STATE OF NEW YORK

8201

2023-2024 Regular Sessions

IN ASSEMBLY

October 27, 2023

Introduced by M. of A. O'DONNELL -- read once and referred 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:

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

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

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

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

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

(a) "Disability" shall mean: (i) any inability of an employee to perform the regular duties of his or her employment or the duties of any other employment which his or her employer may offer him or her as a result of a mandatory or precautionary order of medically-necessary

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

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quarantine or isolation issued by the department of health; and (ii) when the employee has exhausted all paid sick leave provided by the employee's employer under this section.

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

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

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

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

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

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

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

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

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

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

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

9. Nothing in this section shall be deemed to impede, infringe, diminish or impair the rights of a public employee or employer under any law, rule, regulation or collectively negotiated agreement, or the rights and benefits which accrue to employees through collective bargaining agreements, or otherwise diminish the integrity of the existing collective bargaining relationship, or to prohibit any personnel action which otherwise would have been taken regardless of any request to use, or utilization of, any leave provided by this section.

10. (a) Notwithstanding any inconsistent provision of law, within one hundred eighty days of the effective date of this section, the superintendent of financial services, in consultation with the director and the chairman, shall promulgate regulations necessary for the implementation of a risk adjustment pool to be administered directly by the superintendent of financial services, in consultation with the director and the chairman.

(b) Disproportionate losses of any members of the risk adjustment pool in excess of threshold limits established by the superintendent of financial services may be supported, if required by the superintendent of financial services, by other members of such pool including the state insurance fund in a proportion to be determined by the superintendent of financial services. Any such support provided by members of the pool shall be fully repaid, including reasonable interest, through a mechanism and period of time to be determined by the superintendent of financial services.

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

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

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

12. If at any point while this section shall be in effect the federal government by law or regulation provides sick leave and/or employee benefits for employees related to outbreaks of contagious disease, then the provisions of this section, including, but not limited to, paid sick leave, paid family leave, and benefits due to disability, shall not be available to any employee otherwise subject to the provisions of this section; provided, however, that if the provisions of this section would have provided sick leave and/or employee benefits in excess of the benefits provided by the federal government by law or regulation, then such employee shall be able to claim such additional sick leave and/or employee benefits pursuant to the provisions of this section in an amount that shall be the difference between the benefits available under this section and the benefits available to such employee, if any, as provided by such federal law or regulation.

§ 2. 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.