

# STATE OF NEW YORK

921--A

2023-2024 Regular Sessions

## IN SENATE

January 9, 2023

Introduced by Sens. COONEY, FERNANDEZ, GOUNARDES -- read twice and ordered printed, and when printed to be committed to the Committee on Labor -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the workers' compensation law, in relation to the weekly benefit of a disabled employee

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

1 Section 1. Short title. This act shall be known and may be cited as  
2 the "equity in leave act".

3 § 2. Paragraph (b) of subdivision 2 of section 204 of the workers'  
4 compensation law, as amended by section 5 of part SS of chapter 54 of  
5 the laws of 2016, is amended to read as follows:

6 (b) The weekly benefit which the disabled employee is entitled to  
7 receive for disability commencing: (i) on or after January first, two  
8 thousand twenty-six shall be fifty percent of the employee's average  
9 weekly wage but shall not exceed fifty percent of the state average  
10 weekly wage; (ii) on or after January first, two thousand twenty-seven  
11 shall be fifty-five percent of the employee's average weekly wage but  
12 shall not exceed fifty-five percent of the state average weekly wage;  
13 (iii) on or after January first, two thousand twenty-eight shall be  
14 sixty percent of the employee's weekly average wage but shall not exceed  
15 sixty percent of the state average weekly wage; and (iv) on or after  
16 January first of each succeeding year, shall be sixty-seven percent of  
17 the employee's average weekly wage but shall not exceed sixty-seven  
18 percent of the state average weekly wage. The weekly benefit which the  
19 disabled employee is entitled to receive for disability commencing on or  
20 after May first, nineteen hundred eighty-nine and prior to January  
21 first, two thousand twenty-six shall be one-half of the employee's week-  
22 ly wage, but in no case shall such benefit exceed one hundred seventy  
23 dollars; except that if the employee's average weekly wage is less than

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

LBD02619-02-3

1 twenty dollars, the benefit shall be such average weekly wage. The week-  
2 ly benefit which the disabled employee is entitled to receive for disa-  
3 bility commencing on or after July first, nineteen hundred eighty-four  
4 shall be one-half of the employee's weekly wage, but in no case shall  
5 such benefit exceed one hundred forty-five dollars; except that if the  
6 employee's average weekly wage is less than twenty dollars, the benefit  
7 shall be such average weekly wage. The weekly benefit which the disabled  
8 employee is entitled to receive for disability commencing on or after  
9 July first, nineteen hundred eighty-three and prior to July first, nine-  
10 teen hundred eighty-four shall be one-half of the employee's average  
11 weekly wage, but in no case shall such benefit exceed one hundred thir-  
12 ty-five dollars nor be less than twenty dollars; except that if the  
13 employee's average weekly wage is less than twenty dollars the benefit  
14 shall be such average weekly wage. The weekly benefit which the disabled  
15 employee is entitled to receive for disability commencing on or after  
16 July first, nineteen hundred seventy-four, and prior to July first,  
17 nineteen hundred eighty-three, shall be one-half of the employee's aver-  
18 age weekly wage, but in no case shall such benefit exceed ninety-five  
19 dollars nor be less than twenty dollars; except that if the employee's  
20 average weekly wage is less than twenty dollars, the benefit shall be  
21 such average weekly wage. The weekly benefit which the disabled employee  
22 is entitled to receive for disability commencing on or after July first,  
23 nineteen hundred seventy and prior to July first, nineteen hundred  
24 seventy-four shall be one-half of the employee's average weekly wage,  
25 but in no case shall such benefit exceed seventy-five dollars nor be  
26 less than twenty dollars; except that if the employee's average weekly  
27 wage is less than twenty dollars the benefit shall be such average week-  
28 ly wage. For any period of disability less than a full week, the bene-  
29 fits payable shall be calculated by dividing the weekly benefit by the  
30 number of the employee's normal work days per week and multiplying the  
31 quotient by the number of normal work days in such period of disability.  
32 The weekly benefit for a disabled employee who is concurrently eligible  
33 for benefits in the employment of more than one covered employer shall,  
34 within the maximum and minimum herein provided, be one-half of the total  
35 of the employee's average weekly wages received from all such covered  
36 employers, and shall be allocated in the proportion of their respective  
37 average weekly wage payments.

