

STATE OF NEW YORK

7989

IN SENATE

January 4, 2024

Introduced by Sen. CLEARE -- 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 requirements for sick leave and the provision of certain employee benefits when such employee is subject to a mandatory or precautionary order of medically-necessary quarantine or isolation

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

1 Section 1. The workers' compensation law is amended by adding a new
2 section 203-d to read as follows:

3 § 203-d. Paid family leave for medically-necessary quarantine or
4 isolation. 1. (a) For all employers, each employee who is subject to a
5 mandatory or precautionary order of medically-necessary quarantine or
6 isolation issued by the department of health shall be provided with at
7 least five days of paid sick leave and unpaid leave until the termi-
8 nation of any mandatory or precautionary order of medically-necessary
9 quarantine or isolation. After such five days of paid sick leave, an
10 employee shall be eligible for paid family leave benefits and benefits
11 due to disability pursuant to this section.

12 (b) Each employee shall be compensated at his or her regular rate of
13 pay for those regular work hours during which such employee is absent
14 from work due to a mandatory or precautionary order of medically-neces-
15 sary quarantine or isolation.

16 (c) Such leave shall be provided without loss of an employee's accrued
17 sick leave.

18 2. For purposes of this section, the following terms shall have the
19 following meanings:

20 (a) "Disability" shall mean: (i) any inability of an employee to
21 perform the regular duties of his or her employment or the duties of any
22 other employment which his or her employer may offer him or her as a
23 result of a mandatory or precautionary order of medically-necessary
24 quarantine or isolation issued by the department of health; and (ii)
25 when the employee has exhausted all paid sick leave provided by the
26 employee's employer under this section.

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

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1 (b) "Family leave" shall mean: (i) any leave taken by an employee from
2 work when an employee is subject to a mandatory or precautionary order
3 of medically-necessary quarantine or isolation issued by the department
4 of health; or (ii) to provide care for a minor dependent child of the
5 employee who is subject to a mandatory or precautionary order of medi-
6 cally-necessary quarantine or isolation issued by the department of
7 health.

8 (c) "Mandatory or precautionary order of medically-necessary quaran-
9 tine or isolation" shall mean a mandatory or precautionary order of
10 quarantine or isolation issued by the department of health due to an
11 outbreak of contagious disease.

12 (d) "Risk adjustment pool" shall mean the process used to stabilize
13 member claims pursuant to this section in order to protect insurers from
14 disproportionate adverse risks.

15 3. Upon return to work following leave taken pursuant to this section,
16 an employee shall be restored by his or her employer to the position of
17 employment held by the employee prior to any leave taken pursuant to
18 this section with the same pay and other terms and conditions of employ-
19 ment. No employer or his or her agent, or the officer or agent of any
20 corporation, partnership, or limited liability company, or any other
21 person, shall discharge, threaten, penalize, or in any other manner
22 discriminate or retaliate against any employee because such employee has
23 taken leave pursuant to this section.

24 4. The commissioner of the department of labor shall have authority to
25 adopt regulations, including emergency regulations, and issue guidance
26 to effectuate any of the provisions of this section. Employers shall
27 comply with regulations promulgated by the commissioner of the depart-
28 ment of labor for this purpose, which may include, but is not limited
29 to, standards for the use, payment, and employee eligibility of sick
30 leave pursuant to this section.

31 5. Notwithstanding any other provision of law, and for purposes of
32 this section:

33 (a) Disability and family leave benefits pursuant to this section may
34 be payable concurrently to an eligible employee upon the first full day
35 of an unpaid period of mandatory or precautionary order of medically-ne-
36 cessary quarantine or isolation issued by the department of health.

37 (b) The maximum weekly benefit which the employee is entitled to
38 receive for benefits due to disability pursuant to this section only
39 shall be the difference between the maximum weekly family leave benefit
40 and such employee's total average weekly wage from each covered employ-
41 er.

42 6. Notwithstanding subdivision one of section two hundred four of this
43 article, disability benefits payable pursuant to this section shall be
44 payable on the first day of disability.

