

STATE OF NEW YORK

10391

IN ASSEMBLY

May 4, 2020

Introduced by M. of A. STERN -- read once and referred to the Committee on Local Governments

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
24 New York city department of correction or of the state or any munici-
25 pality, or police officer employed by the metropolitan transportation

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

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

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

34 § 92-e. Sick leave for officers and employees with COVID-19. 1.(a)
35 Notwithstanding any other law, rule or regulation to the contrary, any
36 sheriff, undersheriff, deputy sheriff or corrections officer of the
37 sheriff's department of any county or any member of a police force of
38 any county, city with a population of less than one million, town or
39 village, or of any district, agency, board, body or commission thereof,
40 or, any police officer whose benefits are provided in and pursuant to
41 section three hundred eighty-three, three hundred eighty-three-a, three
42 hundred eighty-three-b, three hundred eighty-three-c, or three hundred
43 eighty-three-d of the retirement and social security law, troopers and
44 trooper investigators, or any LIRR police officer as defined in para-
45 graph two of subdivision a of section three hundred eighty-nine of the
46 retirement and social security law, or any paid officer or member
47 of an organized fire company or fire department of a city, town,
48 village or fire district, or emergency medical technician, advanced
49 emergency medical technician or paramedic, whose benefits are provided
50 in and pursuant to such section three hundred eighty-nine, or a detec-
51 tive-investigator or any other investigator who is a police officer
52 pursuant to the provisions of the criminal procedure law employed in the
53 office of a district attorney of any county, or probation officers of
54 any department, agency or service maintained by any county or city, or
55 parole officers as defined by section ten of the correction law, or a
56 peace officer employed by the unified court system or a member of the

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

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

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

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

31 2. (a) Notwithstanding any other law, rule or regulation to the
32 contrary, any sheriff, undersheriff, deputy sheriff or corrections offi-
33 cer of the sheriff's department of any county or any member of a police
34 force of any county, city with a population of one million or more, town
35 or village, or of any district, agency, board, body or commission there-
36 of, any police officer whose benefits are provided in and pursuant to
37 section three hundred eighty-three, three hundred eighty-three-a, three
38 hundred eighty-three-b, three hundred eighty-three-c, or three hundred
39 eighty-three-d of the retirement and social security law, troopers and
40 trooper investigators, or any LIRR police officer as defined in para-
41 graph two of subdivision a of section three hundred eighty-nine of the
42 retirement and social security law, or any paid officer or member
43 of an organized fire company or fire department of a city, town,
44 village or fire district, or emergency medical technician, advanced
45 emergency medical technician or paramedic, whose benefits are provided
46 in and pursuant to such section three hundred eighty-nine, or a detec-
47 tive-investigator or any other investigator who is a police officer
48 pursuant to the provisions of the criminal procedure law employed in the
49 office of a district attorney of any county, or probation officers of
50 any department, agency or service maintained by any county or city, or
51 parole officers as defined by section ten of the correction law who (i)
52 do not receive benefits similar to those provided by this section pursu-
53 ant to a collectively bargained agreement, section 14-122.1 of the
54 administrative code of the city of New York, section 15-108.1 of the
55 administrative code of the city of New York, or other statutory
56 provision and who was exposed or came into contact with COVID-19 and

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

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

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

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

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

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

41 § 3. The workers' compensation law is amended by adding a new article
 42 8-B to read as follows:

43 ARTICLE 8-B

44 ESSENTIAL EMPLOYEES DURING COVID-19 OUTBREAK

45 Section 180. Definitions.

46 181. Registration of participation in essential employee oper-
 47 ations.

48 182. Notice.

49 183. Disablement of an essential employee during COVID-19
 50 outbreak treated as an accident.

51 184. Reopening of disallowed claims.

52 185. Liability of employer and insurance carrier.

53 186. Claims of volunteers.

54 § 180. Definitions. 1. "Essential employee during COVID-19 outbreak"
 55 means an employee who worked at an essential business during the COVID-
 56 19 outbreak beginning January first, two thousand twenty, as defined by

1 executive order 202.6 or guidance by Empire State Development, or
2 received a waiver as an essential business from Empire State Develop-
3 ment.

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

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

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

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

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

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

49 § 185. Liability of employer and insurance carrier. The employer in
50 whose employment an essential employee is during the COVID-19 outbreak
51 shall be liable for fifty percent of any claim for a qualifying condi-
52 tion that is presumed to be causally related, under this section, to
53 such employment and the state shall be liable for fifty percent of any
54 such claim; provided that such participation arose out of and in the
55 course of such employment. For the purpose of determining which carrier

1 has insurance coverage of such claim, the date of accident shall be
2 considered the last day of such participation.

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

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

13 3-a. Compensation for permanent or temporary partial disability, or
14 for permanent or temporary total disability due to disablement resulting
15 from a qualifying condition suffered by an employee who participated in
16 essential operations during the COVID-19 outbreak as set forth in arti-
17 cle eight-B of this chapter shall be eighty percent.

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

21 § 6. This act shall take effect immediately.