

STATE OF NEW YORK

4053--B

2023-2024 Regular Sessions

IN ASSEMBLY

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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:

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

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

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

17 (c) "Disability" also includes the inability of an employee to work in
18 order to receive medical treatment for a serious health condition not
19 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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1 § 2. Section 201 of the workers' compensation law is amended by
2 adding a new subdivision 25 to read as follows:

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

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

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

12 § 4. Section 203 of the workers' compensation law, as amended by
13 section 3 of part SS of chapter 54 of the laws of 2016, is amended to
14 read as follows:

15 § 203. Employees eligible for benefits under section two hundred four
16 of this article. Employees in employment of a covered employer for four
17 or more consecutive weeks and employees in employment during the work
18 period usual to and available during such four or more consecutive weeks
19 in any trade or business in which they are regularly employed and in
20 which hiring from day to day of such employees is the usual employment
21 practice shall be eligible for disability and family leave benefits as
22 provided in section two hundred four of this article. [~~Employees in~~
23 ~~employment of a covered employer for twenty six or more consecutive~~
24 ~~weeks and employees in employment during the work period usual to and~~
25 ~~available during such twenty six or more consecutive weeks in any trade~~
26 ~~or business in which they are regularly employed and in which hiring~~
27 ~~from day to day of such employees is the usual employment practice shall~~
28 ~~be eligible for family leave benefits as provided in section two hundred~~
29 ~~four of this article. Every such employee shall continue to be eligible~~
30 ~~for family leave benefits only during employment with a covered employ-~~
31 ~~er.] Every such employee shall continue to be eligible for disability
32 and family leave benefits during such employment and for a period of
33 four weeks after such employment terminates regardless of whether the
34 employee performs any work for remuneration or profit in non-covered
35 employment. If during such four week period the employee performs any
36 work for remuneration or profit for another covered employer the employ-
37 ee shall become eligible for disability and family leave benefits imme-
38 diately with respect to that employment. In addition every such employee
39 who has previously completed four or more consecutive weeks in employ-
40 ment with the covered employer for purposes of disability and family
41 leave benefits [~~, or twenty six or more consecutive weeks in employment~~
42 ~~with the covered employer for purposes of paid family leave,] and
43 returns to work with the same employer after an agreed and specified
44 unpaid leave of absence or vacation without pay shall become eligible
45 for benefits immediately with respect to such employment. An employee
46 who during a period in which [~~he or she is~~] they are eligible to receive
47 benefits under subdivision two of section two hundred seven of this
48 article returns to employment with a covered employer and an employee
49 who is currently receiving unemployment insurance benefits or benefits
50 under section two hundred seven of this article and who returns to
51 employment with a covered employer shall become eligible for disability
52 and family leave benefits immediately with respect to such employment.
53 An employee regularly in the employment of a single employer on a work
54 schedule less than the employer's normal work week shall become eligible
55 for disability and family leave benefits on the twenty-fifth day of such
56 regular employment [~~and for purposes of paid family leave an employer~~~~~~

1 ~~shall become eligible for benefits on the one hundred seventy fifth day~~
2 ~~of such regular employment~~. An employee who is eligible for disability
3 and family leave benefits in the employment of a covered employer shall
4 not be deemed, for the purposes of this article, to have such employment
5 terminated during any period [~~he or she is~~] they are eligible to receive
6 benefits under section two hundred four of this article with respect to
7 such employment.

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

11 § 203-a. [~~Retaliatory~~] Interference and retaliatory action prohibited
12 for disability and family leave. 1. The provisions of section one
13 hundred twenty of this chapter and section two hundred forty-one of this
14 article shall be applicable to disability and family leave.

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

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

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

53 § 203-b. Reinstatement following disability or family leave. Any
54 eligible employee of a covered employer who takes leave, including leave
55 due to a disability, under this article shall be entitled, on return
56 from such leave, to be restored by the employer to the position of

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

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

14 § 203-c. Health insurance during disability or family leave. In
15 accordance with the Family and Medical Leave Act (29 U.S.C. §§
16 2601-2654), during any period of disability or family leave the employer
17 shall maintain any existing health benefits of the employee in force for
18 the duration of such leave as if the employee had continued to work from
19 the date [~~he or she~~] they commenced disability or family leave until the
20 date [~~he or she returns~~] they return to employment.

