

STATE OF NEW YORK

1027--B

2023-2024 Regular Sessions

IN SENATE

January 9, 2023

Introduced by Sens. GOUNARDES, BROUK, FERNANDEZ, HOYLMAN-SIGAL, MYRIE, PARKER, SEPULVEDA -- 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 -- recommitted to the Committee on Labor in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the workers' compensation law, in relation to paid family medical leave

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

1 Section 1. Section 120 of the workers' compensation law, as amended by
2 chapter 61 of the laws of 1989, the section heading as amended by
3 section 31 of part SS of chapter 54 of the laws of 2016, the opening
4 paragraph as amended by chapter 105 of the laws of 2019, is amended to
5 read as follows:

6 § 120. Discrimination against employees. 1. It shall be unlawful for
7 any employer or [~~his or her~~] their duly authorized agent to discharge or
8 fail to reinstate pursuant to section two hundred three-b of this chap-
9 ter, or in any other manner discriminate against an employee as to [~~his~~
10 ~~or her~~] their employment because such employee has claimed or attempted
11 to claim compensation from such employer, requested a claim form for
12 injuries received in the course of employment, or claimed or attempted
13 to claim any benefits provided under this chapter or because [~~he or she~~]
14 such employee has testified or is about to testify in a proceeding under
15 this chapter and no other valid reason is shown to exist for such action
16 by the employer.

17 2. Any complaint alleging such an unlawful discriminatory practice
18 must be filed within two years of the commission of such practice. Upon
19 finding that an employer has violated this section, the board shall make
20 an order that any employee so discriminated against shall be restored to

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

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1 employment or otherwise restored to the position or privileges [~~he or~~
2 ~~she~~] they would have had but for the discrimination, if such rein-
3 statement is requested by such employee, and shall be compensated by
4 [~~his or her~~] their employer for any loss of compensation arising out of
5 such discrimination together with such fees or allowances for services
6 rendered by an attorney or licensed representative as fixed by the
7 board. Any employer who violates this section shall be liable to a
8 penalty of not less than one hundred dollars or more than five hundred
9 dollars, as may be determined by the board. All such penalties shall be
10 paid into the state treasury. All penalties, compensation and fees or
11 allowances shall be paid solely by the employer. The employer alone and
12 not [~~his or her~~] their carrier shall be liable for such penalties and
13 payments. Any provision in an insurance policy undertaking to relieve
14 the employer from liability for such penalties and payments shall be
15 void.

16 3. An employer found to be in violation of this section and the
17 aggrieved employee must report to the board as to the manner of the
18 employer's compliance within thirty days of receipt of a final determi-
19 nation. In case of failure to report on compliance, or failure to comply
20 with an order or penalty of the board within thirty days after the order
21 or notice of penalty is served, except where timely application to the
22 board for a modification, rescission, or review of such order or penalty
23 has been filed under section twenty-three of this chapter, the chair in
24 any such case or, on the chair's consent, any party may enforce the
25 order or penalty in a like manner as an award of compensation.

26 4. Pursuant with the provisions of section two hundred three-b of this
27 chapter, an employee shall not be required to request reinstatement to
28 such employee's former position of employment before filing a complaint
29 of unlawful discriminatory practice as described in this section.

30 5. As an alternative to filing a complaint with the board as herein
31 provided, an employee may bring an action against any covered employer,
32 as described in section two hundred two of this chapter, who violates
33 the provisions of this section or section two hundred three-b of this
34 chapter, by or on behalf of an employee, as that term is defined in
35 subdivision five of section two hundred one of this chapter, who has
36 claimed or attempted to claim paid family leave benefits. A plaintiff
37 who prevails on a claim alleging a violation of this section or of
38 section two hundred three-b of this chapter with regards to paid family
39 leave shall be entitled to compensatory, actual, and punitive damages,
40 injunctive relief, reasonable attorneys' fees and costs, and other such
41 remedies as a court may deem appropriate.

42 6. An employee with a pending claim before the board where a finding
43 has not yet been issued as of the effective date of this subdivision
44 shall be permitted to withdraw such claim and file the action described
45 in subdivision five of this section against a covered employer.

46 § 2. Section 203-b of the workers' compensation law, as added by
47 section 4 of part SS of chapter 54 of the laws of 2016, is amended to
48 read as follows:

49 § 203-b. Reinstatement following family leave. Any eligible employee
50 of a covered employer who takes leave under this article shall be enti-
51 tled, on return from such leave, to be restored by the employer to the
52 position of employment held by the employee when the leave commenced, or
53 to be restored to a comparable position with comparable employment bene-
54 fits, pay and other terms and conditions of employment, provided, howev-
55 er, that such eligible employee shall not be required to request rein-
56 statement to any such position. The taking of family leave shall not

1 result in the loss of any employment benefit accrued prior to the date
2 on which the leave commenced. Nothing in this section shall be construed
3 to entitle any restored employee to the accrual of any seniority or
4 employment benefits during any period of leave, or any right, benefit or
5 position to which the employee would have been entitled had the employee
6 not taken the leave. Furthermore, nothing in this section shall be
7 construed to require an employee to request reinstatement to their
8 former position of employment, or to a comparable position with compara-
9 ble employment benefits, pay, and other terms and conditions of employ-
10 ment, before initiating a complaint against a covered employer pursuant
11 to the provisions of section one hundred twenty of this chapter.

12 § 3. This act shall take effect immediately and shall apply to all
13 complaints and actions filed on or after such effective date; provided,
14 however, that the provisions of subdivision 6 of section 120 of the
15 workers' compensation law added by section one of this act shall apply
16 to claims pending before the workers' compensation board where a finding
17 has not yet been issued as of the effective date of this act.