHILL, CARROLL, COLTON, COOK, CRUZ, DARLING, DAVILA, DE LA ROSA, DenDEKKER, DINOWITZ, ENGLEBRIGHT, EPSTEIN, FAHY, FERNANDEZ, GANTT, GLICK, GOTTFRIED, GRIFFIN, GUNTHER, HEVESI, JACOBSON, JAFFEE, JEAN-PIERRE, JOYNER, KIM, LAVINE, LENTOL, LIFTON, MAGNARELLI, McMAHON, M. G. MILLER, MOSLEY, NIOU, O'DONNELL, ORTIZ, OTIS, PAULIN, PICHARDO, PRETLOW, QUART, RAMOS, RICHARDSON, RIVERA, RODRIGUEZ, D. ROSENTHAL, L. ROSENTHAL, ROZIC, RYAN, SAYEGH, SEAWRIGHT, SIMON, SIMOTAS, SOLAGES, STECK, STERN, STIRPE, TAYLOR, THIELE, VANEL, WALLACE, WEPRIN, WILLIAMS, ZEBROWSKI -- (at request of the Governor) -- read once and referred to the Committee on Labor

AN ACT providing requirements for sick leave and the provision of certain employee benefits when such employee is subject to a mandatory or precautionary order of quarantine or isolation due to COVID-19; and to amend the labor law, in relation to requirements for sick leave

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. 1.(a) For employers with ten or fewer employees as of January 1, 2020, each employee who is subject to a mandatory or precautionary order of quarantine or isolation issued by the state of New York, the department of health, local board of health, or any governmental entity duly authorized to issue such order due to COVID-19, shall be provided with unpaid sick leave until the termination of any mandatory or precautionary order of quarantine or isolation due to COVID-19 and any other benefit as provided by any other provision of law. During the period of mandatory or precautionary quarantine or isolation, an employee shall be eligible for paid family leave benefits and benefits due pursuant to disability pursuant to this act. An employer with ten or fewer employees as of January 1, 2020, and that has a net income of greater than one million dollars in the previous tax year, shall provide each employee who is subject to a precautionary or mandatory order of quarantine or isolation issued by the state of New York, the department of health, local board of health, or any governmental entity duly

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

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authorized to issue such order due to COVID-19, at least five days of paid sick leave and unpaid leave until the termination of any mandatory or precautionary order of quarantine or isolation. After such five days of paid sick leave, an employee shall be eligible for paid family leave benefits and benefits due pursuant to disability pursuant to this act.

(b) For employers with between eleven and ninety-nine employees as of January 1, 2020, each employee who is subject to a mandatory or precautionary order of quarantine or isolation issued by the state of New York, the department of health, local board of health, or any governmental entity duly authorized to issue such order due to COVID-19, shall be provided with at least five days of paid sick leave and unpaid leave until the termination of any mandatory or precautionary order of quarantine or isolation. After such five days of paid sick leave, an employee shall be eligible for paid family leave benefits and benefits due pursuant to disability pursuant to this act.

(c) For employers with one hundred or more employees as of January 1, 2020, each employee who is subject to a mandatory or precautionary order of quarantine or isolation issued by the state of New York, the department of health, local board of health, or any governmental entity duly authorized to issue such order due to COVID-19, shall be provided with at least fourteen days of paid sick leave during any mandatory or precautionary order of quarantine or isolation.

(d) For public employers, each officer or employee who is subject to a mandatory or precautionary order of quarantine or isolation issued by the state of New York, the department of health, local board of health, or any governmental entity duly authorized to issue such order due to COVID-19 shall be provided with at least fourteen days of paid sick leave during any mandatory or precautionary order of quarantine or isolation. Each officer or employee shall be compensated at his or her regular rate of pay for those regular work hours during which the officer or employee is absent from work due to a mandatory or precautionary order of quarantine or isolation due to COVID-19. For purposes of this act, "public employer" shall mean the following: (i) the state; (ii) a county, city, town or village; (iii) a school district, board of cooperative educational services, vocational education and extension board or a school district as enumerated in section 1 of chapter 566 of the laws of 1967, as amended; (iv) any governmental entity operating a college or university; (v) a public improvement or special district including police or fire districts; (vi) a public authority, commission or public benefit corporation; or (vii) any other public corporation, agency, instrumentality or unit of government which exercises governmental power under the laws of this state.

