

# STATE OF NEW YORK

6865

2021-2022 Regular Sessions

## IN ASSEMBLY

April 13, 2021

Introduced by M. of A. CRUZ -- 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, miscarriage, stillbirth, 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:

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

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

21 § 2. Paragraph (b) of subdivision 2 of section 205 of the workers'  
22 compensation law, as added by section 6 of part SS of chapter 54 of the  
23 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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1 (b) For any period of family leave wherein the notice and medical  
2 certification, fetal death certificate, certificate of miscarriage,  
3 certificate of stillbirth or death certificate, as prescribed by the  
4 chair has not been filed. At the discretion of the chair or chair's  
5 designee pursuant to section two hundred twenty-one of this article, the  
6 family member who is the recipient of care may be required to submit to  
7 a physical examination by a qualified health care provider unless such  
8 family member is unable to be examined due to death, fetal death,  
9 miscarriage or stillbirth. Such examination shall be paid for by the  
10 carrier; and

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

14 5. In any case in which the necessity for family leave is foreseeable  
15 based on an expected birth or placement, the employee shall provide the  
16 employer with not less than thirty days notice before the date the leave  
17 is to begin, of the employee's intention to take family leave under this  
18 article, except that if the date of the birth or placement requires  
19 leave to begin in less than thirty days, the employee shall provide such  
20 notice as is practicable. In any case in which the necessity for family  
21 leave is foreseeable based on planned medical treatment, the employee  
22 shall provide the employer with not less than thirty days notice, before  
23 the date the leave is to begin, of the employees intention to take fami-  
24 ly leave under this article, except that if the date of the treatment  
25 requires leave to begin in less than thirty days, the employee shall  
26 provide such notice as is practicable. In the case of family leave due  
27 to bereavement, notice shall be provided as soon as practicable.

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

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

1 shall be paid unless the required proof of disability is furnished with-  
2 in the period of actual disability or family leave that does not exceed  
3 the statutory maximum period permitted under section two hundred four of  
4 this article. No limitation of time provided in this section shall run  
5 as against any disabled employee who is mentally incompetent, or phys-  
6 ically incapable of providing such notice as a result of a serious  
7 medical condition, or a minor so long as such person has no guardian of  
8 the person and/or property.

9 § 5. Subdivisions 3 and 4 of section 217 of the workers' compensation  
10 law, as amended by section 16 of part SS of chapter 54 of the laws of  
11 2016, are amended to read as follows:

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

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

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