STATE OF NEW YORK

9840

IN SENATE

June 3, 2024

Introduced by Sen. RAMOS -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the workers' compensation law and the insurance law, in relation to increasing short-term disability benefits

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

Section 1. Section 200 of the workers' compensation law, as amended by section 1 of part SS of chapter 54 of the laws of 2016, is amended to read as follows:

§ 200. Short title. This article shall be known and may be cited as the "disability [~~benefits law~~] and [~~the~~] paid family leave benefits law."

§ 2. Subdivisions 14, 15 and 22 of section 201 of the workers' compensation law, subdivision 14 as amended and subdivisions 15 and 22 as added by section 2 of part SS of chapter 54 of the laws of 2016, are amended to read as follows:

14. "A day of disability" means any day on which the employee was prevented from performing work because of disability[~~, including any day which the employee uses for family leave,~~] and for which the employee has not received [~~his or her~~] **their** regular remuneration.

15. "Family leave" shall mean any leave taken by an employee from work: (a) to participate in providing care, including physical or psychological care, for a family member of the employee made necessary by a serious health condition of the family member; or (b) to bond with the employee's child during the first twelve months after the child's birth, or the first twelve months after the placement of the child for adoption or foster care with the employee **or on or after January first, two thousand twenty-five until January first, two thousand twenty-nine, for the six weeks immediately following a stillbirth**; or (c) because of any qualifying exigency as interpreted under the family and medical leave act, 29 U.S.C.S § 2612(a)(1)(e) and 29 C.F.R. S.825.126[~~(a)(1)-(8)~~], arising out of the fact that the spouse, domestic partner, child, or parent of the employee is on active duty (or has been

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

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notified of an impending call or order to active duty) in the armed forces of the United States.

22. "Health care provider" shall mean for the purpose of [~~family leave~~] this article, a person licensed under article one hundred thirty-one, one hundred thirty-one-B, one hundred thirty-two, one hundred thirty-three, one hundred thirty-six, one hundred thirty-nine, one hundred forty-one, one hundred forty-three, one hundred forty-four, one hundred fifty-three, one hundred fifty-four, one hundred fifty-six or one hundred fifty-nine of the education law or a person licensed under the public health law, article one hundred forty of the education law or article one hundred sixty-three of the education law.

§ 3. 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 action prohibited for [~~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 family and disability leave.

2. 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.

§ 4. 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 [~~family~~] leave. Any eligible employee of a covered employer who takes leave 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 or disability leave 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.

§ 5. 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 [~~family~~] leave. In accordance with the Family and Medical Leave Act (29 U.S.C. §§ 2601-2654), during any period of family or disability 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~~] they commenced family or disability leave until the date [~~he or she returns~~] they return to employment.

§ 6. 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:

§ 204. Disability and family leave during employment. 1. Disability benefits shall be payable to an eligible employee for disabilities, beginning with the eighth day of disability and thereafter during the continuance of disability, subject to the limitations as to maximum and minimum amounts and duration and other conditions and limitations in this section and in sections two hundred five and two hundred six of this article. Family leave benefits shall be payable to an eligible

employee for the first full day when family leave is required and thereafter during the continuance of the need for family leave, subject to the limitations as to maximum and minimum amounts and duration and other conditions and limitations in this section and in sections two hundred five and two hundred six of this article. Successive periods of disability or family leave caused by the same or related injury or sickness **or qualifying event** shall shall be deemed a single period of disability or family leave only if separated by less than three months.

2. (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 weeks during any fifty-two week calendar period and shall be sixty-seven percent of the employee's average weekly wage but shall not exceed sixty-seven 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 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~~] **their** 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.

(b) **The weekly benefit which the disabled employee is entitled to receive for the first twelve weeks of disability commencing: (i) on or after January first, two thousand twenty-six shall be fifty-five 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 sixty 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-seven 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 the periods of disability after the twelfth week of disability and through the twenty-sixth week of disability on or after January first, two thousand twenty-six and each succeeding year shall be thirty percent of the employee's average weekly wage but shall not exceed thirty percent of the state average weekly wage. The chair of the workers' compensation board, in consultation with the superintendent of financial services, shall have discretion to increase the benefit level for the period of disability after the twelfth week of disability through the twenty-sixth week of disability, provided that such benefit shall not exceed sixty-seven percent of the state average weekly wage. In determining whether to increase the disability benefit for any year, the chair of the workers' compensation board in consultation with the superintendent of financial services shall consider factors including but not limited to utilization of the current benefit, the expected utilization of any increase, the need for a benefit increase, the current contribution cost to employees and employers and the expected cost after any such benefit increase; the current number of insurers issuing insurance policies with a disability benefit and any expected change in the number of insurers issuing such policies after the benefit increase; and any additional factors that the chair of the workers' compensation board and the superintendent of financial services deems relevant. The weekly benefit which the disabled employee is entitled to receive for disability leave that occurs on or after January first, two thousand twenty-six shall not be less than one hundred dollars per week except that if the employee's wages at the time of disability leave are less than one hundred dollars per week, the employee shall receive their full wages. 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 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.~~] Benefits may be payable to employees for disability leave taken intermittently or for less than a full work week in increments of one full day or one-fifth of the weekly benefit. 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.

