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December 9, 2022

Heather MacMaster
New York State Workers' Compensation Board
Office of General Counsel
328 State Street
Schenectady, NY 12305

Submitted via regulations@wcb.ny.gov

Dear Ms. MacMaster:

Thank you for the opportunity to comment on the Workers' Compensation Board's ("the Board") updates to its disability benefits regulations.

A Better Balance is a national nonprofit legal services and advocacy organization that uses the power of the law to advance justice for workers, so they can care for themselves and their loved ones without jeopardizing their economic security. We run a free and confidential legal helpline through which we hear from thousands of workers a year, including hundreds of workers who have needed, applied for, and/or received New York temporary disability benefits and paid family leave. We also helped lead the coalition that drafted the paid family leave provisions that were added to the temporary disability benefits program.

We thank the Board for proposing regulations to update and clarify the disability benefits program. Still, we urge the Board to make several key changes to the proposed regulations to ensure that workers are able to readily access the benefits to which they are entitled. Our topline recommendations are:

- Clarify if/when medical certification is required in the four weeks prior to and six-to-eight weeks after birth and, if required, explain to what the health provider must certify. Update the medical certification form itself to plainly state what is required.
- Clarify the employer's versus the claimant's role in submitting the application to the insurance carrier.
- Expand the list of examples of reasons it may not be "reasonably possible" for a worker to timely file for disability benefits, so as to better reflect the barriers workers encounter from their employers.
- Classify disability and paid family leave materials, including applications, as vital documents that must be translated into commonly-spoken languages.
- To complement the regulatory changes, provide technical assistance, including guidance and trainings, to help workers, employers, carriers, and health providers understand their new roles and responsibilities in the application process.

We provide section-by-section recommendations below.

I. Section 355.4(b)

We support the proposed amendment concerning domestic workers, which will align the regulations with the statute.

II. Section 363.1(e)

We strongly support the Board's codification of its position that "disability" includes pregnancy- and childbirth-related health needs, as well as the presumption that workers have a qualifying disability for at least four weeks before, and six-to-eight weeks after, childbirth.[1]

To further clarify this section, we urge the Board to:

1. Change "for at least the four weeks prior to the child's estimated due date and for the six weeks after giving birth" to "for at least the four weeks prior to the child's estimated due date and for at least the six weeks after giving birth via vaginal delivery." The addition of "at least" better comports with the Board's existing guidance[2] and will ensure that the presumption after birth, just like the presumption before birth, is not misunderstood to *cap* the duration that a postpartum worker is unable to work.
2. Change "An employee who delivers by Cesarean section has a disability caused by or in connection with a pregnancy for eight weeks after giving birth" to "An employee who delivers by Cesarean section is presumed to have a disability caused by or in connection with a pregnancy for at least eight weeks after giving birth." The addition of "is presumed to have" will harmonize the provision governing Cesarean sections with the prior provision governing prepartum disability (which uses "is presumed to have" language). The addition of "at least" will ensure that the presumption is not misunderstood to *cap* the duration of disability a particular worker may experience, better comporting with the Board's existing position.[3]
3. Clarify whether a worker seeking disability benefits during the presumptive periods must submit medical certification. The current proposed text ("Any further disability requires medical certification of a complication due to pregnancy or childbirth") is ambiguous as to whether a worker is required to submit medical certification (currently Part B of Form DB-450) for pregnancy-related disability arising during the presumptive periods four weeks prior to and six-to-eight weeks following childbirth.
4. In addition, if medical certification *is* required during these presumptive periods, the regulation should clarify if the health provider (i) need only certify the due/birth date and method of delivery, and/or (ii) must certify the fact that the worker is unable to work, and/or (iii) must offer specific medical evidence as to why the worker is unable to work due to pregnancy. We recommend the Board take approach (i), which would better comport with the intent of the presumption—to helpfully simplify and streamline the application process for workers, health providers, and insurance carriers—by requiring providers to certify solely to the due date or birth date.

[1] N.Y.S. WORKERS' COMP. BD., DISABILITY BENEFITS: PREGNANCY & MATERNITY LEAVE, http://www.wcb.ny.gov/content/main/DisabilityBenefits/employee-disability-benefits.jsp#pregnancyMaternityLeave ("If you are pregnant, you are eligible for disability benefits for four weeks before your due date and six weeks after giving birth (eight weeks if you delivered by Caesarian section). You may be entitled to further disability benefits up to the maximum 26 weeks with documentation from your medical care provider.").

