

Technical Analysis

Estimating the Cost of Using New York's Temporary Disability Insurance Program to Provide Partial Pay to Covered Workers During Leaves Taken Under the Family and Medical Leave Act

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Introduction

Assembly Bill 9463 was introduced in the New York State Legislature on February 26, 1998 to provide disability benefits to employees who meet the provisions of the federal Family and Medical Leave Act (FMLA or the Act). By amending the disability benefits section of the workers' compensation law, this legislation would extend workers' access to paid leave for the care of a new child (newborn, adopted or foster) or an ill child, spouse or parent. New York currently has a family leave law which requires employers to provide leave benefits to adoptive parents if the employers provide leave benefits for the birth of a child.

Under the New York State Disability Benefits Law (DBL or NYS DBL), employers must provide paid leave for a maximum of 26 weeks to employees for their own non work-related disabilities. Temporary disability resulting from illness or injury - including pregnancy - must be certified by a physician. In New York, private sector employees who have worked at least 4 consecutive weeks can apply for leave. For exclusions and other aspects of the law, see Appendix.

The FMLA protects an employee's job, seniority and health benefits during a maximum 12 weeks **unpaid** leave for one's own serious health condition, including pregnancy and childbirth, and for the care of a new child or a seriously ill child, spouse or parent. Covered employers include all public sector agencies (federal, state and local) and private sector employers who have at least 50 workers onsite or within a 75-mile radius. Eligible employees include people who have worked for a covered employer at least 1,250 hours over the 12 months preceding leave. Just over half of American workers - 54.9 percent - are covered by, and eligible to take leave under, the federal Family and Medical Leave Act. Almost 11 percent of private sector worksites nationally are covered by the FMLA and they employ 59.5 percent of private sector employees in the United States.

To assess the fiscal impact of Assembly Bill 9463 (the 1998 Assembly bill, or, A9463) in New York, it is necessary to estimate the costs associated with extending disability benefits, ie, providing half an average weekly wage - up to a maximum of \$170 - to employees taking leave for the care of a new child or a seriously ill child, spouse or parent (family leave). These employees include those who use paid leave (vacation, sick or other) already to care for their family and those who use unpaid leave. The bill also takes in a portion of those who do not take leave now because they cannot afford it. Since the NYS DBL provides paid leave already for one's own serious health condition including pregnancy, meeting the leave needs of people in this category does not represent an additional cost under A9463. However, it is likely that the legislation will induce some people taking pregnancy-related leaves now to lengthen those leaves. Given the probable increase in total benefit payments, it is possible that premiums may go up for the employers and employees who pay for the disability benefits program in New York. National level research provides insight on these issues.

(See Appendix for information on the New York State Disability Benefits Law)

National Survey Results on Coverage and Utilization of the FMLA

When the Family and Medical Leave Act was enacted in 1993, it created the (US) Commission on Family and Medical Leave to evaluate the impact of the FMLA. To complete this task, the Commission contracted for two national random sample surveys to gather information on employers' response to family leave (Survey of Employers) and employees' leave-taking activity (Survey of Employees on the Impact of the Family and Medical Leave Act, or, Survey of Employees). Both surveys provide data on the extent of coverage and utilization of the FMLA in the United States.

Coverage under the FMLA

Approximately 122,000,000 people in the United States were employed in 1995 (see Table 1). Two-thirds of them, or 80,650,000 people, either worked for government agencies or at private sector workplaces with either 50 or more employees onsite or within a 75-mile radius. Therefore, these employees worked at FMLA covered worksites. Of this group, 83 percent - 66,940,000 - were eligible for FMLA benefits because they worked for the employer at least 1,250 hours in the past 12 months. These workers represented 54.9 percent of the total employed civilian labor force in the United States.

Approximately 10.8 percent of private sector worksites are covered by the FMLA. These worksites employ 59.5 percent of all private sector employees in the United States. While 89 percent of private sector worksites are not covered by the Act, they employ less than half of private sector employees - two-fifths (see Table 2).

