

STATE OF NEW YORK

6061

2019-2020 Regular Sessions

IN SENATE

May 16, 2019

Introduced by Sen. GOUNARDES -- read twice and ordered printed, and when printed to be committed to the Committee on Civil Service and Pensions

AN ACT to amend the retirement and social security law and the workers' compensation law, in relation to participation in World Trade Center rescue, recovery or cleanup operations by members of the state police; and to repeal certain provisions of the retirement and social security law relating thereto

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

1 Section 1. Subparagraph (a) of paragraph 1 of subdivision h of section
2 363-bb of the retirement and social security law, as amended by chapter
3 93 of the laws of 2005, is amended to read as follows:

4 (a) Notwithstanding any provisions of this chapter or of any general,
5 special or local law, charter, administrative code or rule or regulation
6 to the contrary, any condition or impairment of health caused by a qual-
7 ifying condition or impairment of health resulting in disability to a
8 member who participated in World Trade Center rescue, recovery or clean-
9 up operations for a minimum of forty hours shall be presumptive evidence
10 that it was incurred in the performance and discharge of duty and the
11 natural and proximate result of an accident not caused by such member's
12 own willful negligence, unless the contrary be proved by competent
13 evidence. A member shall be eligible for the presumption provided for
14 under this paragraph notwithstanding the fact that the member did not
15 participate in World Trade Center recovery and cleanup operations for a
16 minimum of forty hours, provided that: (i) the member participated in
17 the rescue, recovery, or cleanup operations at the World Trade Center
18 site between September eleventh, two thousand one and September twelfth,
19 two thousand one; (ii) the member sustained a documented physical injury
20 at the World Trade Center site between September eleventh, two thousand
21 one and September twelfth, two thousand one that is a qualifying condi-
22 tion or impairment of health resulting in disability to the member that

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

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1 prevented the member from continuing to participate in World Trade
2 Center rescue, recovery or cleanup operations for a minimum of forty
3 hours; and (iii) the documented physical injury that resulted in a disa-
4 bility to the member that prevented the member from continuing to
5 participate in World Trade Center rescue, recovery or cleanup operations
6 for a minimum of forty hours is the qualifying condition or impairment
7 of health which the member seeks to be eligible for the presumption
8 provided for under this paragraph. A member shall also be eligible for
9 the presumption provided for under this paragraph notwithstanding the
10 fact that the member did not participate in World Trade Center recovery
11 and cleanup operations for a minimum of forty hours, provided that the
12 member drove, rode in, repaired, cleaned, rehabilitated, or otherwise
13 used or worked in vehicles or equipment, including emergency vehicle
14 radio equipment, owned by the state of New York that was contaminated by
15 debris in the World Trade Center site, as defined in paragraph (f) of
16 subdivision thirty-six of section two of this chapter, regardless of
17 whether the use of or work on such vehicles and equipment was performed
18 within the World Trade Center site, and provided such use or work
19 occurred prior to decontamination of such vehicles or equipment. Absent
20 proof to the contrary, contamination is presumed where such vehicles or
21 equipment were in service between September eleventh, two thousand one
22 and September eleventh, two thousand two and used in the World Trade
23 Center site. Furthermore, it is presumed a member who was a member of
24 the state police between September eleventh, two thousand one and
25 September eleventh, two thousand six, and occupied a position whose
26 duties would reasonably include use of or work on such contaminated
27 vehicles and equipment, drove, rode in, repaired, cleaned, rehabili-
28 tated, or otherwise used or worked on such contaminated vehicles and
29 equipment.

30 § 2. Subparagraph (d) of paragraph 1 of subdivision h of section 363-
31 bb of the retirement and social security law is REPEALED.

32 § 3. Subparagraph (e) of paragraph 1 of subdivision h of section 363-
33 bb of the retirement and social security law, as amended by chapter 495
34 of the laws of 2007, is amended to read as follows:

35 (e) In order to be eligible for consideration for such presumption,
36 such member must file a written and sworn statement with the member's
37 retirement system on a form provided by such system indicating the dates
38 and locations of employment. ~~[Such statement must be filed not later~~
39 ~~than four years following the effective date of chapter one hundred four~~
40 ~~of the laws of two thousand five.]~~

41 § 4. Subparagraph (a) of paragraph 2 of subdivision h of section 363-
42 bb of the retirement and social security law, as amended by chapter 93
43 of the laws of 2005, is amended to read as follows:

44 (a) Notwithstanding the provisions of this chapter or of any general,
45 special or local law, charter, administrative code or rule or regulation
46 to the contrary, if a member who participated in World Trade Center
47 rescue, recovery or cleanup operations for a minimum of forty hours, and
48 subsequently retired on a service retirement, an ordinary disability
49 retirement, a performance of duty disability retirement or a state
50 police disability retirement pursuant to section three hundred sixty-
51 three-b of this title and subsequent to such retirement incurred a disa-
52 bility caused by any qualifying condition or impairment of the health
53 which the comptroller determines to have been caused by such member's
54 having participated in World Trade Center rescue, recovery or cleanup
55 operations for a minimum of forty hours, upon such determination by the
56 comptroller it shall be presumed that such disability was incurred in

1 the performance and discharge of duty as the natural and proximate
2 result of an accident not caused by such member's own willful negli-
3 gence, and that the member would have been physically or mentally inca-
4 pacitated for the performance and discharge of duty of the position from
5 which he or she retired had the condition been known and fully developed
6 at the time of the member's retirement, unless the contrary is proven by
7 competent evidence. A member shall be eligible for the presumption
8 provided for under this paragraph notwithstanding the fact that the
9 member did not participate in World Trade Center rescue, recovery or
10 cleanup operations for a minimum of forty hours, provided that: (i) the
11 member participated in the rescue, recovery, or cleanup operations at
12 the World Trade Center site between September eleventh, two thousand one
13 and September twelfth, two thousand one; (ii) the member sustained a
14 documented physical injury at the World Trade Center site between
15 September eleventh, two thousand one and September twelfth, two thousand
16 one that is a qualifying condition or impairment of health resulting in
17 disability to the member that prevented the member from continuing to
18 participate in World Trade Center rescue, recovery or cleanup operations
19 for a minimum of forty hours; and (iii) the documented physical injury
20 that resulted in a disability to the member that prevented the member
21 from continuing to participate in World Trade Center rescue, recovery or
22 cleanup operations for a minimum of forty hours is the qualifying condi-
23 tion or impairment of health which the member seeks to be eligible for
24 the presumption provided for under this paragraph. A member shall also
25 be eligible for the presumption provided for under this paragraph
26 notwithstanding the fact that the member did not participate in World
27 Trade Center recovery and cleanup operations for a minimum of forty
28 hours, provided that the member drove, rode in, repaired, cleaned, reha-
29 bilitated, or otherwise used or worked in vehicles or equipment, includ-
30 ing emergency vehicle radio equipment, owned by the state of New York
31 that was contaminated by debris in the World Trade Center site, as
32 defined in paragraph (f) of subdivision thirty-six of section two of
33 this chapter, regardless of whether the use of or work on said vehicles
34 and equipment was performed within the World Trade Center site, and
35 provided such use or work occurred prior to decontamination of such
36 vehicles or equipment. Absent proof to the contrary, contamination is
37 presumed where such vehicles or equipment were in service between
38 September eleventh, two thousand one and September eleventh, two thou-
39 sand two and used in the World Trade Center site. Furthermore, it is
40 presumed that a member who was a member of the state police between
41 September eleventh, two thousand one and September eleventh, two thou-
42 sand six, and occupied a position whose duties would reasonably include
43 use of or work on such contaminated vehicles and equipment, drove, rode
44 in, repaired, cleaned, rehabilitated, or otherwise used or worked on
45 such contaminated vehicles and equipment.

46 § 5. Clause (i) of subparagraph (b) of paragraph 2 of subdivision h of
47 section 363-bb of the retirement and social security law, as amended by
48 chapter 495 of the laws of 2007, is amended to read as follows:

49 (i) the member files a written and sworn statement with the member's
50 retirement system on a form provided by such system indicating the dates
51 and locations of employment [~~within four years following the effective~~
52 ~~date of chapter one hundred four of the laws of two thousand five~~]; and

53 § 6. Subdivisions i and j of section 363-bb of the retirement and
54 social security law, subdivision i as amended and subdivision j as added
55 by chapter 5 of the laws of 2007, are amended to read as follows:

i. Notwithstanding any other provision of this chapter or of any general, special or local law, charter, administrative code or rule or regulation to the contrary, if a retiree who: (1) has met the criteria of subdivision h of this section and retired on a service or disability retirement, or would have met the criteria if not already retired on an accidental disability; and (2) has not been retired for more than twenty-five years; and (3) dies from a qualifying condition or impairment of health, as defined in subparagraph (c) of paragraph one of subdivision h of this section, that is determined by the applicable head of the retirement system or applicable medical board to have been caused by such retiree's participation in the World Trade Center rescue, recovery or cleanup operations, [~~as defined in subparagraph (d) of paragraph one of~~] or is otherwise eligible for the presumption as provided in subdivision h of this section, then unless the contrary be proven by competent evidence, such retiree shall be deemed to have died as a natural and proximate result of an accident sustained in the performance of duty and not as a result of willful negligence on his or her part. Such retiree's eligible beneficiary, as set forth in section three hundred sixty-one of this title, shall be entitled to an accidental death benefit as provided by section three hundred sixty-one of this title, however, for the purposes of determining the salary base upon which the accidental death benefit is calculated, the retiree shall be deemed to have died on the date of his or her retirement. Upon the retiree's death, the eligible beneficiary shall make a written application to the head of the retirement system within the time for filing an application for an accidental death benefit as set forth in section three hundred sixty-one of this title requesting conversion of such retiree's service or disability retirement benefit to an accidental death benefit. At the time of such conversion, the eligible beneficiary shall relinquish all rights to the prospective benefits payable under the service or disability retirement benefit, including any post-retirement death benefits, since the retiree's death. If the eligible beneficiary is not the only beneficiary receiving or entitled to receive a benefit under the service or disability retirement benefit (including, but not limited to, post-retirement death benefits or benefits paid or payable pursuant to the retiree's option selection), the accidental death benefit payments to the eligible beneficiary will be reduced by any amounts paid or payable to any other beneficiary.

j. Notwithstanding any other provision of this chapter or of any general, special or local law, charter, administrative code or rule or regulation to the contrary, if a member who: (1) has met the criteria of subdivision h of this section; and (2) dies in active service from a qualifying condition or impairment of health, as defined in subparagraph (c) of paragraph one of subdivision h of this section, that is determined by the applicable head of the retirement system or applicable medical board to have been caused by such member's participation in the World Trade Center rescue, recovery or cleanup operations, [~~as defined in subparagraph (d) of paragraph one of~~] or is otherwise eligible for the presumption as provided in subdivision h of this section, then unless the contrary be proven by competent evidence, such member shall be deemed to have died as a natural and proximate result of an accident sustained in the performance of duty and not as a result of willful negligence on his or her part. Such member's eligible beneficiary, as set forth in section three hundred sixty-one of this title, shall be entitled to an accidental death benefit provided he or she makes written application to the head of the retirement system within the time for

1 filing an application for an accidental death benefit as set forth in
2 section three hundred sixty-one of this title.

3 § 7. Subdivision 1 of section 161 of the workers' compensation law, as
4 added by chapter 446 of the laws of 2006, is amended to read as follows:

5 1. "Participant in World Trade Center rescue, recovery, or cleanup
6 operations" means any (a) employee who within the course of employment,
7 or (b) volunteer upon presentation to the board of evidence satisfactory
8 to the board that he or she:

9 (i) participated in the rescue, recovery, or cleanup operations at the
10 World Trade Center site between September eleventh, two thousand one and
11 September twelfth, two thousand two; or

12 (ii) worked at the Fresh Kills Land Fill in New York city between
13 September eleventh, two thousand one and September twelfth, two thousand
14 two[~~7~~]; or

15 (iii) worked at the New York city morgue or the temporary morgue on
16 pier locations on the west side of Manhattan between September eleventh,
17 two thousand one and September twelfth, two thousand two[~~7~~]; or

18 (iv) worked on the barges between the west side of Manhattan and the
19 Fresh Kills Land Fill in New York city between September eleventh, two
20 thousand one and September twelfth, two thousand two[~~7~~]; or

21 (v) as a member of the state police, drove, rode in, repaired,
22 cleaned, rehabilitated, or otherwise used or worked in vehicles or
23 equipment, including emergency vehicle radio equipment, owned by the
24 state of New York that was contaminated by debris in the World Trade
25 Center site, as defined in paragraph (f) of subdivision thirty-six of
26 section two of the retirement and social security law, regardless of
27 whether the use of or work on said vehicles and equipment was performed
28 within the World Trade Center site, provided such use or work occurred
29 prior to decontamination of such vehicles or equipment. Absent proof to
30 the contrary, contamination is presumed where such vehicles or equipment
31 were in service between September eleventh, two thousand one and Septem-
32 ber eleventh, two thousand two and used in the World Trade Center site.
33 Furthermore, it is presumed a member who was a member of the state
34 police between September eleventh, two thousand one and September elev-
35 enth, two thousand six, and occupied a position whose duties would
36 reasonably include use of or work on the contaminated vehicles and
37 equipment, drove, rode in, repaired, cleaned, rehabilitated, or other-
38 wise used or worked on such contaminated vehicles and equipment.

39 § 8. Notwithstanding any other provision to the contrary, none of the
40 provisions of this act shall be subject to section 25 of the retirement
41 and social security law.

42 § 9. This act shall take effect immediately and shall be deemed to
43 have been in full force and effect on and after September 11, 2001;
44 provided, however, that the amendments to section 161 of the workers'
45 compensation law made by section seven of this act shall apply to all
46 open and closed claims coming within the purview of the workers' compen-
47 sation board.