

**STATUS:**

A8742 Silver (MS) Same as S 5791 SAVINO

Workers' Compensation Law

TITLE....Provides benefits for injury or sickness, pregnancy or family leave

06/05/09 referred to labor

**SUMMARY:**

SILVER, JOHN, NOLAN; M-S: Benedetto, Bing, Boyland, Destito, Dinowitz, Farrell, Glick, Jacobs, Lancman, Lentol, Markey, O'Donnell, Peoples, Pheffer, Robinson, Rosenthal, Sweeney, Towns, Weinstein, Weisenberg Amd Work Comp L, generally; amd S1113, Ins L

Provides workers' compensation benefits for injury or sickness, pregnancy or family leave; applies to an employee and to family members taking family leave to care for an employee.

**BILL TEXT:**

## STATE OF NEW YORK

8742

2009-2010 Regular Sessions

### IN ASSEMBLY

June 5, 2009

Introduced by M. of A. SILVER, JOHN, NOLAN -- Multi-Sponsored by -- M. of A. BENEDETTO, BING, BOYLAND, DESTITO, DINOWITZ, FARRELL, GLICK, JACOBS, LANCMAN, LENTOL, MARKEY, O'DONNELL, PEOPLES, PHEFFER, ROBINSON, ROSENTHAL, SWEENEY, TOWNS, WEINSTEIN, WEISENBERG -- read once and referred to the Committee on Labor

AN ACT to amend the workers' compensation law and the insurance law, in relation to providing benefits for injury or sickness, pregnancy or family leave

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

1 Section 1. Subdivision 9 of section 201 of the workers' compensation  
2 law is amended by adding two new paragraphs C and D to read as follows:

3 C. "Disability" also includes family care, as defined in subdivision  
4 fifteen of this section.

5 D. Unless otherwise set forth in this article, all provisions of this  
6 article applicable to "disability" shall apply to (i) disability arising  
7 from injury or sickness; (ii) disability caused by or in connection with  
8 pregnancy; and (iii) for family care.

9 § 2. Subdivision 14 of section 201 of the workers' compensation law,  
10 as added by chapter 600 of the laws of 1949 and as renumbered by chapter  
11 438 of the laws of 1964, is amended to read as follows:

12 14. "A day of disability" means any day on which the employee was  
13 prevented from performing work because of disability, including any day  
14 on which the employee took off for family care, and for which ~~he~~ the

15 employee has not received his or her regular remuneration.

16 § 3. Section 201 of the workers' compensation law is amended by adding  
17 ten new subdivisions 15, 16, 17, 18, 19, 20, 21, 22, 23 and 24 to read  
18 as follows:

19 15. "Family care" shall mean any leave taken by an employee from work:

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

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1 A. to participate in providing care, including physical or psycholog-  
2 ical care, for a family member of the employee made necessary by a seri-  
3 ous health condition of the family member; or

4 B. to bond with his or her child during the first twelve months after  
5 the child's birth, or the first twelve months after the placement of the  
6 child for adoption or foster care with the employee.

7 16. "Child" means a biological, adopted, or foster child, a stepchild,  
8 a legal ward, or a child of a person standing in loco parentis, who is:

9 A. under eighteen years of age; or

10 B. eighteen years of age or older and incapable of self-care because  
11 of a mental or physical disability.

12 17. "Domestic partner" has the meaning set forth in section four of  
13 this chapter.

14 18. "Serious health condition" means an illness, injury, impairment,  
15 or physical or mental condition that:

16 A. requires inpatient care in a hospital, hospice or residential  
17 health care facility; or

18 B. requires continuing treatment by a health care provider.

19 19. "Parent" means the biological, adoptive, or foster parent of an  
20 employee or individual who stood in loco parentis to an employee when  
21 the employee was a son or daughter.

22 20. "Family member" means a child, spouse, domestic partner, parent,  
23 grandchild, grandparent, mother-in-law, father-in-law or mother and/or  
24 father of domestic partner.

25 21. Persons who are "in loco parentis" include those with day-to-day  
26 responsibilities to care for and financially support a child or, in the  
27 case of an employee, who had such responsibility for the employee when  
28 the employee was a child. A biological or legal relationship is not  
29 necessary.

30 22. "Grandchild" means the child of a child.

31 23. "Health care provider" means any provider treating an employee's  
32 injury or sickness, or a family member's serious health condition,  
33 including a physician, podiatrist, chiropractor, dentist, psychologist,  
34 certified nurse midwife, or in the case of a family member who adheres  
35 to the faith or teachings of any church or denomination, and who in  
36 accordance with its creed, tenets or principles depends for healing upon  
37 prayer through spiritual means alone in the practice of religion, by an  
38 accredited practitioner, containing facts and opinions as to such health  
39 condition in compliance with regulations of the chair.