[2] *Id.*

[3] *Id.*

In addition, because we have heard on our helpline from workers who have been denied disability benefits following loss or termination of pregnancy, we urge the Board to:

5. Add the following text: "An employee who experiences a stillbirth is presumed to have a disability caused by or in connection with a pregnancy for at least six weeks after vaginal delivery, or eight weeks after Cesarean section. Likewise, an employee who experiences a loss or termination of pregnancy in the second trimester is presumed to have a disability caused by or in connection with a pregnancy for at least two weeks." The physical recovery from stillbirth is no less than that from birth—a reality the regulations should reflect. Likewise, earlier loss or termination of pregnancy can still require significant recovery time; according to the March of Dimes, "[i]t can take a few weeks to a month or more for your body to recover from a miscarriage."[4] In addition, as noted below, the Board should also issue guidance to workers and carriers on the availability of disability benefits following loss or termination of pregnancy, including for any related mental health conditions.

III. Section 363.11(a)

We appreciate the Board's effort to better harmonize the disability benefits application process with the paid family leave process. We recognize the Board's hope that doing so might make the application process clearer for employers and workers, particularly for those workers who apply for both kinds of benefits (such as many pregnant and postpartum workers).

We urge the Board to reconsider this proposed change, however, as the paid family leave application process has serious flaws that should not be imported into the disability benefits application process. Specifically, (1) the involvement of the employer in completing the paid family leave form (which the Board expressly proposes applying to the disability context) and (2) the requirement that the worker submit the paid family leave form to the insurance carrier, rather than have the option to submit to either the employer or carrier (which the proposed regulations appear to implicitly suggest will apply to the disability context) have created significant barriers to workers' receipt of the paid family leave benefits to which they are entitled.

- For example, we regularly hear from workers whose supervisors falsely assured them that the employer would submit (or already had submitted) the paid family leave form to the carrier on the worker's behalf—but then did not do so.[5] Often, workers do not realize that the form was never submitted until many months later, when they have not received their benefits—at which point, it is often too late to apply.
- We also hear from workers who struggled to get their form back from their employers (after providing the form to the employer to complete the employer portion), either because the employer had lost the form or refused to provide it back to them.
- For the low-wage workers who call our helpline—and who are often working multiple jobs, on top of providing the time-consuming family care work that prompted them to seek paid family leave in the first place—such barriers significantly delay their application process, or dissuade them from applying for benefits at all.

[4] March of Dimes, Miscarriage (Nov. 2017), https://www.marchofdimes.org/find-support/topics/miscarriage-loss-grief/miscarriage.

[5] Although the paid family leave application form notes that it is the worker's responsibility, not the employer's, to submit the application form to the insurance carrier, on our helpline we hear from workers who did not notice or understand this information (sometimes because it is not in a language they speak), or whose supervisors had confidently (but incorrectly) assured them that they would "handle" submitting the application. The hierarchical nature of the employer-worker relationship (or, alternately, the trust between a supervisor and a worker) can make it difficult for a worker to insist that their employer return the form to them so that they can submit it.

We strongly advise the Board against importing such a problematic scheme into the disability application process. In addition, we urge the Board to reform the paid family leave application process to eliminate (1) the involvement of the employer in completing the application form and (2) the requirement that the worker submit the application form to the carrier, rather than have the option to submit to the employer or carrier (as is the case with disability).

