

NY CLS Work Comp, Art. 9 Note

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Article 9 Disability Benefits

History

Add, L 1949, ch 600, eff April 13, 1949.

New York Consolidated Laws Service

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§ 200. Short title

This article shall be known and may be cited as the "disability benefits law and the paid family leave benefits law."

History

Add, L 1949, ch 600, eff April 13, 1949; amd, L 2016, ch 54, §1 (Part SS), eff April 1, 2016.

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§ 201. Definitions

As used in this article:

1. "Board" means the workmen's compensation board created under this chapter.
2. "Chairman" means the chairman of the workmen's compensation board of the state of New York.
3. "State fund" means the state insurance fund created under article six of this chapter.
4. "Employer," except when otherwise expressly stated, means a person, partnership, association, corporation, legal representative of a deceased employer, or the receiver or trustee of a person, partnership, association or corporation, who has persons in employment as defined in subdivision six of this section, but does not include the state, a municipal corporation, local governmental agency, other political subdivisions or public authority.
5. "Employee" means a person engaged in the service of an employer in any employment defined in subdivision six of this section, except a minor child of the employer except a duly ordained, commissioned, or licensed minister, priest or rabbi, a sexton, a christian science reader, or member of a religious order, or an executive officer of a corporation who at all times during the period involved owns all of the issued and outstanding stock of the corporation and holds all of the offices pursuant to paragraph (e) of section seven hundred fifteen of the business corporation law or two executive officers of a corporation who at all times during the period involved between them own all of the issued and outstanding stock of such corporation and hold all such offices provided, however, that each officer must own at least one share of stock, except as provided in section two hundred twelve of this article, or an executive officer of an incorporated religious, charitable or educational institution, or persons engaged in a professional or teaching capacity in or for a religious, charitable or educational institution, or volunteers in or for a religious, charitable or educational institution, or persons participating in and receiving rehabilitative services in a sheltered workshop operated by a religious, charitable or educational institution under a certificate issued by the United States department of labor, or recipients of charitable aid from a religious or charitable institution who perform work in or for the institution which is incidental to or in return for the aid conferred, and not under an express contract of hire. The terms "religious, charitable or educational institution" mean a corporation, unincorporated association, community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, no part of the net earnings of which inure to the benefit of any private shareholder or individual.

"Employee" shall also mean, for purposes of this chapter, a professional musician or a person otherwise engaged in the performing arts who performs services as such for a television or radio station or network, a film production, a theatre, hotel, restaurant, night club or similar establishment unless, by written contract, such musician or person is stipulated to be an employee of another employer covered by this chapter. "Engaged in the performing arts" shall mean performing service in connection with the production of or performance in any artistic endeavor which requires artistic or technical skill or expertise.

"Employee" shall also mean, for purposes of this chapter, a professional model, who:

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- (a) performs modeling services for; or
- (b) consents in writing to the transfer of his or her exclusive legal right to the use of his or her name, portrait, picture or image, for advertising purposes or for the purposes of trade, directly to

a retail store, a manufacturer, an advertising agency, a photographer, a publishing company or any other such person or entity, which dictates such professional model's assignments, hours of work or performance locations and which compensates such professional model in return for a waiver of such professional model's privacy rights enumerated above, unless such services are performed pursuant to a written contract wherein it is stated that such professional model is the employee of another employer covered by this chapter. For the purposes of this paragraph, the term "professional model" means a person who, in the course of his or her trade, occupation or profession, performs modeling services. For purposes of this paragraph, the term "modeling services" means the appearance by a professional model in photographic sessions or the engagement of such model in live, filmed or taped modeling performances for remuneration.

6. "Employment."

- A. "Employment" means employment in any trade, business or occupation carried on by an employer, except that the following shall not be deemed employment under this article: services performed for the state, a municipal corporation, local governmental agency, other political subdivision or public authority; employment subject to the federal railroad unemployment insurance act; service performed on or as an officer or member of the crew of a vessel on the navigable water of the United States or outside the United States; service as farm laborers; casual employment and the first forty-five days of extra employment of employees not regularly in employment as otherwise defined herein; service as golf caddies; and service during all or any part of the school year or regular vacation periods as a part-time worker of any person actually in regular attendance during the day time as a student in an elementary or secondary school. The term "employment" shall include domestic or personal work in a private home. The term "employment" shall not include the services of a licensed real estate broker or sales associate if it be proven that (a) substantially all of the remuneration (whether or not paid in cash) for the services performed by such broker or sales associate is directly related to sales or other output (including the performance of services) rather than to the number of hours worked; (b) the services performed by the broker or sales associate are performed pursuant to a written contract executed between such broker or sales associate and the person for whom the services are performed within the past twelve to fifteen months; and (c) the written contract provided for in subparagraph (b) of this paragraph was not executed under duress and contains the following provisions:
 - (i) that the broker or sales associate is engaged as an independent contractor associated with the person for whom services are performed pursuant to article twelve-A of the real property law and shall be treated as such for all purposes, including but not limited to federal and state taxation, withholding, unemployment insurance and workers' compensation;
 - (ii) that the broker or sales associate (1) shall be paid a commission on his or her gross sales, if any, without deduction for taxes, which commission shall be directly related to sales or other output; (2) shall not receive any remuneration related to the number of hours worked; and (3) shall not be treated as an employee with respect to such services for federal and state tax purposes;
 - (iii) that the broker or sales associate shall be permitted to work any hours he or she chooses;
 - (iv) that the broker or sales associate shall be permitted to work out of his or her own home or the office of the person for whom services are performed;
 - (v) that the broker or sales associate shall be free to engage in outside employment;
 - (vi) that the person for whom the services are performed may provide office facilities and supplies for the use of the broker or sales associate, but the broker or sales associate shall otherwise

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bear his or her own expenses, including but not limited to automobile, travel, and entertainment expenses;

- (vii) that the person for whom the services are performed and the broker or sales associate shall comply with the requirements of article twelve-A of the real property law and the regulations pertaining thereto, but such compliance shall not affect the broker or sales associate's status as an independent contractor nor should it be construed as an indication that the broker or sales associate is an employee of the person for whom the services are performed for any purpose whatsoever;
- (viii) that the contract and the association created thereby may be terminated by either party thereto at any time upon notice given to the other.

"Employment" shall not include, for the purposes of this chapter, the services of a licensed insurance agent or broker if it be proven that (a) substantially all of the remuneration (whether or not paid in cash) for the services performed by such agent or broker is directly related to sales or other output (including the performance of services) rather than to the number of hours worked; (b) such agent is not a life insurance agent receiving a training allowance subsidy described in paragraph three of subsection (e) of section four thousand two hundred twenty-eight of the insurance law; (c) the services performed by the agent or broker are performed pursuant to a written contract executed between such agent or broker and the person for whom the services are performed; and (d) the written contract provided for in clause (c) of this paragraph was not executed under duress and contains the following provisions:

- (i) that the agent or broker is engaged as an independent contractor associated with the person for whom services are performed pursuant to article twenty-one of the insurance law and shall be treated as such for all purposes, including but not limited to federal and state taxation, withholding (other than federal insurance contributions act (FICA) taxes required for full time life insurance agents pursuant to section 3121(d)(3) of the federal internal revenue code), unemployment insurance and workers' compensation;
- (ii) that the agent or broker (1) shall be paid a commission on his or her gross sales, if any, without deduction for taxes (other than federal insurance contributions act (FICA) taxes required for full time life insurance agents pursuant to section 3121(d)(3) of the federal internal revenue code), which commission shall be directly related to sales or other output; (2) shall not receive any remuneration related to the number of hours worked; and (3) shall not be treated as an employee with respect to such services for federal and state tax purposes (other than federal insurance contributions act (FICA) taxes required for full time life insurance agents pursuant to section 3121(d)(3) of the federal internal revenue code);
- (iii) that the agent or broker shall be permitted to work any hours he or she chooses;
- (iv) that the agent or broker shall be permitted to work out of his or her own office or home or the office of the person for whom services are performed;
- (v) that the person for whom the services are performed may provide office facilities, clerical support, and supplies for the use of the agent or broker, but the agent or broker shall otherwise bear his or her own expenses, including but not limited to automobile, travel, and entertainment expenses;
- (vi) that the person for whom the services are performed and the agent or broker shall comply with the requirements of article twenty-one of the insurance law and the regulations pertaining thereto, but such compliance shall not affect the agent's or broker's status as an independent contractor nor should it be construed as an indication that the agent or broker is an employee of the person for whom the services are performed for any purpose whatsoever;
- (vii) that the contract and the association created thereby may be terminated by either party thereto at any time with notice given to the other.

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- B. The term "employment" includes an employee's entire service performed within or both within and without this state if the service is localized in this state. Service is deemed localized within the state if it is performed entirely within the state or is performed both within and without the state but that performed without the state is incidental to the employee's service within the state or is temporary or transitory in nature or consists of isolated transactions.
- C. The term "employment" includes an employee's entire service performed both within and without this state provided it is not localized in any state but some of the service is performed in this state, and
- (1) the employee's base of operations is in this state; or
 - (2) if there is no base of operations in any state in which some part of the service is performed, the place from which such service is directed or controlled is in this state; or
 - (3) if the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, the employee's residence is in this state.
- D. "Employment" shall not include the services of a media sales representative if it be proven that (A) substantially all of the compensation for the services performed by such media sales representative is directly related to sales or other productivity rather than to the number of hours worked; (B) the media sales representative must be incorporated under the laws of this state in order to be considered an independent contractor and shall be solely responsible for the payment of workers' compensation premiums; (C) the services performed by the media sales representative are performed pursuant to a written contract executed between such media sales representative and the person for whom the services are performed; and (D) the written contract provided for in subparagraph (C) of this paragraph was not executed under duress and contains the following provisions:
- (i) that the media sales representative is engaged as an independent contractor associated with the person for whom services are performed and shall be treated as such for all purposes, including but not limited to federal and state taxation, withholdings, and workers' compensation;
 - (ii) that the media sales representative (1) shall be paid a commission based on a fixed fee rate outlined in the written contract, if any, without deduction for taxes, which commission shall be directly related to sales pursuant to price guidelines or other productivity within the sales area; (2) shall not receive any compensation related to the number of hours worked; and (3) shall not be treated as an employee with respect to such services for federal and state tax purposes;
 - (iii) that the media sales representative shall be permitted to work any hours he or she chooses subject to the restrictions in section three hundred ninety-nine-p of the general business law;
 - (iv) that the media sales representative may work at any site other than on the premises of the person for whom services are performed;
 - (v) that the person for whom the services are performed shall not be responsible for any reimbursement expenses other than those outlined in the written contract;
 - (vi) that the person for whom the services are performed and the media sales representative shall comply with all articles of the labor law that apply to such work other than article eighteen of the labor law, but such compliance shall not affect the media sales representative's status as an independent contractor nor should it be construed as an indication that the media sales representative is an employee of the person for whom the services are performed for any purpose whatsoever;

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(vii) that the contract and the association created thereby may be terminated by the media sales representative thereto at any time with two weeks notice given to the person for whom the services are performed.

