STATE OF NEW YORK

4560

2021-2022 Regular Sessions

IN ASSEMBLY

February 4, 2021

Introduced by M. of A. ASHBY -- read once and referred to the Committee on Labor

AN ACT to amend the workers' compensation law, in relation to paid family leave and bereavement for fetal death, still birth, and an infant being medically not viable to survive

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

Section 1. Subdivision 15 of section 201 of the workers' compensation law, as added by section 2 of part SS of chapter 54 of the laws of 2016, is amended to read as follows:

15. "Family leave" shall mean any leave taken by an employee from work: (a) to participate in providing care, including physical or psychological care, for a family member of the employee made necessary by a serious health condition of the family member; or (b) to bond with the employee's child during the first twelve months after the child's birth, or the first twelve months after the placement of the child for adoption or foster care with the employee; or (c) because of any qualifying exigency as interpreted under the family and medical leave act, 29 U.S.C.S § 2612(a)(1)(e) and 29 C.F.R. S.825.126(a)(1)-(8), arising out of the fact that the spouse, domestic partner, child, or parent of the employee is on active duty (or has been notified of an impending call or order to active duty) in the armed forces of the United States**; or (d) leave taken for the purposes of bereavement due to the fetal death or still birth of an infant born to the employee or the employee's spouse, or due to the employee's infant being declared medically not viable to survive birth by a physician licensed under article one hundred thirty-one of the education law**.

§ 2. Paragraph (b) of subdivision 2 of section 205 of the workers' compensation law, as added by section 6 of part SS of chapter 54 of the laws of 2016, is amended to read as follows:

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

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(b) For any period of family leave wherein the notice and medical certification**, fetal death certificate, certificate of still birth or death certificate,** as prescribed by the chair has not been filed. At the discretion of the chair or chair's designee pursuant to section two hundred twenty-one of this article, the family member who is the recipient of care may be required to submit to a physical examination by a qualified health care provider **unless such family member is unable to be examined due to death, fetal death, or still birth**. Such examination shall be paid for by the carrier; and

§ 3. Subdivision 5 of section 205 of the workers' compensation law, as added by section 6 of part SS of chapter 54 of the laws of 2016, is amended to read as follows:

5. In any case in which the necessity for family leave is foreseeable based on an expected birth or placement, the employee shall provide the employer with not less than thirty days notice before the date the leave is to begin, of the employee's intention to take family leave under this article, except that if the date of the birth or placement requires leave to begin in less than thirty days, the employee shall provide such notice as is practicable. In any case in which the necessity for family leave is foreseeable based on planned medical treatment, the employee shall provide the employer with not less than thirty days notice, before the date the leave is to begin, of the employees intention to take family leave under this article, except that if the date of the treatment requires leave to begin in less than thirty days, the employee shall provide such notice as is practicable. **In the case of family leave due to bereavement, notice shall be provided as soon as practicable.**

§ 4. Subdivision 1 of section 217 of the workers' compensation law, as amended by section 16 of part SS of chapter 54 of the laws of 2016, is amended to read as follows:

1. Written notice and proof of disability or proof of need for family leave shall be furnished to the employer by or on behalf of the employee claiming benefits or, in the case of a claimant under section two hundred seven of this article, to the chair, within thirty days after commencement of the period of disability. Additional proof shall be furnished thereafter from time to time as the employer or carrier or chair may require but not more often than once each week. Such proof shall include a statement of disability by the employee's attending physician or attending podiatrist or attending chiropractor or attending dentist or attending psychologist or attending certified nurse midwife or family leave care recipient's health care provider, or in the case of an employee who adheres to the faith or teachings of any church or denomination, and who in accordance with its creed, tenets or principles depends for healing upon prayer through spiritual means alone in the practice of religion, by an accredited practitioner, containing facts and opinions as to such disability in compliance with regulations of the chair. **In the event that the claimant is eligible for family leave due to bereavement, a fetal death certificate, certificate of still birth, or death certificate shall serve as proof of need of leave.** Failure to furnish notice or proof within the time and in the manner above provided shall not invalidate the claim but no benefits shall be required to be paid for any period more than two weeks prior to the date on which the required proof is furnished unless it shall be shown to the satisfaction of the chair not to have been reasonably possible to furnish such notice or proof and that such notice or proof was furnished as soon as possible; provided, however, that no benefits shall be paid unless the required proof of disability is furnished within the period of actual

disability or family leave that does not exceed the statutory maximum period permitted under section two hundred four of this article. No limitation of time provided in this section shall run as against any disabled employee who is mentally incompetent, or physically incapable of providing such notice as a result of a serious medical condition, or a minor so long as such person has no guardian of the person and/or property.

§ 5. Subdivisions 3 and 4 of section 217 of the workers' compensation law, as amended by section 16 of part SS of chapter 54 of the laws of 2016, are amended to read as follows:

3. The chair or chair's designee, pursuant to section two hundred twenty-one of this article, may direct the claimant or family leave care recipient to submit to examination by a health care provider designated by him or her in any case in which the claim to disability or family leave benefits is contested and in claims arising under section two hundred seven of this article, and in other cases as the chair or board may require. **In the event that the family member or the family leave care recipient is unable to be examined due to death, fetal death, or still birth, this section shall not apply.**

4. Refusal of the claimant or family leave care recipient without good cause to submit to any such examination shall disqualify the claimant or employee from all benefits hereunder for the period of such refusal, except as to benefits already paid. **In the event that the family member or family leave care recipient is unable to be examined due to death, fetal death, or still birth, this section shall not apply.**

§ 6. This act shall take effect immediately and shall apply to all policies or contracts issued, renewed, modified, altered or amended on or after January 1, 2022.