(e) Such leave shall be provided without loss of an officer or employee's accrued sick leave.

2. For purposes of this act, "mandatory or precautionary order of quarantine or isolation" shall mean a mandatory or precautionary order of quarantine or isolation issued by the state of New York, the department of health, local board of health, or any government entity duly authorized to issue such order due to COVID-19.

3. Upon return to work following leave taken pursuant to this act, an employee shall be restored by his or her employer to the position of employment held by the employee prior to any leave taken pursuant to this act with the same pay and other terms and conditions of employment. No employer or his or her agent, or the officer or agent of any corporation, partnership, or limited liability company, or any other person, shall discharge, threaten, penalize, or in any other manner discriminate

or retaliate against any employee because such employee has taken leave pursuant to this act.

4. An employee shall not receive paid sick leave benefits or any other paid benefits provided by any provisions of this section if the employee is subject to a mandatory or precautionary order of quarantine because the employee has returned to the United States after traveling to a country for which the Centers for Disease Control and Prevention has a level two or three travel health notice and the travel to that country was not taken as part of the employee's employment or at the direction of the employee's employer, and if the employee was provided notice of the travel health notice and the limitations of this subdivision prior to such travel. Such employee shall be eligible to use accrued leave provided by the employer, or to the extent that such employee does not have accrued leave or sufficient accrued leave, unpaid sick leave shall be provided for the duration of the mandatory or precautionary quarantine or isolation.

5. The commissioner of labor shall have authority to adopt regulations, including emergency regulations, and issue guidance to effectuate any of the provisions of this act. Employers shall comply with regulations promulgated by the commissioner of labor for this purpose which may include, but is not limited to, standards for the use, payment, and employee eligibility of sick leave pursuant to this act.

6. Notwithstanding any other provision of law, and for purposes of this act only, for purposes of article 9 of the workers' compensation law, "disability" shall mean: any inability of an employee to perform the regular duties of his or her employment or the duties of any other employment which his or her employer may offer him or her as a result of a mandatory or precautionary order of quarantine or isolation issued by the state, the department of health, a local board of health, or any government entity duly authorized to issue such order due to COVID-19 and when the employee has exhausted all paid sick leave provided by the employee's employer under this act.

7. Notwithstanding subdivision 1 of section 204 of the workers' compensation law, disability benefits payable pursuant to this act shall be payable on the first day of disability.

8. Notwithstanding any other provision of law, and for purposes of this act only, for purposes of article 9 of the workers' compensation law, "family leave" shall mean: (a) any leave taken by an employee from work when an employee is subject to a mandatory or precautionary order of quarantine or isolation issued by the state, the department of health, a local board of health, or any government entity duly authorized to issue such order due to COVID-19; or (b) to provide care for a minor dependent child of the employee who is subject to a mandatory or precautionary order of quarantine or isolation issued by the state, the department of health, a local board of health, or any government entity duly authorized to issue such order due to COVID-19.

9. Notwithstanding any other provision of law, and for purposes of this act only, for purposes of article 9 of the workers' compensation law, disability and family leave benefits pursuant to this act may be payable concurrently to an eligible employee upon the first full day of an unpaid period of mandatory or precautionary order of quarantine or isolation issued by the state of New York, the department of health, a local board of health, or any government entity duly authorized to issue such order due to COVID-19, provided however, an employee may not collect any benefits that would exceed $840.70 in paid family leave and $2,043.92 in benefits due pursuant to disability per week.

10. Notwithstanding any other provision of law, and for purposes of this act only, for purposes of article 9 of the workers' compensation law, the maximum weekly benefit which the employee is entitled to receive for benefits due pursuant to disability pursuant to subdivision six of this section only shall be the difference between the maximum weekly family leave benefit and such employee's total average weekly wage from each covered employer up to a maximum benefit due pursuant to disability of $2,043.92 per week.

