

# STATE OF NEW YORK

8117--A

## IN SENATE

March 23, 2020

Introduced by Sens. MARTINEZ, BROOKS, GAUGHRAN, KAMINSKY -- read twice and ordered printed, and when printed to be committed to the Committee on Local Government -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general municipal law, in relation to presumption regarding impairment of health caused by COVID-19 and in relation to sick leave; and to amend the workers' compensation law, in relation to workers' compensation coverage and benefits for employees who participated in essential services during the COVID-19 outbreak

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

1 Section 1. The general municipal law is amended by adding a new  
2 section 207-r to read as follows:

3 § 207-r. Notwithstanding any provision of this chapter or of any  
4 general, special or local law to the contrary, and for the purposes of  
5 this chapter, any condition of impairment of health caused by COVID-19,  
6 resulting in total or partial disability, death, accidental disability  
7 or accidental death to any sheriff, undersheriff, deputy sheriff or  
8 corrections officer of the sheriff's department of any county, or any  
9 member of a police force of any county, city, town or village, or of any  
10 district, agency, board, body or commission thereof, or any LIRR police  
11 officer as defined in paragraph two of subdivision a of section three  
12 hundred eighty-nine of the retirement and social security law, or any  
13 paid officer or member of an organized fire company or fire  
14 department of a city, town, village or fire district, or emergency  
15 medical technician, advanced emergency medical technician or paramedic,  
16 whose benefits are provided in and pursuant to such section three  
17 hundred eighty-nine, or a detective-investigator or any other investi-  
18 gator who is a police officer pursuant to the provisions of the criminal  
19 procedure law employed in the office of a district attorney of any coun-  
20 ty, or any probation officer of any department, agency or service main-  
21 tained by any county or city, or any parole officer as defined by  
22 section ten of the correction law, or a peace officer employed by the  
23 unified court system or a member of the uniformed correction force of

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

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1 New York city department of correction or of the state or any municipi-  
2 palitiy, or police officer employed by the metropolitan transportation  
3 authority, or a police officer employed by the port authority of New  
4 York and New Jersey or police officer as defined in subdivision thirty-  
5 four of section 1.20 of the criminal procedure law, or members of the  
6 regional state park police, members of the division of law enforcement  
7 in the department of environmental conservation, members holding the  
8 position of forest ranger in the service of the department of environ-  
9 mental conservation, university police officers appointed by the state  
10 university as defined in the retirement and social security law whose  
11 benefits are provided in and pursuant to section three hundred eighty-  
12 three, three hundred eighty-three-a, three hundred eighty-three-b, three  
13 hundred eighty-three-c, or three hundred eighty-three-d of the retire-  
14 ment and social security law, troopers and trooper investigators, or any  
15 supervising fire inspector, fire inspector, fire marshal, or assistant  
16 fire marshal where such officer is exposed or comes into contact with  
17 COVID-19 and such member test positive for COVID-19, shall be presump-  
18 tive evidence that such permanent or partial disability or death (1) was  
19 caused by the natural and proximate exposure, not caused by the individ-  
20 ual's own negligence and (2) was incurred in the performance and  
21 discharge of duty and proximate result of an accident, unless the  
22 contrary be proven by competent evidence. Any individual pursuant to  
23 this section that is taken ill in the performance of his or her duties  
24 so as to necessitate medical or other lawful remedial treatment shall be  
25 paid by the municipality or the Long Island Rail Road Company, the port  
26 authority of New York and New Jersey or the metropolitan transportation  
27 authority by which he or she is employed the full amount of his or her  
28 regular salary or wages from such employer until his or her disability  
29 arising therefrom has ceased, in addition the municipality or the Long  
30 Island Rail Road Company, the port authority of New York and New Jersey  
31 or the metropolitan transportation authority shall be liable for fifty  
32 percent of all medical treatment and hospital care necessitated by such  
33 reason of illness and the state shall be liable for fifty percent.