Utilization of the FMLA

The Wage and Hour Division of the United States Department of Labor which administers the Act has not compiled empirical data yet on FMLA utilization. Two years after the FMLA became effective however, the Survey of Employees on the Impact of the Family and Medical Leave asked respondents to consider their leave-taking activity during an 18-month period beginning January 1, 1994. The survey showed that of all American workers, 16.8 percent, or almost 20,440,000 took leave for reasons covered by the FMLA (these employees worked at FMLA and non-FMLA covered worksites) and 3.4 percent, or approximately 4,130,000 people, needed to take leave but did not do so (see Tables 3 and 8). Looking at a 12-month period instead, these figures translate to approximately 13,627,000 leave-takers and 2,753,000 leave-needers annually, or, 11.2 and 2.3 percent of all employees in the United States. In addition, about 40 percent of all employees anticipated they would need to take leave for a reason covered under the Act at some point within the following five years. Care for a seriously ill parent was most often cited.

The survey data indicate that the rate of using designated FMLA leave is quite minimal. Of the 16.8 percent of employees that took leave, approximately seven percent took what they referred to as 'FMLA leave'. This represents about 2 percent of employees that are covered and eligible to take leave under the Act or about 1.2 percent of all employees. The Survey of Employers, which

Table 1: Employees at Worksites Covered and not Covered by the Federal Family and Medical Leave Act, 1995

All Workers, 18+ years of age and in the 48 Contiguous States			
122,000,000			
FMLA covered		Non-FMLA covered	
80,650,000 66.1%		41,350,000 33.9%	
Eligible		Non-eligible	
66,940,000 83.0%		13,710,000 17.0%	
Private	Public	Private	Public
51,714,000 77.3%	15,226,000 22.7%	10,592,000 77.3%	3,118,000 22.7%

Source: Survey of Employees, 1995; Employment and Earnings, July 1996.

Table 2: FMLA Coverage in the Private Sector

	Worksites	All Employees
FMLA covered worksites	10.8%	59.5%
Non-FMLA covered worksites	89.2%	40.5%
<i>FMLA Covered Worksites Only</i>		
At least 50 employees at worksite	39.1%	90.2%
At least 50 employees within a 75-mile radius of worksite	60.9%	9.8%

Source: Survey of Employers, 1995.

Table 3: Leave Profile of all US Employees by FMLA Coverage Status
During 18-Month Period

	FMLA covered	Non-FMLA covered	Total*	
Needed and took leave	14,815,440 72.5%	5,595,783 27.4%	20,439,974	16.8%
Needed but didn't take leave	2,247,664 54.4%	1,068,132 25.9%	4,129,261	3.4%
Did not need leave	63,586,896 65.3%	34,686,085 35.6%	97,368,848	79.8%
Total*	80,650,000 66.1%	41,350,000 33.9%	121,940,000 122,000,000	100.0%

* Sums may not equal 'Total' due to rounding; figures in the middle two row categories were derived from demographic data on survey respondents.

Source: Survey of Employees on the Impact of the Family and Medical Leave Act, 1995.

Table 4: Sector Profile of all US Employees by FMLA Coverage Status

	FMLA covered	Non-FMLA covered	Total	
Public sector*	18,344,000 100.0%		18,344,000	15.0%
Private sector	62,306,000 60.1%	41,350,000 39.9%	103,656,000	85.0%
Total	80,650,000 66.1%	41,350,000 33.9%	122,000,000	100.0%

* Bureau of Labor Statistics, Employment and Earnings, July 1996
(from the Current Population Survey for July 1995 on which survey is based)

Source: Survey of Employees on the Impact of the Family and Medical Leave Act, 1995.

covered only private sector worksites, reported that approximately 3.6 percent of covered (and eligible) employees used designated FMLA leave. Other leave was taken though - for reasons covered under the Act - but not reported as FMLA leave. Therefore, the Survey of Employees examines the total group of people who took leave for a reason covered under the Act, or 16.8 percent of all respondents.