11. Notwithstanding subdivision 7 of section 590, and subdivision 2 of section 607, of the labor law, a claim for benefits under article 18 of the labor law due to closure of an employer otherwise subject to this section for a reason related to COVID-19 or due to a mandatory order of a government entity duly authorized to issue such order to close such employer otherwise subject to this section, shall not be subject to a waiting period for a claim for benefits pursuant to such title.

12. A mandatory or precautionary order of quarantine or isolation issued by the state, the department of health, a local board of health, or any government entity duly authorized to issue such order due to COVID-19 shall be sufficient proof of disability or proof of need for family leave taken pursuant to this act.

13. The provisions of this act shall not apply in cases where an employee is deemed asymptomatic or has not yet been diagnosed with any medical condition and is physically able to work while under a mandatory or precautionary order of quarantine or isolation, whether through remote access or other similar means.

14. Nothing in this section shall be deemed to impede, infringe, diminish or impair the rights of a public employee or employer under any law, rule, regulation or collectively negotiated agreement, or the rights and benefits which accrue to employees through collective bargaining agreements, or otherwise diminish the integrity of the existing collective bargaining relationship, or to prohibit any personnel action which otherwise would have been taken regardless of any request to use, or utilization of, any leave provided by this act.

15. Notwithstanding any inconsistent provision of law, on or before June 1, 2020, the superintendent of financial services by regulation, in consultation with the director of the state insurance fund and the chair of the workers' compensation board of the state, shall promulgate regulations necessary for the implementation of a risk adjustment pool to be administered directly by the superintendent of financial services, in consultation with the director of the state insurance fund and the chair of the workers' compensation board of the state. "Risk adjustment pool" as used in this subdivision shall mean the process used to stabilize member claims pursuant to this act in order to protect insurers from disproportionate adverse risks. Disproportionate losses of any members of the risk adjustment pool in excess of threshold limits established by the superintendent of financial services of the state may be supported, if required by the superintendent, by other members of such pool including the state insurance fund in a proportion to be determined by the superintendent. Any such support provided by members of the pool shall be fully repaid, including reasonable interest, through a mechanism and period of time to be determined by the superintendent of financial services.

16. (a) The superintendent of financial services, in consultation with the director of the state insurance fund and the chair of the workers' compensation board shall issue two reports assessing the risk adjustment pool required by this act.

(b) On or before January 1, 2022, an initial report shall be provided to the speaker of the assembly, the chair of the assembly ways and means committee and the chair of the assembly labor committee, the temporary president of the senate, the chair of the senate finance committee and the chair of the senate labor committee. Such report shall include: the total number of claims filed pursuant to this section for (i) family leave benefits, and (ii) benefits due to disability, as a result of a mandatory or precautionary order of quarantine or isolation due to COVID-19; the aggregate amount of paid family leave claims and disability claims; the total amount of the claims paid for out of the risk adjustment pool; the threshold limits established by the department of financial services; and any other information the superintendent of financial services deems necessary to provide to the legislature.

(c) On or before January 1, 2025, a final report shall be provided to the speaker of the assembly, the chair of the assembly ways and means committee and the chair of the assembly labor committee, the temporary president of the senate, the chair of the senate finance committee and the chair of the senate labor committee. Such report shall include the balance of the risk adjustment pool, if any, the total amount collected through the repayment mechanism established by the department of financial services including interest; and any other information the superintendent of financial services deems necessary to provide to the legislature. If there exists a balance in the risk adjustment pool, the final report shall provide a timeline by which repayment will be completed.

17. If at any point while this section shall be in effect the federal government by law or regulation provides sick leave and/or employee benefits for employees related to COVID-19, then the provisions of this section, including, but not limited to, paid sick leave, paid family leave, and benefits due to disability, shall not be available to any employee otherwise subject to the provisions of this section; provided, however, that if the provisions of this section would have provided sick leave and/or employee benefits in excess of the benefits provided by the federal government by law or regulation, then such employee shall be able to claim such additional sick leave and/or employee benefits pursuant to the provisions of this section in an amount that shall be the difference between the benefits available under this section and the benefits available to such employee, if any, as provided by such federal law or regulation.