40 24. "Family care cost" shall mean:

41 A. prior to July first, two thousand eleven, forty-five cents per  
42 week; and

43 B. during every subsequent year commencing on July first such amount  
44 as shall be set by regulation of the superintendent of insurance follow-  
45 ing consultation with the family care advisory council by April first of  
46 the same year based on his or her actuarially sound estimation of the  
47 cost per employee of providing family care benefits, but in no event  
48 more than one hundred fifteen percent of his or her estimation of the  
49 cost per employee of providing family care benefits through the state  
50 insurance fund.

51 § 3-a. The workers' compensation law is amended by adding a new  
52 section 203-a to read as follows:

53 § 203-a. Retaliatory action prohibited. 1. The provisions of section  
54 one hundred twenty of this chapter and section two hundred forty-one of  
55 this article shall be applicable to family care leave as fully as if set  
56 forth in this section.

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1 2. Nothing in this section shall be deemed to diminish the rights,  
2 privileges, or remedies of any employee under any collective bargaining  
3 agreement or employment contract; except that the institution of an  
4 action in accordance with this section shall be deemed a waiver of the  
5 rights and remedies available under any other contract or collective  
6 bargaining agreement.

7 § 3-b. The workers' compensation law is amended by adding a new  
8 section 203-b to read as follows:

9 § 203-b. Family care leave. Any eligible employee of a covered employ-  
10 er who has in employment after January first, two thousand ten twenty-  
11 five or more employees on each of at least thirty days in any calendar  
12 year who takes leave under this section shall be entitled, on return  
13 from such leave, to be restored by the employer to the position of  
14 employment held by the employee when the leave commenced, or to be  
15 restored to a comparable position with comparable employment benefits,  
16 pay and other terms and conditions of employment. The taking of leave  
17 for the purpose of family care shall not result in the loss of any  
18 employment benefit accrued prior to the date on which the leave  
19 commenced. Nothing in this section shall be construed to entitle any  
20 restored employee to the accrual of any seniority or employment benefits  
21 during any period of leave, or any right, benefit or position to which  
22 the employee would have been entitled had the employee not taken the  
23 leave. A violation of this section shall be a violation of section one  
24 hundred twenty of this chapter and all remedies and penalties available  
25 under section one hundred twenty of this chapter shall be available for  
26 violations of this section as fully as if set forth in this section.

27 § 3-c. The section heading and the first undesignated paragraph of  
28 section 120 of the workers' compensation law, as amended by chapter 61  
29 of the laws of 1989, are amended to read as follows:

30 Discrimination against employees [~~who bring proceedings~~]. It shall be  
31 unlawful for any employer or his or her duly authorized agent to  
32 discharge or in any other manner discriminate against an employee as to  
33 his or her employment because such employee has claimed or attempted to  
34 claim compensation from such employer, or claimed or attempted to claim  
35 any benefits provided under this chapter, or because he or she has  
36 testified or is about to testify in a proceeding under this chapter and  
37 no other valid reason is shown to exist for such action by the employer.

38 § 4. Subdivision 1 of section 204 of the workers' compensation law, as  
39 added by chapter 600 of the laws of 1949, is amended and a new subdivi-  
40 sion 3 is added to read as follows:

41 1. Disability benefits shall be payable to an eligible employee for  
42 disabilities commencing after June thirtieth, nineteen hundred fifty,  
43 beginning with the eighth consecutive day of disability and thereafter  
44 during the continuance of disability, subject to the limitations as to  
45 maximum and minimum amounts and duration and other conditions and limi-  
46 tations in this section and in sections two hundred five and two hundred  
47 six of this article. Successive periods of disability caused by the  
48 same or related injury or sickness or reason for family care shall be  
49 deemed a single period of disability only if separated by less than  
50 three months.

51 3. The weekly benefit which the disabled employee is entitled to  
52 receive for disability commencing on or after January first, two thou-  
53 sand ten shall be fifty percent of the employee's average weekly wage,  
54 but in no case shall such benefit exceed thirty-five percent of the  
55 statewide average weekly wage as determined by the state department of  
56 labor pursuant to subdivision sixteen of section two of this chapter.

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1 The weekly benefit which the disabled employee is entitled to receive  
2 for disability commencing on or after April first, two thousand eleven  
3 shall be fifty percent of the employee's average weekly wage, but in no  
4 case shall such benefit exceed forty percent of the statewide average  
5 weekly wage as determined by the state department of labor pursuant to  
6 subdivision sixteen of section two of this chapter. The weekly benefit  
7 which the disabled employee is entitled to receive for disability  
8 commencing on or after April first, two thousand twelve shall be fifty  
9 percent of the employee's average weekly wage but in no case shall such  
10 benefit exceed forty-five percent of the statewide average weekly wage  
11 as determined by the state department of labor pursuant to subdivision  
12 sixteen of section two of this chapter. The weekly benefit which the  
13 disabled employee is entitled to receive for disability commencing on or  
14 after April first, two thousand thirteen and subsequently shall be fifty  
15 percent of the employee's average weekly wage but in no case shall such  
16 benefit exceed fifty percent of the statewide average weekly wage as  
17 determined by the state department of labor pursuant to subdivision  
18 sixteen of section two of this chapter.