Comparing New York to National Experience

To understand what New York would be likely to experience under the 1998 Assembly bill, we can determine first what actual data exists on employees taking leave here. We can compare New York's demographic profile with the United States' to assess whether national level findings would be relevant for the state. Then we can apply national survey results to a comparable New York population and make adjustments with actual data, and for provisions under the state's disability benefits law, to estimate leave-taking for family reasons and its costs here under A9463.

Major differences on the state level are that a disability benefits program exists in New York already which provides partial pay for one's own serious health condition, including pregnancy. Also, while all employees of government agencies are covered under the FMLA, they are not covered under the state's disability benefits law.

Actual Data on New York (see Appendix for more information on data sources)

Money Paid into the Disability Benefits Program

The State Insurance Department (NYSID) collects information on premiums paid to insurance carriers by employers for coverage (statutory) under the state's disability benefits law. From this data, the department is able to compute an annual loss ratio (available for 1995 and 1996). Also, the Disability Benefits Bureau (DBB) of the Workers' Compensation Board gathers information annually on the number of employees from whom contributions are deducted to help pay for disability benefits (employers finance the program with or without employee contributions); the most recent data they make available is from 1990. We can use this data to explore whether premiums would increase under Assembly Bill 9463, and, whether more employees would be required by their employers to contribute or whether the same number of employees would be required to pay more in contributions.

The Number of Employees who Contributed to Disability Benefits Coverage*

	Insurance Companies	Self-insurers	Total
1989	3,721,581	339,647	4,061,228
1990	3,584,316	354,295	3,938,611

* Does not represent the total number of employees covered by NYS DBL (see Appendix, p. 32).
Source: New York State Workers' Compensation Board, Disability Benefits Bureau

Loss Ratios for Small and Large Groups

Groups of Employees	Losses	Premiums	Ratio
1995			
Less than 50	\$ 86,001,721	\$122,968,764	0.70
50 or Greater	\$212,606,709	\$309,561,604	0.69
1996			
Less than 50	\$ 64,827,824	\$115,427,532	0.56
50 or Greater	\$203,638,274	\$286,757,703	0.71

Source: New York State Insurance Department

Money Paid Out from the Disability Benefits Program

These two state agencies collect information also on disability benefits usage in New York. The Disability Benefits Bureau gathers information annually from insurance carriers (including the State Insurance Fund) and employers that act as self-insurers, on items such as the number of disability claims allowed, the amount of benefits paid and duration of leave. The DBB summarizes all coverage - both statutory and coverage that goes beyond the law (plan); their most recent data is from 1990. The State Insurance Department collects similar information from insurance carriers and on statutory coverage only; the most recent data is from 1996.

Disability claims in New York are paid leaves to care for one's own serious health condition, including pregnancy. The DBB provides specific data on pregnancy claims which is used in this analysis to estimate maternity-disability leave taken for pregnancies with complications and leave taken for birth and care of newborns in the state. The data was compared with national survey findings on leave-taking for maternity-disability and care for newborns to determine the similarity and difference of New York's experience from the nation and therefore, how to make adjustments during analysis.

The state Department of Health compiles vital statistics on live births and methods of delivery. This information served as the base from which to reconstruct two components, maternity-disability and leave to care for a newborn, of New York's leave rate for pregnancies.

