STATE OF NEW YORK

4053--B

2023-2024 Regular Sessions

IN ASSEMBLY

February 9, 2023

Introduced by M. of A. SOLAGES, SHRESTHA, CHANDLER-WATERMAN, EPSTEIN, DICKENS, SIMON, KELLES, SIMONE, J. A. GIGLIO, TAYLOR, GONZALEZ-ROJAS, ZINERMAN, MEEKS, HEVESI, L. ROSENTHAL, LUNSFORD, CUNNINGHAM, DAVILA, SEAWRIGHT, BURDICK, BICHOTTE HERMELYN, GLICK, BORES -- read once and referred to the Committee on Labor -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Labor in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the workers' compensation law, in relation to expanding eligibility for temporary disability insurance and paid family leave benefits and to making certain conforming technical changes

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision 9 of section 201 of the workers' compensation law, as amended by chapter 675 of the laws of 1977, paragraph B as amended by chapter 352 of the laws of 1981, is amended to read as follows:

9. [~~A.~~] **(a)** "Disability" during employment means the inability of an employee, as a result of injury or sickness not arising out of and in the course of an employment, to perform the regular duties of [~~his~~] **their** employment or the duties of any other employment which [~~his~~] **their** employer may offer [~~him~~] **them** at [~~his~~] **their** regular wages and which [~~his~~] **their** injury or sickness does not prevent [~~him~~] **them** from performing. "Disability" during unemployment means the inability of an employee, as a result of injury or sickness not arising out of and in the course of an employment, to perform the duties of any employment for which [~~he is~~] **they are** reasonably qualified by training and experience.

[~~B.~~] **(b)** "Disability" also includes disability caused by or in connection with a pregnancy **or neonatal loss**.

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

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

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§ 2. Section 201 of the workers' compensation law is amended by adding a new subdivision 25 to read as follows:

25. "Neonatal loss" means the death of a child during the first twelve weeks of life.

§ 3. Subdivision 20 of section 201 of the workers' compensation law, as amended by chapter 550 of the laws of 2021, is amended to read as follows:

20. "Family member" means a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner as defined in this section**, or any other individual related by blood to the employee or whose close association with the employee is the equivalent of a family relationship**.

§ 4. 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. 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 **and family leave** 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 **and family leave** 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 **and family leave** 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 **and family leave** 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~~] **they are** 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 **and family leave** 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 **and family** 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~~] they are eligible to receive benefits under section two hundred four of this article with respect to such employment.

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

§ 203-a. [~~Retaliatory~~] Interference and retaliatory action prohibited for disability and family leave. 1. The provisions of section one hundred twenty of this chapter and section two hundred forty-one of this article shall be applicable to disability and family leave.

2. It shall be unlawful for any employer to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided under this article, including: (a) failing to comply with the requirements of section two hundred twenty-nine of this article, such as by failing to provide an employee with the notice of rights required by such section; (b) failing to provide an employee with complete and accurate information related to the submission of a claim for disability or family leave benefits, such as by failing to inform the employee that it is the employee's responsibility to submit the completed application materials to the employer's insurance carrier or by failing or refusing to provide the employee with the name of the employer's insurance carrier and/or the employer's policy number with said insurance carrier; (c) failing to accurately complete and return to the employee the disability or family leave application paperwork within the time period specified by the chair; (d) providing the employer's insurance carrier with inaccurate information about an employee's employment as it relates to the employee's eligibility for disability or family leave benefits; (e) refusing to allow an employee who has requested disability or family leave under this article to begin leave until the employer's insurance carrier has approved the employee's claim for disability or family leave benefits; (f) failing or refusing to carry disability or family leave insurance as required by section two hundred eleven of this article; (g) threatening termination, demotion, discipline, suspension, or reduction of hours or wages, reporting or threatening to report an employee's suspected citizenship or immigration status or the suspected citizenship or immigration status of a family member of the employee to a federal, state, or local agency, or threatening any other action against an employee seeking to take disability or family leave that might reasonably deter an employee from exercising a right provided under this article; or (h) threatening or taking any other action that may have the effect of preventing or discouraging an employee from exercising a right provided under this article.

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

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

§ 203-b. Reinstatement following disability or family leave. Any eligible employee of a covered employer who takes leave, including leave due to a disability, under this article shall be entitled, on return from such leave, to be restored by the employer to the position of

employment held by the employee when the leave commenced, or to be restored to a comparable position with comparable employment benefits, pay and other terms and conditions of employment. The taking of family leave **or leave due to a disability** shall not result in the loss of any employment benefit accrued prior to the date on which the leave commenced. Nothing in this section shall be construed to entitle any restored employee to the accrual of any seniority or employment benefits during any period of leave, or any right, benefit or position to which the employee would have been entitled had the employee not taken the leave.