For the purposes of this paragraph, "media sales representative" shall include any contractor engaged in the sale or renewal of magazine subscriptions or the sale or renewal of magazine advertising space who (i) receives no direction or control on the methods by which they perform services other than training on product characteristics, (ii) are solely in control of their work schedule, and (iii) may refuse any work assignment.

7. "Termination of employment". Employment with a covered employer terminates on the last day on which an employee performs work in the service of such employer; provided, however, that employment shall not terminate on such day if the employee by agreement with the employer, then commences, for a specified period, a leave of absence with pay or vacation with pay, at the conclusion of which the employee will return to work with the same employer. If notwithstanding such agreement the employee does not so return, his employment shall be deemed to have terminated on the last day of the period of such paid leave of absence or such paid vacation.
8. "Injury" and "sickness" mean accidental injury, disease, infection or illness or incapacitation as a result of being an organ donor in a transplant operation.
9.
 - A. "Disability" during employment means the inability of an employee, as a result of injury or sickness not arising out of and in the course of an employment, to perform the regular duties of his employment or the duties of any other employment which his employer may offer him at his regular wages and which his injury or sickness does not prevent him from performing. "Disability" during unemployment means the inability of an employee, as a result of injury or sickness not arising out of and in the course of an employment, to perform the duties of any employment for which he is reasonably qualified by training and experience.
 - B. "Disability" also includes disability caused by or in connection with a pregnancy.
10. "Benefits" means the money allowances during disability payable to an employee who is eligible to receive such benefits, as provided in this article.
11. "Carrier" shall include: the state fund, stock corporations, mutual corporations and reciprocal insurers which insure the payment of benefits provided pursuant to this article; and employers and associations of employers or of employees and trustees authorized or permitted to pay benefits under the provisions of this article. For purposes of this chapter, a nonprofit property/casualty insurance company which is licensed pursuant to subsection (b) of section six thousand seven hundred four of the insurance law shall be deemed a stock corporation and a nonprofit property/casualty insurance company which is licensed as a reciprocal insurer pursuant to subsection (c) of section six thousand seven hundred four of the insurance law shall be deemed a reciprocal insurer.
12. "Wages" means the money rate at which employment with a covered employer is recompensed under the contract of hiring with the covered employer and shall include the reasonable value of board, rent, housing, lodging, or similar advantage received under the contract of hiring.
13. "Average weekly wage." For the purpose of computing the amount of disability benefits of an employee during any period of disability, "average weekly wage" shall be the amount determined by dividing either the total wages of such employee in the employment of his last covered employer for the eight weeks or portion thereof that the employee was in such employment immediately preceding and including his last day worked prior to commencement of such disability, or the total wages of the last eight weeks or portion thereof immediately preceding and excluding the week in which the disability began, whichever is the higher amount, by the number of weeks or portion thereof of such employment. The chairman may by regulation prescribe reasonable procedures to determine average weekly wage, including procedures in lieu of the foregoing for determination of the average weekly

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wage of a class or classes of employees, and may authorize reasonable deviations to facilitate administration in the determination of average weekly wage of a class or classes of the employees of a covered employer.

In the event the employee was not in the employment of his last covered employer during all of such eight weeks and if the above determination results in an average weekly wage which does not fairly represent the normal earnings of such employee in all employments with covered employers during such eight weeks, there may be a redetermination of average weekly wage to reflect wages received from all covered employers during such eight week period. The chairman may by regulation prescribe reasonable procedures for such redetermination.

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 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 (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 notified of an impending call or order to active duty) in the armed forces of the United States.
16. "Child" means a biological, adopted, or foster son or daughter, a stepson or stepdaughter, a legal ward, a son or daughter of a domestic partner, or the person to whom the employee stands in loco parentis.
17. "Domestic partner" has the same meaning as set forth in section four of this chapter.
18. "Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves inpatient care in a hospital, hospice, or residential health care facility, continuing treatment or continuing supervision by a health care provider. Continuing supervision by a health care provider includes a period of incapacity which is permanent or long term due to a condition for which treatment may not be effective where the family member is under the continuing supervision of, but need not be receiving active treatment by, a health care provider.
19. "Parent" means a biological, foster, or adoptive parent, a parent-in-law, a stepparent, a legal guardian, or other person who stood in loco parentis to the employee when the employee was a child.
20. "Family member" means a child, parent, grandparent, grandchild, spouse, or domestic partner as defined in this section.
21. "Grandchild" means a child of the employee's child.
22. "Health care provider" shall mean for the purpose of family leave, 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.
23. "Grandparent" means a parent of the employee's parent.

History

Add, L 1949, ch 600, § 1, eff April 13, 1949; amd, L 1956, ch 204; L 1960, ch 791, §§ 1, 2; L 1961, ch 93, §§ 1, 2,

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eff March 13, 1961; L 1961, ch 431, eff April 11, 1961; L 1964, ch 438, § 1, eff April 10, 1964; L 1969, ch 119, § 1, eff Jan 1, 1970; L 1977, ch 675, § 28, eff Aug 3, 1977; L 1979, ch 631, § 1, eff Aug 10, 1979; L 1981, ch 352, § 1, eff June 29, 1981; L 1981, ch 448, § 1, eff Jan 1, 1982; L 1983, ch 65, § 1, eff Jan 1, 1984; L 1983, ch 256, § 1, eff Jan 1, 1984; L 1985, ch 858, § 5, eff Oct 31, 1985; L 1986, ch 903, §§ 6, 7, eff Oct 4, 1986; L 1988, ch 167, § 1; L 1992, ch 593, § 1, eff Jan 1, 1993; L 1992, ch 668, § 3, eff Aug 30, 1992; L 1993, ch 205, § 4, eff Jan 1, 1994; L 2000, ch 598, § 13, eff Dec 20, 2000; L 2002, ch 574, § 4, eff Nov 23, 2002; L 2006, ch 572, § 3, eff Jan 1, 2007; L 2010, ch 481, § 9, eff Nov 29, 2010; L 2016, ch 54, § 2 (Part SS), eff April 1, 2016.

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§ 202. Covered employer

1. An employer who has in employment, after June thirtieth, nineteen hundred sixty-one, one or more employees on each of at least thirty days in any calendar year, shall be a covered employer subject to the provisions of this article from and after January first, nineteen hundred sixty-two, or the expiration of four weeks following the thirtieth day of such employment, whichever is the later.
2. The provisions of subdivision one of this section shall not apply to an employer of personal or domestic employees in a private home, except an employer shall become 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 forty hours per week for such employer and are employed on each of at least thirty days in any calendar year.
3. A covered employer, except as otherwise provided herein, shall continue to be a covered employer until the end of any calendar year in which he shall not have employed in employment one or more employees on each of thirty days, and shall have duly filed with the chairman satisfactory evidence thereof. A covered employer of employees in personal or domestic service in a private home shall continue to be a covered employer until the end of any calendar year in which he shall not have employed in such service one or more employees for at least forty hours per week and on each of at least thirty days, and shall have duly filed with the chairman satisfactory evidence thereof.
4. An employer who by operation of law becomes successor to a covered employer, or who acquires by purchase or otherwise the trade or business of a covered employer, shall immediately become a covered employer.
5. Whenever an employee of a covered employer, with the consent of the employer, engages or permits another to do any work in employment for which the employee is employed, the employer shall be deemed for the purpose of this article to be the employer also of such other person, regardless of whether the employee or the employer pays for his service.

History

Add, L 1949, ch 600, § 1; amd, L 1959, ch 312 eff Jan 1, 1960; L 1960, ch 790, § 1; L 1961, ch 119, eff Jan 1, 1962; L 1983, ch 65, § 2, eff Jan 1, 1984.

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§ 203. Employees eligible for benefits under section two hundred four of this article

History

Add, L 1949, ch 600, § 1; amd, L 1952, ch 315, § 1; L 1955, ch 362; L 1964, ch 438, § 2, eff April 10, 1964; L 1986, ch 436, § 1, eff Jan 1, 1987; L 2016, ch 54, §3 (Part SS), eff April 1, 2016.

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§ 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 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.

History

L 2016, ch 54, §4 (Part SS), eff April 1, 2016.

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§ 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 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.

History

L 2016, ch 54, §4 (Part SS), eff April 1, 2016.

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§ 203-c Health insurance during family leave

In accordance with the Family and Medical Leave Act (29 U.S.C. Sections 2601-2654), during any period of family 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 commenced family leave until the date he or she returns to employment.

History

L 2016, ch 54, §4 (Part SS), eff April 1, 2016.

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§ 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 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 full wages. Benefits may be payable to employees for paid family

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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 disability commencing on or after May first, nineteen hundred eighty-nine 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. 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.

History

Add, L 1949, ch 600, § 1, eff April 13, 1949; amd, L 1952, ch 95; L 1954, ch 20; L 1956, ch 734, § 1; L 1957, ch 987; L 1960, ch 790, § 2; L 1965, ch 392, § 1; L 1968, ch 831; L 1970, ch 284, eff July 1, 1970; L 1974, ch 583, § 6, eff Sept 1, 1974; L 1983, ch 415, § 22, eff July 1, 1983; L 1989, ch 38, § 4, eff April 13, 1989; L 2016, ch 54, §5 (Part SS), eff April 1, 2016.

