STATE OF NEW YORK

10153

IN ASSEMBLY

March 18, 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, D'URSO, FALL, BRONSON -- (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

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 authorized to issue such order due to COVID-19, at least five days of

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

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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. This act shall take effect immediately.