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

§ 203-c**.** Health insurance during **disability or** family leave. In accordance with the Family and Medical Leave Act (29 U.S.C. §§ 2601-2654), during any period of **disability or** family leave the employer shall maintain any existing health benefits of the employee in force for the duration of such leave as if the employee had continued to work from the date [~~he or she~~] **they** commenced **disability or** family leave until the date [~~he or she returns~~] **they return** to employment.

§ 8. Section 204 of the workers' compensation law, as amended by section 5 of part SS of chapter 54 of the laws of 2016, is amended to read as follows:

§ 204. Disability and family leave during employment. 1. Disability benefits shall be payable to an eligible employee for disabilities, beginning with the [~~eighth~~] **first** day of disability and thereafter during the continuance of disability, subject to the limitations as to maximum and minimum amounts and duration and other conditions and limitations in this section and in sections two hundred five and two hundred six of this article. Family leave benefits shall be payable to an eligible employee for the first full day when family leave is required and thereafter during the continuance of the need for family leave, subject to the limitations as to maximum and minimum amounts and duration and other conditions and limitations in this section and in sections two hundred five and two hundred six of this article. Successive periods of disability or family leave caused by the same or related injury or sickness shall be deemed a single period of disability or family leave only if separated by less than three months.

2. (a) The weekly benefit for family leave that occurs (i) on or after January first, two thousand eighteen shall not exceed eight weeks during any fifty-two week calendar period and shall be fifty percent of the employee's average weekly wage but shall not exceed fifty percent of the state average weekly wage, (ii) on or after January first, two thousand nineteen shall not exceed ten weeks during any fifty-two week calendar period and shall be fifty-five percent of the employee's average weekly wage but shall not exceed fifty-five percent of the state average weekly wage, (iii) on or after January first, two thousand twenty shall not exceed ten weeks during any fifty-two week calendar period and shall be sixty percent of the employee's average weekly wage but shall not exceed sixty percent of the state average weekly wage, [~~and~~] (iv) on or after January first [~~of each succeeding year~~], **two thousand twenty-three** shall not exceed twelve weeks during any fifty-two week calendar 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**, and (v) on or after January first, two thousand twenty-six, shall not exceed twelve weeks during any fifty-two week calendar**

period and shall be ninety percent of the portion of the employee's average weekly wage that is equal to or less than fifty percent of the New York state average weekly wage in effect and sixty-seven percent of the portion of the employee's average weekly wage that is more than fifty percent of the New York state average weekly wage in effect but shall not exceed sixty-seven percent of the New York state average weekly wage in effect. The superintendent of financial services shall have discretion to delay the increases in the family leave benefit level provided in subparagraphs (ii), (iii), [~~and~~] (iv), and (v) of this paragraph by one or more calendar years. In determining whether to delay the increase in the family leave benefit for any year, the superintendent of financial services shall consider: (1) the current cost to employees of the family leave benefit and any expected change in the cost after the benefit increase; (2) the current number of insurers issuing insurance policies with a family leave benefit and any expected change in the number of insurers issuing such policies after the benefit increase; (3) the impact of the benefit increase on employers' business and the overall stability of the program to the extent that information is readily available; (4) the impact of the benefit increase on the financial stability of the disability and family leave insurance market and carriers; and (5) any additional factors that the superintendent of financial services deems relevant. If the superintendent of financial services delays the increase in the family leave benefit level for one or more calendar years, the family leave benefit level that shall take effect immediately following the delay shall be the same benefit level that would have taken effect but for the delay. The weekly benefits for family leave that occurs on or after January first, two thousand eighteen shall not be less than one hundred dollars per week except that if the employee's wages at the time of family leave are less than one hundred dollars per week, the employee shall receive [~~his or her~~] their full wages. Benefits may be payable to employees for paid family leave taken intermittently or for less than a full work week in increments of one [~~full day or one fifth of the weekly benefit~~] hour or shorter periods if consistent with the increments the employer typically uses to measure employee leave, except that benefits shall not be payable until the employee accumulates at least eight hours of family leave.

(b) The weekly benefit which the disabled employee is entitled to receive for disability commencing on or after January first, two thousand twenty-six shall be ninety percent of the portion of the employee's average weekly wage that is equal to or less than fifty percent of the New York state average weekly wage in effect and sixty-seven percent of the portion of the employee's average weekly wage that is more than fifty percent of the New York state average weekly wage in effect but shall not exceed sixty-seven percent of the New York state average weekly wage in effect; except that if the employee's average weekly wage is less than one hundred dollars, the benefit shall be such average weekly wage. The weekly benefit which the disabled employee is entitled to receive for disability commencing on or after May first, nineteen hundred eighty-nine shall be one-half of the employee's weekly wage, but in no case shall such benefit exceed one hundred seventy dollars; except that if the employee's average weekly wage is less than twenty dollars, the benefit shall be such average weekly wage. The weekly benefit which the disabled employee is entitled to receive for disability commencing on or after July first, nineteen hundred eighty-four shall be one-half of the employee's weekly wage, but in no case shall such benefit exceed one hundred forty-five dollars; except that if the employee's average