19 § 5. Subdivisions 1, 2, 3, 4, 7 and 8 of section 205 of the workers'  
20 compensation law, subdivision 1 as amended by chapter 651 of the laws of  
21 1958, subdivision 2 as amended by chapter 270 of the laws of 1990 and  
22 subdivisions 3, 4, 7 and 8 as added by chapter 600 of the laws of 1949  
23 and as renumbered by chapter 352 of the laws of 1981, are amended and a  
24 new subdivision 9 is added to read as follows:

25 1. (a) For disability resulting from injury or sickness or pregnancy  
26 of an employee, for more than twenty-six weeks during a period of  
27 fifty-two consecutive calendar weeks or during any one period of disa-  
28 bility; or

29 (b) For family care, for more than twelve weeks during a period of  
30 fifty-two consecutive calendar weeks or during any one period of family  
31 care;

32 2. for any period of disability resulting from the injury or sickness  
33 or pregnancy of an employee during which an employee is not under the  
34 care of a duly licensed physician or with respect to disability result-  
35 ing from a condition of the foot which may lawfully be treated by a duly  
36 registered and licensed podiatrist of the state of New York or with  
37 respect to a disability resulting from a condition which may lawfully be  
38 treated by a duly registered and licensed chiropractor of the state of  
39 New York or with respect to a disability resulting from a condition  
40 which may lawfully be treated by a duly licensed dentist of the state of  
41 New York or with respect to a disability resulting from a condition  
42 which may lawfully be treated by a duly registered and licensed psychol-  
43 ogist of the state of New York or with respect to a disability resulting  
44 from a condition which may lawfully be treated by a duly certified nurse  
45 midwife, for any period of such disability during which an employee is  
46 neither under the care of a physician nor a podiatrist, nor a chiroprac-  
47 tor, nor a dentist, nor a psychologist, nor a certified nurse midwife;  
48 and for any period of disability during which an employee who adheres to  
49 the faith or teachings of any church or denomination and who in accord-  
50 ance with its creed, tenets or principles depends for healing upon pray-  
51 er through spiritual means alone in the practice of religion, is not  
52 under the care of a practitioner duly accredited by the church or denom-  
53 ination, and provided such employee shall submit to all physical exam-  
54 inations as required by this chapter[-];

55 3. for any disability resulting from injury or sickness of an employee  
56 occasioned by the wilful intention of the employee to bring about injury

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1 to or the sickness of himself or another, or resulting from any injury  
2 or sickness sustained in the perpetration by the employee of an illegal  
3 act;

4 4. for any day of disability during which the employee performed work  
5 for remuneration or profit; but not including any remuneration received  
6 for caring for a foster or adopted child or other individual residing in  
7 the employee's place of residence;

8 7. for any disability due to any act of war, declared or undeclared,  
9 if such act shall occur after June thirtieth, nineteen hundred fifty,  
10 except that nothing in this subdivision shall bar an employee from  
11 receiving benefits under this article for care of a family member disa-  
12 bled due to an act of war;

13 8. for any disability resulting from an injury or sickness to or preg-  
14 nancy of the employee commencing before the employee becomes eligible to  
15 benefits hereunder [or commencing prior to July first, nineteen hundred  
16 fifty, but this shall not preclude benefits for recurrence after July  
17 first, nineteen hundred fifty, of a disability commencing prior there-  
18 to-];

19 9. for any day of absence from work required pursuant to any discipli-  
20 nary process; or, in regard to family care benefits, any day of absence  
21 from work resulting from injury or sickness to or pregnancy of the  
22 employee, including any leave taken under section seventy-one or seven-  
23 ty-three of the civil service law.

24 § 6. The workers' compensation law is amended by adding a new section  
25 205-a to read as follows:

26 § 205-a. Relationship between disability benefits for family care and  
27 for the employee's own injury or sickness or pregnancy. The receipt of  
28 benefits for disability resulting from injury or sickness to the employ-  
29 ee, or pregnancy of the employee, shall not count toward any time limi-  
30 tation under subdivision one of section two hundred five of this article  
31 on the receipt of benefits for family care, and the receipt of benefits  
32 for family care shall not count toward any time limitation under subdivi-  
33 vision one of section two hundred five of this article on the receipt of  
34 benefits for disability resulting from injury or sickness or pregnancy  
35 to the employee, except that an employee may receive disability benefits  
36 on only one claim at any time.

