STATE OF NEW YORK

5799

2025-2026 Regular Sessions

IN ASSEMBLY

February 20, 2025

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

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:

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

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

2. Any complaint alleging such an unlawful discriminatory practice must be filed within two years of the commission of such practice. Upon finding that an employer has violated this section, the board shall make an order that any employee so discriminated against shall be restored to employment or otherwise restored to the position or privileges [~~he or she~~] they would have had but for the discrimination, if such reinstatement is requested by such employee, and shall be compensated by [~~his or her~~] their employer for any loss of compensation arising out of such discrimination together with such fees or allowances for services

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

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rendered by an attorney or licensed representative as fixed by the board. Any employer who violates this section shall be liable to a penalty of not less than one hundred dollars or more than five hundred dollars, as may be determined by the board. All such penalties shall be paid into the state treasury. All penalties, compensation and fees or allowances shall be paid solely by the employer. The employer alone and not [~~his or her~~] their carrier shall be liable for such penalties and payments. Any provision in an insurance policy undertaking to relieve the employer from liability for such penalties and payments shall be void.

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

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

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

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

§ 2. 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, provided, however, that such eligible employee shall not be required to request reinstatement to any such position. The taking of family 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. **Furthermore, nothing in this section shall be construed to require an employee to request reinstatement to their former position of employment, or to a comparable position with comparable employment benefits, pay, and other terms and conditions of employment, before initiating a complaint against a covered employer pursuant to the provisions of section one hundred twenty of this chapter.**

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