

**Subdivision (b) of Section 355.4 of Title 12 NYCRR is hereby amended to read as follows:**

(b) An employer of personal or domestic employees in a private home becomes a covered employer from and after the expiration of four weeks following the employment of one or more personal or domestic employees who work for a minimum of 20 [40] hours per week for such employer and are employed on each of at least 30 days in any calendar year.

**Subdivision (d) of Section 363.1 of Title 12 NYCRR is hereby amended to read as follows:**

(d) Injury and sickness means accidental injury, disease, infection or illness or incapacitation as a result of being an organ donor in a transplant operation.

**A new subdivision (e) of Section 363.1 of Title 12 NYCRR is hereby added to read as follows:**

(e) Disability includes disability caused by or in connection with a pregnancy. An employee is presumed to have a disability caused by or in connection with a pregnancy for at least the four weeks prior to the child's estimated due date and for the six weeks after giving birth via vaginal delivery. An employee who delivers by Cesarean section has a disability caused by or in connection with a pregnancy for eight weeks after giving birth. Any further disability requires medical certification of a complication due to pregnancy or childbirth.

**Section 363.11 of Title 12 NYCRR is hereby amended to read as follows:**

(a) [Written notice of disability shall be furnished to the employer by or on behalf of the employee claiming benefits or in the case of a claimant under section 207 of the Workers' Compensation Law, to the chairman, within 30 days after commencement of the period of disability. Proof of such disability shall be furnished to the employer or carrier or, in the case of a claimant under section 207 of the Workers' Compensation Law, to the chairman, not later than 30 days after commencement of the period of disability and thereafter from time to time as the employer or carrier or chairman may require but not more often than once each week.] Notice and proof of disability shall be in the format prescribed by the Chair. Once the employer receives the request for disability benefits from an employee, the employer shall complete the employer information and return it to the employee within three business days.

(b) Such notice and proof shall include statements furnished by the claimant and the claimant's attending physician, podiatrist, certified nurse midwife, chiropractor or dentist in form prescribed for such purpose by the chairman. The attending physician, podiatrist, certified nurse midwife, chiropractor or dentist shall complete and mail such form to the carrier or self-insured employer, or return it to the claimant, within seven days of receipt of the form.

(c) A carrier, employer or the chairman may investigate a claim and for cause require additional information.

(d) Failure to furnish notice or proof within thirty days after commencement of the period of disability [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. However, if claimant shows it was not [it shall be shown not to have been] reasonably

possible [for the claimant] to furnish such notice or proof within thirty days and that such notice or proof was furnished as soon as possible (e.g., delay by medical provider, or claimant was incapacitated), such delay may be excused and benefits may be payable for the full period of disability; provided[, however, that no benefits shall be paid unless] required proof of disability is furnished within 26 weeks after commencement of the period of disability.

**Section 363.13 of Title 12 is hereby amended to read as follows:**

**363.13. [Rejection] Denial of claim**

(a) [Notice of rejection of claim. If an employee's claim for benefits is rejected in whole or in part by the chairman, carrier or employer, notice of such rejection, in a form prescribed by the chairman, shall be mailed promptly in triplicate to the employee.] Notice of denial of claim. If the employer or carrier denies an initial claim for disability benefits, the employer or carrier must notify the employee of such denial in a manner prescribed by the chair within 18 days of receipt of the proof of disability and must thereafter notify the employee of rejection within 45 days of receipt of the proof of disability.

(b) Notice of rejection of claim. A Notice of Total or Partial Rejection of Claim for Disability Benefits (in the format prescribed by the Chair) sent to the claimant within 18 days of receipt of proof of disability shall satisfy the employer or carrier's obligation to send a notice of denial of claim pursuant to subdivision (a) of this section.

(c) Unless supported by an examination pursuant to Workers' Compensation Law § 217(2), and upon 7 days' notice to the employee, no inquiry pursuant to Workers' Compensation Law § 208(1) shall be made prior to the expiration of the medical certification or twelve weeks from the date of disability, whichever is sooner. Any inquiry made thereafter must be made no more than two weeks prior to the date of expiration of the proof of disability. Such inquiry shall include a clear and prominent statement of the deadline of at least 2 weeks for responding and consequences of failing to respond. Disability caused by or in connection with a pregnancy shall be presumed for the four weeks prior to the child's estimated due date and for the six weeks after giving birth or eight weeks after delivering by Cesarean section.