34 § 2. The general municipal law is amended by adding a new section 92-e  
35 to read as follows:

36 § 92-e. Sick leave for officers and employees with COVID-19. 1.(a)  
37 Notwithstanding any other law, rule or regulation to the contrary, any  
38 sheriff, undersheriff, deputy sheriff or corrections officer of the  
39 sheriff's department of any county or any member of a police force of  
40 any county, city with a population of less than one million, town or  
41 village, or of any district, agency, board, body or commission thereof,  
42 or, any police officer whose benefits are provided in and pursuant to  
43 section three hundred eighty-three, three hundred eighty-three-a, three  
44 hundred eighty-three-b, three hundred eighty-three-c, or three hundred  
45 eighty-three-d of the retirement and social security law, troopers and  
46 trooper investigators, or any LIRR police officer as defined in para-  
47 graph two of subdivision a of section three hundred eighty-nine of the  
48 retirement and social security law, or any paid officer or member  
49 of an organized fire company or fire department of a city, town,  
50 village or fire district, or emergency medical technician, advanced  
51 emergency medical technician or paramedic, whose benefits are provided  
52 in and pursuant to such section three hundred eighty-nine, or a detec-  
53 tive-investigator or any other investigator who is a police officer  
54 pursuant to the provisions of the criminal procedure law employed in the  
55 office of a district attorney of any county, or probation officers of  
56 any department, agency or service maintained by any county or city, or

1 parole officers as defined by section ten of the correction law, or a  
2 peace officer employed by the unified court system or a member of the  
3 uniformed correction force of New York city department of correction or  
4 of the state or any municipality, or police officer employed by the  
5 metropolitan transportation authority, or a police officer employed by  
6 the port authority of New York and New Jersey or police officer as  
7 defined in subdivision thirty-four of section 1.20 of the criminal  
8 procedure law, or any supervising fire inspector, fire inspector, fire  
9 marshal, or assistant fire marshal who was exposed or came into contact  
10 with COVID-19 and such individual tests positive for COVID-19, as  
11 defined in section two hundred seven-r of this chapter, shall, after the  
12 receipt of a written request for line of duty sick leave, be granted  
13 line of duty sick leave commencing on the date that such employee was  
14 diagnosed with COVID-19. The individual shall be compensated at his or  
15 her regular rate of pay for those regular work hours during which the  
16 individual is absent from work due to his or her COVID-19. Such leave  
17 shall be provided without loss of an individual's accrued sick leave.

18 (b) A public employer shall not take any adverse personnel action  
19 against a public employee regarding the employee's employment because  
20 either (i) the employee utilizes, or requests to utilize, sick leave or  
21 any other available leave due to COVID-19, or (ii) the employee utilizes  
22 or requests to utilize line of duty sick leave provided by this section.

23 (c) For purposes of this section, an "adverse personnel action" means  
24 any discipline, including issuing a notice of discipline, discharge,  
25 suspension, demotion, penalization, or discrimination against an employ-  
26 ee utilizing line of duty sick leave pursuant to paragraph (a) of this  
27 subdivision.

28 Nothing in this section shall limit an employer's power pursuant to  
29 any other provision of law to discipline an individual by termination,  
30 reduction of salary, or any other appropriate measure; to terminate an  
31 appointee who has not completed his or her probationary term; and to  
32 apply for ordinary or accident disability retirement for an individual.

33 2. (a) Notwithstanding any other law, rule or regulation to the  
34 contrary, any sheriff, undersheriff, deputy sheriff or corrections offi-  
35 cer of the sheriff's department of any county or any member of a police  
36 force of any county, city with a population of one million or more, town  
37 or village, or of any district, agency, board, body or commission there-  
38 of, any police officer whose benefits are provided in and pursuant to  
39 section three hundred eighty-three, three hundred eighty-three-a, three  
40 hundred eighty-three-b, three hundred eighty-three-c, or three hundred  
41 eighty-three-d of the retirement and social security law, troopers and  
42 trooper investigators, or any LIRR police officer as defined in para-  
43 graph two of subdivision a of section three hundred eighty-nine of the  
44 retirement and social security law, or any paid officer or member  
45 of an organized fire company or fire department of a city, town,  
46 village or fire district, or emergency medical technician, advanced  
47 emergency medical technician or paramedic, whose benefits are provided  
48 in and pursuant to such section three hundred eighty-nine, or a detec-  
49 tive-investigator or any other investigator who is a police officer  
50 pursuant to the provisions of the criminal procedure law employed in the  
51 office of a district attorney of any county, or probation officers of  
52 any department, agency or service maintained by any county or city, or  
53 parole officers as defined by section ten of the correction law who (i)  
54 do not receive benefits similar to those provided by this section pursu-  
55 ant to a collectively bargained agreement, section 14-122.1 of the  
56 administrative code of the city of New York, section 15-108.1 of the

