

# 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:

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

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

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

9 § 203. Employees eligible for benefits under section two hundred four  
10 of this article. Employees in employment of a covered employer for four  
11 or more consecutive weeks and employees in employment during the work  
12 period usual to and available during such four or more consecutive weeks  
13 in any trade or business in which they are regularly employed and in  
14 which hiring from day to day of such employees is the usual employment  
15 practice shall be eligible for disability and family leave benefits as  
16 provided in section two hundred four of this article. [~~Employees in~~  
17 ~~employment of a covered employer for twenty six or more consecutive~~  
18 ~~weeks and employees in employment during the work period usual to and~~  
19 ~~available during such twenty six or more consecutive weeks in any trade~~  
20 ~~or business in which they are regularly employed and in which hiring~~  
21 ~~from day to day of such employees is the usual employment practice shall~~  
22 ~~be eligible for family leave benefits as provided in section two hundred~~  
23 ~~four of this article. Every such employee shall continue to be eligible~~  
24 ~~for family leave benefits only during employment with a covered employ-~~  
25 ~~er.] Every such employee shall continue to be eligible for disability~~  
26 and family leave benefits during such employment and for a period of  
27 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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1 employee performs any work for remuneration or profit in non-covered  
2 employment. If during such four week period the employee performs any  
3 work for remuneration or profit for another covered employer the employ-  
4 ee shall become eligible for disability and family leave benefits imme-  
5 diately with respect to that employment. In addition every such employee  
6 who has previously completed four or more consecutive weeks in employ-  
7 ment with the covered employer for purposes of disability and family  
8 leave benefits[~~, or twenty six or more consecutive weeks in employment~~  
9 ~~with the covered employer for purposes of paid family leave,~~] and  
10 returns to work with the same employer after an agreed and specified  
11 unpaid leave of absence or vacation without pay shall become eligible  
12 for benefits immediately with respect to such employment. An employee  
13 who during a period in which he or she is eligible to receive benefits  
14 under subdivision two of section two hundred seven of this article  
15 returns to employment with a covered employer and an employee who is  
16 currently receiving unemployment insurance benefits or benefits under  
17 section two hundred seven of this article and who returns to employment  
18 with a covered employer shall become eligible for disability and family  
19 leave benefits immediately with respect to such employment. An employee  
20 regularly in the employment of a single employer on a work schedule less  
21 than the employer's normal work week shall become eligible for disabili-  
22 ty leave benefits on the twenty-fifth day of such regular employment  
23 ~~[and for purposes of paid family leave an employer shall become eligible~~  
24 ~~for benefits on the one hundred seventy-fifth day of such regular~~  
25 ~~employment]~~. An employee who is eligible for disability and family leave  
26 benefits in the employment of a covered employer shall not be deemed,  
27 for the purposes of this article, to have such employment terminated  
28 during any period he or she is eligible to receive benefits under  
29 section two hundred four of this article with respect to such employ-  
30 ment.

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

34 § 203-a. Retaliatory action prohibited for disability and family  
35 leave. 1. The provisions of section one hundred twenty of this chapter  
36 and section two hundred forty-one of this article shall be applicable to  
37 disability and family leave.

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

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

44 § 203-b. Reinstatement following disability or family leave. Any  
45 eligible employee of a covered employer who takes leave, including leave  
46 due to a disability, under this article shall be entitled, on return  
47 from such leave, to be restored by the employer to the position of  
48 employment held by the employee when the leave commenced, or to be  
49 restored to a comparable position with comparable employment benefits,  
50 pay and other terms and conditions of employment. The taking of family  
51 leave or leave due to a disability shall not result in the loss of any  
52 employment benefit accrued prior to the date on which the leave  
53 commenced. Nothing in this section shall be construed to entitle any  
54 restored employee to the accrual of any seniority or employment benefits  
55 during any period of leave, or any right, benefit or position to which

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

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

6 § 203-c. Health insurance during disability oroff; family leave. In  
7 accordance with the Family and Medical Leave Act (29 U.S.C. §§  
8 2601-2654), during any period of disability or family leave the employer  
9 shall maintain any existing health benefits of the employee in force for  
10 the duration of such leave as if the employee had continued to work from  
11 the date he or she commenced disability or family leave until the date  
12 he or she returns to employment.