Comparing Demographic Profiles: New York and the United States

We can make the assumption that there is little difference between New York and the United States in the number of FMLA and non-FMLA covered firms located here. Using *County Business Patterns* (produced by the Bureau of the Census), we can look at size of worksite by state and on the national level (see Table 5). In 1995, 39.7 percent of private sector employees in

Table 5: Employment and Establishments by Size of Worksite

Numbers of employees by size of worksite

Employment - Size Class	1988			1995		
	1 to 49	50 or more	Total	1 to 49	50 or more	Total
NY	2,726,961 39.6%	4,157,720 60.4%	6,884,681	2,693,956 39.7%	4,088,218 60.3%	6,782,174
US	38,013,154 43.3%	49,868,478 56.7%	87,881,632	42,228,617 42.1%	58,106,128 57.9%	100,334,745

Numbers of establishments by size of worksite

Employment - Size Class	1988			1995		
	1 to 49	50 or more	Total	1 to 49	50 or more	Total
NY	442,115 95.5%	21,062 4.5%	463,177	446,484 95.6%	20,778 4.4%	467,262
US	5,723,787 95.1%	294,813 4.9%	6,018,600	6,276,975 94.9%	336,243 5.1%	6,613,218

Source: U.S. Department of Commerce, Bureau of the Census, County Business Patterns.

Table 6: Employed Civilian Labor Force: July 1995

Employed persons	16 years+	18 years+
NY*	7,946,100	7,782,954
US	124,832,000	122,269,000

* The portion of the US' employed labor force that is 16-17 years old was calculated and applied to New York's employed population and subtracted from it for comparison with the national Survey on Employees.

Source: U.S. Department of Labor, Bureau of Labor Statistics, Employment and Earnings, July 1996 (July 1995 Current Population Survey data).

New York worked in establishments of 1 to 49 employees (non-FMLA covered) and 60.3 percent worked in establishments of 50 or more employees (FMLA covered). In the U.S., these proportions were 42.1 percent and 57.9 percent respectively, or a difference of less than 2.5 percent from New York's.

Both sets of figures, especially New York's, correspond to results from the Survey of Employers which indicate that 40.5 percent of employees in the United States work at non-FMLA covered worksites and 59.5 percent work at FMLA covered worksites (see Table 2). While the national data from *County Business Patterns* differ from those here, the distinction is minimal, about one and a half percent. Also, when the number of government workers is removed from the population represented by the Survey of Employees - measured at 18,344,000 in July 1995 from the same base as that used for weighting the survey - this leaves the same approximate breakdown in FMLA coverage, 39.9 percent not covered and 60.1 percent covered (see Table 4). Again, the *County Business Patterns* data for New York and the United States parallel these findings.

There is no reason to assume that the distribution of public and private sector workforces in the state differs from the rest of the country. U.S. Department of Labor, Bureau of Labor Statistics data indicate that there is approximately a 1.2 percent difference - 17.7 percent of all New York employees in 1995 and 17.5 percent in 1996 were employed in the public sector. Nationally, these proportions were 16.5 percent and 16.3 percent respectively (see U.S. Department of Labor, Bureau of Labor Statistics 1997 Benchmark employment data and *Employment and Earnings* reports).

Applying National Survey Results to New York State Data

There are two ways to estimate costs of using the disability benefits program in New York to provide paid family leave under the 1998 Assembly bill: 1) use Current Population Survey data and survey findings to estimate the number of FMLA covered and eligible employees in the private sector that take or need family leave and assume that they will all be covered by the Disability Benefits Law in New York (since all private sector employees are covered by this law with various exclusions); or, 2) use historical data on the number of employees covered by the Disability Benefits Law in New York to estimate the number covered currently and then use survey findings to calculate the proportion who are FMLA covered and eligible that take or need family leave. While the first method was used primarily in this analysis, the second method was used as a doublecheck to confirm that the universe of covered and eligible employees was approximately the same using either method.