37 § 7. Subdivision 3 of section 209 of the workers' compensation law, as  
38 amended by chapter 415 of the laws of 1983, is amended to read as  
39 follows:

40 3. The contribution of each such employee to the cost of disability  
41 benefits provided by this article shall be one-half of one per centum of  
42 the employee's wages paid to him on and after July first, nineteen  
43 hundred fifty, but not in excess of sixty cents per week for the cost of  
44 disability benefits for injury or sickness to, or pregnancy of the  
45 employee plus the family care cost, as defined in subdivision twenty-  
46 four of section two hundred one of this article.

47 § 7-a. Section 211 of the workers' compensation law is amended by  
48 adding two new subdivisions 7 and 8 to read as follows:

49 7. Such family care benefits as are provided for in this article shall  
50 be in addition to, and shall not amend, repeal or replace, the terms of  
51 any agreement that is collectively negotiated between an employer and  
52 an employee organization, including agreement or interest arbitration  
53 awards made pursuant to article fourteen of the civil service law.

54 8. Nothing in this article shall require an employer to use the same  
55 carrier to provide benefits required by or permissible under this arti-  
56 cle for disability resulting from injury or sickness to or pregnancy of

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1 the employee as it uses to provide benefits required by or permissible  
2 under this article for family care. An employer may use a different  
3 means, among those set forth in subdivisions one through five of this  
4 section, to provide benefits required by this article for disability  
5 resulting from injury or sickness to or pregnancy of the employee, from  
6 the means used to provide benefits required by this article for family  
7 care.

8 § 7-b. The workers' compensation law is amended by adding a new  
9 section 211-a to read as follows:

10 § 211-a. Public employees; employee opt in. 1. For purposes of this  
11 section, "public employee" means any employee of the state, any poli-  
12 tical subdivision of the state, a public authority or any other govern-  
13 mental agency or instrumentality. "Public employer" means the state, any  
14 political subdivision of the state, a public authority or any other  
15 governmental agency or instrumentality thereof. "Employee organization"  
16 shall have the meaning set forth in section two hundred one of the civil  
17 service law.

18 2. Public employers shall provide benefits for family care to public  
19 employees where an employee organization that represents those employees  
20 opts in to family care in accordance with the procedures and terms set  
21 forth in subdivision three of this section.

22 3. An employee organization may opt in to the family care benefit on  
23 behalf of those employees it represents:

24 a. upon notice given prior to April first, two thousand ten, which opt  
25 in shall become effective only on July first, two thousand ten;

26 b. at any time upon ninety days notice for any employer who is not  
27 providing disability benefits for injury or sickness to or pregnancy of  
28 an employee under section two hundred twelve of this article, or who is  
29 self-insured for such benefits;

30 c. for any employer who is providing disability benefits for injury or  
31 sickness to or pregnancy of an employee under section two hundred twelve  
32 of this article, upon notice at least ninety days prior to the expira-  
33 tion of the employer's insurance policy for such benefits, which opt in  
34 shall be effective only for the time period covered by any subsequent  
35 policy or renewal; or

36 d. at any time as is mutually agreed upon between the employee organ-  
37 ization and any public employer.

38 An employee organization that has opted in to the family care benefit  
39 may opt out of it within the time periods, and effective upon the same  
40 dates, set forth in this paragraph.

41 4. In the absence of any contrary statement in a collectively negoti-  
42 ated agreement under article fourteen of the civil service law, a public  
43 employer may require public employees who opt in under this section to  
44 contribute up to the family care cost, as defined in subdivision twen-  
45 ty-four of section two hundred one of this article, per week in accord-  
46 ance with the procedure set forth in section two hundred nine of this  
47 article.

48 § 8. Subdivisions 1 and 2 of section 212 of the workers' compensation  
49 law, subdivision 1 as amended by chapter 740 of the laws of 1960 and  
50 subdivision 2 as amended by chapter 120 of the laws of 1969, are amended  
51 to read as follows:

52 1. Any employer not required by this article to provide for the  
53 payment of disability benefits to his employees, or to any class or  
54 classes thereof, may become a covered employer or bring within the  
55 provisions of this article such employees or class or classes thereof by  
56 voluntarily electing to provide for payment of [~~such~~] benefits for disa-

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1 bility resulting from injury or sickness to or pregnancy of an employee  
2 or for family care, or both, in one or more of the ways set forth in  
3 section two hundred eleven of this article; but such election shall be  
4 subject to the approval of the chairman, and if the employees are  
5 required to contribute to the cost of such benefits the assent within  
6 thirty days before such approval is granted, of more than one-half of  
7 such employees shall be evidenced to the satisfaction of the chairman.  
8 On approval by the chairman of such election to provide benefits, all  
9 the provisions of this article shall become and continue applicable as  
10 if the employer were a covered employer as defined in this article. The  
11 obligation to continue as a covered employer with respect to employees  
12 for whom provision of benefits is not required under this article, may  
13 be discontinued by such employer on ninety days notice to the chairman  
14 in writing and to his employees, after he has provided for payment of  
15 benefits for not less than one year and with such provision for payment  
16 of obligations incurred on and prior to the termination date as the  
17 chairman may approve. Any election by a public employer to provide  
18 family care benefits made prior to July first, two thousand ten shall be  
19 effective on that date.