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§ 205. Disabilities, family leave and periods for which benefits are not payable

1. No employee shall be entitled to disability benefits under this article:
 - (a) For more than twenty-six weeks minus any days taken for family leave during any fifty-two consecutive calendar weeks during a period of fifty-two consecutive calendar weeks or during any one period of disability, or for more than twenty-six weeks;
 - (b) for any period of disability during which an employee is not under the care of a duly licensed physician or with respect to disability resulting from a condition of the foot which may lawfully be treated by a duly registered and licensed podiatrist of the state of New York or with respect to a disability resulting from a condition which may lawfully be treated by a duly registered and licensed chiropractor of the state of New York or with respect to a disability resulting from a condition which may lawfully be treated by a duly licensed dentist of the state of New York or with respect to a disability resulting from a condition which may lawfully be treated by a duly registered and licensed psychologist of the state of New York or with respect to a disability resulting from a condition which may lawfully be treated by a duly certified nurse midwife, for any period of such disability during which an employee is neither under the care of a physician nor a podiatrist, nor a chiropractor, nor a dentist, nor a psychologist, nor a certified nurse midwife; and for any period of disability during which 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, is not under the care of a practitioner duly accredited by the church or denomination, and provided such employee shall submit to all physical examinations as required by this chapter.
2. No employee shall be entitled to family leave benefits under this article:
 - (a) For more than twelve weeks, or the maximum duration permitted as set forth in paragraph (a) of subdivision two of section two hundred four of this article, during a period of fifty-two consecutive calendar weeks, or for any period in which the family leave combined with the disability benefits previously paid exceeds twenty-six weeks during the same fifty-two consecutive calendar weeks;
 - (b) For any period of family leave wherein the notice and medical certification as prescribed by the chair has not been filed. At the discretion of the chair or chair's designee pursuant to section two hundred twenty-one of this article, the family member who is the recipient of care may be required to submit to a physical examination by a qualified health care provider. Such examination shall be paid for by the carrier; and
 - (c) As a condition of an employee's initial receipt of family leave benefits during any fifty-two consecutive calendar weeks in which an employee is eligible for these benefits, an employer may offer an employee who has accrued but unused vacation time or personal leave available at the time of use of available family leave to choose whether to charge all or part of the family leave time to accrued but unused vacation or personal leave, and receive full salary, or to not charge time to accrued but unused vacation or personal leave, and receive the benefit as set forth in section two hundred four of this article. An employer that pays full salary during a period of family leave may request reimbursement in

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accordance with section two hundred thirty-seven of this article. With the election of either option, the employee shall receive the full protection of the reinstatement provision set forth in section two hundred three-b of this article, and shall concurrently use available family medical leave act and paid family leave credits. In no event can an employee utilize family leave beyond twelve weeks, or the maximum duration permitted as set forth in paragraph (a) of subdivision two of section two hundred four of this article, per any fifty-two week period set forth in this article. This paragraph may not be construed in a manner that relieves an employer of any duty of collective bargaining the employer may have with respect to the subject matter of this paragraph.

3. No employee shall be entitled to disability or family leave benefits under this article:
 - (a) for any disability occasioned by the wilful intention of the employee to bring about injury to or the sickness of himself or another, or resulting from any injury or sickness sustained in the perpetration by the employee of an illegal act;
 - (b) for any day of disability or family leave during which the employee performed work for remuneration or profit;
 - (c) for any day of disability or family leave for which the employee is entitled to receive from his or her employer, or from a fund to which the employer has contributed, remuneration or maintenance in an amount equal to or greater than that to which he or she would be entitled under this article; but any voluntary contribution or aid which an employer may make to an employee or any supplementary benefit paid to an employee pursuant to the provisions of a collective bargaining agreement or from a trust fund to which contributions are made pursuant to the provisions of a collective bargaining agreement shall not be considered as continued remuneration or maintenance for this purpose;
 - (d) for any period in respect to which such employee is subject to suspension or disqualification of the accumulation of unemployment insurance benefit rights, or would be subject if he or she were eligible for such benefit rights, except for ineligibility resulting from the employee's disability;
 - (e) for any disability due to any act of war, declared or undeclared;
 - (f) for any disability or family leave commencing before the employee becomes eligible to benefits under this section.
4. An employee may not collect benefits concurrently under both subdivisions one and two of this section.
5. In any case in which the necessity for family leave is foreseeable based on an expected birth or placement, the employee shall provide the employer with not less than thirty days notice before the date the leave is to begin, of the employee's intention to take family leave under this article, except that if the date of the birth or placement requires leave to begin in less than thirty days, the employee shall provide such notice as is practicable. In any case in which the necessity for family leave is foreseeable based on planned medical treatment, the employee shall provide the employer with not less than thirty days notice, before the date the leave is to begin, of the employees intention to take family leave under this article, except that if the date of the treatment requires leave to begin in less than thirty days, the employee shall provide such notice as is practicable.

History

Add, L 1949, ch 600, § 1, eff April 13, 1949; amd, L 1956, ch 734, § 2; L 1958, ch 651, eff June 1, 1958; L 1961, ch 589, § 1; L 1966, ch 866, § 1; L 1970, ch 288, eff April 30, 1970; L 1973, ch 13, § 8, eff Feb 1, 1974; L 1973, ch 940, § 3, eff May 1, 1974; L 1977, ch 675, § 29, eff Aug 3, 1977; L 1977, ch 892, § 16, eff Dec 1, 1977; L 1979, ch 628, § 1, eff July 11, 1979; L 1981, ch 130, § 1, eff May 26, 1981; L 1981, ch 352, § 2, eff June 29, 1981; L 1989, ch 257, § 1, eff Jan 1, 1990; L 1990, ch 270, § 1, eff Jan 1, 1991; L 2016, ch 54, §6 (Part SS), eff April 1, 2016.

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§ 206. Non-duplication of benefits

1. No disability benefits shall be payable under section two hundred four or two hundred seven of this article:
 - (a) in a weekly benefit amount which, together with any amount that the employee receives or is entitled to receive for the same period or any part thereof as a permanent disability benefit or annuity under any governmental system or program, except under a veteran's disability program, or under any permanent disability policy or program of an employer for whom he or she has performed services, would, if apportioned to weekly periods, exceed his or her weekly benefit amount under this section, provided however, that there shall be no offset against the benefits set forth in this article if the claim for disability benefits is based on a disability other than the permanent disability for which the aforesaid permanent disability benefit or annuity was granted;
 - (b) with respect to any week for which payments are received under the unemployment insurance law or similar law of this state or of any other state or of the United States;
 - (c) subject to the provisions of subdivision two of this section, for any period with respect to which benefits, compensation or other allowances (other than workers' compensation benefits for a permanent partial disability occurring prior to the disability for which benefits are claimed hereunder) are paid or payable under this chapter, the volunteer firefighters' benefit law, or any other workers' compensation act, occupational disease act or similar law, or under any employers' liability act or similar law; under any other temporary disability or cash sickness benefits act or similar law; under section six hundred eighty-eight, title forty-six, United States code; under the federal employers' liability act; or under the maritime doctrine of maintenance, wages and cure.
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 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 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 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.

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§ 207. Disability while unemployed

1. Employees entitled to unemployment insurance benefits. An employee whose employment with a covered employer is terminated and who during a period of unemployment within twenty-six weeks immediately following such termination of employment shall become ineligible for benefits currently being claimed under the unemployment insurance law solely because of disability commencing after June thirtieth, nineteen hundred fifty, and who on the day such disability commences is not employed or working for remuneration or profit and is not then otherwise eligible for benefits under this article, shall be entitled to receive disability benefits as herein provided for each week of such disability for which week he would have received unemployment insurance benefits if he were not so disabled. The weekly benefit of such disabled employee shall be computed in the same manner as provided in subdivision two of section two hundred four, and the benefits he is entitled to receive shall be subject to the limitations as to maximum and minimum amounts and duration and other conditions and limitations prescribed in sections two hundred four, two hundred five and two hundred six.
2. Employees not eligible for unemployment insurance benefits. An employee whose employment with a covered employer is terminated and who was in employment of one or more covered employers and was paid wages of at least thirteen dollars in such employment in each of twenty calendar weeks during the thirty calendar weeks immediately preceding the date he last worked for such covered employer, and who during a period of unemployment within twenty-six weeks immediately following such termination of employment is not eligible to benefits under the unemployment insurance law because of lack of qualifying wages but who during unemployment has evidenced his continued attachment to the labor market, shall be eligible for benefits under the provisions of this subdivision for disability commencing after June thirtieth, nineteen hundred fifty. If such employee becomes disabled and continues to be disabled for at least eight consecutive days during such twenty-six week period and on the day such disability commences he is not employed or working for remuneration or profit and is not then otherwise eligible for benefits under this article, he shall be entitled to receive disability benefits, as herein provided, beginning with the eighth consecutive day of such disability, for each week of such disability thereafter. The weekly benefit of such disabled employee shall be computed in the same manner as provided in subdivision two of section two hundred four, and the benefits he is entitled to receive shall be subject to the limitations as to maximum and minimum amounts and duration and other conditions and limitations prescribed in sections two hundred four, two hundred five and two hundred six.
3. Payment of benefits. The benefits payable under this section shall be subject to the provisions and limitations generally applicable to disability benefits payable under this article, and shall be paid by the chairman out of any assets in the fund created by section two hundred fourteen. The chairman may require an employee claiming benefits under this section to file proofs of disability and of his employment and wages, and other proofs reasonably necessary for the chairman to make in the first instance the determination of eligibility and benefit rights under this section; and may require his employer or his former employer or employers to file reports of employment and wages and other information reasonably necessary for such determination. The chairman may make administrative regulations for such determinations. The chairman may also by regulation establish reasonable procedures for determining pro rata benefits payable with respect to disability periods of less than one week. Any employee claiming

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3. No family leave benefits shall be payable under section two hundred four of this article:
- (a) During periods when the employee is receiving total disability payments pursuant to a claim for workers' compensation, volunteer firefighters' benefits or volunteer ambulance workers' benefits, except that when the employee is receiving payments for partial disability or reduced earnings under such laws, the family leave benefit, when combined with the benefits under such laws shall not exceed the average weekly wage in the employment for which family leave benefits are sought;
 - (b) To an employee who is not employed or is on administrative leave from his or her employment;
 - (c) To an employee during periods where the employee is collecting sick pay or paid time off from the employer; and
 - (d) for any day in which claimant works at least part of that day for remuneration or profit for the covered employer or for any other employer while working for remuneration or profit, for him or herself, or another person or entity, during the same or substantially similar working hours as those of the covered employer from which family leave benefits are claimed, except that occasional scheduling adjustments with respect to secondary employments shall not prevent receipt of family leave benefits.
4. Unless otherwise expressly permitted by the employer, benefits available under 29 U.S. Code Chapter 28 (The Family and Medical Leave Act) must be used concurrently with family leave benefits. For a subsequent unrelated disability, an employee may seek benefits up to the maximum number of available weeks permitted in this article.
5. A covered employer is not required to permit more than one employee to use the same period of family leave to care for the same family member.

History

Add, L 1949, ch 600, § 1, eff April 13, 1949; amd, L 1955, ch 616; L 1956, ch 699, § 23, eff March 1, 1957; L 1956, ch 929, eff July 1, 1956; L 1959, ch 644, eff April 21, 1959; L 1988, ch 24, § 29, eff Jan 1, 1989; L 2016, ch 54, § 7 (Part SS), eff April 1, 2016.