(d) The carrier or self-insured employer may deny the claim without prejudice for the following reasons:

- (1) incomplete Notice and Proof of Claim for Disability Benefits; or
- (2) insufficient certification of disability.

(e) If the claim is denied without prejudice due to an incomplete claim package, the carrier or self-insured employer must notify the employee of each piece of required information, as identified on the Notice and Proof of Claim for Disability Benefits (in the format prescribed by the Chair), which is missing from the employee's claim for benefits. If the claim is not refiled within 30 days from when leave was first taken, the carrier or self-insured employer may deny the claim.

(f) The carrier or self-insured employer may deny the claim for the following reasons:

- (1) employee has not been employed by the employer for at least 4 consecutive weeks and has not carried eligibility from their prior employer;

(2) employee is not an employee of the employer or employee's disability began more than 4 weeks after their employment terminated;

(3) employee is not an employee of a covered employer;

(4) the amount of leave requested exceeds the statutory maximum benefit period under Article 9 of the Workers' Compensation Law;

(5) the amount of leave requested exceeds the leave needed as stated in the medical certification of the employee;

(6) the claim was not timely made, and claimant did not show it was not reasonably possible to timely file required notice and proof of claim (e.g., delay of medical provider, or claimant was incapacitated);

(7) the employer did not have coverage on the date leave began

(i) when the Board has identified a carrier as providing coverage, the carrier shall pay benefits to the employee without prejudice while the dispute regarding coverage is resolved. Such payments are subject to reimbursement by the carrier identified following the dispute regarding coverage. Whenever a claim for benefits is the responsibility of the special fund for disability benefits pursuant to section 213 of the Workers' Compensation Law, the chair may waive the special fund for disability benefits' obligation to pay without prejudice;

(ii) when a basis for denial is lack of insurance coverage, the insurance carrier shall provide the Board with a copy of the denial.

(8) disability arose out of and in the course of the employee's employment as evidenced by a workers' compensation claim number, if available, or by providing the employer's name and date of accident or date of disablement.

(g) Failure of the employer to complete, or inadequate completion by the employer, of the employer section on the Notice and Proof of Claim for Disability Benefits is not a valid basis for denial by the carrier.

(h) If the employee is eligible to receive benefits at the time of submission of the Notice and Proof of Claim for Disability Benefits with the carrier, the carrier or self-insured employer must accept the claim and make payment to the employee within 18 days. In addition to any other applicable penalties, any benefits paid after 18 days shall draw simple interest from 10 days after notice was given, at the rate provided in section 5004 of the Civil Practice Law and Rules.

(i)[(b)] Request for review. If an employee desires a review of any action on [his] their claim, [he] they shall file with the chair[man two copies of] the notice of rejection of [his] their claim, [his]the request for review and a statement giving specific reasons for such request. Determination of such contested claim shall be made in accordance with the provisions of section 221 of the Workers' Compensation Law. If the insurance carrier or self-insured employer fails to respond to an inquiry from the Workers' Compensation Board relating to a request for review, the claim shall be deemed approved. [Any hearing necessary for such review will be scheduled within 90 days after receipt by the board of the completed

request for review. Cases at hearing points which do not have regularly scheduled hearings within 90 days, may be scheduled at another available hearing point.]

A new section 363.15 of Title 12 NYCRR is hereby added to read as follows:

**363.15. Alternate method for filing a claim**

(a) A carrier or self-insured employer who receives a request for benefits in any format other than the format prescribed by the chair shall immediately provide the employee with an acknowledgment of receipt with a claim identification number.

(b) If the request for benefits is made telephonically, the carrier or self-insured employer shall create a written form, or use the format prescribed by the chair, to capture the information reported by the employee. The carrier or self-insured employer shall provide a copy of the completed written form with any notice of rejection or notice of denial. If the carrier or self-insured employer accepts the medical certification telephonically, such carrier or self-insured employer may not deny the claim based on insufficient medical certification.

(c) If the carrier or self-insured employer determines the application for disability benefits is incomplete, it shall provide the employee within five business days a list of each piece of required information which is missing with the corresponding data field on the Notice and Proof of Claim for Disability Benefits prescribed by the chair identified. Such list shall also provide the employee with an explanation of how to properly complete Notice and Proof of Claim for Disability Benefits.

A new section 363.16 of Title 12 NYCRR is hereby added to read as follows:

**363.16. Certain PFL Regulations Also Applicable to Subchapter H**

Sections 380-5.5, 380-5.6, and 380-7.2 of this Title shall also be applicable to disability benefits under Article 9 of the Workers' Compensation Law.