STATE OF NEW YORK

9479

IN ASSEMBLY

March 7, 2022

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

AN ACT to amend the workers' compensation law, in relation to expand eligibility for temporary disability insurance and paid family leave benefits

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

Section 1. Subdivision 9 of section 201 of the workers' compensation law is amended by adding a new paragraph C to read as follows:

C. "Disability" also includes the inability of an employee to work in order to receive medical treatment for a serious health condition not arising out of and in the course of employment.

§ 2. Section 203 of the workers' compensation law, as amended by section 3 of part SS of chapter 54 of the laws of 2016, is amended to read as follows:

§ 203. Employees eligible for benefits under section two hundred four of this article. Employees in employment of a covered employer for four or more consecutive weeks and employees in employment during the work period usual to and available during such four or more consecutive weeks in any trade or business in which they are regularly employed and in which hiring from day to day of such employees is the usual employment practice shall be eligible for disability **and family leave** benefits as provided in section two hundred four of this article. [~~Employees in employment of a covered employer for twenty-six or more consecutive weeks and employees in employment during the work period usual to and available during such twenty-six or more consecutive weeks in any trade or business in which they are regularly employed and in which hiring from day to day of such employees is the usual employment practice shall be eligible for family leave benefits as provided in section two hundred four of this article. Every such employee shall continue to be eligible for family leave benefits only during employment with a covered employer.~~] Every such employee shall continue to be eligible for disability **and family leave** benefits during such employment and for a period of four weeks after such employment terminates regardless of whether the

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

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employee performs any work for remuneration or profit in non-covered employment. If during such four week period the employee performs any work for remuneration or profit for another covered employer the employee shall become eligible for disability **and family leave** benefits immediately with respect to that employment. In addition every such employee who has previously completed four or more consecutive weeks in employment with the covered employer for purposes of disability **and family leave** benefits[~~, or twenty-six or more consecutive weeks in employment with the covered employer for purposes of paid family leave,~~] and returns to work with the same employer after an agreed and specified unpaid leave of absence or vacation without pay shall become eligible for benefits immediately with respect to such employment. An employee who during a period in which he or she is eligible to receive benefits under subdivision two of section two hundred seven of this article returns to employment with a covered employer and an employee who is currently receiving unemployment insurance benefits or benefits under section two hundred seven of this article and who returns to employment with a covered employer shall become eligible for disability **and family leave** benefits immediately with respect to such employment. An employee regularly in the employment of a single employer on a work schedule less than the employer's normal work week shall become eligible for disability leave benefits on the twenty-fifth day of such regular employment [~~and for purposes of paid family leave an employer shall become eligible for benefits on the one hundred seventy-fifth day of such regular employment~~]. An employee who is eligible for disability and family leave benefits in the employment of a covered employer shall not be deemed, for the purposes of this article, to have such employment terminated during any period he or she is eligible to receive benefits under section two hundred four of this article with respect to such employment.

§ 3. Section 203-a of the workers' compensation law, as added by section 4 of part SS of chapter 54 of the laws of 2016, is amended to read as follows:

§ 203-a. Retaliatory action prohibited for **disability and** family leave. 1. The provisions of section one hundred twenty of this chapter and section two hundred forty-one of this article shall be applicable to **disability and** family leave.

2. Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any employee under any collective bargaining agreement or employment contract.

§ 4. Section 203-b of the workers' compensation law, as added by section 4 of part SS of chapter 54 of the laws of 2016, is amended to read as follows:

§ 203-b. Reinstatement following **disability or** family leave. Any eligible employee of a covered employer who takes leave**, including leave due to a disability,** under this article shall be entitled, on return from such leave, to be restored by the employer to the position of employment held by the employee when the leave commenced, or to be restored to a comparable position with comparable employment benefits, pay and other terms and conditions of employment. The taking of family leave **or leave due to a disability** shall not result in the loss of any employment benefit accrued prior to the date on which the leave commenced. Nothing in this section shall be construed to entitle any restored employee to the accrual of any seniority or employment benefits during any period of leave, or any right, benefit or position to which

the employee would have been entitled had the employee not taken the leave.