45 7. A mandatory or precautionary order of quarantine or isolation
46 issued by the department of health shall be sufficient proof of disabil-
47 ity or proof of need for family leave taken pursuant to this section.

48 8. The provisions of this section shall not apply in cases where an
49 employee is deemed asymptomatic or has not yet been diagnosed with any
50 medical condition and is physically able to work while under a mandatory
51 or precautionary order of medically-necessary quarantine or isolation,
52 whether through remote access or other similar means.

53 9. Nothing in this section shall be deemed to impede, infringe, dimin-
54 ish or impair the rights of a public employee or employer under any law,
55 rule, regulation or collectively negotiated agreement, or the rights and
56 benefits which accrue to employees through collective bargaining agree-

1 ments, or otherwise diminish the integrity of the existing collective
2 bargaining relationship, or to prohibit any personnel action which
3 otherwise would have been taken regardless of any request to use, or
4 utilization of, any leave provided by this section.

5 10. (a) Notwithstanding any inconsistent provision of law, within one
6 hundred eighty days of the effective date of this section, the super-
7 intendent of financial services, in consultation with the director and
8 the chairman, shall promulgate regulations necessary for the implementa-
9 tion of a risk adjustment pool to be administered directly by the super-
10 intendent of financial services, in consultation with the director and
11 the chairman.

12 (b) Disproportionate losses of any members of the risk adjustment pool
13 in excess of threshold limits established by the superintendent of
14 financial services may be supported, if required by the superintendent
15 of financial services, by other members of such pool including the state
16 insurance fund in a proportion to be determined by the superintendent of
17 financial services. Any such support provided by members of the pool
18 shall be fully repaid, including reasonable interest, through a mech-
19 anism and period of time to be determined by the superintendent of
20 financial services.

21 11. (a) The superintendent of financial services, in consultation with
22 the director and the chairman, shall issue two reports assessing the
23 risk adjustment pool required by subdivision ten of this section.

24 (b) Within two years after the effective date of this section, an
25 initial report shall be provided to the speaker of the assembly, the
26 chair of the assembly ways and means committee and the chair of the
27 assembly labor committee, the temporary president of the senate, the
28 chair of the senate finance committee, and the chair of the senate labor
29 committee. Such report shall include: the total number of claims filed
30 pursuant to this section for (i) family leave benefits, and (ii) bene-
31 fits due to disability, as a result of a mandatory or precautionary
32 order of medically-necessary quarantine or isolation; the aggregate
33 amount of paid family leave claims and disability claims; the total
34 amount of the claims paid for out of the risk adjustment pool imple-
35 mented pursuant to subdivision ten of this section; the threshold limits
36 established by the department of financial services; and any other
37 information the superintendent of financial services deems necessary to
38 provide to the legislature.

39 (c) Within five years after the effective date of this section, a
40 final report shall be provided to the speaker of the assembly, the chair
41 of the assembly ways and means committee and the chair of the assembly
42 labor committee, the temporary president of the senate, the chair of the
43 senate finance committee, and the chair of the senate labor committee.
44 Such report shall include: the balance of the risk adjustment pool
45 implemented pursuant to subdivision ten of this section, if any; the
46 total amount collected through the repayment mechanism established by
47 the department of financial services, including interest; and any other
48 information the superintendent of financial services deems necessary to
49 provide to the legislature. If there exists a balance in the risk
50 adjustment pool, the final report shall provide a timeline by which
51 repayment will be completed.

52 12. If at any point while this section shall be in effect the federal
53 government by law or regulation provides sick leave and/or employee
54 benefits for employees related to outbreaks of contagious disease, then
55 the provisions of this section, including, but not limited to, paid sick
56 leave, paid family leave, and benefits due to disability, shall not be

1 available to any employee otherwise subject to the provisions of this
2 section; provided, however, that if the provisions of this section would
3 have provided sick leave and/or employee benefits in excess of the bene-
4 fits provided by the federal government by law or regulation, then such
5 employee shall be able to claim such additional sick leave and/or
6 employee benefits pursuant to the provisions of this section in an
7 amount that shall be the difference between the benefits available under
8 this section and the benefits available to such employee, if any, as
9 provided by such federal law or regulation.

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