

# STATE OF NEW YORK

3737

2023-2024 Regular Sessions

## IN ASSEMBLY

February 7, 2023

Introduced by M. of A. BENDETT -- read once and referred to the Committee on Labor

AN ACT to amend the workers' compensation law, in relation to paid family leave and bereavement for 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 fetal death or  
17 still birth of an infant born to the employee or the employee's spouse,  
18 or due to the employee's infant being declared medically not viable to  
19 survive birth by a physician licensed under article one hundred thirty-  
20 one of the education law.

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

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

LBD06258-01-3

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

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

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

27 § 4. Subdivisions 1, 3 and 4 of section 217 of the workers' compen-  
28 sation law, as amended by section 16 of part SS of chapter 54 of the  
29 laws of 2016, are amended to read as follows:

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

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

8 3. The chair or chair's designee, pursuant to section two hundred  
9 twenty-one of this article, may direct the claimant or family leave care  
10 recipient to submit to examination by a health care provider designated  
11 by him or her in any case in which the claim to disability or family  
12 leave benefits is contested and in claims arising under section two  
13 hundred seven of this article, and in other cases as the chair or board  
14 may require. In the event that the family member or the family leave  
15 care recipient is unable to be examined due to death, fetal death, or  
16 still birth, this section shall not apply.

17 4. Refusal of the claimant or family leave care recipient without good  
18 cause to submit to any such examination shall disqualify the claimant or  
19 employee from all benefits hereunder for the period of such refusal,  
20 except as to benefits already paid. In the event that the family member  
21 or family leave care recipient is unable to be examined due to death,  
22 fetal death, or still birth, this section shall not apply.

23 § 5. This act shall take effect immediately and shall apply to all  
24 policies or contracts issued, renewed, modified, altered or amended on  
25 or after January 1, 2024.