Estimating Covered and Eligible Employees and Leave-takers and Leave-needers

Assumptions on Coverage/Eligibility and Study Period

National survey findings indicate the levels of FMLA coverage and eligibility in the employed population of the United States. Survey reports, though, do not provide information on FMLA

eligibility for leave-takers and FMLA coverage and eligibility for leave-needers. Therefore, we calculated the rate of FMLA eligibility from the figures given for FMLA covered and eligible employees in the U.S. population. Of 80,650,000 FMLA covered employees, 66,940,000, or 83 percent, were eligible to take FMLA leave (see Table 1). This percentage was applied to FMLA covered leave-takers. For leave-needers, we applied the rate of FMLA coverage found for leave-takers in the study (72.5 percent) and then applied the same rate of eligibility that we applied to the FMLA covered leave-takers.

As noted earlier, the survey findings are estimated for an 18-month period. For use with other annual data, we re-calculated the numbers of leave-takers and leave-needers for a 12-month period. Since the Survey of Employees was weighted to July 1995 Current Population Survey (CPS) data, costs in this analysis are estimated for 1995.

Use of CPS Data and Survey Findings to Estimate Covered and Eligible Employees in New York

July 1995 CPS data indicate that there were approximately 7,783,000 employees in New York in 1995 (see Table 6). Based on the proportions of FMLA and non-FMLA covered employees found by the Survey of Employees, we estimate that approximately 3,301,000 worked for FMLA-covered firms in the private sector and were eligible to take leave (see Table 7). Then, we applied the same proportions of leave-takers and leave-needers as found nationally - for a 12-month period, the result was 404,396 leave-takers and 81,696 leave-needers in the state (see Table 8). These estimates do not adjust yet for New York rates on pregnancy leave.

Use of New York Disability Data and Survey Findings to Estimate Covered and Eligible Employees in New York

The second method doublechecks these figures. Table 9: *New York State Employees Covered by the Disability Benefits Law and the FMLA*, indicates that in 1995, approximately 6,400,000 employees were covered under the Disability Benefits Law - this figure consists of private sector employees with a number of exclusions (see Appendix). Approximately 3,200,000 were FMLA covered and eligible (the figure in the table is 3,192,512). From this base, about 357,561 took leave and almost 74,705 needed leave. These figures are lower than those above that use CPS data to estimate first the employed population in the state of New York. This is due likely to the exclusions in the law that limit the coverage of the disability benefits program even among private sector employees. However, the estimate for the overall number of FMLA covered and eligible employees in the private sector - approximately 3,200,000 - is close to that estimated with CPS data and national survey findings - 3,301,000.

Assumptions on Leave-taking Behavior

The Survey of Employees broke down leave-taking into care for: own health, maternity-disability, new child (newborn, adopted or foster), ill child, ill spouse, ill parent and, ill relative (see Table 10). The last category is not covered under the FMLA. The survey also separated leave-takers into employees at FMLA covered firms and employees at non-FMLA covered firms. Because

**Table 7: Employees at FMLA
and Non-FMLA Worksites**

	US*	NY**
All Workers (18+ years of age)	122,000,000	7,783,000
FMLA	80,650,000	5,145,000
Eligible	66,940,000	4,270,000
Private	51,714,000	3,301,000
Public	15,226,000	969,000
Non-eligible	13,710,000	875,000
Private	10,592,000	676,000
Public	3,118,000	199,000
Non-FMLA (remaining private sector workers)	41,350,000	2,638,000

Table 8: Employees Leave-taking Activity

	All leave-takers for 18 months***		All leave-needers for 18 months***		Employed-only over 18 months***	
	US	NY	US	NY	US	NY
As % of all workers	20,439,974 16.8%	1,303,970 16.8%	4,129,261 3.4%	263,427 3.4%	97,368,848 79.8%	6,211,654 79.8%
FMLA covered	14,820,000	945,443				
Non-FMLA covered	5,595,782	356,983				
	All leave-takers for 12 months***		All leave-needers for 12 months***		Total leave-takers and leave-needers for 12 months	
	US	NY	US	NY	US	NY
As % of all workers	13,626,717 11.2%	869,318 11.2%	2,752,854 2.3%	175,619 2.3%	16,379,572	1,044,936
FMLA covered	9,880,049	630,299	1,995,957	127,332	11,876,006	757,631
Eligible	8,200,502	523,105	1,656,656	105,677	9,857,159	628,782
Private	6,335,237	404,396	1,279,838	81,696	7,615,075	486,091
Non-FMLA covered	3,730,540	237,990	753,640	48,078	4,484,180	286,069

