

# STATE OF NEW YORK

4743

2021-2022 Regular Sessions

## IN SENATE

February 10, 2021

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

AN ACT to amend the workers' compensation law and the tax law, in relation to expanding family leave eligibility to include participation in remote learning for certain employees who are the parents or guardians of certain children

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 to participate in remote learning where the employee has a child under  
17 the age of twelve or over the age of twelve who has special learning  
18 needs or has a medical or developmental disability requiring services or  
19 accommodations, and the school such child attends is physically closed  
20 during a pandemic or declared state disaster emergency as defined under  
21 section twenty-eight of the executive law or when the child participates  
22 in remote learning as a result of a declared state of disaster emergency  
23 as defined under section twenty-eight of the executive law.

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

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

4 § 203. 1. Employees eligible for benefits under section two hundred  
5 four of this article. Employees in employment of a covered employer for  
6 four or more consecutive weeks and employees in employment during the  
7 work period usual to and available during such four or more consecutive  
8 weeks in any trade or business in which they are regularly employed and  
9 in which hiring from day to day of such employees is the usual employ-  
10 ment practice shall be eligible for disability benefits as provided in  
11 section two hundred four of this article. Employees in employment of a  
12 covered employer for twenty-six or more consecutive weeks and employees  
13 in employment during the work period usual to and available during such  
14 twenty-six or more consecutive weeks in any trade or business in which  
15 they are regularly employed and in which hiring from day to day of such  
16 employees is the usual employment practice shall be eligible for family  
17 leave benefits as provided in section two hundred four of this article.  
18 Every such employee shall continue to be eligible for family leave bene-  
19 fits only during employment with a covered employer. Every such employee  
20 shall continue to be eligible for disability benefits during such  
21 employment and for a period of four weeks after such employment termi-  
22 nates regardless of whether the employee performs any work for remunera-  
23 tion or profit in non-covered employment. If during such four week peri-  
24 od the employee performs any work for remuneration or profit for another  
25 covered employer the employee shall become eligible for disability bene-  
26 fits immediately with respect to that employment. In addition every such  
27 employee who has previously completed four or more consecutive weeks in  
28 employment with the covered employer for purposes of disability bene-  
29 fits, or twenty-six or more consecutive weeks in employment with the  
30 covered employer for purposes of paid family leave, and returns to work  
31 with the same employer after an agreed and specified unpaid leave of  
32 absence or vacation without pay shall become eligible for benefits imme-  
33 diately with respect to such employment. An employee who during a period  
34 in which he or she is eligible to receive benefits under subdivision two  
35 of section two hundred seven of this article returns to employment with  
36 a covered employer and an employee who is currently receiving unemploy-  
37 ment insurance benefits or benefits under section two hundred seven of  
38 this article and who returns to employment with a covered employer shall  
39 become eligible for disability benefits immediately with respect to such  
40 employment. An employee regularly in the employment of a single employer  
41 on a work schedule less than the employer's normal work week shall  
42 become eligible for disability leave benefits on the twenty-fifth day of  
43 such regular employment and for purposes of paid family leave an employ-  
44 er shall become eligible for benefits on the one hundred seventy-fifth  
45 day of such regular employment. An employee who is eligible for disabil-  
46 ity and family leave benefits in the employment of a covered employer  
47 shall not be deemed, for the purposes of this article, to have such  
48 employment terminated during any period he or she is eligible to receive  
49 benefits under section two hundred four of this article with respect to  
50 such employment.

51 2. The chairman shall promulgate rules and regulations regarding  
52 eligibility of an employee for family leave pursuant to paragraph (d) of  
53 subdivision fifteen of section two hundred one of this article which  
54 shall include but not be limited to:

55 (a) Limiting eligibility for such family leave to periods where school  
56 is in session; and

1 (b) Limiting the eligibility for such family leave to one parent or  
2 legal guardian per household concurrently.

3 § 3. Subdivision 2 of section 204 of the workers' compensation law is  
4 amended by adding a new paragraph (a-1) to read as follows:

5 (a-1) (i) Notwithstanding any provision of law to the contrary, family  
6 leave taken pursuant to paragraph (d) of subdivision fifteen of section  
7 two hundred one of this article shall be taken on an hourly basis which  
8 shall not exceed a total of four hundred eighty hours in a single  
9 covered period and shall be sixty-seven percent of the employee's aver-  
10 age weekly wage but shall not exceed sixty-seven percent of the New York  
11 state average weekly wage in effect. Family leave benefits taken pursu-  
12 ant to paragraph (d) of subdivision fifteen of section two hundred one  
13 of this article shall not be counted against the maximum duration of  
14 benefits under paragraph (a) of this subdivision. Family leave benefits  
15 taken pursuant to paragraphs (a), (b), and (c) of subdivision fifteen of  
16 section two hundred one of this article shall not count against the  
17 maximum duration of benefits taken pursuant to this paragraph.

