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:

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**; or (d) to participate in remote learning where the employee has a child under the age of twelve or over the age of twelve who has special learning needs or has a medical or developmental disability requiring services or accommodations, and the school such child attends is physically closed during a pandemic or declared state disaster emergency as defined under section twenty-eight of the executive law or when the child participates in remote learning as a result of a declared state of disaster emergency 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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§ 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. **1.** 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 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 benefits during such employment and for a period of four weeks after such employment terminates regardless of whether the 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 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 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 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.

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

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

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

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

(a-1) (i) Notwithstanding any provision of law to the contrary, family leave taken pursuant to paragraph (d) of subdivision fifteen of section two hundred one of this article shall be taken on an hourly basis which shall not exceed a total of four hundred eighty hours in a single covered period and 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. Family leave benefits taken pursuant to paragraph (d) of subdivision fifteen of section two hundred one of this article shall not be counted against the maximum duration of benefits under paragraph (a) of this subdivision. Family leave benefits taken pursuant to paragraphs (a), (b), and (c) of subdivision fifteen of section two hundred one of this article shall not count against the maximum duration of benefits taken pursuant to this paragraph.

(ii) The benefits payable under this section for family leave benefits taken pursuant to paragraph (d) of subdivision fifteen of section two hundred one of this article shall be paid by the chairman out of any assets in the remote learning account in the fund created by section two hundred fourteen of this article. Family leave benefits taken pursuant to paragraph (d) of subdivision fifteen of section two hundred one of this article shall not be payable from any insurance carrier, employer, or plan under section two hundred eleven of this article. The chairman may require an employee claiming benefits under this section to file proofs of 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 the employer or former employer or employers of such employee to file reports of employment and wages and other information reasonably necessary for such determination. The chairman may make administrative regulations for such determinations. Any employee claiming benefits under this paragraph 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. Paragraph (b) of subdivision 3 of section 205 of the workers' compensation law, as amended by section 6 of part SS of chapter 54 of the laws of 2016, is amended to read as follows:

(b) for any day of disability or family leave during which the employee performed work for remuneration or profit, provided however, that this paragraph shall not apply to family leave taken pursuant to paragraph (d) of subdivision fifteen of section two hundred one of this article;

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

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

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

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

There is hereby created a fund which shall be known as the special fund for disability benefits to provide for the payment of disability benefits under sections two hundred seven, two hundred thirteen and attendance fees under section two hundred thirty-two of this article. There is hereby created a subaccount within the fund to be known as the remote learning account to provide for the provision of family leave benefits pursuant to the provisions of paragraph (a-1) of subdivision two of section two hundred four of this article.

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

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

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

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

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

surcharge shown on the taxpayer's return for the preceding taxable year, if such preceding taxable year was a taxable year of twelve months; provided, however, that in no event shall such amount be less than the product of the following three amounts: (a) the tax surcharge rate in effect for the taxable year pursuant to subdivision one of this section, (b) the fixed dollar minimum applicable to such taxpayer as determined under paragraph (d) of subdivision one of section two hundred ten of this chapter for the taxable year, and (c) the percentage determined under subdivision two of this section for the preceding taxable year, unless the taxpayer was not subject to the tax surcharge imposed pursuant to this section with respect to such year, in which case such percentage shall be deemed to be one hundred percent. The tax surcharge imposed by this section shall be payable to the commissioner in full at the time the report is required to be filed, and such tax surcharge or the balance thereof, imposed on any taxpayer which ceases to exercise its franchise or be subject to the tax surcharge imposed by this section shall be payable to the commissioner at the time the report is required to be filed, provided such tax surcharge of a domestic corporation which continues to possess its franchise shall be subject to adjustment as the circumstances may require; all other tax surcharges of any such taxpayer, which pursuant to the foregoing provisions of this section would otherwise be payable subsequent to the time such report is required to be filed, shall nevertheless be payable at such time. All of the provisions of this article presently applicable are applicable to the tax surcharge imposed by this section.

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

§ 8. This act shall take effect immediately.