* Based on the Survey of Employees on the Impact of the Family and Medical Leave Act, 1995 conducted by the Survey Research Center, University of Michigan pursuant to a contract with the (US) Commission on Family and Medical Leave. The survey covered employees from all sectors of the economy in the contiguous 48 states; it is weighted to July 1995 CPS data.

** The New York 'All Workers' figure is from the July 1995 CPS civilian labor force data, employed and 18 years of age or older. The remaining figures are computed by the Fiscal Policy Institute based on the national results of the Survey of Employees (ie, assuming the incidence in NY is the same as nationally). Where indicated in following tables, actual or other figures have been used.

*** Survey respondents had been employed for pay anytime within an approximate 18-month period beginning January 1, 1994. For this analysis, leave-taking was calculated for 12 months.

Source: Survey of Employees on the Impact of the Family and Medical Leave Act, 1995; Bureau of Labor Statistics, Employment and Earnings, July 1996 (Current Population Survey for July 1995).

Table 9: New York: Employees Covered by the Disability Benefits Law and the FMLA

	1		2	3			
	Employees that have disability benefits coverage		Number of employees who also work at an FMLA covered worksite	Number of FMLA covered employees also eligible for FMLA leave	Leave taken for reasons covered by the FMLA	Leave needed for reasons covered by the FMLA	Total leave-takers
	Number with statutory protection through insurance companies*	Total**	(60.1 % of 1)	(83 % of 2)	(11.2% of 3)***	(2.3% of 3)***	
1989	4,600,955 72.8%	6,319,381	3,797,948	3,152,297	353,057	73,764	426,821
1990	4,384,519 69.6%	6,296,221	3,784,029	3,140,744	351,763	73,493	425,257
1995	4,524,155 70.7%	6,400,000	3,846,400	3,192,512	357,561	74,705	432,266
1996	4,664,884 71.8%	6,500,000	3,906,500	3,242,395	363,148	75,872	439,020

Bolded figures are actual figures; the remaining are derived or estimated.

* Provided by the New York State Insurance Department which collects data only on employees with precisely and substantially statutory coverage provided by insurance companies. The percent figures below the actual numbers are the proportion of the total that the numbers represent.

** Provided by the Disability Benefits Bureau which summarizes data from insurance companies and self-insurers that provide statutory coverage and coverage that goes beyond statutory requirements ('plan').

*** In the Survey of Employees, 11.2 percent is the proportion of all workers who took leave for FMLA reasons and 2.3 percent needed leave but did not take it (over 12 months). In this table, 11.2 percent and 2.3 percent are taken as a proportion of employees who work at an FMLA site and who are eligible to take leave for FMLA reasons.

Sources: New York State Insurance Department, DBL Experience for 1989, 1990, 1995 and 1996; New York State Workers' Compensation Board, Disability Benefits Bureau, Office of Research and Statistics, Claim Statistics: 1970-1989 and Claims Statistics: 1971-1990.