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§ 208. Payment of disability and family leave benefits

1. Benefits provided under this article shall be paid periodically and promptly and, except as to a contested period of disability or family leave, without any decision by the board, or designee of the chair pursuant to section two hundred twenty-one of this article. The first payment of benefits shall be due on the fourteenth day of disability or family leave and benefits for that period shall be paid directly to the employee within four business days thereafter or within four business days after the filing of required proof of claim, whichever is the later. If the employer or carrier rejects an initial claim for family leave benefits, the employer or carrier must notify the employee in a manner prescribed by the chair within eighteen days of filing of the proof of claim. Failure to timely reject shall constitute a waiver of objection to the family leave claim. Thereafter benefits shall be due and payable bi-weekly in like manner. The chair or chair's designee, pursuant to section two hundred twenty-one of this article, may determine that benefits may be paid monthly or semi-monthly if wages were so paid, and may authorize deviation from the foregoing requirements to facilitate prompt payment of benefits. Any inquiry which requires the employee's response in order to continue benefits uninterrupted or unmodified shall provide a reasonable time period in which to respond and include a clear and prominent statement of the deadline for responding and consequences of failing to respond.
2. The chair and superintendent of financial services may, whenever such information is deemed necessary, require any carrier to file in form prescribed by the chair a report or reports as to any claim or claims, including (but without limitation) dates of commencement and termination of benefit payments and amount of benefits paid under this article. The chair and superintendent of financial services may also require annually information in respect to the aggregate of benefits paid, the number of claims allowed and disallowed, the average benefits and duration of benefit periods, the amount of payrolls covered and such other information as the chair may deem necessary for the purposes of administering this article. If the carrier is providing benefits in respect to more than one employer, the chair and superintendent of financial services may require that such information be shown separately as to those employers who are providing only benefits that are substantially the same as the benefits required in this article. The chair and superintendent of financial services may prescribe the format of such report and may promulgate regulations to effectuate this article.

History

Add, L 1949, ch 600, § 1, eff April 13, 1949; amd, [L 2010, ch 314, § 1](#), eff Sept 12, 2010; [L 2016, ch 54, §9](#) (Part SS), eff April 1, 2016.

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benefits under this section whose claim is rejected in whole or in part by the chairman, shall be entitled to request a review by the board and shall have all the rights with respect to contested claims provided in this article.

4. Qualification notwithstanding casual non-covered employment. An employment of not more than four weeks with a non-covered employer or employers occurring within such twenty-six weeks period shall not disqualify an employee from benefits provided such employee was otherwise eligible to receive benefits under this section at the time such employment for a non-covered employer commenced.
5. The foregoing provisions of this section shall not apply to family leave benefits, as family leave benefits are not available to employees that are not employed at the time family leave is requested by filing the notice and medical certification required by the chair.

History

Add, L 1949, ch 600, § 1, eff April 13, 1949; amd, L 1952, ch 315, § 2, eff March 28, 1952; L 1964, ch 438, § 3, eff April 10, 1964; L 1986, ch 436, § 2, eff Jan 1, 1987; L 2016, ch 54, §8 (Part SS), eff April 1, 2016.

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§ 209. Contribution of employees for disability and family leave benefits

1. Every employee in the employment of a covered employer shall contribute to the cost of providing disability and after January first, two thousand eighteen, family leave benefits under this article, to the extent and in the manner herein provided.
2. The special contribution of each such employee to the accumulation of funds to provide benefits for disabled unemployed shall be as provided in subdivision one of section two hundred fourteen of this article.
3.
 - (a) Disability benefits. 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.
 - (b) Family leave benefits. On June first, two thousand seventeen and annually thereafter on September first, the superintendent of financial services shall set the maximum employee contribution, using sound actuarial principles and the reports provided in section two hundred eight of this article. No employer shall be required to fund any portion of the family leave benefit.
4. Notwithstanding any other provision of law, the employer is authorized to collect from his or her employees, except as otherwise provided in any plan or agreement under the provisions of subdivisions four or five of section two hundred eleven of this article, the contribution provided under subdivisions two and three of this section, through payroll deductions. If the employer shall not make deduction for any payroll period he or she may thereafter, but not later than one month after payment of wages, collect such contribution through payroll deduction.
5. In collecting employee contributions through payroll deductions, the employer shall act as the agent of his or her employees and shall use the contributions only to provide disability and family leave benefits as required by this article. In no event may the employee's annual contribution for family leave exceed his or her per capita share of the actual annual premium charged for the same year and must be determined consistent with the principle that employees should pay the total costs of family leave premium. In no event may the employee's weekly contribution for disability premium exceed one-half of one per centum of the employee's wages paid to him or her, but not in excess of sixty cents per week. After June thirtieth, nineteen hundred fifty, if the employer is not providing, or to the extent that he or she is not then providing, for the payment of disability benefits to his or her employees by insuring with the state fund or with another insurance carrier, he or she shall keep the contributions of his or her employees as trust funds separate and apart from all other funds of the employer. The payment of such contributions by the employer to a carrier providing for the payment of such benefits shall discharge the employer from responsibility with respect to such contributions.

History

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§ 210. Employer contributions

1. Every covered employer shall, on and after January first, nineteen hundred fifty, contribute the cost of providing disability benefits in excess of the contributions collected from his or her employees, to the extent and in the manner provided in this article.
2. The special contribution of each covered employer to the accumulation of funds to provide benefits for disabled unemployed shall be as provided in subdivision one of section two hundred fourteen of this article.
3. The contribution of every covered employer to the cost of providing disability benefits after June thirtieth, nineteen hundred fifty, shall be the excess of such cost over the amount of the contributions of his or her employees.
4. No profit shall be derived by any employer or association of employers or of employees from providing payment of disability and family leave benefits under this article. All funds representing contributions of employers and employees, and increments thereon, held by employers or associations of employers or of employees authorized or permitted to pay benefits under the provisions of this article, and by trustees paying benefits under plans or agreements meeting the requirements of section two hundred eleven of this article, shall be trust funds and shall be expended only to provide for the payment of benefits to employees and for the costs of administering this article and for the support of the fund established under section two hundred fourteen of this article.

History

Add, L 1949, ch 600, § 1, eff April 13, 1949; amd, L 2016, ch 54, §11 (Part SS), eff April 1, 2016.

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Add, L 1949, ch 600, § 1, eff April 13, 1949; amd, L 1952, ch 134, § 1, eff March 18, 1952; L 1983, ch 415, § 23, eff July 1, 1983; L 2016, ch 54, §10 (Part SS), eff April 1, 2016.

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§ 211. Provision for payment of benefits

A covered employer shall, with his or her own contributions and the contributions of his employees, provide disability and after January first, two thousand eighteen, family leave benefits to his or her employees in one or more of the following ways:

1. by insuring and keeping insured the payment of such benefits in the state fund, or
2. by insuring and keeping insured the payment of such benefits with any stock or mutual corporation or reciprocal insurer authorized to transact the business of accident and health insurance in this state, or
3. by furnishing satisfactory proof to the chair of the employers financial ability to pay such benefits, in which case the chair shall require the deposit of such securities as the chair may deem necessary consistent with the provisions of subdivision three of section fifty of this chapter. An association of employers or employees authorized to pay benefits under this article or the trustee or trustees paying benefits under a plan or agreement authorized under subdivisions four and five of this section, may with the approval of the chair furnish such proof and otherwise comply with the provisions of this section to provide disability and family leave benefits to employees under such plan or agreement.
4. by a plan in existence on the effective date of this article. If on the effective date of this article the employees of a covered employer or any class or classes of such employees are entitled to receive disability and family leave benefits under a plan or agreement which remains in effect on July first, nineteen hundred fifty, the employer, subject to the requirements of this section, shall be relieved of responsibility for making provision for benefit payments required under this article until the earliest date, determined by the chair for the purposes of this article, upon which the employer shall have the right to discontinue the provisions thereof or to discontinue his contributions towards the cost. Any such plan or agreement may be extended, with or without modification, by agreement or collective bargaining between an employer or employers or association of employers and an association of employees, in which event the period for which the employer is relieved of such responsibility shall include such period of extension. Any other plan or agreement in existence on the effective date of this article which the employer may, by his or her sole act, terminate at any time, or with respect to which he or she is not obligated to continue for any period to make contributions, may be accepted by the chair as satisfying the obligation to provide for the payment of benefits under this article if such plan or agreement provides benefits at least as favorable as the disability and family leave benefits provided by this article and does not require contributions of any employee or of any class or classes of employees in excess of the statutory amount provided in subdivision three of section two hundred nine of this article, subdivision three, except by agreement and provided the contribution is reasonably related to the value of the benefits as determined by the chair. The chair may require that the employer shall enter into an agreement in writing with the chair that he or she will pay the assessments set forth in sections two hundred fourteen and two hundred twenty-eight and that until he or she shall have filed written notice with the chair of his or her election to terminate such plan or agreement or to discontinue making necessary contributions to its cost, he or she will continue to provide for the payment of the disability and family leave benefits under such plan or agreement. Any such plan or agreement may be extended with or without modification, provided the benefits under such plan or agreement, as

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extended or modified, shall be found by the chair to be at least as favorable as the benefits provided by this article.

During any period in which any plan or agreement or extension thereof authorized under this subdivision provides for payment of benefits under this article, the responsibility of the employer and the obligations and benefits of the employees shall be as provided in said plan or agreement rather than as provided under this article, other than the benefits provided in section two hundred seven, and provided the employer or carrier has agreed to pay the assessments described in sections two hundred fourteen and two hundred twenty-eight.

5. by a new plan or agreement. After the effective date of this article, a new plan or agreement with a carrier may be accepted by the chair as satisfying the obligation to provide for the payment of benefits under this article if such plan or agreement shall provide benefits at least as favorable as the disability and family leave benefits provided by this article and does not require contributions of any employee or of any class or classes of employees in excess of the statutory amount provided in section two hundred nine, subdivision three, except by agreement and provided the contribution is reasonably related to the value of the benefits as determined by the chair. Any such plan or agreement shall continue until written notice filed with the chair of intention to terminate such plan or agreement, and any modification of such plan or agreement shall be subject to the written approval of the chair.

During any period in which any plan or agreement or extension thereof authorized under this subdivision provides for payment of benefits under this article, the responsibility of the employer and the obligations and benefits of the employees shall be as provided in said plan or agreement rather than as provided under this article, other than the benefits provided in section two hundred seven, and provided the employer or carrier has agreed to pay the assessments described in sections two hundred fourteen and two hundred twenty-eight.

6. if any plan or agreement authorized under subdivisions four and five of this section covers less than all of the employees of a covered employer, the provisions of this article shall apply with respect to his remaining employees not covered under such plan or agreement.

The chairman may make reasonable regulations for the filing under subdivisions four and five of this section of plans and agreements to provide for the payment of benefits under this article.

7. Premiums for policies providing disability or family leave benefits in accordance with this article shall be calculated in accordance with applicable provisions of the insurance law, including subsection (n) of section four thousand two hundred and thirty-five of such law.
8. An employer providing disability benefits coverage pursuant to subdivision three of this section may obtain coverage for family leave benefits separately pursuant to subdivision one or subdivision two of this section.