§ 5. Section 203-c of the workers' compensation law, as added by section 4 of part SS of chapter 54 of the laws of 2016, is amended to read as follows:

§ 203-c. Health insurance during **disability oroff;** family leave. In accordance with the Family and Medical Leave Act (29 U.S.C. §§ 2601-2654), during any period of **disability or** family leave the employer shall maintain any existing health benefits of the employee in force for the duration of such leave as if the employee had continued to work from the date he or she commenced **disability or** family leave until the date he or she returns to employment.

§ 6. Paragraph (b) of subdivision 2 of section 204 of the workers' compensation law, as amended by section 5 of part SS of chapter 54 of the laws of 2016, is amended to read as follows:

(b) **The weekly benefit which the disabled employee is entitled to receive for disability commencing on or after January first, two thousand twenty-three shall be sixty-seven percent of the employee's average weekly wage but shall not exceed sixty-seven percent of the New York state average weekly wage in effect; except that if the employee's average weekly wage is less than one hundred dollars, the benefit shall be such average weekly wage.** The weekly benefit which the disabled employee is entitled to receive for disability commencing on or after May first, nineteen hundred eighty-nine shall be one-half of the employee's weekly wage, but in no case shall such benefit exceed one hundred seventy dollars; except that if the employee's average weekly wage is less than twenty dollars, the benefit shall be such average weekly wage. The weekly benefit which the disabled employee is entitled to receive for disability commencing on or after July first, nineteen hundred eighty-four shall be one-half of the employee's weekly wage, but in no case shall such benefit exceed one hundred forty-five dollars; except that if the employee's average weekly wage is less than twenty dollars, the benefit shall be such average weekly wage. The weekly benefit which the disabled employee is entitled to receive for disability commencing on or after July first, nineteen hundred eighty-three and prior to July first, nineteen hundred eighty-four shall be one-half of the employee's average weekly wage, but in no case shall such benefit exceed one hundred thirty-five dollars nor be less than twenty dollars; except that if the employee's average weekly wage is less than twenty dollars the benefit shall be such average weekly wage. The weekly benefit which the disabled employee is entitled to receive for disability commencing on or after July first, nineteen hundred seventy-four, and prior to July first, nineteen hundred eighty-three, shall be one-half of the employee's average weekly wage, but in no case shall such benefit exceed ninety-five dollars nor be less than twenty dollars; except that if the employee's average weekly wage is less than twenty dollars, the benefit shall be such average weekly wage. The weekly benefit which the disabled employee is entitled to receive for disability commencing on or after July first, nineteen hundred seventy and prior to July first, nineteen hundred seventy-four shall be one-half of the employee's average weekly wage, but in no case shall such benefit exceed seventy-five dollars nor be less than twenty dollars; except that if the employee's average weekly wage is less than twenty dollars the benefit shall be such average weekly wage. For any period of disability less than a full week, the benefits payable shall be calculated by dividing the weekly benefit by the number of the employee's normal work days per week and multiplying the

quotient by the number of normal work days in such period of disability. The weekly benefit for a disabled employee who is concurrently eligible for benefits in the employment of more than one covered employer shall, within the maximum and minimum herein provided, be one-half of the total of the employee's average weekly wages received from all such covered employers, and shall be allocated in the proportion of their respective average weekly wage payments.

§ 7. Section 207 of the workers' compensation law, as added by chapter 600 of the laws of 1949, subdivisions 1 and 2 as amended by chapter 438 of the laws of 1964, subdivision 4 as amended by chapter 436 of the laws of 1986, and subdivision 5 as added by section 8 of part SS of chapter 54 of the laws of 2016, is amended to read as follows:

§ 207. Disability while unemployed. 1. Employees entitled to unemployment insurance benefits. An employee whose employment with a covered employer is terminated and who during a period of unemployment within twenty-six weeks immediately following such termination of employment shall become ineligible for benefits currently being claimed under the unemployment insurance law solely because of disability commencing after June thirtieth, nineteen hundred fifty **or need for family leave commencing after January first, two thousand twenty-three**, and who on the day such disability **or need for family leave** commences is not employed or working for remuneration or profit and is not then otherwise eligible for benefits under this article, shall be entitled to receive disability **or family leave** benefits as herein provided for each week of such disability **or need for family leave** for which week he would have received unemployment insurance benefits if he **or she** were not so disabled **or did not have such need for family leave**. The weekly benefit of such [~~disabled~~] employee shall be computed in the same manner as provided in subdivision two of section two hundred four **of this article**, and the benefits he **or she** is entitled to receive shall be subject to the limitations as to maximum and minimum amounts and duration and other conditions and limitations prescribed in sections two hundred four, two hundred five and two hundred six **of this article**.