18 (ii) The benefits payable under this section for family leave benefits  
19 taken pursuant to paragraph (d) of subdivision fifteen of section two  
20 hundred one of this article shall be paid by the chairman out of any  
21 assets in the remote learning account in the fund created by section two  
22 hundred fourteen of this article. Family leave benefits taken pursuant  
23 to paragraph (d) of subdivision fifteen of section two hundred one of  
24 this article shall not be payable from any insurance carrier, employer,  
25 or plan under section two hundred eleven of this article. The chairman  
26 may require an employee claiming benefits under this section to file  
27 proofs of employment and wages, and other proofs reasonably necessary  
28 for the chairman to make in the first instance the determination of  
29 eligibility and benefit rights under this section; and may require the  
30 employer or former employer or employers of such employee to file  
31 reports of employment and wages and other information reasonably neces-  
32 sary for such determination. The chairman may make administrative regu-  
33 lations for such determinations. Any employee claiming benefits under  
34 this paragraph whose claim is rejected in whole or in part by the chair-  
35 man, shall be entitled to request a review by the board and shall have  
36 all the rights with respect to contested claims provided in this arti-  
37 cle.

38 § 4. Paragraph (b) of subdivision 3 of section 205 of the workers'  
39 compensation law, as amended by section 6 of part SS of chapter 54 of  
40 the laws of 2016, is amended to read as follows:

41 (b) for any day of disability or family leave during which the employ-  
42 ee performed work for remuneration or profit, provided however, that  
43 this paragraph shall not apply to family leave taken pursuant to para-  
44 graph (d) of subdivision fifteen of section two hundred one of this  
45 article;

46 § 5. Paragraph (d) of subdivision 3 of section 206 of the workers'  
47 compensation law, as added by section 7 of part SS of chapter 54 of the  
48 laws of 2016, is amended to read as follows:

49 (d) for any day in which claimant works at least part of that day for  
50 remuneration or profit for the covered employer or for any other employ-  
51 er while working for remuneration or profit, for him or herself, or  
52 another person or entity, during the same or substantially similar work-  
53 ing hours as those of the covered employer from which family leave bene-  
54 fits are claimed, except that occasional scheduling adjustments with  
55 respect to secondary employments shall not prevent receipt of family  
56 leave benefits, provided however, that this paragraph shall not apply to

1 family leave taken pursuant to paragraph (d) of subdivision fifteen of  
2 section two hundred one of this article.

3 § 6. The opening paragraph of section 214 of the workers' compensation  
4 law, as amended by section 26 of part GG of chapter 57 of the laws of  
5 2013, is amended and a new subdivision 4 is added to read as follows:

6 There is hereby created a fund which shall be known as the special  
7 fund for disability benefits to provide for the payment of disability  
8 benefits under sections two hundred seven, two hundred thirteen and  
9 attendance fees under section two hundred thirty-two of this article.

10 There is hereby created a subaccount within the fund to be known as the  
11 remote learning account to provide for the provision of family leave  
12 benefits pursuant to the provisions of paragraph (a-1) of subdivision  
13 two of section two hundred four of this article.

14 4. Any monies deposited into the remote learning account pursuant to  
15 section two hundred nine-a of the tax law shall not be commingled with  
16 any other assets of the fund, and shall not be utilized in the calcu-  
17 lation of the net assets of the fund for the purposes of subdivisions  
18 two and three of this section.