In the alternative, if the Board is unwilling to make the above changes to its *proposed* disability regulations and to its *existing* paid family leave regulations, the Board should at minimum make the two processes identical. (Changing the disability application process to parallel the paid family leave application process in *some* but not all respects—as the proposed regulation appears to do—would create rather than minimize confusion.) Accordingly—and, again, only if the Board is unwilling to make the aforementioned changes—we urge the Board to amend the proposed regulation to:

1. State that it is the worker's obligation to submit the application form to the insurance carrier. The form itself should prominently advise workers of this obligation and the Board should create additional educational materials for workers to this effect. Too often we hear from workers who were unaware of their obligation to submit the paid family leave application form to the insurance carrier, rather than to their employer, causing them to lose critical benefits, with devastating consequences for their financial stability.
2. State that the disability benefits application form must prominently advise applicants to make a copy of their application form prior to providing it to their employers. In the paid family leave context, we regularly hear from workers whose employers lost or otherwise failed to return their paid family leave form to them, frustrating their ability to apply for benefits. For workers who do not have ready access to the internet and a printer, having to re-download, print, and complete an application form can significantly delay or outright impede workers' ability to apply for benefits to which they are entitled (and which they have funded).
3. Require the Board to provide technical assistance, including guidance and training, to employers and workers about their new role and responsibility in the disability benefit application process.

IV. Section 363.11(b)

We support the Board's addition of "certified nurse midwife" to the list of health providers who can provide proof of disability. This addition will align the regulations with the statutory text and will aid the many pregnant and postpartum workers who receive care from nurse midwives.

V. Section 363.11(d)

We strongly support the Board's proposed addition of examples of reasons a claimant may show it was not reasonably possible to timely furnish notice or proof of disability.

To better capture the full range of reasons that make it impossible for workers to timely apply for disability benefits, we urge the Board to:

1. Change "delay by medical provider, or claimant was incapacitated" to "delay by medical provider; claimant was incapacitated; application instructions not available in language the claimant reads; employer failed to accurately complete and return application form within three business days;[6] employer failed to inform, or misinformed, claimant of claimant's responsibility to submit completed

[6] This language is only necessary if the Board decides to retain its proposed regulation, § 363.11(a), which we urge the Board not to do. See our discussion of § 363.11(a) above.

application to employer's insurance carrier;[7] employer failed or refused to provide claimant the correct name of its insurance carrier and/or the employer's correct policy number with the insurance carrier;[8] employer threatened termination, demotion, discipline, suspension, or reduction of hours or wages, reported or threatened to report citizenship or immigration status of worker or a family member, or took or threatened to take any other action that would reasonably deter a worker from applying for benefits; or employer otherwise failed to inform or misinformed claimant of right to benefits."

   a. On our free and confidential legal helpline, we hear *weekly* from workers who could not timely apply for disability benefits because their employers did not inform them, or misinformed them, of their right to benefits, or misled them about the application process. For example, we often hear from workers whose employers refused or failed to provide them the name of their insurance carrier, forcing workers to spend many weeks chasing down the name of the carrier and causing them not to be able to submit their applications on time—or at all. Likewise, we often hear from pregnant workers whose employers only told them of the right to paid family leave, not to disability benefits. Finally, we hear frequently from workers whose employers told them (incorrectly) that the worker could submit their paid family leave application form to their employer, rather than to the employer's insurance carrier, causing them to not receive their benefits; if the Board intends to now likewise require workers to submit their disability benefits applications to their employer's insurance carrier, we anticipate this same problem will occur in the disability benefits context too.
   b. Still other workers tell us they did not apply for benefits because they worried their employer would punish them for doing so, were afraid of the immigration consequences of applying, or were unable to read the application form or guidance materials because they are only available in English.

2. Change "e.g.," to "including but not limited to," so as to make clear that the list is not intended to be exhaustive.
3. Change "such delay may be excused," to "such delay shall be excused." Workers who are able to show that it was not reasonably possible to furnish notice within 30 days and that the notice was furnished as soon as possible should be entitled to receive the disability benefits that they need.
4. Make the same changes to the paid family leave regulations.

VI. Section 363.11(e) (NEW)

State law requires state agencies to translate all "vital documents" related to services provided by the agency into "the twelve most common non-English languages spoken by limited-English proficient individuals in the state." N.Y. Exec. Law § 202-A.

Currently, the temporary disability benefits application form (Form DB-450), the paid family leave application forms, and guidance materials related to disability and paid family leave are not deemed "vital documents" and are only available in English. On our legal helpline, which serves workers in both English and Spanish, we hear from many dozens of workers who struggle to apply for these benefits as a result. Indeed, according to the American Community Survey, nearly 15% of New Yorkers "speak English less than very well," meaning that offering these materials and application forms in only English creates a significant barrier to millions of New Yorkers' ability to apply.[9]

[7] This language is only necessary if the Board decides to retain its proposed approach (as we understand it), which we urge the Board not to do. See our discussion of § 363.11(a) above.