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

24 § 204. Disability and family leave during employment. 1. Disability
25 benefits shall be payable to an eligible employee for disabilities,
26 beginning with the [~~eighth~~] first day of disability and thereafter
27 during the continuance of disability, subject to the limitations as to
28 maximum and minimum amounts and duration and other conditions and limi-
29 tations in this section and in sections two hundred five and two hundred
30 six of this article. Family leave benefits shall be payable to an eligi-
31 ble employee for the first full day when family leave is required and
32 thereafter during the continuance of the need for family leave, subject
33 to the limitations as to maximum and minimum amounts and duration and
34 other conditions and limitations in this section and in sections two
35 hundred five and two hundred six of this article. Successive periods of
36 disability or family leave caused by the same or related injury or sick-
37 ness shall be deemed a single period of disability or family leave only
38 if separated by less than three months.

39 2. (a) The weekly benefit for family leave that occurs (i) on or after
40 January first, two thousand eighteen shall not exceed eight weeks during
41 any fifty-two week calendar period and shall be fifty percent of the
42 employee's average weekly wage but shall not exceed fifty percent of the
43 state average weekly wage, (ii) on or after January first, two thousand
44 nineteen shall not exceed ten weeks during any fifty-two week calendar
45 period and shall be fifty-five percent of the employee's average weekly
46 wage but shall not exceed fifty-five percent of the state average weekly
47 wage, (iii) on or after January first, two thousand twenty shall not
48 exceed ten weeks during any fifty-two week calendar period and shall be
49 sixty percent of the employee's average weekly wage but shall not exceed
50 sixty percent of the state average weekly wage, [~~and~~] (iv) on or after
51 January first [~~of each succeeding year~~], two thousand twenty-three shall
52 not exceed twelve weeks during any fifty-two week calendar period and
53 shall be sixty-seven percent of the employee's average weekly wage but
54 shall not exceed sixty-seven percent of the New York state average week-
55 ly wage in effect, and (v) on or after January first, two thousand twen-
56 ty-six, shall not exceed twelve weeks during any fifty-two week calendar

1 period and shall be ninety percent of the portion of the employee's
2 average weekly wage that is equal to or less than fifty percent of the
3 New York state average weekly wage in effect and sixty-seven percent of
4 the portion of the employee's average weekly wage that is more than
5 fifty percent of the New York state average weekly wage in effect but
6 shall not exceed sixty-seven percent of the New York state average week-
7 ly wage in effect. The superintendent of financial services shall have
8 discretion to delay the increases in the family leave benefit level
9 provided in subparagraphs (ii), (iii), [~~and~~] (iv), and (v) of this para-
10 graph by one or more calendar years. In determining whether to delay the
11 increase in the family leave benefit for any year, the superintendent of
12 financial services shall consider: (1) the current cost to employees of
13 the family leave benefit and any expected change in the cost after the
14 benefit increase; (2) the current number of insurers issuing insurance
15 policies with a family leave benefit and any expected change in the
16 number of insurers issuing such policies after the benefit increase; (3)
17 the impact of the benefit increase on employers' business and the over-
18 all stability of the program to the extent that information is readily
19 available; (4) the impact of the benefit increase on the financial
20 stability of the disability and family leave insurance market and carri-
21 ers; and (5) any additional factors that the superintendent of financial
22 services deems relevant. If the superintendent of financial services
23 delays the increase in the family leave benefit level for one or more
24 calendar years, the family leave benefit level that shall take effect
25 immediately following the delay shall be the same benefit level that
26 would have taken effect but for the delay. The weekly benefits for fami-
27 ly leave that occurs on or after January first, two thousand eighteen
28 shall not be less than one hundred dollars per week except that if the
29 employee's wages at the time of family leave are less than one hundred
30 dollars per week, the employee shall receive [~~his or her~~] their full
31 wages. Benefits may be payable to employees for paid family leave taken
32 intermittently or for less than a full work week in increments of one
33 [~~full day or one fifth of the weekly benefit~~] hour or shorter periods if
34 consistent with the increments the employer typically uses to measure
35 employee leave, except that benefits shall not be payable until the
36 employee accumulates at least eight hours of family leave.