38 § 3. Paragraph (a) of subdivision 3 of section 209 of the workers'  
39 compensation law, as amended by section 10 of part SS of chapter 54 of  
40 the laws of 2016, is amended to read as follows:

41 (a) Disability benefits. The contribution of each such employee to the  
42 cost of disability benefits provided by this article shall be one-half  
43 of one per centum of the employee's wages paid to him or her on and  
44 after July first, nineteen hundred fifty and prior to January first, two  
45 thousand twenty-six, but not in excess of sixty cents per week. The  
46 contribution of each such employee to the cost of employee disability  
47 benefits provided by this article shall be one-half of one per centum of  
48 the employee's wages paid to him or her on and after January first, two  
49 thousand twenty-six, but not in excess of two dollars and twenty cents  
50 per week.

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

54 § 203-a. [~~Retaliatory~~] Interference and retaliatory action prohibited  
55 for disability and family leave. 1. The provisions of section one

1 hundred twenty of this chapter and section two hundred forty-one of this  
2 article shall be applicable to disability and family leave.

3 2. It shall be unlawful for any employer to interfere with, restrain,  
4 or deny the exercise of, or the attempt to exercise, any right provided  
5 under this article, including: (a) failing to comply with the require-  
6 ments of section two hundred twenty-nine of this article, such as by  
7 failing to provide an employee with the notice of rights required by  
8 such section; (b) failing to provide an employee with complete and accu-  
9 rate information related to the submission of a claim for disability or  
10 family leave benefits, such as by failing to inform the employee that it  
11 is the employee's responsibility to submit the completed application  
12 materials to the employer's insurance carrier or by failing or refusing  
13 to provide the employee with the name of the employer's insurance carri-  
14 er and/or the employer's policy number with said insurance carrier; (c)  
15 failing to accurately complete and return to the employee the disability  
16 or family leave application paperwork within the time period specified  
17 by the chair; (d) providing the employer's insurance carrier with inac-  
18 curate information about an employee's employment as it relates to the  
19 employee's eligibility for disability or family leave benefits; (e)  
20 refusing to allow an employee who has requested disability or family  
21 leave under this article to begin leave until the employer's insurance  
22 carrier has approved the employee's claim for disability or family leave  
23 benefits; (f) failing or refusing to carry disability or family leave  
24 insurance as required by section two hundred eleven of this article; (g)  
25 threatening termination, demotion, discipline, suspension, or reduction  
26 of hours or wages, reporting or threatening to report an employee's  
27 suspected citizenship or immigration status or the suspected citizenship  
28 or immigration status of a family member of the employee to a federal,  
29 state, or local agency, or threatening any other action against an  
30 employee seeking to take disability or family leave that might reason-  
31 ably deter an employee from exercising a right provided under this arti-  
32 cle; or (h) threatening or taking any other action that may have the  
33 effect of preventing or discouraging an employee from exercising a right  
34 provided under this article.

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

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

41 § 203-b. Reinstatement following disability or family leave. Any  
42 eligible employee of a covered employer who takes leave, including leave  
43 for disability, under this article shall be entitled, on return from  
44 such leave, to be restored by the employer to the position of employment  
45 held by the employee when the leave commenced, or to be restored to a  
46 comparable position with comparable employment benefits, pay and other  
47 terms and conditions of employment. The taking of family leave or leave  
48 due to a disability shall not result in the loss of any employment bene-  
49 fit accrued prior to the date on which the leave commenced. Nothing in  
50 this section shall be construed to entitle any restored employee to the  
51 accrual of any seniority or employment benefits during any period of  
52 leave, or any right, benefit or position to which the employee would  
53 have been entitled had the employee not taken the leave.

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

1     § 203-c. Health insurance during disability or family leave. In  
2 accordance with the Family and Medical Leave Act (29 U.S.C. §§  
3 2601-2654), during any period of disability or family leave the employer  
4 shall maintain any existing health benefits of the employee in force for  
5 the duration of such leave as if the employee had continued to work from  
6 the date he or she commenced disability or family leave until the date  
7 he or she returns to employment.  
8     § 7. This act shall take effect immediately.