20 2. Notwithstanding the definition of "employer" and "employment" in  
21 section two hundred one of this article, the state or any agency there-  
22 of, a public authority, a municipal corporation or a fire district or  
23 other political subdivision may become a covered employer under this  
24 article by complying with the provisions of subdivision one of this  
25 section and may discontinue such status only as provided in that subdivi-  
26 vision.

27 § 8-a. Subdivision 2 of section 76 of the workers' compensation law,  
28 as added by chapter 600 of the laws of 1949, is amended to read as  
29 follows:

30 2. The purposes of the state insurance fund herein created are hereby  
31 enlarged to provide [~~for the~~] insurance [~~by the state insurance fund of~~]  
32 for the payment of the benefits required by section two hundred four of  
33 this chapter, including benefits for family care provided either in the  
34 same policy with or in a separate policy from benefits for disability  
35 resulting from injury or sickness to or pregnancy of an employee, and as  
36 provided pursuant to section two hundred eleven-a of this chapter. A  
37 separate fund is hereby created within the state insurance fund, which  
38 shall be known as the "disability benefits fund", and which shall  
39 consist of all premiums received and paid into said fund on account of  
40 such insurance, all securities acquired by and through the use of moneys  
41 belonging to said fund and of interest earned upon moneys belonging to  
42 said fund and deposited or invested as herein provided. Said disability  
43 benefits fund shall be applicable to the payment of benefits, expenses  
44 and assessments on account of insurance written pursuant to article nine  
45 of this chapter.

46 § 9. Subdivisions 1, 2, 3 and 4 of section 217 of the workers' compen-  
47 sation law, subdivision 1 as amended by chapter 167 of the laws of 1999,  
48 subdivisions 2 and 3 as amended by chapter 270 of the laws of 1990 and  
49 subdivision 4 as added by chapter 600 of the laws of 1949, are amended  
50 to read as follows:

51 1. Written notice and proof of disability shall be furnished to the  
52 employer by or on behalf of the employee claiming benefits or, in the  
53 case of a claimant under section two hundred seven of this article, to  
54 the chair, within thirty days after commencement of the period of disa-  
55 bility. Additional proof shall be furnished thereafter from time to time



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1 as the employer or carrier or chair may require but not more often than  
2 once each week. Such proof shall include:

3 (a) in the case of disability resulting from injury or sickness to or  
4 pregnancy of the employee, a statement of disability by the employee's  
5 attending [physician or attending podiatrist or attending chiropractor  
6 or attending dentist or attending psychologist or attending certified  
7 nurse midwife, or in the case of an employee who adheres to the faith or  
8 teachings of any church or denomination, and who in accordance with its  
9 creed, tenets or principles depends for healing upon prayer through  
10 spiritual means alone in the practice of religion, by an accredited  
11 practitioner, containing facts and opinions as to such disability in  
12 compliance with regulations of the chair.] health care provider;

13 (b) in the case of family care for bonding with a new child, a birth  
14 certificate, certificate of adoption, or other competent evidence show-  
15 ing that the employee is the parent of a child within twelve months of  
16 that child's birth or placement for adoption or foster care with the  
17 employee;

18 (c) in the case of benefits for care of a family member with a serious  
19 health condition:

20 (i) a statement by the family member's health care provider, contain-  
21 ing facts and opinions as to such health condition in compliance with  
22 regulations of the chair; and

23 (ii) a statement subscribed by the employee and affirmed by him or her  
24 as true under penalties of perjury, or other equivalent documentary  
25 proof, that the employee is a primary care giver for the family member  
26 during the time of disability.

27 Failure to furnish notice or proof within the time and in the manner  
28 above provided shall not invalidate the claim but no benefits shall be  
29 required to be paid for any period more than two weeks prior to the date  
30 on which the required proof is furnished unless it shall be shown to the  
31 satisfaction of the chair not to have been reasonably possible to  
32 furnish such notice or proof and that such notice or proof was furnished  
33 as soon as possible; provided, however, that no benefits shall be paid  
34 unless the required proof of disability is furnished within twenty-six  
35 weeks after commencement of the period of disability. No limitation of  
36 time provided in this section shall run as against any person who is  
37 mentally incompetent, or physically incapable of providing such notice  
38 as a result of a serious medical condition, or a minor so long as such  
39 person has no guardian of the person and/or property.