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

16 (b) The weekly benefit which the disabled employee is entitled to  
17 receive for disability commencing on or after January first, two thou-  
18 sand twenty-three shall be sixty-seven percent of the employee's average  
19 weekly wage but shall not exceed sixty-seven percent of the New York  
20 state average weekly wage in effect; except that if the employee's aver-  
21 age weekly wage is less than one hundred dollars, the benefit shall be  
22 such average weekly wage. The weekly benefit which the disabled employee  
23 is entitled to receive for disability commencing on or after May first,  
24 nineteen hundred eighty-nine shall be one-half of the employee's weekly  
25 wage, but in no case shall such benefit exceed one hundred seventy  
26 dollars; except that if the employee's average weekly wage is less than  
27 twenty dollars, the benefit shall be such average weekly wage. The week-  
28 ly benefit which the disabled employee is entitled to receive for disa-  
29 bility commencing on or after July first, nineteen hundred eighty-four  
30 shall be one-half of the employee's weekly wage, but in no case shall  
31 such benefit exceed one hundred forty-five dollars; except that if the  
32 employee's average weekly wage is less than twenty dollars, the benefit  
33 shall be such average weekly wage. The weekly benefit which the disabled  
34 employee is entitled to receive for disability commencing on or after  
35 July first, nineteen hundred eighty-three and prior to July first, nine-  
36 teen hundred eighty-four shall be one-half of the employee's average  
37 weekly wage, but in no case shall such benefit exceed one hundred thir-  
38 ty-five dollars nor be less than twenty dollars; except that if the  
39 employee's average weekly wage is less than twenty dollars the benefit  
40 shall be such average weekly wage. The weekly benefit which the disabled  
41 employee is entitled to receive for disability commencing on or after  
42 July first, nineteen hundred seventy-four, and prior to July first,  
43 nineteen hundred eighty-three, shall be one-half of the employee's aver-  
44 age weekly wage, but in no case shall such benefit exceed ninety-five  
45 dollars nor be less than twenty dollars; except that if the employee's  
46 average weekly wage is less than twenty dollars, the benefit shall be  
47 such average weekly wage. The weekly benefit which the disabled employee  
48 is entitled to receive for disability commencing on or after July first,  
49 nineteen hundred seventy and prior to July first, nineteen hundred  
50 seventy-four shall be one-half of the employee's average weekly wage,  
51 but in no case shall such benefit exceed seventy-five dollars nor be  
52 less than twenty dollars; except that if the employee's average weekly  
53 wage is less than twenty dollars the benefit shall be such average week-  
54 ly wage. For any period of disability less than a full week, the bene-  
55 fits payable shall be calculated by dividing the weekly benefit by the  
56 number of the employee's normal work days per week and multiplying the

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

8 § 7. Section 207 of the workers' compensation law, as added by chap-  
9 ter 600 of the laws of 1949, subdivisions 1 and 2 as amended by chapter  
10 438 of the laws of 1964, subdivision 4 as amended by chapter 436 of the  
11 laws of 1986, and subdivision 5 as added by section 8 of part SS of  
12 chapter 54 of the laws of 2016, is amended to read as follows:

13 § 207. Disability while unemployed. 1. Employees entitled to unemploy-  
14 ment insurance benefits. An employee whose employment with a covered  
15 employer is terminated and who during a period of unemployment within  
16 twenty-six weeks immediately following such termination of employment  
17 shall become ineligible for benefits currently being claimed under the  
18 unemployment insurance law solely because of disability commencing after  
19 June thirtieth, nineteen hundred fifty or need for family leave commencing  
20 after January first, two thousand twenty-three, and who on the day  
21 such disability or need for family leave commences is not employed or  
22 working for remuneration or profit and is not then otherwise eligible  
23 for benefits under this article, shall be entitled to receive disability  
24 or family leave benefits as herein provided for each week of such disa-  
25 bility or need for family leave for which week he would have received  
26 unemployment insurance benefits if he or she were not so disabled or did  
27 not have such need for family leave. The weekly benefit of such [~~disa-~~  
28 ~~bled~~] employee shall be computed in the same manner as provided in  
29 subdivision two of section two hundred four of this article, and the  
30 benefits he or she is entitled to receive shall be subject to the limi-  
31 tations as to maximum and minimum amounts and duration and other condi-  
32 tions and limitations prescribed in sections two hundred four, two  
33 hundred five and two hundred six of this article.

34 2. Employees not eligible for unemployment insurance benefits. An  
35 employee whose employment with a covered employer is terminated and who  
36 was in employment of one or more covered employers and was paid wages of  
37 at least thirteen dollars in such employment in each of twenty calendar  
38 weeks during the thirty calendar weeks immediately preceding the date he  
39 or she last worked for such covered employer, and who during a period of  
40 unemployment within twenty-six weeks immediately following such termi-  
41 nation of employment is not eligible to benefits under the unemployment  
42 insurance law because of lack of qualifying wages but who during unem-  
43 ployment has evidenced his or her continued attachment to the labor  
44 market, shall be eligible for benefits under the provisions of this  
45 subdivision for disability commencing after June thirtieth, nineteen  
46 hundred fifty or need for family leave commencing after January first,  
47 two thousand twenty-three. If such employee becomes disabled and  
48 continues to be disabled for at least eight consecutive days during such  
49 twenty-six week period and on the day such disability commences he or  
50 she is not employed or working for remuneration or profit and is not  
51 then otherwise eligible for benefits under this article, he or she shall  
52 be entitled to receive disability benefits, as herein provided, begin-  
53 ning with the eighth consecutive day of such disability, for each week  
54 of such disability thereafter. If such employee has a need for family  
55 leave during such twenty-six week period and on the day such family  
56 leave commences such person is not employed or working for remuneration

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

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

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

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

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

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

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

1 ment shall have been rendered. It is hereby declared to be the intent of  
2 the legislature that this act would have been enacted even if such  
3 invalid provisions had not been included herein.  
4 § 10. This act shall take effect on the sixtieth day after it shall  
5 have become a law. Effective immediately, the addition, amendment  
6 and/or repeal of any rule or regulation necessary for the implementation  
7 of this act on its effective date are authorized to be made and  
8 completed on or before such effective date.