37 (b) The weekly benefit which the disabled employee is entitled to
38 receive for disability commencing on or after January first, two thou-
39 sand twenty-six shall be ninety percent of the portion of the employee's
40 average weekly wage that is equal to or less than fifty percent of the
41 New York state average weekly wage in effect and sixty-seven percent of
42 the portion of the employee's average weekly wage that is more than
43 fifty percent of the New York state average weekly wage in effect but
44 shall not exceed sixty-seven percent of the New York state average week-
45 ly wage in effect; except that if the employee's average weekly wage is
46 less than one hundred dollars, the benefit shall be such average weekly
47 wage. The weekly benefit which the disabled employee is entitled to
48 receive for disability commencing on or after May first, nineteen
49 hundred eighty-nine shall be one-half of the employee's weekly wage, but
50 in no case shall such benefit exceed one hundred seventy dollars; except
51 that if the employee's average weekly wage is less than twenty dollars,
52 the benefit shall be such average weekly wage. The weekly benefit which
53 the disabled employee is entitled to receive for disability commencing
54 on or after July first, nineteen hundred eighty-four shall be one-half
55 of the employee's weekly wage, but in no case shall such benefit exceed
56 one hundred forty-five dollars; except that if the employee's average

1 weekly wage is less than twenty dollars, the benefit shall be such aver-
2 age weekly wage. The weekly benefit which the disabled employee is enti-
3 tled to receive for disability commencing on or after July first, nine-
4 teen hundred eighty-three and prior to July first, nineteen hundred
5 eighty-four shall be one-half of the employee's average weekly wage, but
6 in no case shall such benefit exceed one hundred thirty-five dollars nor
7 be less than twenty dollars; except that if the employee's average week-
8 ly wage is less than twenty dollars the benefit shall be such average
9 weekly wage. The weekly benefit which the disabled employee is entitled
10 to receive for disability commencing on or after July first, nineteen
11 hundred seventy-four, and prior to July first, nineteen hundred eighty-
12 three, shall be one-half of the employee's average weekly wage, but in
13 no case shall such benefit exceed ninety-five dollars nor be less than
14 twenty dollars; except that if the employee's average weekly wage is
15 less than twenty dollars, the benefit shall be such average weekly wage.
16 The weekly benefit which the disabled employee is entitled to receive
17 for disability commencing on or after July first, nineteen hundred
18 seventy and prior to July first, nineteen hundred seventy-four shall be
19 one-half of the employee's average weekly wage, but in no case shall
20 such benefit exceed seventy-five dollars nor be less than twenty
21 dollars; except that if the employee's average weekly wage is less than
22 twenty dollars the benefit shall be such average weekly wage. [~~For any
23 period of disability less than a full week, the benefits payable shall
24 be calculated by dividing the weekly benefit by the number of the
25 employee's normal work days per week and multiplying the quotient by the
26 number of normal work days in such period of disability~~] Benefits may be
27 payable to employees for leave due to a disability taken intermittently
28 in increments of one hour or shorter periods if consistent with the
29 increments the employer typically uses to measure employee leave, except
30 that benefits shall not be payable until the employee accumulates at
31 least eight hours of leave due to a disability. The weekly benefit for a
32 disabled employee who is concurrently eligible for benefits in the
33 employment of more than one covered employer shall, within the maximum
34 and minimum herein provided, be (i) one-half of the total of the employ-
35 ee's average weekly wages received from all such covered employers, or
36 (ii) for disability commencing on or after January first, two thousand
37 twenty-six, ninety percent of the portion of the employee's average
38 weekly wage received from all such covered employers that is equal to or
39 less than fifty percent of the New York state average weekly wage in
40 effect and sixty-seven percent of the portion of the employee's average
41 weekly wage received from all such covered employers that is more than
42 fifty percent of the New York state average weekly wage in effect, and
43 shall be allocated in the proportion of their respective average weekly
44 wage payments.