1 administrative code of the city of New York, or other statutory  
 2 provision and who was exposed or came into contact with COVID-19 and  
 3 such individual tests positive for COVID-19, as defined in section two  
 4 hundred seven-r of this chapter, shall, after the receipt of a written  
 5 request for line of duty sick leave, be granted line of duty sick leave  
 6 commencing on the date that such employee was diagnosed with COVID-19.  
 7 The individual shall be compensated at his or her regular rate of pay  
 8 for those regular work hours during which the individual is absent from  
 9 work due to his or her COVID-19. Such leave shall be provided without  
 10 loss of an individual's accrued sick leave.

11 (b) A public employer shall not take any adverse personnel action  
 12 against a public employee regarding the employee's employment because  
 13 either (i) the employee utilizes, or requests to utilize, sick leave or  
 14 any other available leave due to COVID-19, or (ii) the employee utilizes  
 15 or requests to utilize line of duty sick leave provided by this section.

16 (c) For purposes of this section, an "adverse personnel action" means  
 17 any discipline, including issuing a notice of discipline, discharge,  
 18 suspension, demotion, penalization, or discrimination against an employ-  
 19 ee utilizing line of duty sick leave pursuant to paragraph (a) of this  
 20 subdivision.

21 Nothing in this section shall limit an employer's power pursuant to  
 22 any other provision of law to discipline an individual by termination,  
 23 reduction of salary, or any other appropriate measure; to terminate an  
 24 appointee who has not completed his or her probationary term; and to  
 25 apply for ordinary or accident disability retirement for an individual.

26 3. For purposes of this section, "cost" shall mean the number of days  
 27 of sick leave that must be restored to an officer or employee pursuant  
 28 to subdivision one or two of this section multiplied by such individ-  
 29 ual's wage rate at the time that such sick leave for which reimbursement  
 30 is being sought was taken.

31 4. A request, for line of duty sick leave shall be in writing and  
 32 include a waiver of the protection afforded to the individual pursuant  
 33 to the health insurance portability and accountability act to allow  
 34 disclosure of the individual's exposure or contact with COVID-19 and  
 35 such individual's positive test for COVID-19 and any medical records  
 36 concerning such individual's employee's notice of exposure or contact  
 37 with COVID-19 and such individual's positive test for COVID-19 in the  
 38 possession of the retirement system in which such individual is a member  
 39 for the purpose of reviewing, processing and auditing his or her claim  
 40 for line of duty sick leave. Such waiver shall be in the form required  
 41 by the retirement system of which he or she is a member, along with the  
 42 application for line of duty sick leave, with his or her employer.

43 § 3. The workers' compensation law is amended by adding a new article  
 44 8-B to read as follows:

45 ARTICLE 8-B

46 ESSENTIAL EMPLOYEES DURING COVID-19 OUTBREAK

47 Section 180. Definitions.

48 181. Registration of participation in essential employee oper-  
 49 ations.

50 182. Notice.

51 183. Disablement of an essential employee during COVID-19  
 52 outbreak treated as an accident.

53 184. Reopening of disallowed claims.

54 185. Liability of employer and insurance carrier.

55 186. Claims of volunteers.

1     § 180. Definitions. 1. "Essential employee during COVID-19 outbreak"  
2 means an employee who worked at an essential business during the COVID-  
3 19 outbreak beginning January first, two thousand twenty, as defined by  
4 executive order 202.6 or guidance by Empire State Development, or  
5 received a waiver as an essential business from Empire State Develop-  
6 ment.