§ 2. The labor law is amended by adding a new section 196-b to read as follows:

§ 196-b. Sick leave requirements. 1. Every employer shall be required to provide its employees with sick leave as follows:

a. For employers with four or fewer employees in any calendar year, each employee shall be provided with up to forty hours of unpaid sick leave in each calendar year; provided, however, an employer that employs four or fewer employees in any calendar year and that has a net income of greater than one million dollars in the previous tax year shall provide each employee with up to forty hours of paid sick leave pursuant to this section;

b. For employers with between five and ninety-nine employees in any calendar year, each employee shall be provided with up to forty hours of paid sick leave in each calendar year; and

c. For employers with one hundred or more employees in any calendar year, each employee shall be provided with up to fifty-six hours of paid sick leave each calendar year.

For purposes of determining the number of employees pursuant to this subdivision, a calendar year shall mean the twelve-month period from January first through December thirty-first. For all other purposes, a calendar year shall either mean the twelve-month period from January first through December thirty-first, or a regular and consecutive twelve-month period, as determined by an employer.

2. Nothing in this section shall be construed to prohibit or prevent an employer from providing an amount of sick leave, paid or unpaid, which is in excess of the requirements set forth in subdivision one of this section, or from adopting a paid leave policy that provides additional benefits to employees. An employer may elect to provide its employees with the total amount of sick leave required to fulfill its obligations pursuant to subdivision one of this section at the beginning of the calendar year, provided, however that no employer shall be permitted to reduce or revoke any such sick leave based on the number of hours actually worked by an employee during the calendar year if such employer elects pursuant to this subdivision.

3. Employees shall accrue sick leave at a rate of not less than one hour per every thirty hours worked, beginning at the commencement of employment or the effective date of this section, whichever is later, subject to the use and accrual limitations set forth in this section.

4. a. On and after January first, two thousand twenty-one and upon the oral or written request of an employee, an employer shall provide accrued sick leave for the following purposes:

(i) for a mental or physical illness, injury, or health condition of such employee or such employee's family member, regardless of whether such illness, injury, or health condition has been diagnosed or requires medical care at the time that such employee requests such leave;

(ii) for the diagnosis, care, or treatment of a mental or physical illness, injury or health condition of, or need for medical diagnosis of, or preventive care for, such employee or such employee's family member; or

(iii) for an absence from work due to domestic violence pursuant to subdivision thirty-four of section two hundred ninety-two of the executive law, a sexual offense, stalking, or human trafficking, for such employee to avail themselves or a family member of services or assistance including, but not limited to, to obtain services from a domestic violence shelter, rape crisis center, or other shelter or services program for relief from a family offense matter, sexual offense, stalking, or human trafficking; to participate in safety planning, temporarily or permanently relocate, or take other actions to increase the safety of the employee or employee's family members from future family offense matters, sexual offenses, stalking, or human trafficking; to meet with a civil attorney or other social services provider to obtain information and advice on, and prepare for or participate in any criminal or civil proceeding, including but not limited to, matters related to a family offense matter, sexual offense, stalking, human trafficking, custody, visitation, matrimonial issues, orders of protection, immigration, housing, discrimination in employment, housing or consumer credit; to file a complaint or domestic incident report with law enforcement; to meet with a district attorney's office; to enroll children in a new school; or to take other actions necessary to maintain, improve, or restore the physical, psychological, or economic health or safety of the employee or the employee's family member or to protect those who associate or work with the employee.

b. For purposes of this section, "family member" shall mean an employee's child, spouse, domestic partner, parent, sibling, grandchild or grandparent; and the child or parent of an employee's spouse or domestic partner. "Parent" shall mean a biological, foster, step- or adoptive parent, or a legal guardian of an employee, or a person who stood in loco parentis when the employee was a minor child. "Child" shall mean a biological, adopted or foster child, a legal ward, or a child of an employee standing in loco parentis.

5. a. An employer may not require the disclosure of confidential information relating to a mental or physical illness, injury, or health condition of such employee or such employee's family member, or information relating to absence from work due to domestic violence, a sexual offense, stalking, or human trafficking, as a condition of providing sick leave pursuant to this section.

b. An employer may set a reasonable minimum increment for the use of sick leave which shall not exceed four hours. Employees shall receive compensation at his or her regular rate of pay, or the applicable minimum wage established pursuant to section six hundred fifty-two of this chapter, whichever is greater, for the use of paid sick leave.

