STATE OF NEW YORK

8465

2023-2024 Regular Sessions

IN ASSEMBLY

December 29, 2023

Introduced by M. of A. FORREST -- read once and referred to the Committee on Labor

AN ACT to amend the workers' compensation law, in relation to the maximum amount of family leave time

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

Section 1. Paragraph (a) of subdivision 2 of section 204 of the workers' compensation law, as added by section 5 of part SS of chapter 54 of the laws of 2016, is amended to read as follows:

(a) The weekly benefit for family leave that occurs (i) on or after January first, two thousand eighteen shall not exceed eight weeks during any fifty-two week calendar period and shall be fifty percent of the employee's average weekly wage but shall not exceed fifty percent of the state average weekly wage, (ii) on or after January first, two thousand nineteen shall not exceed ten weeks during any fifty-two week calendar period and shall be fifty-five percent of the employee's average weekly wage but shall not exceed fifty-five percent of the state average weekly wage, (iii) on or after January first, two thousand twenty shall not exceed ten weeks during any fifty-two week calendar period and shall be sixty percent of the employee's average weekly wage but shall not exceed sixty percent of the state average weekly wage, and (iv) on or after January first of each succeeding year, shall not exceed [~~twelve~~] twenty-six weeks during any fifty-two week calendar period and shall be [~~sixty-seven~~] one hundred percent of the employee's average weekly wage but shall not exceed [~~sixty-seven~~] eighty percent of the New York state average weekly wage in effect. The superintendent of financial services shall have discretion to delay the increases in the family leave benefit level provided in subparagraphs (ii), (iii), and (iv) of this paragraph by one or more calendar years. In determining whether to delay the increase in the family leave benefit for any year, the superintendent of financial services shall consider: (1) the current cost to employees of

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

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the family leave benefit and any expected change in the cost after the benefit increase; (2) the current number of insurers issuing insurance policies with a family leave benefit and any expected change in the number of insurers issuing such policies after the benefit increase; (3) the impact of the benefit increase on employers' business and the overall stability of the program to the extent that information is readily available; (4) the impact of the benefit increase on the financial stability of the disability and family leave insurance market and carriers; and (5) any additional factors that the superintendent of financial services deems relevant. If the superintendent of financial services delays the increase in the family leave benefit level for one or more calendar years, the family leave benefit level that shall take effect immediately following the delay shall be the same benefit level that would have taken effect but for the delay. The weekly benefits for family leave that occurs on or after January first, two thousand eighteen shall not be less than one hundred dollars per week except that if the employee's wages at the time of family leave are less than one hundred dollars per week, the employee shall receive his or her full wages. Benefits may be payable to employees for paid family leave taken intermittently or for less than a full work week in increments of one full day or one fifth of the weekly benefit.

§ 2. Subdivision 2 of section 205 of the workers' compensation law, as added by section 6 of part SS of chapter 54 of the laws of 2016, is amended to read as follows:

2. No employee shall be entitled to family leave benefits under this article:

(a) For more than [~~twelve~~] twenty-six weeks, or the maximum duration permitted as set forth in paragraph (a) of subdivision two of section two hundred four of this article, during a period of fifty-two consecutive calendar weeks[~~, or for any period in which the family leave combined with the disability benefits previously paid exceeds twenty-six weeks during the same fifty-two consecutive calendar weeks~~];

(b) For any period of family leave wherein the notice and medical certification as prescribed by the chair has not been filed. At the discretion of the chair or chair's designee pursuant to section two hundred twenty-one of this article, the family member who is the recipient of care may be required to submit to a physical examination by a qualified health care provider. Such examination shall be paid for by the carrier; and

(c) As a condition of an employee's initial receipt of family leave benefits during any fifty-two consecutive calendar weeks in which an employee is eligible for these benefits, an employer may offer an employee who has accrued but unused vacation time or personal leave available at the time of use of available family leave to choose whether to charge all or part of the family leave time to accrued but unused vacation or personal leave, and receive full salary, or to not charge time to accrued but unused vacation or personal leave, and receive the benefit as set forth in section two hundred four of this article. An employer that pays full salary during a period of family leave may request reimbursement in accordance with section two hundred thirty-seven of this article. With the election of either option, the employee shall receive the full protection of the reinstatement provision set forth in section two hundred three-b of this article, and shall concurrently use available family medical leave act and paid family leave credits. In no event can an employee utilize family leave beyond [~~twelve~~] twenty-six weeks, or the maximum duration permitted as set

forth in paragraph (a) of subdivision two of section two hundred four of this article, per any fifty-two week period set forth in this article. This paragraph may not be construed in a manner that relieves an employer of any duty of collective bargaining the employer may have with respect to the subject matter of this paragraph.

§ 3. This act shall take effect immediately.