

# STATE OF NEW YORK

8697

## IN SENATE

January 7, 2026

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

AN ACT to amend the state finance law, in relation to dependent care flexible benefits

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

1 Section 1. The state finance law is amended by adding a new article 17  
2 to read as follows:

### ARTICLE 17

#### DEPENDENT CARE FLEXIBLE BENEFITS

##### Section 245. Definitions.

##### 246. Dependent care flexible benefits.

7 § 245. Definitions. For the purposes of this article, the following  
8 terms shall have the following meanings:

9 1. "Employer" shall mean a person or entity engaged in a business,  
10 industry, profession, trade, or other enterprise in New York state,  
11 whether for profit or not for profit, that:

12 (a) has at all times during the previous calendar year employed at  
13 least one hundred employees in the state;

14 (b) has been in business for at least two full years; and

15 (c) has not offered a dependent care flexible spending account under  
16 section 129 of the Internal Revenue Code in the preceding two years.

17 2. "Employee" shall mean any individual who is eighteen years of age  
18 or older, who is employed by an employer, and who earned wages working  
19 for an employer in New York state during a calendar year.

20 3. "Program administrator" shall mean the agent, as determined by an  
21 employer, responsible for the maintenance and management of flexible  
22 spending accounts as authorized in subdivision one of section two  
23 hundred forty-six of this article.

24 § 246. Dependent care flexible benefits. 1. Each employer shall estab-  
25 lish a dependent care flexible benefits program for the deferment of a  
26 portion of its employees' compensations into dependent care flexible  
27 spending accounts consistent with section 129 of the Internal Revenue  
28 Code and regulations adopted pursuant thereto, and implement such

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

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1 program. The program administrator shall prioritize the dissemination  
2 of such program on an annual basis and shall document the communication  
3 in at least three different modes.

4 2. At the request of an employee, an employer shall, by payroll  
5 deduction, defer the payment of part of the compensation of such employ-  
6 ee as provided in a written statement by such employee for the purpose  
7 of establishing and maintaining a dependent care flexible spending  
8 account as authorized under subdivision one of this section, and shall  
9 transfer the amount so deferred to the authorized program administrator;  
10 provided, however, that the amount so deferred shall not exceed the  
11 amount allowed by section 129 of the Internal Revenue Code.

12 3. Moneys held in dependent care flexible benefits accounts estab-  
13 lished pursuant to subdivision one of this section for the employees of  
14 each such participating employer shall be held by the program adminis-  
15 trator as agent for the participating employee and shall be accounted  
16 for separately and shall remain the property of such participating  
17 employer. Notwithstanding any law to the contrary, moneys may be paid  
18 out of such accounts without any appropriation by law. All payments of  
19 moneys from such accounts shall be made only in accordance with the  
20 flexible benefits program audit of the state comptroller. Any unexpended  
21 balances in such accounts at the end of a plan year as such term is so  
22 defined by the Internal Revenue Service shall be returned to the control  
23 of the participating employer.

24 4. To the extent permitted by section 125 of the Internal Revenue Code  
25 and regulations adopted pursuant thereto, any salary deferred by an  
26 employee under a flexible benefits program established pursuant to this  
27 section shall be considered part of annual compensation for the purpose  
28 of computing retirement benefits.

29 § 2. This act shall take effect immediately.