Provided that the provisions of paragraph (b) of this subdivision concerning benefits on or after January first, two thousand twenty-six and subparagraphs (i) and (ii) of paragraph (a) of subdivision three of section two hundred nine of this article may be waived by a covered employer subject to a collective bargaining agreement with a bona fide labor organization in effect on January first, two thousand twenty-six for employees subject to such collective bargaining agreement for a disability commencing between January first, two thousand twenty-six and until January first, two thousand twenty-nine; and provided that for such waiver to be valid, it shall explicitly reference this section and be agreed to by the bona fide labor organization. Nothing herein shall prevent a collective bargaining agreement from providing temporary disability benefits greater than the benefits required herein.

§ 7. Subdivision 2 of section 206 of the workers' compensation law, as amended by section 7 of part SS of chapter 54 of the laws of 2016, is amended to read as follows:

2. If an employee who is eligible for disability benefits under section two hundred three or two hundred seven of this article is disabled and has claimed or subsequently claims workers' compensation benefits under this chapter or benefits under the volunteer firefighters' benefit law or the volunteer ambulance workers' benefit law, and such claim is controverted on the ground that the employee's disability was not caused by an accident that arose out of and in the course of [~~his~~] their employment or by an occupational disease, or by an injury in line of duty as a volunteer firefighter or volunteer ambulance worker, the employee shall be entitled in the first instance to receive benefits under this article for [~~his or her~~] their disability. If benefits have been paid under this article in respect to a disability alleged to have arisen out of and in the course of the employment or by reason of an occupational disease, or in line of duty as a volunteer firefighter or a volunteer ambulance worker, the employer or carrier or the chair making such payment may, at any time before award of workers' compensation

benefits, or volunteer firefighters' benefits or volunteer ambulance workers' benefits, is made, file with the board a claim for reimbursement out of the proceeds of such award to the employee for the period for which disability benefits were paid to the employee under this article, and shall have a lien against the **full** award for reimbursement, notwithstanding the provisions of section thirty-three of this chapter or section twenty-three of the volunteer firefighters' benefit law or section twenty-three of the volunteer ambulance workers' benefit law provided the insurance carrier liable for payment of the award receives, before such award is made, a copy of the claim for reimbursement from the employer, carrier or chair who paid disability benefits, or provided the board's decision and award directs such reimbursement therefrom.

§ 8. 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. **(i)** 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, but not in excess of sixty cents per week.

(ii) Beginning January first, two thousand twenty-six, the maximum employee contribution that a covered employer is authorized to collect from each employee for the cost of disability benefits provided by this article shall be one-half of one per centum of the employee's wages but shall not exceed two dollars and twenty cents per week provided, however, that the employee contribution shall be pursuant to subparagraph (i) of this paragraph where such employee is covered under paragraph (c) of subdivision two of section two hundred four of this article.

(iii) Beginning January first, two thousand twenty-nine, the maximum employee contribution that a covered employer is authorized to collect from each employee for the cost of disability benefits provided by this article shall be one-half of one per centum of the employee's wages, but shall not exceed forty percent of the average of the combination of all employee and employer contributions to disability benefits provided pursuant to paragraph (b) of subdivision two of section two hundred four of this article during the prior calendar year, as determined annually by the superintendent of financial services pursuant to subsection (n) of section four thousand two hundred thirty-five of the insurance law. A self-insurer shall submit reports to the superintendent of financial services for the purpose of determining forty percent of the average of the combination of all employee and employer contributions to disability benefits provided pursuant to paragraph (b) of subdivision two of section two hundred four of this article during the prior calendar year, pursuant to subsection (n) of section four thousand two hundred thirty-five of the insurance law.