Table 10: Leave-takers at FMLA Covered Worksites: Reasons for Leave

	All workers, 18 months		Private sector eligible workers, 12 months*	As percent of all leave-takers
	US	NY	NY	
<i>Leave currently covered by the Disability Benefits Law (DBL) in New York</i>				
Own Disability	8,886,950	566,944	242,500	60.0%
Maternity-Disability**	563,153	13,470	8,980	3.8%
				(US rate only)
Normal Pregnancy	1,972,861	42,890	28,593	13.3%
(overlaps leave to care for new child not specifically covered by the DBL***)				(US rate only)
<i>Leave to be covered also by the DBL in New York under A9463</i>				
Care for Ill Child	1,123,486	71,673	30,657	7.6%
Care for Ill Spouse	542,298	34,596	14,798	3.7%
Care for Ill Parent	1,271,182	81,095	34,687	8.6%
<i>Other leave</i>				
Care for Ill Relative or Other	455,510	29,059	12,430	3.1%
<i>Sub-total (without 'Other leave')****</i>				
	14,359,930	810,667	360,214	96.9%
<i>Total*****</i>				
	14,815,440	839,727	372,644	100.0%

* Rates of FMLA eligibility were not reported for leave-takers. Therefore, the rate of eligibility for FMLA covered employees in the U.S. (83 percent, or, 54.9 percent of all U.S. workers) was applied to New York (see Table 1). Also, since the disability law in New York applies only to private sector workers (with exclusions), the proportion of FMLA eligible employees in this group was calculated. The national rates for leave-taking (except for pregnancy-related leaves) were applied to these employees.

** Maternity-disability refers to those employees taking leave for medical complications during pregnancy.

*** Estimating from 1989 and 1990 NYS Disability Benefit Bureau reports, an estimated 75,312 women took pregnancy disability leave in 1995. These women work in the private sector. 37,573 would have been covered and eligible under the FMLA to take leave for care of their newborn. This figure breaks down into 8,980 maternity disability leaves and 28,593 leaves to care for newborns, or 23.9 % cesarean or other births and 76.1 % regular births.

**** Sub-total and total figures differ from Employees' Leave-taking Activity table due to rounding and using actual figures for pregnancy-related leave in New York.

Source: Survey of Employees on the Impact of the Family and Medical Leave Act, 1995; Bureau of Labor Statistics, Employment and Earnings, July 1996 (July 1995 data).

employees who receive benefits for family leave under Assembly Bill 9463 must qualify under the provisions of the FMLA, we looked primarily at survey findings about FMLA covered leave-takers.

As explained earlier, disability benefits are provided now in New York for leave to care for one's own health, including pregnancy. Additional costs to the disability benefits program under Assembly Bill 9463 would result from providing benefits for two groups: those who take leave for family reasons currently and those who do not take leave because they cannot afford it. Among the first group are those who take unpaid leave now and would receive disability benefits under the new legislation; and, those who take paid leave now and would lengthen their leave period with the availability of disability benefits. Among the second group are those who would be able to afford to take family leave with the partial wage replacement offered by the disability benefits program.

In estimating leave-taking for FMLA reasons in New York, we adjusted pregnancy-related leave-taking found by the survey with New York pregnancy claims data and statewide practice on the length of maternity leave allowed. We looked then at the impact of various proportions of leave-takers caring for a new child who would increase their leaves under the 1998 Assembly bill due to the 12 week period allowed for FMLA leave. For leaves taken to care for an ill family member, we applied the survey's national leave rates and, as an alternative, adjusted these rates based on pregnancy leave experience in New York compared to the national survey's results. Currently, pregnant women take leave and receive partial wage replacement under New York's disability program. Therefore, while some characteristics of their leave may vary from other FMLA covered leaves, they can be used to estimate utilization of paid leave to care for ill family taken under A9463.

Adjustments during Analysis

Pregnancy Leave in New York

In the Survey of Employees, two leaves related to pregnancy are estimated, maternity-disability and care for a newborn (or an adopted or foster child). Maternity-disability leave - for pregnancies with medical complications - stretches across two FMLA categories: care for one's own health (before and/or after childbirth) and care for a newborn. This overlap occurs also when providing leave to women in New York for the following standard period of time before and after childbirth.