45 § 9. Section 207 of the workers' compensation law, as added by chap-
46 ter 600 of the laws of 1949, subdivisions 1 and 2 as amended by chapter
47 438 of the laws of 1964, subdivision 4 as amended by chapter 436 of the
48 laws of 1986, and subdivision 5 as added by section 8 of part SS of
49 chapter 54 of the laws of 2016, is amended to read as follows:

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

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

15 2. Employees not eligible for unemployment insurance benefits. An
16 employee whose employment with a covered employer is terminated and who
17 was in employment of one or more covered employers and was paid wages of
18 at least thirteen dollars in such employment in each of twenty calendar
19 weeks during the thirty calendar weeks immediately preceding the date
20 [~~he~~] they last worked for such covered employer, and who during a period
21 of unemployment within twenty-six weeks immediately following such
22 termination of employment is not eligible to benefits under the unem-
23 ployment insurance law because of lack of qualifying wages but who
24 during unemployment has evidenced [~~his~~] their continued attachment to
25 the labor market, shall be eligible for benefits under the provisions of
26 this subdivision for disability commencing after June thirtieth, nine-
27 teen hundred fifty or need for family leave commencing after January
28 first, two thousand twenty-six. If such employee becomes disabled and
29 continues to be disabled [~~for at least eight consecutive days~~] during
30 such twenty-six week period and on the day such disability commences [~~he~~
31 ~~is~~] they are not employed or working for remuneration or profit and [~~is~~]
32 are not then otherwise eligible for benefits under this article, [~~he~~]
33 they shall be entitled to receive disability benefits, as herein
34 provided, beginning with the [~~eighth consecutive~~] first day of such
35 disability, for each week of such disability thereafter. If such employ-
36 ee has a need for family leave during such twenty-six week period and on
37 the day such family leave commences such person is not employed or work-
38 ing for remuneration or profit and is not then otherwise eligible for
39 benefits under this article, such person shall be entitled to receive
40 family leave benefits, as herein provided for each week of such family
41 leave thereafter. The weekly benefit of such [~~disabled~~] employee shall
42 be computed in the same manner as provided in subdivision two of section
43 two hundred four of this article, and the benefits [~~he is~~] they are
44 entitled to receive shall be subject to the limitations as to maximum
45 and minimum amounts and duration and other conditions and limitations
46 prescribed in sections two hundred four, two hundred five and two
47 hundred six of this article.

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

1 eligibility and benefit rights under this section; and may require [~~his~~]
2 their employer or [~~his~~] their former employer or employers to file
3 reports of employment and wages and other information reasonably neces-
4 sary for such determination. The [~~chairman~~] chair may make administra-
5 tive regulations for such determinations. The [~~chairman~~] chair may also
6 by regulation establish reasonable procedures for determining pro rata
7 benefits payable with respect to disability or family leave periods of
8 less than one week. Any employee claiming benefits under this section
9 whose claim is rejected in whole or in part by the [~~chairman~~] chair,
10 shall be entitled to request a review by the board and shall have all
11 the rights with respect to contested claims provided in this article.

12 4. Qualification notwithstanding casual non-covered employment. An
13 employment of not more than four weeks with a non-covered employer or
14 employers occurring within such twenty-six [~~weeks~~] week period shall not
15 disqualify an employee from benefits provided such employee was other-
16 wise eligible to receive benefits under this section at the time such
17 employment for a non-covered employer commenced.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 6. "Chairman" or "chair" shall mean the [~~chairman~~] chair of the work-
5 ers' compensation board.

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

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

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

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

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

35 § 16. Paragraph (b) of subdivision 3 of section 205 of the workers'
36 compensation law, as amended by section 6 of part SS of chapter 54 of
37 the laws of 2016, is amended to read as follows:

38 (b) for any day of disability or family leave during which the employ-
39 ee performed work for remuneration or profit, except for during periods
40 of intermittent leave pursuant to section two hundred four of this arti-
41 cle;

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

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