[8] This language is only necessary if the Board decides to retain its proposed approach, which we urge the Board not to do. See our discussion of § 363.11(a) above.

[9] AM. COMM. SURVEY, WHY WE ASK QUESTIONS ABOUT LANGUAGE SPOKEN AT HOME, https://www.census.gov/acs/www/about/why-we-ask-each-question/language/.

Disability and paid family leave are vital benefits on which working families depend to stay afloat at moments of great precarity: These benefits are often the difference between being able to welcome a new child into a financially secure home, or being able to recover from serious illness, and losing one's livelihood, health insurance, and home. Moreover, these are benefits that most workers themselves *have already funded*, through their payroll contributions. No worker should be unable to access the benefits to which they are entitled—and for which they have paid—solely because of the language they happen to speak.

Accordingly, we strongly urge the Board to add a provision (e) to § 363.11 that states: "Materials related to disability benefits and paid family leave, including application forms, shall be considered vital documents under N.Y. Exec. Law § 202-A, such that the chair shall translate them into the twelve most common non-English languages spoken by limited-English proficient individuals in the state." Doing so will guarantee that English-language proficiency is not a barrier to learning about, applying for, and receiving these critical monetary benefits.

VII. Section 363.11(f) (NEW)

Currently, the Form DB-450 and the paid family leave application forms ask workers to provide their social security numbers or the social security numbers of their care recipients.[10] On our helpline and in the dozens of trainings we provide to New York workers every year, we hear that requesting such information—even while noting that it is "voluntary"[11]—has a chilling effect on workers' willingness to apply for benefits.

Accordingly, we urge the Board to add a provision (f) to § 363.11, stating that, "In no circumstance shall the format prescribed by the chair for notice and proof of disability request a social security number." The same change should be made to the paid family leave regulations. When the Board prepares its new disability and paid family leave application forms and processes, it should look to Washington State's Paid Family and Medical Leave program as a guide for processing applications without relying on social security numbers.[12]

VIII. Section 363.13(a)

The proposed regulation states that the carrier must notify the employee of a claim denial within 18 days and of claim rejection within 45 days. The difference between a claim denial and claim rejection is unclear, as are the corresponding timelines.

[10] *See, e.g.,* N.Y.S. WORKERS' COMP. BD., NOTICE & PROOF OF CLAIM FOR DISABILITY BENEFITS, http://www.wcb.ny.gov/content/main/forms/db450.pdf; N.Y.S. WORKERS' COMPENSATION BD., HOW TO REQUEST PAID FAMILY LEAVE TO BOND, http://docs.paidfamilyleave.ny.gov/content/main/forms/PFLDocs/PFL2.pdf; N.Y.S. WORKERS' COMP. BD., HOW TO REQUEST PAID FAMILY LEAVE TO CARE FOR A FAMILY MEMBER, http://docs.paidfamilyleave.ny.gov/content/main/forms/PFLDocs/PFL3.pdf.

[11] N.Y.S. WORKERS' COMP. BD., NOTICE & PROOF OF CLAIM FOR DISABILITY BENEFITS, http://www.wcb.ny.gov/content/main/forms/db450.pdf ("Providing your social security number to the Board is voluntary. There is no penalty for failure to provide your social security number on this form; it will not result in a denial of your claim or a reduction in benefits."); N.Y.S. WORKERS' COMPENSATION BD., HOW TO REQUEST PAID FAMILY LEAVE TO BOND, http://docs.paidfamilyleave.ny.gov/content/main/forms/PFLDocs/PFL2.pdf.

[12] *See* WASH. EMP. & SEC. DEP'T, WASH. PAID FAMILY & MEDICAL LEAVE: APPLY NOW (2022), https://paidleave.wa.gov/apply-now/ ("A paper application is available if you do not have a Social Security number."); WASH. EMP. & SEC. DEP'T, WASH. PAID FAMILY & MEDICAL LEAVE: FAQ (2022), https://paidleave.wa.gov/more-answers/ (accepting "any valid foreign government issued form of identification" as accepted proof of identity); WASH. EMP. & SEC. DEP'T, WASH. PAID FAMILY & MEDICAL LEAVE: WHERE CAN I FIND THE CERTIFICATION OF SERIOUS MEDICAL CONDITION FORM? (2022), https://paidleave.wa.gov/question/where-can-i-find-the-certification-of-serious-medical-condition-form/ (requesting no social security numbers).