40 2. An employee claiming benefits for his or her injury or sickness or  
41 pregnancy, or the family member of such employee in any case where the  
42 employee claims family care benefits for providing care to that family  
43 member shall, as requested by the employer or carrier, submit himself or  
44 herself at intervals, but not more than once a week, for examination by  
45 a [physician or podiatrist or chiropractor or dentist or psychologist or  
46 certified nurse midwife] relevant health care provider designated by the  
47 employer or carrier. All such examinations shall be without cost to the  
48 employee or family member and shall be held at a reasonable time and  
49 place.

50 3. The chair may direct the claimant who seeks disability benefits for  
51 his or her injury or sickness or pregnancy, or the claimants' family  
52 member where the claimant seeks disability benefits for family leave to  
53 provide care to that family member to submit to examination by a [physi-  
54 cian or podiatrist or chiropractor or dentist or psychologist] relevant  
55 health care provider designated by him or her in any case in which the  
56 claim to disability benefits is contested and in claims arising under

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1 section two hundred seven of this article, and in other cases as the  
2 chair or board may require.

3 4. Refusal of the claimant or family member without good cause to  
4 submit to any such examination shall disqualify ~~[him]~~ the claimant from  
5 all benefits hereunder for the period of such refusal, except as to  
6 benefits already paid.

7 § 9-a. Section 217 of the workers' compensation law is amended by  
8 adding a new subdivision 7 to read as follows:

9 7. The commissioner of labor, in consultation with the commissioner of  
10 health and the director of the office for the aging, shall develop and  
11 implement an outreach program to ensure that individuals who may be  
12 eligible to receive temporary disability insurance and family care bene-  
13 fits under this chapter are made aware of these benefits. The outreach  
14 program shall provide adequate information on eligibility requirements,  
15 the claims process, benefit amounts, reinstatement and nondiscrimination  
16 rights, confidentiality and coordination of leave under this chapter and  
17 other sections. The commissioner shall provide such outreach information  
18 in as many languages and as frequently as the commissioner deems neces-  
19 sary to provide adequate notice.

20 § 10. Section 221 of the workers' compensation law, as separately  
21 amended by chapters 425 and 500 of the laws of 1985, is amended to read  
22 as follows:

23 § 221. Determination of contested claims for disability benefits.  
24 Within twenty-six weeks of written notice of rejection of claim, denial  
25 of rights under section two hundred three-a or two hundred three-b of  
26 this article, the employee may file with the chairman a notice that his  
27 or her claim for disability benefits has not been paid, ~~[and]~~ or that  
28 the employee has been denied rights guaranteed by section two hundred  
29 three-a or two hundred three-b of this article. In cases of denial of  
30 benefits, the employee shall submit proof of disability or eligibility  
31 for family care and of his or her employment, wages and other facts  
32 reasonably necessary for determination of the employee's right to such  
33 benefits or proof of denial of rights under section two hundred three-a  
34 or two hundred three-b of this article or of retaliation. Failure to  
35 file such notice within the time provided, may be excused by the chair-  
36 man if it can be shown to the satisfaction of the chairman not to have  
37 been reasonably possible to furnish such notice and that such notice was  
38 furnished as soon as possible. On demand of the chairman the employer  
39 or carrier shall forthwith deliver to the chairman proof of disability,  
40 including if relevant the original or a true copy of the attending  
41 physician's or attending podiatrist's or accredited practitioner's  
42 statement, wage and employment data and all other papers in the  
43 possession of the employer or carrier with respect to such claim or  
44 complaint.

45 The board shall have full power and authority to determine all issues  
46 in relation to every such claim for disability or family care benefits  
47 required or provided under this article, or with respect to denial of  
48 rights under section two hundred three-a or two hundred three-b of this  
49 article or including ordering payment of benefits, damages and rein-  
50 statement and shall file its decision in the office of the chairman.  
51 Upon such filing, the chairman shall send to the parties a copy of the  
52 decision. Either party may present evidence and be represented by coun-  
53 sel at any hearing on such claim. The decision of the board shall be  
54 final as to all questions of fact and, except as provided in section  
55 twenty-three of this chapter, as to all questions of law. Every decision  
56 of the board shall be complied with in accordance with its terms within

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1 ten days thereafter except in case of appeal, and any payments due under  
2 such decision shall draw simple interest from thirty days after the  
3 making thereof at the rate provided in section five thousand four of the  
4 civil practice law and rules.

