

# 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:

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; [~~ex~~] (b) to bond  
8 with the employee's child during the first twelve months after the  
9 child's birth, or the first twelve months after the placement of the  
10 child for adoption or foster care with the employee; [~~ex~~] (c) to mourn  
11 the loss of a stillborn child; (d) to mourn the loss of a child as a  
12 result of a miscarriage; or (e) because of any qualifying exigency as  
13 interpreted under the family and medical leave act, 29 U.S.C.S §  
14 2612(a)(1)(e) and 29 C.F.R. S.825.126(a)(1)-(8), arising out of the fact  
15 that the spouse, domestic partner, child, or parent of the employee is  
16 on active duty (or has been notified of an impending call or order to  
17 active duty) in the armed forces of the United States.

18 § 2. Section 204 of the workers' compensation law is amended by adding  
19 two new subdivisions 3 and 4 to read as follows:

20 3. Notwithstanding any provision of law to the contrary, the weekly  
21 benefit for family leave taken pursuant to paragraph (c) of subdivision  
22 fifteen of section two hundred one of this article shall not exceed four  
23 weeks during any fifty-two week calendar period and shall be sixty-seven  
24 percent of the employee's average weekly wages but shall not exceed  
25 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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1 4. Notwithstanding any provision of law to the contrary, the weekly  
2 benefit for family leave taken pursuant to paragraph (d) of subdivision  
3 fifteen of section two hundred one of this article shall not exceed one  
4 week during any fifty-two week calendar period and shall be sixty-seven  
5 percent of the employee's average weekly wages but shall not exceed  
6 sixty-seven percent of the New York state average weekly wage.

7 § 3. Subdivision 5 of section 205 of the workers' compensation law, as  
8 added by section 6 of part SS of chapter 54 of the laws of 2016, is  
9 amended to read as follows:

10 5. In any case in which the necessity for family leave is foreseeable  
11 based on an expected birth or placement, the employee shall provide the  
12 employer with not less than thirty days notice before the date the leave  
13 is to begin, of the employee's intention to take family leave under this  
14 article, except that if the date of the birth or placement requires  
15 leave to begin in less than thirty days, the employee shall provide such  
16 notice as is practicable. In any case in which the necessity for family  
17 leave is foreseeable based on planned medical treatment, the employee  
18 shall provide the employer with not less than thirty days notice, before  
19 the date the leave is to begin, of the employees intention to take fami-  
20 ly leave under this article, except that if the date of the treatment  
21 requires leave to begin in less than thirty days, the employee shall  
22 provide such notice as is practicable. In the case of family leave due  
23 to a stillbirth or a miscarriage, notice shall be provided as soon as  
24 practicable.

25 § 4. Subdivision 1 of section 217 of the workers' compensation law, as  
26 amended by section 16 of part SS of chapter 54 of the laws of 2016, is  
27 amended to read as follows:

28 1. Written notice and proof of disability or proof of need for family  
29 leave shall be furnished to the employer by or on behalf of the employee  
30 claiming benefits or, in the case of a claimant under section two  
31 hundred seven of this article, to the chair, within thirty days after  
32 commencement of the period of disability. Additional proof shall be  
33 furnished thereafter from time to time as the employer or carrier or  
34 chair may require but not more often than once each week. Such proof  
35 shall include a statement of disability by the employee's attending  
36 physician or attending podiatrist or attending chiropractor or attending  
37 dentist or attending psychologist or attending certified nurse midwife  
38 or family leave care recipient's health care provider, or in the case of  
39 an employee who adheres to the faith or teachings of any church or  
40 denomination, and who in accordance with its creed, tenets or principles  
41 depends for healing upon prayer through spiritual means alone in the  
42 practice of religion, by an accredited practitioner, containing facts  
43 and opinions as to such disability in compliance with regulations of the  
44 chair. In the event that the claimant is eligible for family leave due  
45 to the loss of a stillborn child, a certificate of stillbirth shall  
46 serve as proof of need of leave. In the event that the claimant is  
47 eligible for family leave due to a miscarriage, a certificate of still-  
48 birth or a fetal death certificate shall serve as proof of need of  
49 leave. Failure to furnish notice or proof within the time and in the  
50 manner above provided shall not invalidate the claim but no benefits  
51 shall be required to be paid for any period more than two weeks prior to  
52 the date on which the required proof is furnished unless it shall be  
53 shown to the satisfaction of the chair not to have been reasonably  
54 possible to furnish such notice or proof and that such notice or proof  
55 was furnished as soon as possible; provided, however, that no benefits  
56 shall be paid unless the required proof of disability is furnished with-

1 in the period of actual disability or family leave that does not exceed  
2 the statutory maximum period permitted under section two hundred four of  
3 this article. No limitation of time provided in this section shall run  
4 as against any disabled employee who is mentally incompetent, or phys-  
5 ically incapable of providing such notice as a result of a serious  
6 medical condition, or a minor so long as such person has no guardian of  
7 the person and/or property.

8 § 5. This act shall take effect on the thirtieth day after it shall  
9 have become a law.