We recommend the Board clarify the difference between a denial and a rejection, and the corresponding 18-day and 45-day timelines.

IX. Section 363.13(b)

As with § 363.13(a) above, we recommend the Board clarify the difference between a denial and a rejection.

X. Section 363.13(c)

We support the proposed provision limiting the circumstances in which an inquiry, pursuant to WCL § 208(1) and requiring the worker's response in order to continue benefits, may be made.

We suggest, however, that the Board correct the typographical mistake following the word "medical" ("medical or twelve weeks"), which we believe should read "medical certification."

In addition, we suggest that the Board rephrase the sentence beginning, "Proof of a disability caused by or in connection with a pregnancy," to clarify the Board's intent. For example, if the Board intends to say that an insurance carrier or self-insured employer cannot make a WCL § 208(1) inquiry in the four weeks prior to, and the six-to-eight weeks following, childbirth, it should say so explicitly. We do not understand the meaning of the sentence in its current form.

XI. Section 363.13(d)

If the Board opts to retain its proposed § 363.11(a), we recommend the Board change "incomplete Notice and Proof of Claim for Disability Benefits" to "incomplete Notice and Proof of Claim for Disability Benefits, except where the claim is incomplete due to the failure of the employer to timely and/or adequately complete the employer section." This change will make this provision consistent with proposed provision § 363.13(g) and consistent with the Board's approach to paid family leave.

XII. Section 363.13(e)

We support the proposed provision's requirement that the carrier or self-insured employer must notify the claimant of any deficiencies in their application process.

We recommend, however, that the proposed provision also:

1. State that the carrier or self-insured employer also "must notify the employee of how to refile the claim and the timeline by which they must do so."
2. Change "If the claim is not refiled within 30 days from when leave was first taken…" to "If the claim is not refiled within 45 days from when leave was first taken…" Because the carrier is allowed 18 days to send the employee notice of the denial of claim, a 30-day timeline would afford the employee less than two weeks to re-file. Re-filing may require the worker to schedule a new appointment with a health provider, obtain new medical certification from their provider, re-submit the form to their employer for completion of the employer portion, etc.—a timeline that would be unworkable for many claimants already struggling with serious illness, injury, or recovery from childbirth.

XIII. Section 363.13(f)

For the same reasons outlined for § 363.11(d) above, we recommend § 363.13(f)(6) be amended to read: "(6) the claim was not timely made, and claimant did not show it was not reasonably possible to timely file required notice and proof of claim (including but not limited to, because of delay by medical provider; claimant was incapacitated; application instructions not available in language the claimant reads; employer failed to accurately complete and return application form within three business days;[13] employer failed to inform, or misinformed, claimant of claimant's responsibility to submit completed application to employer's insurance carrier; employer failed or refused to provide claimant the correct name of its insurance carrier and/or the employer's correct policy number with the insurance carrier; employer threatened termination, demotion, discipline, suspension, or reduction of hours or wages, reported or threatened to report citizenship or immigration status of worker or a family member, or took or threatened to take any other action that would reasonably deter a worker from applying for benefits; or employer otherwise failed to inform or misinformed claimant of right to benefits)."

XIV. Section 363.13(g)

If the Board decides to retain its proposed approach to § 363.11(a), then we support the proposed provision stating that an employer's failure to complete the employer section of the application form is not a valid ground for denial of the claim.

We recommend, however, that the Board amend the proposed text to clarify that "failure of the employer to complete, including untimely completion or inadequate completion" is not a valid basis for denial. Employers' failure to complete their portion of application form within the prescribed three business days should not be a valid basis for claims denials.

XV. Section 363.13(i)

We support the new provision.

We recommend, however, that the Board revise the proposed regulation to clarify that "if the insurance carrier or self-insured employer fails to respond within seven days to an inquiry from the Workers' Compensation Board relating to a request for review, the claim shall be deemed approved." Adding a specific deadline by which carriers must respond will helpfully clarify their obligations and ensure that workers are not forced to wait many weeks or months for benefits.