§ 9. The opening paragraph of section 211 of the workers' compensation law, as amended by section 12 of part SS of chapter 54 of the laws of 2016, is amended to read as follows:

A covered employer**, unless provided with a waiver pursuant to section 204(2)(c),** shall, with [~~his or her~~] **such employer's** own contributions and the contributions of [~~his~~] **such employer's** employees, provide disability and after January first, two thousand eighteen, family leave benefits to [~~his or her~~] **such employer's** employees in one or more of the following ways:

§ 10. The opening paragraph and subdivision 1 of section 214 of the workers' compensation law, as amended by section 26 of part GG of chapter 57 of the laws of 2013, are amended to read as follows:

There is hereby created a fund which shall be known as the special fund for disability benefits to provide for the payment of [~~disability~~] benefits under sections two hundred seven, two hundred thirteen and attendance fees under section two hundred thirty-two of this article.

1. As promptly as practicable after April first, in each year, the chairman shall ascertain the condition of the fund, and if as of any such date the net assets of the fund shall be one million dollars or more below the sum of twelve million dollars, the chairman shall assess and collect an amount sufficient to restore the fund to an amount equal to twelve million dollars.[~~.~~] Such assessment shall be included in the assessment rate established pursuant to subdivision two of section one hundred fifty-one of this chapter. Such assessments shall be deposited with the commissioner of taxation and finance and transferred to the benefit of such fund upon payment of debt service, if any, pursuant to section one hundred fifty-one of this chapter.

§ 11. Subdivision 1 of section 217 of the workers' compensation law, as amended by section 16 of part SS of chapter 54 of the laws of 2016, is amended to read as follows:

1. Written notice and proof of disability or proof of need for family leave shall be furnished to the employer by or on behalf of the employee claiming benefits or, in the case of a claimant under section two hundred seven of this article, to the chair, within thirty days after commencement of the period of disability. Additional proof shall be furnished thereafter from time to time as the employer or carrier or chair may require but not more often than once each week. Such proof shall include a statement of disability by the employee's [~~attending physician or attending podiatrist or attending chiropractor or attending dentist or attending psychologist or attending certified nurse midwife or family leave care recipient's health care provider, or in the case of an employee who adheres to the faith or teachings of any church or denomination, and who in accordance with its creed, tenets or principles depends for healing upon prayer through spiritual means alone in the practice of religion, by an accredited practitioner,~~] **health care provider** containing facts and opinions as to such disability in compliance with regulations of the chair. Failure to furnish notice or proof within the time and in the manner above provided shall not invalidate the claim but no benefits shall be required to be paid for any period more than two weeks prior to the date on which the required proof is furnished unless it shall be shown to the satisfaction of the chair not to have been reasonably possible to furnish such notice or proof and that such notice or proof was furnished as soon as possible; provided, however, that no benefits shall be paid unless the required proof [~~of disability~~] is furnished within the period of actual disability or family leave that does not exceed the statutory maximum period permitted under section two hundred four of this article. No limitation of time provided in this section shall run as against any disabled employee who is mentally incompetent, or physically incapable of providing such notice as a result of a serious medical condition, or a minor so long as such person has no guardian of the person and/or property.

§ 12. Section 218 of the workers' compensation law, as added by chapter 600 of the laws of 1949, subdivision 2 as amended by chapter 809 of the laws of 1985, is amended to read as follows:

§ 218. [~~Disability benefit~~] **Benefit** rights inalienable. 1. Any agreement by an employee to waive [~~his~~] **their** rights under this article shall be void.

2. Disability **or family leave** benefits payable under this article shall not be assigned or released, except as provided in this article, and shall be exempt from all claims of creditors and from levy, execution and attachment or other remedy for recovery or collection of a debt, which exemption may not be waived provided, however, that such benefits shall be subject to an income execution or order for support enforcement pursuant to section fifty-two hundred forty-one or fifty-two hundred forty-two of the civil practice law and rules.

§ 13. Section 221 of the workers' compensation law, as amended by section 19 of part SS of chapter 54 of the laws of 2016, is amended to read as follows:

§ 221. Determination of contested claims for disability and family leave benefits. In accordance with regulations adopted by the chair, within twenty-six weeks of written notice of rejection of claim, the employee may file with the chair a notice that [~~his or her~~] **their** claim for disability or family leave benefits has not been paid, and the employee shall submit proof of disability or entitlement to family leave and of [~~his or her~~] **their** employment, wages and other facts reasonably necessary for determination of the employee's right to such benefits. Failure to file such notice within the time provided, may be excused if it can be shown not to have been reasonably possible to furnish such notice and that such notice was furnished as soon as possible. On demand the employer or carrier shall forthwith deliver to the board the original or a true copy of the health care provider's report, wage and employment data and all other documentation in the possession of the employer or carrier with respect to such claim.