5 § 11. Subdivision 2 of section 229 of the workers' compensation law,  
6 as added by chapter 271 of the laws of 1985, is amended to read as  
7 follows:

8 2. Whenever an employee of a covered employer who is eligible for  
9 benefits under section two hundred four of this article shall be absent  
10 from work due to a disability as defined in subdivision nine of section  
11 two hundred one of this article for more than seven consecutive days,  
12 the employer shall provide the employee with a written statement of the  
13 employee's rights under this article in a form prescribed by the chair-  
14 man. The statement shall be provided to the employee within five busi-  
15 ness days after the employee's seventh consecutive day of absence due to  
16 disability or within five business days after the employer knows or  
17 should know that the employee's absence is due to disability, whichever  
18 is later. Each covered employer shall provide each employee with a type-  
19 written, printed or electronic notice in a form prescribed by the chair,  
20 stating that the employer has provided for the payment of disability  
21 benefits as required by this article within thirty days of the effective  
22 date of the chapter of the laws of two thousand nine which amended this  
23 subdivision. Each covered employer shall provide such notice to all new  
24 employees within thirty days of their first day of work.

25 § 12. The workers' compensation law is amended by adding a new section  
26 239-a to read as follows:

27 § 239-a. Family care study and monitoring. 1. The department of  
28 insurance shall study, and report to the governor and both houses of the  
29 legislature by April first, two thousand ten, on the feasibility and  
30 impact of community rating disability insurance or any aspect thereof.

31 2. There shall be created the family care advisory council, which  
32 shall consist of fifteen members to be appointed by the governor as  
33 follows: two on recommendation by the New York state american federation  
34 of labor-congress of industrial organizations, one of whom shall be  
35 representative of public employee organizations certified under article  
36 fourteen of the civil service law, participating in the paid family care  
37 plan, one of whom is representative of unions representing workers  
38 employed in the private sector; two who are representatives of organiza-  
39 tions that represent either covered business or public employers in New  
40 York state participating in the paid family leave plan; two on nomi-  
41 nation of the speaker of the assembly; one on nomination by the minority  
42 leader of the assembly; two on nomination by the temporary president of  
43 the senate; one on nomination by the minority leader of the senate; and  
44 the superintendent of insurance, commissioner of labor and chair of the  
45 workers' compensation board, who shall serve as members ex officio. The  
46 commissioner of labor shall serve as chair of the council. The super-  
47 intendent of insurance and chair of the workers' compensation board  
48 shall consult regularly with the council on the implementation of the  
49 family care benefit. The department of labor, the insurance department  
50 and the workers' compensation board shall provide all necessary person-  
51 nel and logistical support as may be necessary to complete the duties of  
52 the advisory council. The council or any of its members may issue such  
53 recommendations or reports as they deem warranted on the family care  
54 benefit, including on the scope of the benefit, problems with the bene-  
55 fit; funding of the benefit including pass-through costs; possible  
56 statutory amendments and regulatory changes; usage rates; outreach; and

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1 community rating. Any such recommendations or reports shall be provided  
 2 to the governor, superintendent of insurance, speaker of the assembly,  
 3 temporary president of the senate and minority leaders of the senate and  
 4 assembly. Each member of the commission shall serve a term of three  
 5 years. An appointment to fill a vacancy shall be made for the remainder  
 6 of the affected term. Members shall receive no compensation.

7 § 13. Paragraph 3 of subsection (a) of section 1113 of the insurance  
 8 law is amended to read as follows:

9 (3) "Accident and health insurance," means (i) insurance against death  
 10 or personal injury by accident or by any specified kind or kinds of  
 11 accident and insurance against sickness, ailment or bodily injury,  
 12 including insurance providing disability benefits pursuant to article  
 13 nine of the workers' compensation law, including any insurance under  
 14 that article for family care benefits, disability benefits resulting  
 15 from injury or sickness to or pregnancy of an employee, or all, except  
 16 as specified in item (ii) [hereof] of this paragraph; and (ii) non-can-  
 17 cellable disability insurance, meaning insurance against disability  
 18 resulting from sickness, ailment or bodily injury (but excluding insur-  
 19 ance solely against accidental injury) under any contract which does not  
 20 give the insurer the option to cancel or otherwise terminate the  
 21 contract at or after one year from its effective date or renewal date.

22 § 14. This act shall take effect immediately; provided, however, that:

23 (a) Sections one, two, three, three-a, three-b, three-c, four, five,  
 24 six, seven, seven-a, seven-b, eight, nine, nine-a, ten, eleven and thir-  
 25 teen of this act shall take effect January 1, 2010.

26 (b) Paragraph a of subdivision 3 of section 211-a of the workers'  
 27 compensation law, as added by section seven-b of this act allowing  
 28 public employees to opt in to family care benefits prior to July 1, 2010  
 29 and subdivision 1 of section 212 of the workers' compensation law as  
 30 amended by section eight of this act allowing public employers to opt in  
 31 to family care benefits prior to July 1, 2010, shall take effect imme-  
 32 diately.

