STATE OF NEW YORK

921--A

2023-2024 Regular Sessions

IN SENATE

January 9, 2023

Introduced by Sens. COONEY, FERNANDEZ, GOUNARDES -- 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

AN ACT to amend the workers' compensation law, in relation to the weekly benefit of a disabled employee

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

Section 1. Short title. This act shall be known and may be cited as the "equity in leave act".

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

(b) **The weekly benefit which the disabled employee is entitled to receive for disability commencing: (i) on or after January first, two thousand twenty-six 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 twenty-seven 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-eight shall be sixty percent of the employee's weekly average 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 be sixty-seven percent of the employee's average weekly wage but shall not exceed sixty-seven percent of the state average weekly wage.** The weekly benefit which the disabled employee is entitled to receive for disability commencing on or after May first, nineteen hundred eighty-nine **and prior to January first, two thousand twenty-six** shall be one-half of the employee's weekly wage, but in no case shall such benefit exceed one hundred seventy dollars; except that if the employee's average weekly wage is less than

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

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twenty dollars, the benefit shall be such average weekly wage. The weekly benefit which the disabled employee is entitled to receive for disability commencing on or after July first, nineteen hundred eighty-four shall be one-half of the employee's weekly wage, but in no case shall such benefit exceed one hundred forty-five dollars; except that if the employee's average weekly wage is less than twenty dollars, the benefit shall be such average weekly wage. The weekly benefit which the disabled employee is entitled to receive for disability commencing on or after July first, nineteen hundred eighty-three and prior to July first, nineteen hundred eighty-four shall be one-half of the employee's average weekly wage, but in no case shall such benefit exceed one hundred thirty-five dollars nor be less than twenty dollars; except that if the employee's average weekly wage is less than twenty dollars the benefit shall be such average weekly wage. The weekly benefit which the disabled employee is entitled to receive for disability commencing on or after July first, nineteen hundred seventy-four, and prior to July first, nineteen hundred eighty-three, shall be one-half of the employee's average weekly wage, but in no case shall such benefit exceed ninety-five dollars nor be less than twenty dollars; except that if the employee's average weekly wage is less than twenty dollars, the benefit shall be such average weekly wage. The weekly benefit which the disabled employee is entitled to receive for disability commencing on or after July first, nineteen hundred seventy and prior to July first, nineteen hundred seventy-four shall be one-half of the employee's average weekly wage, but in no case shall such benefit exceed seventy-five dollars nor be less than twenty dollars; except that if the employee's average weekly wage is less than twenty dollars the benefit shall be such average weekly wage. For any period of disability less than a full week, the benefits payable shall be calculated by dividing the weekly benefit by the number of the employee's normal work days per week and multiplying the quotient by the number of normal work days in such period of disability. The weekly benefit for a disabled employee who is concurrently eligible for benefits in the employment of more than one covered employer shall, within the maximum and minimum herein provided, be one-half of the total of the employee's average weekly wages received from all such covered employers, and shall be allocated in the proportion of their respective average weekly wage payments.

§ 3. Paragraph (a) of subdivision 3 of section 209 of the workers' compensation law, as amended by section 10 of part SS of chapter 54 of the laws of 2016, is amended to read as follows:

(a) Disability benefits. The contribution of each such employee to the cost of disability benefits provided by this article shall be one-half of one per centum of the employee's wages paid to him or her on and after July first, nineteen hundred fifty **and prior to January first, two thousand twenty-six**, but not in excess of sixty cents per week. **The contribution of each such employee to the cost of employee disability benefits provided by this article shall be one-half of one per centum of the employee's wages paid to him or her on and after January first, two thousand twenty-six, but not in excess of two dollars and twenty cents per week.**

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

§ 203-a. [~~**Retaliatory**~~] **Interference and retaliatory** action prohibited for **disability and** family leave. 1. The provisions of section one

hundred twenty of this chapter and section two hundred forty-one of this article shall be applicable to **disability and** family leave.

2. **It shall be unlawful for any employer to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided under this article, including: (a) failing to comply with the requirements of section two hundred twenty-nine of this article, such as by failing to provide an employee with the notice of rights required by such section; (b) failing to provide an employee with complete and accurate information related to the submission of a claim for disability or family leave benefits, such as by failing to inform the employee that it is the employee's responsibility to submit the completed application materials to the employer's insurance carrier or by failing or refusing to provide the employee with the name of the employer's insurance carrier and/or the employer's policy number with said insurance carrier; (c) failing to accurately complete and return to the employee the disability or family leave application paperwork within the time period specified by the chair; (d) providing the employer's insurance carrier with inaccurate information about an employee's employment as it relates to the employee's eligibility for disability or family leave benefits; (e) refusing to allow an employee who has requested disability or family leave under this article to begin leave until the employer's insurance carrier has approved the employee's claim for disability or family leave benefits; (f) failing or refusing to carry disability or family leave insurance as required by section two hundred eleven of this article; (g) threatening termination, demotion, discipline, suspension, or reduction of hours or wages, reporting or threatening to report an employee's suspected citizenship or immigration status or the suspected citizenship or immigration status of a family member of the employee to a federal, state, or local agency, or threatening any other action against an employee seeking to take disability or family leave that might reasonably deter an employee from exercising a right provided under this article; or (h) threatening or taking any other action that may have the effect of preventing or discouraging an employee from exercising a right provided under this article.**

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

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

§ 203-b. Reinstatement following **disability or** family leave. Any eligible employee of a covered employer who takes leave**, including leave for disability,** under this article shall be entitled, on return from such leave, to be restored by the employer to the position of employment held by the employee when the leave commenced, or to be restored to a comparable position with comparable employment benefits, pay and other terms and conditions of employment. The taking of family leave **or leave due to a disability** shall not result in the loss of any employment benefit accrued prior to the date on which the leave commenced. Nothing in this section shall be construed to entitle any restored employee to the accrual of any seniority or employment benefits during any period of leave, or any right, benefit or position to which the employee would have been entitled had the employee not taken the leave.

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

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

§ 7. This act shall take effect immediately.