STATE OF NEW YORK

1968

2021-2022 Regular Sessions

IN SENATE

January 16, 2021

Introduced by Sen. BROOKS -- read twice and ordered printed, and when printed to be committed to the Committee on Labor

AN ACT to amend the workers' compensation law, in relation to family medical leave and military families

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.

§ 2. Subdivision 3 of section 212-b of the workers' compensation law, as added by section 14 of part SS of chapter 54 of the laws of 2016, is amended to read as follows:

3. (a) An employee organization may, pursuant to collective bargaining, opt in to paid family leave benefits on behalf of those public employees it is either certified or recognized to represent, within the meaning of article fourteen of the civil service law. Nothing in this section shall prohibit an agreement to opt in to paid family leave between the employee organization and any public employer. An employee organization that has opted in to paid family leave benefits may, pursu-

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

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ant to collective bargaining, opt out of it as is mutually agreed upon between the employee organization and any public employer.

[~~b.~~] **(b)** For public employees who are not represented by an employee organization, the public employer may opt-in to paid family leave benefits within ninety days notice to such public employees. Following opt-in by a public employer for public employees not represented by an employee organization, the public employer may opt-out of paid family leave benefits with twelve months notice to those public employees.

(c) (i) Notwithstanding the provisions of this section, every employer shall provide paid family leave benefits to the spouse, domestic partner, child, or parent of the employee who is on active duty (or has been notified of an impending call or order to active duty) in the armed forces, national guard or reserves in accordance with the applicable provisions of this article.

(ii) A covered servicemember or veteran is an eligible employee's spouse, parent, son, daughter, or next of kin who is a member of the armed forces, national guard or reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness that was incurred by the member in the line of duty on active duty in the armed forces (or existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the armed forces); or a veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness and who was a member of the armed forces (including a member of the national guard or reserves) at any time during the period of five years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy. Leave is available on an intermittent basis, as necessary.

(iii) Eligible employees are allowed up to twenty-six weeks of leave in a single twelve-month period per covered servicemember or veteran per injury. The twelve-month period must be measured forward from the start date of the first use of military caregiver leave. Additional periods of up to twenty-six weeks of leave may be taken in subsequent twelve-month periods to care for a different servicemember or veteran or to care for the same servicemember or veteran who has a subsequent serious illness or injury. A husband and wife, who are both employed by the same public employer, are limited to a combined twenty-six weeks of military caregiver leave in a single twelve-month period per servicemember or veteran, per injury.

(iv) An employee organization representing such employees may not opt-out of such coverage pursuant to a collective bargaining agreement.

§ 3. This act shall take effect immediately.