19 § 7. The tax law is amended by adding a new section 209-a to read as  
20 follows:

21 § 209-a. Remote learning surcharge. 1. For the privilege of exercising  
22 its corporate franchise, or of doing business, or of employing capital,  
23 or of owning or leasing property in this state in a corporate or organ-  
24 ized capacity, or of maintaining an office in this state, or of deriving  
25 receipts from activity in this state, for all or any part of each of its  
26 fiscal or calendar years, there is hereby imposed on every corporation,  
27 subject to tax under section two hundred nine of this article, or any  
28 receiver, referee, trustee, assignee or other fiduciary, or any officer  
29 or agent appointed by any court, who conducts the business of any such  
30 corporation, a tax surcharge, in addition to the tax imposed under  
31 section two hundred nine of this article, to be computed at the rate of  
32 four percent of the tax imposed under such section for such taxable  
33 years or any part of such taxable years ending on or after December  
34 thirty-first, two thousand twenty-one after the deduction of any credits  
35 otherwise allowable under this article. However, such rate of tax  
36 surcharge shall be applied only to that portion of the tax imposed under  
37 section two hundred nine of this article before the deduction of any  
38 credits otherwise allowable under this article; and provided, further,  
39 the surcharge computed on a combined report shall include a surcharge on  
40 the fixed dollar minimum tax for each member of the combined group  
41 subject to the surcharge under this subdivision.

42 2. Notwithstanding any contrary provisions of state or local law, the  
43 tax surcharge imposed under this section shall not be allowed as a  
44 deduction in the computation of any tax imposed under this chapter.  
45 Furthermore, the credits otherwise allowable under this article shall  
46 not be allowed against the tax surcharge imposed by this section.

47 3. The provisions concerning reports under sections two hundred ten-C  
48 and two hundred eleven shall be applicable to this section, except that  
49 for purposes of an automatic extension for six months for filing a  
50 report covering the tax surcharge imposed by this section, such automat-  
51 ic extension shall be allowed only if a taxpayer files with the commis-  
52 sioner an application for extension in such form as said commissioner  
53 may prescribe by regulation and pays on or before the date of such  
54 filing in addition to any other amounts required under this article,  
55 either ninety percent of the entire tax surcharge required to be paid  
56 under this section for the applicable period, or not less than the tax

1 surcharge shown on the taxpayer's return for the preceding taxable year,  
2 if such preceding taxable year was a taxable year of twelve months;  
3 provided, however, that in no event shall such amount be less than the  
4 product of the following three amounts: (a) the tax surcharge rate in  
5 effect for the taxable year pursuant to subdivision one of this section,  
6 (b) the fixed dollar minimum applicable to such taxpayer as determined  
7 under paragraph (d) of subdivision one of section two hundred ten of  
8 this chapter for the taxable year, and (c) the percentage determined  
9 under subdivision two of this section for the preceding taxable year,  
10 unless the taxpayer was not subject to the tax surcharge imposed pursu-  
11 ant to this section with respect to such year, in which case such  
12 percentage shall be deemed to be one hundred percent. The tax surcharge  
13 imposed by this section shall be payable to the commissioner in full at  
14 the time the report is required to be filed, and such tax surcharge or  
15 the balance thereof, imposed on any taxpayer which ceases to exercise  
16 its franchise or be subject to the tax surcharge imposed by this section  
17 shall be payable to the commissioner at the time the report is required  
18 to be filed, provided such tax surcharge of a domestic corporation which  
19 continues to possess its franchise shall be subject to adjustment as the  
20 circumstances may require; all other tax surcharges of any such taxpay-  
21 er, which pursuant to the foregoing provisions of this section would  
22 otherwise be payable subsequent to the time such report is required to  
23 be filed, shall nevertheless be payable at such time. All of the  
24 provisions of this article presently applicable are applicable to the  
25 tax surcharge imposed by this section.

26 4. Notwithstanding any provision of law to the contrary, all surcharge  
27 monies collected and received by the commissioner under this section  
28 must be deposited daily to the credit of the comptroller with those  
29 responsible banks, banking houses or trust companies the comptroller may  
30 designate. Those deposits shall be kept separate and apart from all  
31 other monies in the possession of the comptroller. The comptroller shall  
32 require adequate security from all such depositories. Of the total  
33 revenue collected or received under this section, the comptroller must  
34 retain in the comptroller's hands an amount determined by the commis-  
35 sioner to be necessary for refunds under this section, out of which the  
36 comptroller will pay any refunds to which taxpayers are entitled under  
37 the provisions of this section. The comptroller, after reserving the  
38 amount to pay refunds, shall, on or before the tenth day of each month,  
39 pay all surcharge monies collected and received under this section and  
40 remaining in the remote learning account of the special fund for disa-  
41 bility benefits established pursuant to section two hundred fourteen of  
42 the workers' compensation law.

43 § 8. This act shall take effect immediately.