XVI. Section 363.15

We commend the Board for its proposed regulation allowing for alternate methods for filing a disability benefits claim. This change will lower application barriers for workers. It will also helpfully harmonize the disability regulation with the parallel paid family leave regulation (§ 380-5.2), easing compliance burdens on employers and insurance carriers.

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[13] The same caveat noted in footnotes 6-8 above applies.

We suggest, however, that the typographical error in subsection (c), which refers first to a "request for paid family leave" but then to a "Claim for Disability Benefits," be amended to refer consistently to disability benefits.

In addition, to further harmonize the disability and paid family leave regulations, we suggest that § 380-5.2 be revised to mirror subsection (b) of proposed § 363.15, so that a worker can request paid family leave telephonically, just like disability.

XVII. Section 363.16

We support the proposed application of certain paid family leave provisions—especially the employer notice provisions of § 380-7.2—to the disability benefits context. To further strengthen these notice provisions and ensure that workers understand how to access disability and paid family leave benefits, we recommend the final regulation:

1. In § 380-7.2(a)(2), state: "including information on how and where to file a claim."
2. Add a new § 380-7.2(a)(3), stating: "A covered employer shall comply with the notice requirements of Workers' Compensation Law section 229."

XVIII. Additional, Non-Regulatory Actions the Board Should Take

Finally, to reduce confusion and ensure that workers, health providers, employers, and insurance carriers alike are able to understand their changed rights and responsibilities under the new regulations, we urge the Board to take a number of important steps beyond the regulations themselves.

1. **Update the Form DB-450** to reflect the new application process and parties' new roles and responsibilities within it, especially emphasizing:
   a. What (if anything) health providers must certify to if completing an application for a patient in the four weeks before their due date or six-to-eight weeks following delivery (e.g., solely the due/birth date and method of delivery?);
   b. That employers must complete their portion of the application form within three (3) business days and return it to the worker (if the Board decides to retain this approach);[14]
   c. That claimants should make a copy of their application form before providing it to their employer, if possible;
   d. That employers must timely and accurately inform their workers of who their insurance carrier is, their insurance policy number, and how workers can submit an application to the carrier;
   e. That it is claimants' responsibility to submit the application form to their employer's insurance carriers (if the Board decides to implement this change).
2. **Issue clear guidance to workers, health providers, employers, and insurance carriers** explaining the new disability benefits application process, and provide training regarding the same. The guidance should focus especially on the points emphasized in (1) above.
3. **Update the Board's website to better integrate the disability and paid family leave sections**, so that workers can seamlessly get to the disability benefits section of the website from the paid family leave section of the website, and vice versa.
4. **Create a standalone webpage for pregnant/postpartum workers** covering the interaction of disability and paid family leave benefits, including the logistics of how to apply for one after the other and

[14] Recommendations (b) and (e) apply only if the Board decides to retain its proposed approach to § 363.11(a), which we urge it not to do.

concrete examples of how the two benefits can interact.[15] We recommend the Board look to the Massachusetts Department of Family and Medical Leave's website[16] and the New Jersey's Division of Temporary Disability and Family Leave webpage[17] as guides. The standalone webpage should be accessible from both the disability and paid family leave sides of the website. It should also cover the availability of disability benefits for recovery from loss or termination of pregnancy, including recovery from any related mental health conditions.

5. **Provide more guidance on the scope of the non-profit exclusion** (especially regarding professionals/teachers), expanding what already exists on the disability side of the website[18] and creating a new section on the paid family leave side of the website.
6. **Remove the following language from the paid family leave website:** "Until an employee's Paid Family Leave is approved by their employer's insurance carrier, the employee is not considered to be on Paid Family Leave, and it will be up to the employer to determine how to treat the time off."[19] This language poses serious logistical barriers to taking paid family leave and raises significant statutory concerns. For example, some workers are not permitted to submit their application for paid family leave until the qualifying event (such as a baby's birth or a family member's surgery) occurs;[20] the carrier can then take weeks or even months to receive, process, and approve the application. In that intervening period—that is, after a worker's need for leave has begun such that they can submit their application, but before that application is approved by the carrier—the website's language appears to leave workers without crucial benefits such as job protection, health insurance continuation, and anti-retaliation protections, contrary to the statute's text and intent.[21]
7. **Provide guidance on the disability benefits side of the website** explaining how to identify an employer's insurance carrier and logistically how to submit the application form to the carrier (e.g., email, fax, etc.).