33 (c) Effective immediately, the addition, amendment and/or repeal of  
 34 any rules or regulations necessary for the implementation of this act on  
 35 its effective date are authorized and directed to be made and completed  
 36 on or before such effective date.

**SPONSORS MEMO:**

**NEW YORK STATE ASSEMBLY  
 MEMORANDUM IN SUPPORT OF LEGISLATION  
 submitted in accordance with Assembly Rule III, Sec 1(e)**

**BILL NUMBER:** A8742**SPONSOR:** Silver (MS)

**TITLE OF BILL:** An act to amend the workers' compensation law and the insurance law, in relation to providing benefits for injury or sickness, pregnancy or family leave

**PURPOSE:** To amend the workers' compensation law to provide benefits for paid family leave.

SUMMARY OF PROVISIONS:

Section 1: amends the workers' compensation law defining disability

Section 2: amends subdivision 14 of the workers compensation law defining a "day of disability"

Section 3: amends section 201 of the worker's compensation law defining "family care", "child", "domestic partner", "serious health condition", "parent", "family member", "in loco parentis", "grandchild", "health care provider", and "family care cost".

Section 3-a: adds section 203-a to the workers' compensation law regarding prohibition of retaliatory action

Section 3-b: adds section 203-b to the workers' compensation law regarding eligibility for family care leave

Section 3-c: amends section 120 of the workers' compensation law regarding discrimination related to family care leave by employers

Section 4: amends subdivision 1 of section 205 of the workers' compensation law and adds a new subdivision 3 regarding payment of benefits

Section 5: amends and adds a new section 9 to section 205 of the workers' compensation law regarding family leave benefit eligibility

Section 6: adds a new section 205-a to the workers compensation law regarding receipt of benefits and limitations

Section 7: amends subdivision 3 of section 209 of the workers' compensation law regarding employee contribution to the cost of disability benefits

Section 7-a: adds two new subdivisions 7 and 8 to section 211 of the workers' compensation law regarding benefits from this law being in addition to the terms of any agreements that is collectively negotiated between an employee and employers

Section 7-b: adds a new section 211-a to the workers compensation law regarding public employees and family leave benefits

Section 8: subdivisions 1 and 2 of section 212 of the workers' compensation law are amended regarding employer obligation of provision of family care benefits Section 8-a: amends subdivision 2 of section 76 of the workers' compensation law regarding the state insurance fund and provision of family care benefits

Section 9: amends subdivisions 1, 2, 3 and 4 of section 217 of the workers' compensation law regarding provision of proof of disability by employee

Section 10: amends section 211 of the workers' compensation law regarding denial of rights to paid family leave benefits

Section 11: amends subdivision 2 of section 229 of the workers' compensation law regarding employer obligation to provide information about family leave benefits

Section 12: amends the workers' compensation law adding a new section 239-a regarding a study by the department of insurance, governor, and both houses of the legislature and community rating disability insurance

Section 13: amends paragraph 3 of subsection (a) of section 1113 of the insurance law defining "accident and health insurance"

Section 14: is the effective date

JUSTIFICATION: Although the Federal Family and Medical Leave Act guarantees 12 weeks of unpaid leave to many workers to care for a sick relative or bond with a new child, most people can't afford to take unpaid time from work. Paid family leave benefits would allow all workers to remain in the workforce and still receive some income while taking leave to care for their family.

The need for such leave grows more acute by the day people are living longer and requiring care in their later years while assisted-living and nursing home options are growing fewer and more expensive. Unanticipated medical emergencies can drive families into desperate financial situations medical bills mount while people are out of work caring for their relatives despite the lack of income. Allowing people to receive some income during a brief leave from work can help prevent such financial disaster.

Further, allowing new parents time from work to bond with a newly born or adopted child is a great positive for the entire family in general and a child's development specifically.

LEGISLATIVE HISTORY: New bill. Similar legislation last session.

FISCAL IMPLICATIONS: To be fully determined.

EFFECTIVE DATE: This act shall take effect immediately; provided however, that:

(a) Sections one, two, three, three-a, three-b, four, five, six, seven, seven-a, seven-b, eight, nine, nine-a, ten, eleven and thirteen of this act shall take effect on January 1, 2010.

(b) Paragraph a of subdivision 3 of section 211-a of the workers' compensation law, as added by section seven-b of this act allowing public employees to opt in to family care benefits prior to July 1, 2010 and subdivision 1 of section 212 of the workers' compensation law as amended by section eight of this act allowing public employers to opt in to family care benefits prior to July 1, 2010, shall take effect immediately.

(c) Effective immediately, the addition amendment and/or repeal of any rules or regulations necessary for the implementation of this act on its effective date are authorized and directed to be made and completed on or before such effective date.

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