

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:

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

§ 207-r. Notwithstanding any provision of this chapter or of any general, special or local law to the contrary, and for the purposes of this chapter, any condition of impairment of health caused by COVID-19, resulting in total or partial disability, death, accidental disability or accidental death to any sheriff, undersheriff, deputy sheriff or corrections officer of the sheriff's department of any county, or any member of a police force of any county, city, town or village, or of any district, agency, board, body or commission thereof, or any LIRR police officer as defined in paragraph two of subdivision a of section three hundred eighty-nine of the retirement and social security law, or any paid officer or member of an organized fire company or fire department of a city, town, village or fire district, or emergency medical technician, advanced emergency medical technician or paramedic, whose benefits are provided in and pursuant to such section three hundred eighty-nine, or a detective-investigator or any other investigator who is a police officer pursuant to the provisions of the criminal procedure law employed in the office of a district attorney of any county, or any probation officer of any department, agency or service maintained by any county or city, or any parole officer as defined by section ten of the correction law, or a peace officer employed by the 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.

LBD15859-05-0

1 New York city department of correction or of the state or any municipi-
2 pality, 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:

ARTICLE 8-B

ESSENTIAL EMPLOYEES DURING COVID-19 OUTBREAK

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.