6. An employee's unused sick leave shall be carried over to the following calendar year, provided, however, that: (i) an employer with fewer than one hundred employees may limit the use of sick leave to forty hours per calendar year; and (ii) an employer with one hundred or more employees may limit the use of sick leave to fifty-six hours per calendar year. Nothing in this section shall be construed to require an employer to pay an employee for unused sick leave upon such employee's termination, resignation, retirement, or other separation from employment.

7. No employer or his or her agent, or the officer or agent of any corporation, partnership, or limited liability company, or any other person, shall discharge, threaten, penalize, or in any other manner discriminate or retaliate against any employee because such employee has exercised his or her rights afforded under this section, including, but not limited to, requesting sick leave and using sick leave, consistent with the provisions of section two hundred fifteen of this chapter.

8. An employer shall not be required to provide any additional sick leave pursuant to this section if the employer has adopted a sick leave policy or time off policy that provides employees with an amount of leave which meets or exceeds the requirements set forth in subdivision one of this section and satisfies the accrual, carryover, and use requirements of this section.

9. Nothing in this section shall be construed to: a. prohibit a collective bargaining agreement entered into, on or after the effective date of this section from, in lieu of the leave provided for in this section, providing a comparable benefit for the employees covered by such agreement in the form of paid days off; such paid days off shall be in the form of leave, compensation, other employee benefits, or some combination thereof; or

b. impede, infringe, or diminish the ability of a certified collective bargaining agent to negotiate the terms and conditions of sick leave different from the provisions of this section.

Provided, however, that in the case of either paragraph a or b of this subdivision, the agreement must specifically acknowledge the provisions of this section.

10. Upon return to work following any sick leave taken pursuant to this section, an employee shall be restored by his or her employer to

the position of employment held by such employee prior to any sick leave taken pursuant to this section with the same pay and other terms and conditions of employment.

11. Upon the oral or written request of an employee, an employer shall provide a summary of the amounts of sick leave accrued and used by such employee in the current calendar year and/or any previous calendar year. The employer shall provide such information to the employee within three business days of such request.

12. Nothing in this section shall be construed to prevent a city with a population of one million or more from enacting and enforcing local laws or ordinances which meet or exceed the standard or requirements for minimum hour and use set forth in this section, as determined by the commissioner. Any paid sick leave benefits provided by a sick leave program enforced by a municipal corporation in effect as of the effective date of this section shall not be diminished or limited as a result of the enactment of this section.

13. The commissioner shall have authority to adopt regulations and issue guidance to effectuate any of the provisions of this section. Employers shall comply with regulations and guidance promulgated by the commissioner for this purpose which may include but are not limited to standards for the accrual, use, payment, and employee eligibility of sick leave.

14. The department shall conduct a public awareness outreach campaign which shall include making information available on its website and otherwise informing employers and employees of the provisions of this section.

§ 3. Subdivision 4 of section 195 of the labor law, as amended by chapter 564 of the laws of 2010, is amended to read as follows:

4. establish, maintain and preserve for not less than six years contemporaneous, true, and accurate payroll records showing for each week worked the hours worked; the rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; gross wages; deductions; allowances, if any, claimed as part of the minimum wage; amount of sick leave provided to each employee; and net wages for each employee. For all employees who are not exempt from overtime compensation as established in the commissioner's minimum wage orders or otherwise provided by New York state law or regulation, the payroll records shall include the regular hourly rate or rates of pay, the overtime rate or rates of pay, the number of regular hours worked, and the number of overtime hours worked. For all employees paid a piece rate, the payroll records shall include the applicable piece rate or rates of pay and number of pieces completed at each piece rate;

§ 4. Severability clause. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

§ 5. This act shall take effect immediately; provided, however that sections two and three of this act shall take effect on the one hundred eightieth day after it shall have become a law; provided, further, that

the department of labor may promulgate rules and regulations to effectuate the purposes of this act, on or before such effective date.