STATE OF NEW YORK

6026

2021-2022 Regular Sessions

IN SENATE

March 30, 2021

Introduced by Sen. COMRIE -- 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 providing family leave in the event of a stillbirth or miscarriage

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) **to mourn the loss of a stillborn child; (d) to mourn the loss of a child as a result of a miscarriage; or (e)** 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. Section 204 of the workers' compensation law is amended by adding two new subdivisions 3 and 4 to read as follows:

3. Notwithstanding any provision of law to the contrary, the weekly benefit for family leave taken pursuant to paragraph (c) of subdivision fifteen of section two hundred one of this article shall not exceed four weeks during any fifty-two week calendar period and shall be sixty-seven percent of the employee's average weekly wages but shall not exceed sixty-seven percent of the New York state average weekly wage.

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

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4. Notwithstanding any provision of law to the contrary, the weekly benefit for family leave taken pursuant to paragraph (d) of subdivision fifteen of section two hundred one of this article shall not exceed one week during any fifty-two week calendar period and shall be sixty-seven percent of the employee's average weekly wages but shall not exceed sixty-seven percent of the New York state average weekly wage.

§ 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 a stillbirth or a miscarriage, 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 the loss of a stillborn child, a certificate of stillbirth shall serve as proof of need of leave. In the event that the claimant is eligible for family leave due to a miscarriage, a certificate of stillbirth or a fetal 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 with-

in 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. This act shall take effect on the thirtieth day after it shall have become a law.