weekly wage is less than twenty dollars, the benefit shall be such average weekly wage. The weekly benefit which the disabled employee is entitled to receive for disability commencing on or after July first, nineteen hundred eighty-three and prior to July first, nineteen hundred eighty-four shall be one-half of the employee's average weekly wage, but in no case shall such benefit exceed one hundred thirty-five dollars nor be less than twenty dollars; except that if the employee's average weekly wage is less than twenty dollars the benefit shall be such average weekly wage. The weekly benefit which the disabled employee is entitled to receive for disability commencing on or after July first, nineteen hundred seventy-four, and prior to July first, nineteen hundred eighty-three, shall be one-half of the employee's average weekly wage, but in no case shall such benefit exceed ninety-five dollars nor be less than twenty dollars; except that if the employee's average weekly wage is less than twenty dollars, the benefit shall be such average weekly wage. The weekly benefit which the disabled employee is entitled to receive for disability commencing on or after July first, nineteen hundred seventy and prior to July first, nineteen hundred seventy-four shall be one-half of the employee's average weekly wage, but in no case shall such benefit exceed seventy-five dollars nor be less than twenty dollars; except that if the employee's average weekly wage is less than twenty dollars the benefit shall be such average weekly wage. [~~For any period of disability less than a full week, the benefits payable shall be calculated by dividing the weekly benefit by the number of the employee's normal work days per week and multiplying the quotient by the number of normal work days in such period of disability~~] **Benefits may be payable to employees for leave due to a disability taken intermittently in increments of one hour or shorter periods if consistent with the increments the employer typically uses to measure employee leave, except that benefits shall not be payable until the employee accumulates at least eight hours of leave due to a disability**. The weekly benefit for a disabled employee who is concurrently eligible for benefits in the employment of more than one covered employer shall, within the maximum and minimum herein provided, be **(i)** one-half of the total of the employee's average weekly wages received from all such covered employers, **or (ii) for disability commencing on or after January first, two thousand twenty-six, ninety percent of the portion of the employee's average weekly wage received from all such covered employers that is equal to or less than fifty percent of the New York state average weekly wage in effect and sixty-seven percent of the portion of the employee's average weekly wage received from all such covered employers that is more than fifty percent of the New York state average weekly wage in effect,** and shall be allocated in the proportion of their respective average weekly wage payments.

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

§ 207. Disability while unemployed. 1. Employees entitled to unemployment insurance benefits. An employee whose employment with a covered employer is terminated and who during a period of unemployment within twenty-six weeks immediately following such termination of employment shall become ineligible for benefits currently being claimed under the unemployment insurance law solely because of disability commencing after June thirtieth, nineteen hundred fifty **or need for family leave commenc-**

ing after January first, two thousand twenty-six, and who on the day such disability or need for family leave commences is not employed or working for remuneration or profit and is not then otherwise eligible for benefits under this article, shall be entitled to receive disability or family leave benefits as herein provided for each week of such disability or need for family leave for which week [~~he~~] they would have received unemployment insurance benefits if [~~he~~] they were not so disabled or did not have such need for family leave. The weekly benefit of such [~~disabled~~] employee shall be computed in the same manner as provided in subdivision two of section two hundred four of this article, and the benefits [~~he is~~] they are entitled to receive shall be subject to the limitations as to maximum and minimum amounts and duration and other conditions and limitations prescribed in sections two hundred four, two hundred five and two hundred six of this article.

2. Employees not eligible for unemployment insurance benefits. An employee whose employment with a covered employer is terminated and who was in employment of one or more covered employers and was paid wages of at least thirteen dollars in such employment in each of twenty calendar weeks during the thirty calendar weeks immediately preceding the date [~~he~~] they last worked for such covered employer, and who during a period of unemployment within twenty-six weeks immediately following such termination of employment is not eligible to benefits under the unemployment insurance law because of lack of qualifying wages but who during unemployment has evidenced [~~his~~] their continued attachment to the labor market, shall be eligible for benefits under the provisions of this subdivision for disability commencing after June thirtieth, nineteen hundred fifty or need for family leave commencing after January first, two thousand twenty-six. If such employee becomes disabled and continues to be disabled [~~for at least eight consecutive days~~] during such twenty-six week period and on the day such disability commences [~~he is~~] they are not employed or working for remuneration or profit and [~~is~~] are not then otherwise eligible for benefits under this article, [~~he~~] they shall be entitled to receive disability benefits, as herein provided, beginning with the [~~eighth consecutive~~] first day of such disability, for each week of such disability thereafter. If such employee has a need for family leave during such twenty-six week period and on the day such family leave commences such person is not employed or working for remuneration or profit and is not then otherwise eligible for benefits under this article, such person shall be entitled to receive family leave benefits, as herein provided for each week of such family leave thereafter. The weekly benefit of such [~~disabled~~] employee shall be computed in the same manner as provided in subdivision two of section two hundred four of this article, and the benefits [~~he is~~] they are entitled to receive shall be subject to the limitations as to maximum and minimum amounts and duration and other conditions and limitations prescribed in sections two hundred four, two hundred five and two hundred six of this article.