The chair or designee, shall have full power and authority to determine all issues in relation to every such claim for disability benefits required or provided under this article, and shall file its decision in the office of the chairman. Upon such filing, the chairman shall send to the parties a copy of the decision. Either party may present evidence and be represented by counsel at any hearing on such claim. The decision of the board shall be final as to all questions of fact and, except as provided in section twenty-three of this chapter, as to all questions of law. Every decision shall be complied with in accordance with its terms within ten days thereafter except as permitted by law upon the filing of a request for review, and any payments due under such decision shall draw simple interest from thirty days after the making thereof at the rate provided in section five thousand four of the civil practice law and rules. The chair shall adopt rules and regulations to carry out the provisions of this article including but not limited to resolution of contested claims and requests for review thereof, and payment of costs for resolution of disputed claims by carriers. Any designated process shall afford the parties the opportunity to present evidence and to be represented by counsel in any such proceeding. The chair shall have the authority to provide for alternative dispute resolution procedures for claims arising under **disability and** family leave, including but not limited to referral and submission of disputed claims to a neutral arbitrator under the auspices of an alternative dispute resolution association pursuant to article seventy-five of the civil practice law and rules. Neutral arbitrator shall mean an arbitrator who does not have a material interest in the outcome of the arbitration proceeding or an existing and substantial relationship, including but not limited to

pecuniary interests, with a party, counsel or representative of a party. Any determination made by alternative dispute resolution shall not be reviewable by the board and the venue for any appeal shall be to a court of competent jurisdiction.

§ 14. Section 228 of the workers' compensation law, as added by section 27 of part GG of chapter 57 of the laws of 2013, is amended to read as follows:

§ 228. Administrative expenses. 1. The estimated annual expenses necessary for the workers' compensation board to administer the provisions of the disability **and paid family leave** benefits law shall be borne by all affected employers and included as part of the assessment rate generated pursuant to subdivision two of section one hundred fifty-one of this chapter.

2. Annually, as soon as practicable after the first day of April, the chair and department of audit and control shall ascertain the total amount of actual expenses.

§ 15. Subsection (n) of section 4235 of the insurance law is amended by adding a new paragraph 4 to read as follows:

(4)(A) The superintendent shall establish by September first of each year the maximum employee contribution that a covered employer, as defined in section two hundred two of the workers' compensation law, is authorized to collect from each employee for the cost of disability benefits provided pursuant to article nine of the workers' compensation law through a group accident and health insurance policy or through a self-funded employer for its employees. Beginning January first, two thousand twenty-six, the maximum employee contribution amount shall be two dollars and twenty cents per week, and beginning January first, two thousand twenty-nine, the maximum employee contribution shall be one-half of one percent of the employee's wages but shall not exceed forty percent of the average of the combination of all employee and employer contributions to disability benefits provided pursuant to paragraph (b) of subdivision two of section two hundred four of the workers' compensation law during the prior calendar year, which the superintendent shall determine and publish on the department's website.

(B) A self-funded employer shall submit reports to the superintendent for the purpose of determining forty percent of the average of the combination of all employee and employer contributions to disability benefits provided pursuant to paragraph (b) of subdivision two of section two hundred four of the workers' compensation law. A self-funded employer shall submit a report to the superintendent by July first, two thousand twenty-five that sets forth employee and employer contributions to disability benefits provided pursuant to paragraph (b) of subdivision two of section two hundred four of the workers' compensation law for the year-ending two thousand twenty-four, in a format determined by the superintendent. Beginning April first, two thousand twenty-six, and annually thereafter, a self-funded employer shall submit a report to the superintendent that sets forth employee and employer contributions to disability benefits provided pursuant to paragraph (b) of subdivision two of section two hundred four of the workers' compensation law for the prior calendar year, in a format determined by the superintendent.

§ 16. Section 2605 of the insurance law is amended to read as follows:

§ 2605. Penalty for violating workers' compensation law. The superintendent may impose a penalty not to exceed twenty-five hundred dollars **per violation** upon any insurer required to be licensed under the provisions of this chapter, if, after notice to and a hearing of such

insurer, [~~he~~] **the superintendent** finds it has unreasonably failed to comply with the workers' compensation law.

§ 17. This act shall take effect immediately and shall apply to all policies issued, renewed, modified, altered, or amended on or after January 1, 2026.