History

Add, L 1949, ch 600, § 1, eff April 13, 1949; amd, L 1952, ch 134, § 2; L 1960, ch 197, §§ 1, 2, eff March 15, 1960; L 1986, ch 333, § 8, eff Jan 1, 1987; L 1991, ch 124, § 1, eff Jan 1, 1992; L 1992, ch 207, § 1, eff June 23, 1992; L 2016, ch 54, §12 (Part SS), eff April 1, 2016.

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§ 212. Voluntary coverage

1. Any employer not required by this article to provide for the payment of disability or family leave benefits to his employees, or to any class or classes thereof, may become a covered employer or bring within the provisions of this article such employees or class or classes thereof by voluntarily electing to provide for payment of such benefits in one or more of the ways set forth in section two hundred eleven of this article; but such election shall be subject to the approval of the chair, and if the employees are required to contribute to the cost of such benefits the assent within thirty days before such approval is granted, of more than one-half of such employees shall be evidenced to the satisfaction of the chair. On approval by the chair of such election to provide benefits, all the provisions of this article shall become and continue applicable as if the employer were a covered employer as defined in this article. The obligation to continue as a covered employer with respect to employees for whom provision of benefits is not required under this article, may be discontinued by such employer on ninety days notice to the chair in writing and to his or her employees, after he or she has provided for payment of benefits for not less than one year and with such provision for payment of obligations incurred on and prior to the termination date as the chair may approve.
2. Notwithstanding the definition of "employer" and "employment" in section two hundred one of this article, a public authority, a municipal corporation or a fire district or other political subdivision may become a covered employer for the purpose of providing disability benefits under this article by complying with the provisions of subdivision one of this section and may discontinue such status only as provided in that subdivision.
3. Notwithstanding the definition of "employment" in section two hundred one of this article, service as a farm laborer may become covered employment by the employer complying with the provisions of subdivision one of this section and such employer may discontinue such status only as provided in that subdivision.
4.
 - (a) An executive officer of a corporation who at all times during the period involved owns all of the issued and outstanding stock of the corporation and holds all of the offices pursuant to paragraph (e) of section seven hundred fifteen of the business corporation law or two executive officers of a corporation who at all times during the period involved between them own all of the issued and outstanding stock of such corporation and hold all such offices provided, however, that each officer must own at least one share of stock and who is the executive officer or who are the executive officers of a corporation having other persons who are employees required to be covered under this article, shall be deemed to be included in the corporation's disability and family leave benefits insurance contract or covered by a certificate of self-insurance or a plan under section two hundred eleven of this article, unless the officer or officers elect to be excluded from the coverage of this article. Such election shall be made by any such corporation filing with the insurance carrier, or the chair of the workers' compensation board in the case of self-insurance, upon a form prescribed by the chair, a notice that the corporation elects to exclude the executive officer or officers of such corporation named in the notice from the coverage of this article. Such election shall be effective with respect to all policies issued to such corporation by such insurance carrier as long as it shall continuously insure the corporation. Such election shall be

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§ 212-a. [Election by governmental entity]

Notwithstanding the definition of "employer" and "employment" set forth in section two hundred one of this article and the requirement for insurance policies to offer both disability and family leave coverage set forth in two hundred twenty six of this article, the state, any political subdivision of the state, a public authority or any other governmental agency or instrumentality, may elect to become a covered employer solely for the purpose of family leave benefits. Coverage for family leave benefits may be secured by a public employer, as that term is defined in subdivision one of section two hundred twelve-b of this article, as permitted by this article, including as applicable section two hundred eleven, subdivision four of section fifty, or section eighty-eight-c. The provider of family leave coverage for such public employees shall be exempt from the requirement that insurance policies offer both disability and family leave benefits in section two hundred twenty-six of this article.

History

L 2016, ch 54, §14 (Part SS), eff April 1, 2016.

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final and binding upon the executive officer or officers named in the notice until revoked by the corporation.

(b) Notwithstanding the definition of “employer” in section two hundred one of this article, a sole proprietor, member of a limited liability company or limited liability partnership, or other self-employed person may become a covered employer under this article by complying with the provisions of subdivision one of this section.

5. A spouse who is an employee of a covered employer shall be deemed to be included in the employer’s disability and family leave benefits insurance contract or covered by a certificate of self-insurance or a plan under section two hundred eleven of this article, unless the employer elects to exclude such spouse from the coverage of this article. Such election shall be made by any such employer filing with the insurance carrier, or the chair of the workers’ compensation board in the case of self-insurance, upon a form prescribed by the chair, a notice that the employer elects to exclude such spouse named in the notice from the coverage of this article. Such election shall be effective with respect to all policies issued to such employer by such insurance carrier as long as it shall continuously insure the employer. Such election shall be final and binding upon the spouse named in the notice until revoked by the employer.

History

Add, L 1949, ch 600, § 1, eff April 13, 1949; amd, L 1960, ch 740, eff April 21, 1960; L 1966, ch 206; L 1969, ch 120, eff March 28, 1969; L 1983, ch 256, § 2, eff Jan 1, 1984; L 1985, ch 593, § 1, eff Jan 1, 1986; L 1988, ch 167, § 2, eff Jan 1, 1989; L 1992, ch 593, § 2, eff Jan 1, 1993; L 1993, ch 205, § 5, eff Jan 1, 1994; L 2016, ch 54, §13 (Part SS), eff April 1, 2016.

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§ 212-b. Public employees; public employees represented by an employee organization; employee opt in

1. For purposes of this section, "public employee" means any employee of the state, any political subdivision of the state, a public authority or any other governmental agency or instrumentality. "Public employer" means the state, any political subdivision of the state, a public authority or any other governmental agency or instrumentality thereof. "Employee organization" shall have the same meaning set forth in section two hundred one of the civil service law.
2. Public employers shall provide benefits for family leave to public employees in accordance with the procedures and terms set forth in subdivision three of this section.
3.
 - (a) An employee organization may, pursuant to collective bargaining, opt in to paid family leave benefits on behalf of those public employees it is either certified or recognized to represent, within the meaning of article fourteen of the civil service law. Nothing in this section shall prohibit an agreement to opt in to paid family leave between the employee organization and any public employer. An employee organization that has opted in to paid family leave benefits may, pursuant to collective bargaining, opt out of it as is mutually agreed upon between the employee organization and any public employer.
 - b. For public employees who are not represented by an employee organization, the public employer may opt-in to paid family leave benefits within ninety days notice to such public employees. Following opt-in by a public employer for public employees not represented by an employee organization, the public employer may opt-out of paid family leave benefits with twelve months notice to those public employees.
4. In the absence of any contrary statement in a collectively negotiated agreement under article fourteen of the civil service law, a public employer may require public employees who opt in under this section to provide the maximum employee contribution, as defined in paragraph (b) of subdivision three of section two hundred nine of this article.

History

L 2016, ch 54, §14 (Part SS), eff April 1, 2016.

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§ 213. Non-compliance or default

1. Whenever a covered employer does not comply with this article by providing for the payment of disability and family leave benefits to his or her employees in one or more of the ways provided in section two hundred eleven of this article or whenever a carrier fails to pay the benefits required by this article to employees of a covered employer, then such employer shall be fully and directly liable to each of his or her employees for the payment of benefits provided by this article. The amount of the benefits to which employees of such employers are entitled under this article and attendance fees of any attending physicians or attending podiatrists or health care provider fixed pursuant to subdivision two of section two hundred thirty-two of this article shall, on order of the chair, be paid out of the fund established under section two hundred fourteen of this article. In case of non-compliance of the employer, such employer shall forthwith pay to the chair, for credit to the fund, the sum so expended or one percent of his or her payroll for his or her employees in employment during the period of non-compliance, whichever is greater; provided, however, that if it shall appear to the satisfaction of the chair that the default in payment of benefits or the non-compliance of the employer otherwise with his or her obligation under this article was inadvertent, the chair may fix the sum payable in such case for non-compliance or default at the amount paid out of the fund and a sum less than one percent of such payroll, and in addition the penalties for non-compliance imposed under this article. In case of failure of the carrier to pay benefits, the employer shall forthwith pay to the chair, for credit to the fund, the sum so expended.
2. Where a carrier authorized by the superintendent of financial services to do business in this state has failed to pay benefits on behalf of an employer pursuant to this article solely because an order of rehabilitation, conservation or liquidation has been issued by a court of competent jurisdiction of this or any other state or jurisdiction, the provisions of subdivision one of this section shall not apply as they relate to: (a) the payment of benefits to an employee if the policy of the employer's carrier is subject to the protection afforded by any guaranty fund pursuant to the insurance law; or (b) the reimbursement to the fund, created under section two hundred fourteen of this article, by an employer whose carrier has failed to pay benefits.
3. The provisions of section one hundred forty-one-b of this chapter shall not apply to violations of this section after January first, two thousand eighteen and before January first, two thousand twenty. Thereafter, in the event an employer is subject to debarment solely due to a penalty for violation of this section, the chair may, in the interests of justice, restore the employer's eligibility to submit a bid on or be awarded any public work contract or subcontract. The chair may exercise this authority only if it is the employer's first time violation of section one hundred forty-one-b of this chapter; the employer is not liable for any outstanding workers' compensation, disability or family leave claims as a result of the lack of coverage; and the employer has paid all fines, assessments, and penalties associated with the lack of coverage.

History

Add, L 1949, ch 600; amd, L 1954, ch 272, § 1; L 1958, ch 653; L 1961, ch 589, § 2, eff April 17, 1961; L 1980, ch

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784, § 2, eff June 30, 1980; L 2011, ch 62, § 104 (Part A), eff Oct 3, 2011; L 2016, ch 54, §15 (Part SS), eff April 1, 2016.

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§ 214. Special fund for disability benefits

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.[.]¹ 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.
2. Whenever the net assets of the fund shall be less than three million dollars and the disability claims currently being paid shall indicate the necessity of supplementing the assets of the fund the chairman may transfer from monies collected pursuant to subdivision two of section one hundred fifty-one of this chapter an amount sufficient in the discretion of the chairman for the needs of the fund, but not in excess of an amount sufficient to restore the fund to twelve million dollars.
3. All contributions and assessments received by the chairman under the provisions of this section shall be credited to the fund herein established and deposited by the chairman to the credit of the commissioner of taxation and finance for the benefit of the fund. The superintendent of financial services may examine into the condition of the fund at any time on his own initiative or upon the request of the chairman.

History

Add, L 1949, ch 600, § 1, eff April 13, 1949; amd, L 1950, ch 727, eff May 1, 1950; L 1951, ch 84; L 1958, ch 629; L 1958, ch 653, § 2, eff July 1, 1958; L 1972, ch 329, § 1, eff May 15, 1972; L 1978, ch 330, § 1, eff June 19, 1978; L 1983, ch 187, § 1, eff May 31, 1983, deemed eff Jan 1, 1983; [L 2010, ch 18, § 1](#), eff March 29, 2010, deemed eff on and after April 1, 2009; [L 2011, ch 62, § 104](#) (Part A), eff Oct 3, 2011; [L 2013, ch 57, § 26](#) (Part GG), eff March 29, 2013.