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[15] The Board's current webpage covers only the "differences" between disability and paid family leave, and lives only on the disability side of the website. *See* N.Y.S. Workers' Comp. Bd., Disability Benefits: Pregnancy & Maternity Leave, http://www.wcb.ny.gov/content/main/DisabilityBenefits/employee-disability-benefits.jsp#pregnancyMaternityLeave. In our experience, workers need far more information, including when to submit an application for each, how to apply for each, etc. Narrative examples would be extremely valuable and we would be happy to assist in drafting them, to address common questions and concerns we hear from pregnant and postpartum workers.

[16] Mass. Dep't of Family & Medical Leave, PFML: Transitioning from Medical Leave to Family Leave to Bond with a Child (2022), https://www.mass.gov/info-details/pfml-transitioning-from-medical-leave-to-family-leave-to-bond-with-a-child (providing narrative examples of "Michelle" and "Ty" covering exactly when and how to transfer from one benefit to the other).

[17] N.J. Dep't of Labor & Workforce Dev., Maternity Coverage (2022), https://nj.gov/labor/myleavebenefits/worker/maternity/ (providing a standalone webpage, "When You're Pregnant or Just Had a Baby," explaining the interaction of both types of benefits).

[18] N.Y.S. Workers' Comp. Bd., Nonprofit Entities, http://www.wcb.ny.gov/content/main/coverage-requirements-db/nonprofit-entities.jsp.

[19] N.Y.S. Workers' Comp. Bd., Paid Family Leave & Other Benefits: Unapproved Leave, https://paidfamilyleave.ny.gov/paid-family-leave-and-other-benefits.

[20] See, e.g., N.Y.S. Paid Family Leave, How to Request Paid Family Leave to Care for a Family Member with a Serious Health Condition, http://docs.paidfamilyleave.ny.gov/content/main/forms/PFLDocs/PFL3.pdf ("Pre-submitting is defined as submitting the application in advance of an upcoming qualifying event . . . If pre-submitting is permitted by the carrier or self-insured employer . . . If the carrier does not permit pre-submitting . . . ") (emphasis added) (last visited Dec. 7, 2022).

[21] N.Y. WCL § 203-A(1) ("The provisions of [§ 120] . . . of this article shall be applicable to family leave."); N.Y. WCL § 120 ("It shall be unlawful for any employer . . . to discharge . . . an employee as to his or her employment because such employee has claimed or attempted to claim any benefits provided under this chapter.") (emphasis added). Notably, the statute is clear that eligible workers have *distinct* rights to both family leave (i.e., job protection, health insurance continuation, etc.), N.Y. WCL § 201(15), *and* benefits in relation to family leave (i.e., pay). During periods of family leave where workers are awaiting approval of their paid benefits claims, they are entitled to the significant protections of the statute, including job protection and health insurance continuation. N.Y. WCL §§ 203-a, b, c.

8. **Add a note on the Department of Financial Services'** ("DFS") webpage, "Insurance Companies with Approved Paid Family Leave (PFL) Insurance Policy Forms in 2022,"[22] explaining where self-employed workers can obtain an insurance policy. (None of the private insurers currently listed on the DFS's website provide policies for self-employed workers, causing confusion for such workers.) In addition, locate similar webpages on the Board's paid family leave and disability benefits websites.

* * *

We thank you for the opportunity to comment on these vital regulations. Please do not hesitate to contact us with any questions at dbolger@abetterbalance.org.

Sincerely,

Sherry Leiwant
Co-President

Dana Bolger
Staff Attorney

[22] N.Y.S. DEP'T OF FIN. SERVS., INSURANCE COMPANIES WITH APPROVED PAID FAMILY LEAVE INSURANCE POLICY FORMS (2022), https://www.dfs.ny.gov/apps_and_licensing/health_insurers/pfl_carriers.