

# STATE OF NEW YORK

6198

2021-2022 Regular Sessions

## IN SENATE

April 14, 2021

Introduced by Sen. BROUK -- 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 paid family leave and bereavement for miscarriage, fetal death, still birth, and an infant being medically not viable to survive

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 leave taken for the purposes of bereavement due to the miscarriage,  
17 fetal death or still birth of an infant born to the employee or the  
18 employee's spouse, domestic partner or person acting as a surrogate for  
19 the employee, or due to the employee's infant being declared medically  
20 not viable to survive birth by a physician licensed under article one  
21 hundred thirty-one of the education law.

22 § 2. Paragraphs (a) and (b) of subdivision 2 of section 205 of the  
23 workers' compensation law, as added by section 6 of part SS of chapter  
24 54 of the laws of 2016, are amended to read as follows:

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

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(a) For more than twelve weeks, or the maximum duration permitted as set forth in paragraph (a) of subdivision two of section two hundred four of this article, during a period of fifty-two consecutive calendar weeks, or for any period in which the family leave combined with the disability benefits previously paid exceeds twenty-six weeks during the same fifty-two consecutive calendar weeks, or for more than five days when such family leave is taken pursuant to paragraph (d) of subdivision fifteen of section two hundred one of this article;

(b) For any period of family leave wherein the notice and medical certification, fetal death certificate, certificate of still birth or death certificate, as prescribed by the chair has not been filed. At the discretion of the chair or chair's designee pursuant to section two hundred twenty-one of this article, the family member who is the recipient of care may be required to submit to a physical examination by a qualified health care provider unless such family member is unable to be examined due to death, miscarriage, fetal death, or still birth. Such examination shall be paid for by the carrier; and

§ 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 employee's 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 bereavement, 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 bereavement, a fetal death certificate, certificate of still birth, or death certificate shall serve as proof of need of leave. Failure to

1 furnish notice or proof within the time and in the manner above provided  
2 shall not invalidate the claim but no benefits shall be required to be  
3 paid for any period more than two weeks prior to the date on which the  
4 required proof is furnished unless it shall be shown to the satisfaction  
5 of the chair not to have been reasonably possible to furnish such notice  
6 or proof and that such notice or proof was furnished as soon as possi-  
7 ble; provided, however, that no benefits shall be paid unless the  
8 required proof of disability is furnished within the period of actual  
9 disability or family leave that does not exceed the statutory maximum  
10 period permitted under section two hundred four of this article. No  
11 limitation of time provided in this section shall run as against any  
12 disabled employee who is mentally incompetent, or physically incapable  
13 of providing such notice as a result of a serious medical condition, or  
14 a minor so long as such person has no guardian of the person and/or  
15 property.

16 § 5. Subdivisions 3 and 4 of section 217 of the workers' compensation  
17 law, as amended by section 16 of part SS of chapter 54 of the laws of  
18 2016, are amended to read as follows:

19 3. The chair or chair's designee, pursuant to section two hundred  
20 twenty-one of this article, may direct the claimant or family leave care  
21 recipient to submit to examination by a health care provider designated  
22 by him or her in any case in which the claim to disability or family  
23 leave benefits is contested and in claims arising under section two  
24 hundred seven of this article, and in other cases as the chair or board  
25 may require. In the event that the family member or the family leave  
26 care recipient is unable to be examined due to death, miscarriage, fetal  
27 death, or still birth, this section shall not apply.

28 4. Refusal of the claimant or family leave care recipient without good  
29 cause to submit to any such examination shall disqualify the claimant or  
30 employee from all benefits hereunder for the period of such refusal,  
31 except as to benefits already paid. In the event that the family member  
32 or family leave care recipient is unable to be examined due to death,  
33 miscarriage, fetal death, or still birth, this section shall not apply.

34 § 6. This act shall take effect immediately and shall apply to all  
35 policies or contracts issued, renewed, modified, altered or amended on  
36 or after January 1, 2022.