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§ 215. Commissioner of taxation and finance custodian of fund

The commissioner of taxation and finance shall be the custodian of the special fund for disability benefits and all disbursements therefrom shall be paid by him upon drafts signed by the chairman or those authorized by the chairman for that purpose. The commissioner of taxation and finance shall give a separate and additional bond in an amount to be fixed by and with sureties approved by the state comptroller conditioned for the faithful performance of his duty as custodian of the fund. The commissioner of taxation and finance shall deposit any portion of the fund not needed for immediate use, in the manner and subject to all the provisions of law respecting the deposit of other state funds by him. The commissioner of taxation and finance may invest any surplus or reserve moneys thereof in securities of the United States or the state of New York and in interest bearing certificates of deposit of a bank or trust company located and authorized to do business in this state or of a national bank located in this state secured by a pledge of direct obligations of the United States or of the state of New York, or in accordance with the provisions of section ninety-eight-a of the state finance law, in an amount equal to the amount of such certificates of deposit, and may sell any such securities or certificates of deposit if advisable for the proper administration of such fund. Interest earned by such portion of the fund deposited or invested by the commissioner of taxation and finance shall be collected by him and placed to the credit of the fund. The commissioner of taxation and finance may issue checks on the fund for the transfers of moneys between depositories and for the purpose of making investments for the fund.

History

Add, L 1949, ch 600, § 1, eff April 13, 1949; amd, L 1950, ch 727, § 2; L 1964, ch 395, § 8, eff April 10, 1964; [L 2005, ch 236, § 8](#), eff July 19, 2005.

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§ 216. Disposition of uncommitted balance of employees' contributions

Whenever any arrangement for the provision of benefits as set forth in section two hundred eleven is terminated, any uncommitted balance of employee contributions shall be utilized only to pay accrued benefits and to provide benefits under this article. On the liquidation of a covered employer's business, or when he shall cease to be a covered employer, any such sums so remaining in excess of those required to discharge obligations under this article may be used for the benefit of employees on a reasonable basis approved by the chairman, and any such sums not so used shall be promptly paid to the chairman for deposit in the fund created under section two hundred fourteen.

History

Add, L 1949, ch 600, § 1, eff April 13, 1949.

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§ 217. Notice and proof of claim

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, 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.
2. An employee claiming disability benefits shall, as requested by the employer or carrier, submit himself or herself at intervals, but not more than once a week, for examination by a physician or podiatrist or chiropractor or dentist or psychologist or certified nurse midwife designated by the employer or carrier. All such examinations shall be without cost to the employee and shall be held at a reasonable time and place.
3. The chair or chair's designee, pursuant to section two hundred twenty-one of this article, may direct the claimant or family leave care recipient to submit to examination by a health care provider designated by him or her in any case in which the claim to disability or family leave benefits is contested and in claims arising under section two hundred seven of this article, and in other cases as the chair or board may require.
4. Refusal of the claimant or family leave care recipient without good cause to submit to any such examination shall disqualify the claimant or employee from all benefits hereunder for the period of such refusal, except as to benefits already paid.
5. If benefits required to be paid by this article have been paid to an employee, further payments for the same disability or family leave shall not be barred solely because of failure to give notice or to file proof of disability for the period or periods for which such benefits have been paid.

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6. In the event that a claim for disability benefits is rejected, the carrier or employer shall send by first class mail written notice of rejection to the employee within forty-five days of receipt of proof of disability. Failure to mail such written notice of rejection within the time provided, shall bar the employer or carrier from contesting entitlement to benefits for any period of disability prior to such notice but such failure may be excused by the chair if it can be shown to the satisfaction of the chair not to have been reasonably possible to mail such notice and that such notice was mailed as soon as possible. Such notice shall include a statement, in a form prescribed by the chair, to the effect that the employee may, for the purpose of review, file notice that his or her claim has not been paid as set forth in section two hundred twenty-one of this article.

History

Add, L 1949, ch 600, § 1, eff April 13, 1949; amd, L 1961, ch 589, § 3; L 1966, ch 866, § 1; L 1973, ch 940, § 2, eff May 1, 1974; L 1981, ch 130, § 2, eff May 26, 1981; L 1985, ch 485, § 1, eff Jan 1, 1986; L 1985, ch 500, § 1, eff Jan 1, 1986; L 1989, ch 257, § 2, eff Jan 1, 1990; L 1990, ch 270, § 2, eff Jan 1, 1991; L 1994, ch 344, § 10, eff Sept 1, 1994; L 1999, ch 167, § 1, eff July 6, 1999; L 2016, ch 54, §16 (Part SS), eff April 1, 2016.

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§ 218. Disability benefit rights inalienable

1. Any agreement by an employee to waive his rights under this article shall be void.
2. Disability 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.

History

Add, L 1949, ch 600, § 1, eff April 13, 1949; amd, L 1985, ch 809, § 35, eff Nov 1, 1985.

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§ 219. Enforcement of payment in default

In case of a default in the payment of any benefits, assessments or penalties payable under this article by an employer who has failed to comply with the provisions of section two hundred eleven of this article or refusal of such employer to reimburse the fund under section two hundred fourteen of this article for the expenditures made therefrom pursuant to section two hundred thirteen of this article or to deposit within ten days after demand the estimated value of benefits not presently payable, the chair may file with the county clerk for the county in which the employer has his principal place of business (1) a certified copy of the decision of the board, or alternative dispute resolution association designated by the chair pursuant to section two hundred twenty-one of this article, or order of the chair, or (2) a certified copy of the demand for deposit of security, and thereupon judgment must be entered in the supreme court by the clerk of such county in conformity therewith immediately upon such filing.

History

Add, L 1949, ch 600, § 1, eff April 13, 1949; amd, L 1953, ch 688, eff April 13, 1953; L 2016, ch 54, §17 (Part SS), eff April 1, 2016.

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§ 220. Penalties

1. Any employer who fails to make provision for payment of disability or family leave benefits as required by section two hundred eleven of this article within ten days following the date on which such employer becomes a covered employer as defined in section two hundred two of this article shall be guilty of a misdemeanor and upon conviction be punishable by a fine of not less than one hundred nor more than five hundred dollars or imprisonment for not more than one year or both, except that where any person has previously been convicted of a failure to make provisions for payment of disability or family leave benefits within the preceding five years, upon conviction for a second violation such person shall be fined not less than two hundred fifty nor more than one thousand two hundred fifty dollars in addition to any other penalties including fines otherwise provided by law, and upon conviction for a third or subsequent violation such person may be fined up to two thousand five hundred dollars in addition to any other penalties including fines otherwise provided by law. Where the employer is a corporation, the president, secretary, treasurer, or officers exercising corresponding functions, shall each be liable under this section.
2. The chair or any officer of the board designated by him or her, upon finding that an employer has failed to make provision for the payment of disability or family leave benefits, shall impose upon such employer a penalty not in excess of a sum equal to one-half of one per centum of his or her weekly payroll for the period of such failure and a further sum not in excess of five hundred dollars, which sums shall be paid into the fund created under section two hundred fourteen of this article.
3. If for the purpose of obtaining any benefit or payment under the provisions of this article, or for the purpose of influencing any determination regarding any benefit payment, either for himself or herself or any other person, any person, employee, employer or carrier wilfully makes a false statement or representation or fails to disclose a material fact, he or she shall be guilty of a misdemeanor.
4. Whenever a carrier shall fail to make prompt payment of disability or family leave benefits payable under this article and after hearing before an officer designated by the chair or a determination by the chair's designee, pursuant to section two hundred twenty-one of this article, for that purpose, the chair or designee shall determine that failure to make such prompt payment was without just cause, the chair or designee, pursuant to section two hundred twenty-one of this article, shall collect from the carrier a sum not in excess of twenty-five per centum of the amount of the benefits as to which the carrier failed to make payment, which sum shall be credited to the special fund for disability benefits. In addition, the chair or designee, pursuant to section two hundred twenty-one of this article, may collect and pay over to the employee the sum of ten dollars in respect to each week, or fraction thereof, for which benefits have not been promptly paid.
5. In addition to other penalties herein provided, the chair or designee shall remove from the list of physicians authorized to render medical care under the provisions of articles one to eight, inclusive, of this chapter and from the list of podiatrists authorized to render podiatric care under section thirteen-k of this chapter, and from the list of chiropractors authorized to render chiropractic care under section thirteen-l of this chapter the name of any physician or podiatrist or chiropractor whom the chair or designee, pursuant to section two hundred twenty-one of this article, shall find, after reasonable investigation, has submitted to

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the employer or carrier or chair in connection with any claim for disability benefits under this article, a statement of disability that is not truthful and complete.

6. In addition to other penalties herein provided, any person who for the purpose of obtaining any benefit or payment under this article or for the purpose of influencing any determination regarding any benefit payment, knowingly makes a false statement with regard to a material fact, shall not be entitled to receive benefits with respect to the disability claimed or any disability benefits during the period of twelve calendar months thereafter; but this penalty shall not be applied more than once with respect to each such offense.
7. All fines imposed under subdivisions one and three of this section, except as herein otherwise provided, shall be paid directly and immediately by the officer collecting the same to the chair, and be paid into the state treasury, provided, however, that all such fines collected by justices of the peace of towns and police justices of villages shall be paid to the state comptroller in accordance with the provisions of section twenty-seven of the town law.
8.
 - (a) The head of a state or municipal department, board, commission or office authorized or required by law to issue any permit for or in connection with any work involving the employment of employees in employment as defined in this article, and notwithstanding any general or special statute requiring or authorizing the issue of such permits, shall not issue such permit unless proof duly subscribed by an insurance carrier is produced in a form satisfactory to the chair, that the payment of disability benefits and after January first, two thousand twenty-one, the payment of family leave benefits for all employees has been secured as provided by this article. Nothing herein, however, shall be construed as creating any liability on the part of such state or municipal department, board, commission or office to pay any disability benefits to any such employee if so employed.
 - (b) The head of a state or municipal department, board, commission or office authorized or required by law to enter into any contract for or in connection with any work involving the employment of employees in employment as defined in this article, and notwithstanding any general or special statute requiring or authorizing any such contract, shall not enter into any such contract unless proof duly subscribed by an insurance carrier is produced in a form satisfactory to the chair, that the payment of disability benefits and after January first, two thousand eighteen, the payment of family leave benefits for all employees has been secured as provided by this article.