2. Employees not eligible for unemployment insurance benefits. An employee whose employment with a covered employer is terminated and who was in employment of one or more covered employers and was paid wages of at least thirteen dollars in such employment in each of twenty calendar weeks during the thirty calendar weeks immediately preceding the date he **or she** last worked for such covered employer, and who during a period of unemployment within twenty-six weeks immediately following such termination of employment is not eligible to benefits under the unemployment insurance law because of lack of qualifying wages but who during unemployment has evidenced his **or her** continued attachment to the labor market, shall be eligible for benefits under the provisions of this subdivision for disability commencing after June thirtieth, nineteen hundred fifty **or need for family leave commencing after January first, two thousand twenty-three**. If such employee becomes disabled and continues to be disabled for at least eight consecutive days during such twenty-six week period and on the day such disability commences he **or she** is not employed or working for remuneration or profit and is not then otherwise eligible for benefits under this article, he **or she** shall be entitled to receive disability benefits, as herein provided, beginning with the eighth consecutive day of such disability, for each week of such disability thereafter. **If such employee has a need for family leave during such twenty-six week period and on the day such family leave commences such person is not employed or working for remuneration**

or profit and is not then otherwise eligible for benefits under this article, such person shall be entitled to receive family leave benefits, as herein provided for each week of such family leave thereafter. The weekly benefit of such [~~disabled~~] employee shall be computed in the same manner as provided in subdivision two of section two hundred four of this article, and the benefits he or she is entitled to receive shall be subject to the limitations as to maximum and minimum amounts and duration and other conditions and limitations prescribed in sections two hundred four, two hundred five and two hundred six of this article.

3. Payment of benefits. The benefits payable under this section shall be subject to the provisions and limitations generally applicable to disability and family leave benefits payable under this article, and shall be paid by the chairman out of any assets in the fund created by section two hundred fourteen. The chairman may require an employee claiming benefits under this section to file proofs of disability or need for family leave and of his or her employment and wages, and other proofs reasonably necessary for the chairman to make in the first instance the determination of eligibility and benefit rights under this section; and may require his or her employer or his or her former employer or employers to file reports of employment and wages and other information reasonably necessary for such determination. The chairman may make administrative regulations for such determinations. The chairman may also by regulation establish reasonable procedures for determining pro rata benefits payable with respect to disability or family leave periods of less than one week. Any employee claiming benefits under this section whose claim is rejected in whole or in part by the chairman, shall be entitled to request a review by the board and shall have all the rights with respect to contested claims provided in this article.

4. Qualification notwithstanding casual non-covered employment. An employment of not more than four weeks with a non-covered employer or employers occurring within such twenty-six weeks period shall not disqualify an employee from benefits provided such employee was otherwise eligible to receive benefits under this section at the time such employment for a non-covered employer commenced.

[~~5. The foregoing provisions of this section shall not apply to family leave benefits, as family leave benefits are not available to employees that are not employed at the time family leave is requested by filing the notice and medical certification required by the chair.~~]

§ 8. Paragraph (b) of subdivision 4 of section 212 of the workers' compensation law, as added by section 13 of part SS of chapter 54 of the laws of 2016, is amended to read as follows:

(b) Notwithstanding the definition of "employer" in section two hundred one of this article, a sole proprietor, member of a limited liability company or limited liability partnership, or other self-employed person may become a covered employer under this article by complying with the provisions of subdivision one of this section. A self-employed person who becomes a covered employer under this section shall become eligible for disability and family leave benefits no later than four weeks after the purchase of a policy of insurance under this article.

§ 9. Severability. If any clause, sentence, paragraph, subdivision or section of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judg-

ment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

§ 10. This act shall take effect on the sixtieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.