3. Payment of benefits. The benefits payable under this section shall be subject to the provisions and limitations generally applicable to disability and family leave benefits payable under this article, and shall be paid by the [~~chairman~~] chair out of any assets in the fund created by section two hundred fourteen of this article. The [~~chairman~~] chair may require an employee claiming benefits under this section to file proofs of disability or need for family leave and of [~~his~~] their employment and wages, and other proofs reasonably necessary for the [~~chairman~~] chair to make in the first instance the determination of

eligibility and benefit rights under this section; and may require [~~his~~] their employer or [~~his~~] their former employer or employers to file reports of employment and wages and other information reasonably necessary for such determination. The [~~chairman~~] chair may make administrative regulations for such determinations. The [~~chairman~~] chair may also by regulation establish reasonable procedures for determining pro rata benefits payable with respect to disability or family leave periods of less than one week. Any employee claiming benefits under this section whose claim is rejected in whole or in part by the [~~chairman~~] chair, 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. Qualification notwithstanding casual non-covered employment. An employment of not more than four weeks with a non-covered employer or employers occurring within such twenty-six [~~weeks~~] week period shall not disqualify an employee from benefits provided such employee was otherwise eligible to receive benefits under this section at the time such employment for a non-covered employer commenced.

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

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

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

§ 11. Section 229 of the workers' compensation law is amended by adding a new subdivision 3 to read as follows:

3. Materials related to paid family leave and temporary disability insurance, including application forms, shall be considered vital documents under section two hundred two-a of the executive law.

§ 12. Subdivision 2 of section 2 of the workers' compensation law, as amended by chapter 717 of the laws of 2021, is amended to read as follows:

2. (a) "Department" means the department of labor of the state of New York;

(b) "Chairman" or "chair" means the [~~chairman~~] chair of the workers' compensation board of the state of New York;

(c) "Commissioner" means the industrial commissioner of the state of New York;

(d) "Board" means the workers' compensation board of the state of New York;

(e) "Commissioners" means the commissioners of the state insurance fund of the department of labor of the state of New York.

§ 13. Subdivision 2 of section 201 of the workers' compensation law, as amended by chapter 717 of the laws of 2021, is amended to read as follows:

2. "Chairman" or "chair" means the [~~chairman~~] chair of the workers' compensation board of the state of New York.

§ 14. Subdivision 6 of section 302 of the workers' compensation law, as amended by chapter 717 of the laws of 2021, is amended to read as follows:

6. "Chairman" **or "chair"** shall mean the [~~chairman~~] **chair** of the workers' compensation board.

§ 15. Section 217 of the workers' compensation law is amended by adding a new subdivision 7 to read as follows:

7. (a) When an eligible employee experiences a neonatal loss while receiving family leave benefits pursuant to paragraph (b) of subdivision fifteen of section two hundred one of this article, the remainder of the employee's family leave claim shall be deemed to automatically convert to a claim for leave due to a disability without need for any additional documentation. An eligible employee may apply for additional leave due to a disability if needed and may be required to provide documentation for the additional leave.

(b) When an eligible employee has filed a claim for family leave pursuant to paragraph (b) of subdivision fifteen of section two hundred one of this article and the pregnancy giving rise to the employee's family leave claim results in a pregnancy loss, the family leave claim shall be deemed to automatically convert to a claim for leave due to a disability for the entirety of the period for which the eligible employee had applied for family leave benefits without need for any additional documentation. An eligible employee may apply for additional leave due to a disability if needed and may be required to provide documentation for the additional leave.

(c) Notwithstanding paragraphs (a) and (b) of this subdivision, a non-birthing parent who experiences a neonatal loss or a pregnancy loss in relation to the pregnancy giving rise to the employee's claim for family leave pursuant to paragraph (b) of subdivision fifteen of section two hundred one of this article may elect to convert their claim to a claim for paid family leave pursuant to paragraph (a) of subdivision fifteen of section two hundred one of this article.

(d) The chair shall adopt rules and regulations to implement this subdivision.

§ 16. 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**, except for during periods of intermittent leave pursuant to section two hundred four of this article**;

§ 17. Severability. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

§ 18. This act shall take effect on the sixtieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.