History

Add, L 1949, ch 600, § 1, eff April 13, 1949; amd, L 1954, ch 272, § 2, eff March 26, 1954; L 1961, ch 589, § 4; L 1966, ch 310, eff July 1, 1966; L 1973, ch 940, § 4, eff May 1, 1974; L 1979, ch 626, §§ 1, 2, eff Sept 1, 1979; L 1981, ch 645, § 1, eff Sept 1, 1981; L 1983, ch 415, § 24, eff July 1, 1983; L 1984, ch 387, § 2, eff July 18, 1984; L 1986, ch 212, § 2, eff Jan 1, 1987; L 1989, ch 61, § 217, eff April 19, 1989 and deemed eff April 1, 1989; L 1993, ch 213 § 2, eff July 6, 1993; L 2016, ch 54, §18 (Part SS), eff April 1, 2016.

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§ 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 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 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 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.

History

Add, L 1949, ch 600, § 1, eff April 13, 1949; amd, L 1961 ch 589, § 5; L 1966, ch 866, § 1, eff July 1, 1966; L 1985, ch 425, § 3, eff Jan 1, 1986; L 1985, ch 500, § 2, eff Jan 1, 1986; L 2016, ch 54, §19 (Part SS), eff April 1, 2016.

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§ 222. Technical rules of evidence or procedure not required

The chair, the board or the chair's designee, pursuant to section two hundred twenty-one of this article, in making an investigation or inquiry or conducting a hearing shall not be bound by common law or statutory rules of evidence or by technical or formal rules of procedure, except as provided by this chapter; but may make such investigation or inquiry or conduct such hearing in such manner as to ascertain the substantial rights of the parties.

History

Add, L 1949, ch 600, § 1, eff April 13, 1949; amd, L 2016, ch 54, §20 (Part SS), eff April 1, 2016.

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§ 223. Modification of board decisions or orders

Upon its own motion or upon the application of any party in interest, the board may at any time review any decision or order regarding disability benefits and, on such review, may make a decision ending, diminishing or increasing the disability benefits previously ordered, and shall state the reason therefor. Upon the filing of such decision regarding disability benefits, the chair shall send to each of the parties a copy thereof. No such review shall affect any previous decision as regards any moneys regarding disability benefits already paid, except that a decision increasing the disability benefit rate may be made effective from date of commencement of disability, and except that, if any part of the disability benefits due is unpaid, a decision decreasing the disability benefit rate may be made effective from the commencement of disability, and any payments made prior thereto in excess of such decreased rate shall be deducted from future disability benefits in such manner and by such method as may be determined by the board.

History

Add, L 1949, ch 600, § 1, eff April 13, 1949; amd, [L 2016, ch 54, §21](#) (Part SS), eff April 1, 2016.

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§ 224. Appeals

All the provisions of section twenty-three of this chapter with respect to decisions of the board and appeals from such decisions shall be applicable to decisions of the board regarding disability benefits and to appeals from such decisions regarding disability benefits as fully in all respects as if the provisions of section twenty-three of this chapter were fully set forth in this article except that reimbursement for disability benefits, if required, following modification or rescission upon appeal shall be paid from administrative expenses as provided in section two hundred twenty-eight of this article.

History

Add, L 1949, ch 600, § 1, eff April 13, 1949; amd, L 1978, ch 334, § 1, eff June 19, 1978; L 2016, ch 54, §21 (Part SS), eff April 1, 2016.

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§ 225. Fees for representing employees

Claims of attorneys and counsellors-at-law for services in connection with any contested claim arising under this article shall not be enforceable unless approved by the board. If so approved, such fee or fees shall become a lien upon the benefits ordered, but shall be paid therefrom only in the manner fixed by the board or the alternative dispute resolution association. Any other person, firm, corporation, organization, or other association who shall exact or receive any fee or gratuity for any services rendered on behalf of an employee except in an amount so determined shall be guilty of a misdemeanor. Any person, firm, corporation, organization, or association who shall solicit the business of an employee claiming benefits under this article, or who shall make it a business to solicit employment for a lawyer in connection with any claim for disability or family leave benefits under this article, or who shall exact or receive any fee or gratuity or other charge with respect to the collection of any uncontested claim for disability or family leave benefits, shall be guilty of a misdemeanor.

History

Add, L 1949, ch 600, § 1, eff April 13, 1949; amd, [L 2016, ch 54, §22](#) (Part SS), eff April 1, 2016.

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§ 226. The insurance contract

1. Every policy of insurance providing the benefits required to be paid under this article shall contain a provision setting forth the right of the chairman to enforce in the name of the people of the state of New York for the benefit of the person entitled to the benefits insured by the policy, either by filing a separate application or by making the insurance carrier a party to the original application, the liability of the insurance carrier in whole or in part for the payment of such benefits; provided, however, that payment in whole or in part of such benefits by either the employer or the insurance carrier shall to the extent thereof be a bar to the recovery against the other of the amount so paid.
2. Every such policy shall contain a provision that, as between the employee and the insurance carrier, the notice to or knowledge of the occurrence of the injury or sickness on the part of the employer shall be deemed notice or knowledge as the case may be, on the part of the insurance carrier; that jurisdiction of the employer shall, for the purpose of this chapter, be jurisdiction of the insurance carrier and that the insurance carrier shall in all things be bound by and subject to the orders, findings or decisions rendered in connection with the payment of benefits under the provisions of this article.
3. Every such policy shall contain a provision to the effect that the insolvency or bankruptcy of the employer shall not relieve the insurance carrier from the payment of benefits for disability suffered by an employee during the life of such policy.
4. Every policy of insurance issued to meet the requirements of section two hundred eleven shall contain a provision reciting in effect that notwithstanding any other provision of the policy, benefits shall be paid at least to the extent and in the manner and subject to the conditions required by the terms of the insured's provision of benefits under this article.
5. No contract of insurance issued by an insurance carrier providing the benefits to be paid under this article shall be cancelled within the time limited in such contract for its expiration unless notice is given as required by this section. When cancellation is due to non-payment of premiums such cancellation shall not be effective until at least ten days after a notice of cancellation of such contract, on a date specified in such notice, shall be filed in the office of the chair and also served on the employer. When cancellation is due to any reason other than non-payment of premiums such cancellation shall not be effective until at least thirty days after a notice of cancellation of such contract, on a date specified in such notice, shall be filed in the office of the chair and also served on the employer; provided, however, in either case that if insurance with another insurance carrier has been obtained which becomes effective prior to the expiration of the time stated in such notice, the cancellation shall be effective as of the date of such other coverage. Such notice shall be served on the employer as prescribed by the chair, including delivering it to him or her by electronic means; provided that, if the employer be a partnership, then such notice may be given to any one of the partners, and if the employer be a corporation then the notice may be given to any agent or officer of the corporation upon whom legal process may be served, provided, however, the right to cancellation of a policy of insurance in the state fund shall be exercised only for nonpayment of premiums or as provided in section ninety-four of this chapter.
- 6.

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- (a) Any insurance carrier or the state insurance fund who issues, reinstates, amends or endorses any contract of insurance or rider thereto providing the benefits required to be paid under this article shall file notification in the office of the chair within thirty days after such issuance, reinstatement, amendment or endorsement of the contract. Such notice shall be filed in the manner and form prescribed by the chair.
- (b) In the event notice required under this subdivision or subdivision five of this section is not filed with the chair within the thirty-day time period, the chair may impose a penalty of up to one hundred dollars for each ten-day period the insurance carrier or state insurance fund failed to file the notification. All penalties collected pursuant to this subdivision shall be deposited in the uninsured employers' fund.
7. The chair may require by regulation that every policy of family leave insurance contain a provision requiring that all disputes be resolved by designated alternative dispute resolution process in accordance with such regulations.
8. Premiums for policies providing disability or family leave benefits in accordance with this article shall be calculated in accordance with applicable provisions of the insurance law, including subsection (n) of section four thousand two hundred thirty-five of such law.
9. Except as set forth in subdivision eight of section two hundred eleven of this article, every policy of insurance issued pursuant to this article must offer coverage for both disability and family leave benefits.

History

Add, L 1949, ch 600, § 1, eff April 13, 1949; amd, L 1974, ch 225, § 1, eff July 1, 1974; L 1983, ch 211, § 1, eff Jan 1, 1984; L 2008, ch 322, § 3, eff Oct 19, 2008; L 2016, ch 54, §23 (Part SS), eff April 1, 2016.

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§ 227. Actionable injuries in claims for disability benefits; subrogation

1. If an employee entitled to disability benefits under this article be disabled by injury caused by the negligence or wrong of a third party, such employee need not elect whether to take such disability benefits or to pursue his remedy against such third party, but may take his benefits under this article. The carrier liable for payment of disability benefits under this article or the chairman in case of benefits paid under section two hundred seven or two hundred thirteen shall have a lien on the proceeds of any recovery from such third party, whether by judgment, settlement or otherwise, after the deduction of reasonable and necessary expenditures, including attorneys' fees, incurred in effecting such recovery, to the extent of the total amount of disability benefits provided by this article and paid, and to such extent such recovery shall be deemed for the benefit of such carrier or the chairman. Should the employee secure a recovery from such third party, whether by judgment, settlement or otherwise, such employee may apply on notice to such lienor to the court in which the third party action was instituted, or to a court of competent jurisdiction if no action was instituted, for an order apportioning the reasonable and necessary expenditures, including attorneys' fees, incurred in effecting such recovery. Such expenditures shall be equitably apportioned by the court between the employee and the lienor. Notice of the commencement of such action shall be given within ninety days thereafter to the employer or carrier or to the chairman, as the case may be. The foregoing rights, limitations, and procedures shall also apply to actions and recoveries under the employers' liability act, and section six hundred eighty-eight, title forty-six, United States code, and under the maritime doctrine of wages, maintenance and cure. Any of the foregoing providers of disability benefits which has recovered a lien pursuant to the provisions hereof against the recovery of a person injured on or after December first, nineteen hundred seventy-seven and before July first, nineteen hundred seventy-eight, through the use or operation of a motor vehicle in this state, shall notify such person by certified mail, in a manner to be approved by the chairman and the superintendent of financial services, of the responsibilities of an "insurer" (as defined in subsection (g) of section five thousand one hundred two of the insurance law), to reimburse such person under such circumstances to the extent that the recovered lien represents first party benefits as defined in article fifty-one of the insurance law.
- 1-a. Notwithstanding any other provisions of this article the carrier liable for payment of disability benefits under this article, or the chairman in case benefits are paid under section two hundred seven or section two hundred thirteen of this chapter shall not have a lien on the proceeds of any recovery received pursuant to subsection (a) of section five thousand one hundred four of the insurance law, whether by judgment, settlement or otherwise for disability benefits paid, which were in lieu of first party benefits which another insurer would have otherwise been obligated to pay under article fifty-one of the insurance law. The sole remedy of any of the foregoing providers to recover the payments in the situation specified in the preceding sentence shall be pursuant to the settlement procedures contained in section five thousand one hundred five of the insurance law.
2. If such disabled employee has been paid disability benefits under this article but has failed to commence action against such other within six months prior to the expiration of the statute of limitations, the carrier or the chairman, as the case may be, may maintain an action against such third party. If the carrier or the chairman, as the case may be, having paid disability benefits to a disabled employee, who is also a "covered person" (as defined in subsection (j) of section five thousand one hundred two of the insurance

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law), and who was injured in a motor vehicle accident in this state on and after December first, nineteen hundred seventy-seven and before July first, nineteen hundred seventy-eight, maintains an action against such third party, who is also a "covered person", and recovers, whether by judgment, settlement or otherwise, it shall advise the disabled employee, by certified mail, in a manner to be approved by the chairman and the superintendent of financial services, of the responsibility of an "insurer" (as defined in subsection (g) of section five thousand one hundred two of the insurance law) to further compensate such disabled employee.

