

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:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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