7     2. "Qualifying condition" means tests positive for COVID-19 while  
8 working for an essential employer during COVID-19 outbreak.

9     3. "Disablement" shall have the same meaning as defined in section  
10 thirty-seven of this chapter and determined by the board in the same  
11 manner as provided in section forty-two of this chapter.

12     § 181. Registration of participation in essential employee operations.  
13 In order for the claim of an essential employee during COVID-19 outbreak  
14 to come within the application of this article, such employee must file  
15 a written and sworn statement with the board on a form promulgated by  
16 the chair indicating the dates and locations of such participation and  
17 the name of the participant's employer during the period of partic-  
18 ipation. Such statement must be filed not later than December thirty-  
19 first, two thousand twenty-two. The board shall transmit a copy of such  
20 statement to the employer or carrier named therein. The filing of such a  
21 statement shall not be considered the filing of a claim for benefits  
22 under this chapter.

23     § 182. Notice. The notice requirements for injury or death resulting  
24 from a qualifying condition for an essential employee during COVID-19  
25 outbreak shall be the same as set forth in section eighteen of this  
26 chapter, except that the notice shall be given to the employer, or in  
27 the case of a volunteer, to the board, within two years after the disa-  
28 blement of the participant or after the participant knew or should have  
29 known that the qualifying condition was causally related to his or her  
30 employment as an essential employee during COVID-19, whichever is the  
31 later date.

32     § 183. Disablement of an essential employee during COVID-19 outbreak  
33 treated as an accident. The date of disablement of an essential employee  
34 during COVID-19 outbreak resulting from a qualifying condition that is  
35 causally related to such participation shall be treated as the happening  
36 of an accident within the meaning of this chapter and the procedure and  
37 practice provided in this chapter shall apply to all proceedings under  
38 this article, except where otherwise specifically provided in this arti-  
39 cle. The board shall determine the date of disablement that is most  
40 beneficial to the claimant.

41     § 184. Reopening of disallowed claims. The board, upon receiving a  
42 statement duly filed as required under section one hundred eighty-one of  
43 this article from an essential employee during the COVID-19 outbreak for  
44 a qualifying condition that was disallowed as barred by section eighteen  
45 or section twenty-eight of this chapter or by section one hundred eight-  
46 y-one of this article for failure to register timely, shall reopen and  
47 redetermine such claim in accordance with the provisions of this arti-  
48 cle; provided that no such previously disallowed claim for a qualifying  
49 condition shall be determined to have a date of disablement that would  
50 bar the claim under section eighteen or section twenty-eight of this  
51 chapter.

52     § 185. Liability of employer and insurance carrier. The employer in  
53 whose employment an essential employee is during the COVID-19 outbreak  
54 shall be liable for fifty percent of any claim for a qualifying condi-  
55 tion that is presumed to be causally related, under this section, to  
56 such employment and the state shall be liable for fifty percent of any

1 such claim; provided that such participation arose out of and in the  
2 course of such employment. For the purpose of determining which carrier  
3 has insurance coverage of such claim, the date of accident shall be  
4 considered the last day of such participation.

5 § 186. Claims of volunteers. For persons who participated at an essen-  
6 tial entity as volunteers at a non-profit organization providing essen-  
7 tial services, the uninsured employers' fund shall be deemed to be the  
8 employer for the purposes of administering and paying claims pursuant to  
9 this article. Benefits under this chapter shall be payable to such  
10 volunteers in the first instance and to the extent that funds are  
11 available. The uninsured employers' fund may pay for volunteers' medical  
12 treatment.

13 § 4. Section 15 of the workers' compensation law is amended by adding  
14 a new subdivision 3-a to read as follows:

15 3-a. Compensation for permanent or temporary partial disability, or  
16 for permanent or temporary total disability due to disablement resulting  
17 from a qualifying condition suffered by an employee who participated in  
18 essential operations during the COVID-19 outbreak as set forth in arti-  
19 cle eight-B of this chapter shall be eighty percent.

20 § 5. The state shall reimburse any public authority or municipal  
21 corporation of less than one million people for the cost of any line of  
22 duty sick leave granted pursuant to this act.

23 § 6. This act shall take effect immediately.