- 2-a. Notwithstanding any other provisions of this article, the failure of a "covered person" (as defined in subsection (j) of section five thousand one hundred two of the insurance law), who has been paid disability benefits under this article for injuries arising out of the use or operation of a motor vehicle in this state, to commence an action against such other within six months prior to the expiration of the statute of limitations, shall not operate to permit the carrier or the chairman to institute an action against such other third party for recovery of disability benefits paid which were in lieu of first party benefits which an insurer would have otherwise been obligated to pay under article fifty-one of the insurance law unless such third party is not a "covered person". The sole remedy of any of the foregoing providers to recover the payments in the situation specified in the preceding sentence when the other party is a "covered person" shall be pursuant to the settlement procedures contained in section five thousand one hundred five of the insurance law.
3. A compromise of any such cause of action by the employee in an amount less than the benefits provided by this article shall be made only with the written consent of the carrier or the chairman, as the case may be.

History

Add, L 1949, ch 600, § 1, eff April 13, 1949; amd, L 1975, ch 190, § 2; L 1978, ch 572, §§ 5–8, eff July 1, 1978; L 1984, ch 805, § 99, eff Sept 1, 1984; L 2011, ch 62, § 104 (Part A), eff Oct 3, 2011; L 2016, ch 54, §24 (Part SS), eff April 1, 2016.

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§ 228. Administrative expenses

1. The estimated annual expenses necessary for the workers' compensation board to administer the provisions of the disability 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.

History

Add, L 2013, ch 57, § 27 (Part GG), eff March 29, 2013.

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§ 229. Posting of notice and providing of notice of rights

1. Each covered employer shall post and maintain in a conspicuous place or places in and about the employer's place or places of business typewritten or printed notices in form prescribed by the chair, stating that the employer has provided for the payment of disability and family leave benefits as required by this article. The chair may require any covered employer to furnish a written statement at any time showing the carrier insuring the payment of benefits under this article or the manner in which such employer has complied with section two hundred eleven of this article or any other provision of this article. Failure for a period of ten days to furnish such written statement shall constitute presumptive evidence that such employer has neglected or failed in respect of any of the matters so required.
2. Whenever an employee of a covered employer who is eligible for benefits under section two hundred four of this article shall be absent from work due to a disability or to provide family leave as defined in subdivision nine and subdivision fifteen respectively, of section two hundred one of this article for more than seven consecutive days, the employer shall provide the employee with a written statement of the employee's rights under this article in a form prescribed by the chair. The statement shall be provided to the employee within five business days after the employee's seventh consecutive day of absence due to disability or family leave or within five business days after the employer has received notice that the employee's absence is due to disability or family leave, whichever is later.

History

Add, L 1949, ch 600, § 1, eff April 13, 1949; amd, L 1985, ch 271, § 1, eff Jan 1, 1986; L 2016, ch 54, §26 (Part SS), eff April 1, 2016.

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§ 230. Destruction of records

All records and documents relative to this article required to be filed with the chairman or board may be destroyed, in accordance with the state finance law.

History

Add, L 1949, ch 600, § 1, eff April 13, 1949; amd, L 1956, ch 303, eff April 4, 1956.

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§ 231. Subpoenas

A subpoena or a subpoena duces tecum may be signed and issued by the chairman, a member of the board, referee or such officer as may be designated by the chairman. A subpoena or a subpoena duces tecum may also be signed and issued by any attorney and counsellor-at-law appearing before the board on behalf of an employee or other party. A subpoena issued under this section shall be regulated by the civil practice law and rules.

History

Add, L 1949, ch 600, § 1, eff April 13, 1949; amd, L 1962, ch 310, § 498, eff Sept 1, 1963.

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§ 232. Fees for testimony of physicians, podiatrists, chiropractors, dentists, psychologists and health care providers

Whenever his or her attendance at a hearing, deposition or arbitration before the board or the chair's designee, pursuant to section two hundred twenty-one of this article, is required, the attending physician or attending podiatrist or attending chiropractor or attending dentist or attending psychologist or attending certified nurse midwife of the disabled employee, except such physicians as are disqualified from testifying pursuant to subdivision one of section thirteen-b, or section nineteen-a of this chapter, and except such podiatrists as are disqualified from testifying under the provisions of section thirteen-k, and except such chiropractors as are disqualified from testifying under the provisions of section thirteen-l, and except such psychologists as are disqualified from testifying under the provisions of section thirteen-m, or health care provider shall be entitled to receive a fee in accordance with regulations of the chair.

History

Add, L 1949, ch 600, § 1, eff April 13, 1949; amd, L 1958, ch 653, § 1; L 1961, ch 589, § 6; L 1962, ch 310 § 499; L 1973, ch 940, § 5, eff May 1, 1974; L 1981, ch 130, § 3, eff May 26, 1981; L 1989, ch 257, § 3, eff Jan 1, 1990; L 1990, ch 270, § 3, eff Jan 1, 1991; L 2016, ch 54, §27 (Part SS), eff April 1, 2016.

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§ 233. Inspection of records of employers

All books, records and payrolls of employers shall be open for inspection by the chairman or by any officer or employee of the board designated by him for the purpose of ascertaining the amount of wages and the number of employees and such other information as may be necessary in the administration of this article. Any person who refuses to allow the chairman or his authorized representative to inspect any such books, records or payrolls relative to the enforcement of this article shall be guilty of a misdemeanor.

History

Add, L 1949, ch 600, § 1, eff April 13, 1949.

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§ 234. Disclosures prohibited

Information as required by any carrier, or its officers or employees, from employers or employees or others pursuant to this article shall not be opened to public inspection or used for any purpose other than the determination of claims under and complying with the provisions of this article; and any carrier, or officer or employee of a carrier who, except with the authority of the chairman or pursuant to his regulations, or as otherwise provided by law, shall disclose the same shall be guilty of a misdemeanor.

History

Add, L 1949, ch 600, § 1, eff April 13, 1949.

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§ 235. Exemptions

Any employee who is receiving or is entitled to receive old-age insurance benefits under title two of the social security act, shall be exempt from this article upon filing with the chairman and his employer a statement, in such form as the chairman shall prescribe, waiving any and all benefits under this article. Thereafter such employee shall be exempt from any liability to contribute toward the cost of such benefits, and his employer shall be relieved of responsibility to provide for the payment of any benefits to such employee under this article.

History

Add, L 1949, ch 600, § 1, eff April 13, 1949; amd, L 1954, ch 226; L 1966, ch 866, § 2, eff July 1, 1966.

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§ 236. Disposition of accrued benefits upon death

If any benefits due under this article to an employee are unpaid at the time of his death, such benefits shall be payable to the estate of the individual or, at the option of the carrier, may be paid to the surviving spouse, parent, child or children of the deceased employee. Benefits that are not paid as above provided shall, after the expiration of one year after such death, be paid into the special fund for disability benefits created under section two hundred fourteen of this article.

History

Add, L 1949, ch 600, § 1, eff April 13, 1949; amd, L 1954, ch 108, eff March 15, 1954.

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§ 237. Reimbursement for advance payments by employers

If an employer has made advance payments of benefits or has made payments to an employee in like manner as wages during any period of disability or family leave for which such employee is entitled to the benefits provided by this article, he or she shall be entitled to be reimbursed by the carrier out of any benefits due or to become due for the existing disability or family leave, if the claim for reimbursement is filed with the carrier prior to payment of the benefits by the carrier.

History

Add, L 1949, ch 600, § 1, eff April 13, 1949; amd, [L 2016, ch 54, §28](#) (Part SS), eff April 1, 2016.

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§ 238. Payments to minors

Minors shall be deemed to be sui juris for the purpose of receiving payment of benefits under this article.

History

Add, L 1949, ch 600, § 1, eff April 13, 1949.

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§ 239. Representation before the board

Any person, firm, or corporation licensed by the board under section twenty-four-a of this article or subdivision three-b of section fifty of this chapter shall be deemed to be authorized to appear in behalf of claimants or self insured employers, as the case may be, in contested disability or family leave claims under this article.

History

Add, L 1949, ch 600, § 1, eff April 13, 1949; amd, L 2016, ch 54, §30 (Part SS), eff April 1, 2016.

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§ 240. Non-liability of state

The special fund for disability benefits created by section two hundred fourteen shall be the sole and exclusive source for the payment of benefits provided by sections two hundred seven and two hundred thirteen. The state of New York undertakes the administration of the fund without any liability on the part of the state beyond the amount of moneys actually collected and credited to the fund.

History

Add, L 1949, ch 600, § 1, eff April 13, 1949.

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§ 241. Application of other provisions of chapter

All the powers and duties conferred or imposed upon the chairman and board by this chapter that are necessary for the administration of this article and not inconsistent are, to that extent, hereby made applicable to this article; and none of the other provisions of this chapter pertaining to benefits provided by other articles of this chapter shall be construed to be applicable to this article. The provisions of section one hundred twenty of this chapter shall be applicable as fully as if set forth in this article, except that penalties paid into the state treasury pursuant thereto under this article shall be applied toward the expenses of administering this article.

History

Add, L 1949, ch 600, § 1, eff April 13, 1949; amd, L 1973, ch 235, § 2, eff April 25, 1973.

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§ 242. Separability of provisions; federal law; regulations

1. If any provision of this article or the application thereof to any person or circumstances is held invalid, the remainder of this article and the application of such provision to other persons or circumstances shall not be affected thereby.
2. Nothing in this article shall be interpreted or applied so as to create a conflict with federal law.
3. The chair shall have authority to adopt regulations to effectuate any of the provisions of this article.

History

Add, L 1949, ch 600, § 1, eff April 13, 1949; amd, L 2016, ch 54, §39 (Part SS), eff April 1, 2016.

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