New York State Disability Leave for Pregnant Women

	Before Childbirth	After Childbirth	After Childbirth
		Normal	Cesarean
Pregnancy without complications	4 weeks	6 weeks	8 weeks
Pregnancy with complications	Doctor prescribes	Doctor prescribes	Doctor prescribes

Survey findings indicate that in the U.S., 3.8 percent of all FMLA covered leave was for maternity-disability and 13.3 percent was for care of a newborn, adopted or foster child (see Table 10; while survey findings state that reasons for leave provided by respondents could overlap, our review of tables with survey results show that they do not). Of these two categories combined, maternity-disability represented 22.2 percent and leave to care for a new child made up 77.8 percent. These proportions are similar to New York vital statistics on method of delivery for live births in 1995 - 22.9 percent by cesarean operation, 76.1 percent by normal (vaginal) delivery and 1 percent other. These categories are not parallel - not all cesarean births represent a condition of disability - or pregnancy with medical complications - before or after a birth, and, not all vaginal deliveries represent routine pregnancies and recovery after childbirth. However, it may indicate that New York's experience in pregnancy-related leave-taking is more similar than different from national level experience.

As of 1989 and 1990, the average length of leave for pregnancy disability in New York was 8.7 and 8.4 weeks respectively and pregnancy claims represented 12.7 and 14.0 percent respectively of all disability leaves allowed (see Table 11). This is the same approximate proportion found by the Survey of Employees for care of a new child (13.3 percent). Again, these categories are not parallel for several reasons. Currently, disability leaves in New York are for care of one's health only (though pregnancy claims may include time spent caring for a newborn) and FMLA leaves covered by the survey include care for a new child and ill family members in addition to care for one's own health. Also, pregnancy claims in New York cover both maternity-disability and leaves to care for newborns.

In New York, the disability claims for pregnancy in 1989 and 1990 - 81,614 and 86,589 - represented 28 and 29 percent respectively of women who gave live birth (Table 11). We estimated a comparable figure for 1995 - 75,312 pregnancy claims - and used national survey findings to determine the proportion of employees that would be FMLA covered and eligible - 37,573. The categories used by New York method of delivery data were applied then to break up the estimated 1995 pregnancy claims into maternity-disability leaves - 8,980, or 23.9 percent - and leaves to care for a new child - 28,593, or 76.1 percent (see Table 10). Maternity-disability leaves are covered already under the state's disability benefits program, therefore, costs from leave-takers in this category do not represent an additional cost under Assembly Bill 9463. Also, their estimated average length of leave is the maximum FMLA leave allowed - 12 weeks. Therefore, leave taken by this group was not examined any longer in this analysis.

Length of Leave and Waiting Period

The length of leave taken by employees receiving benefits affects the final costs of the Assembly bill since the longer a worker is on leave, the more disability benefits received by the employee. The 1998 Assembly bill states that employees who meet the provisions of the federal Family and Medical Leave Act 'shall be entitled to disability benefits for the period of such leave' - the maximum of which is 12 weeks (84 days). Under the state DBL, the maximum available leave is 26 weeks with a one-week waiting period. This week is not retroactively paid; so, people who

Table 11: New York: Pregnancy, Live Births and Leave (Disability Claims)

	Disability claims for pregnancy	Live births	Disability claims for pregnancy as a percent of live births	All disability claims	Disability claims for pregnancy as a percent of all disability
1989	81,614	290,528	28.1%	642,158	12.7%
1990	86,589	297,468	29.1%	616,817	14.0%
1994	79,568	279,187	28.5%		
1995	75,312	264,253	28.5%		
1996	77,397	271,569	28.5%		

Bolded items are actual figures.

Sources: New York State Workers' Compensation Board, Disability Benefits Bureau, Office of Research and Statistics. Claim Statistics: 1970-1989 and Claims Statistics: 1971-1990; The Nelson A. Rockefeller Institute of Government, New York State Statistical Yearbook.

take 10 weeks FMLA leave in New York and whose wages will be partially replaced through the disability benefits program will be paid for 9 weeks leave, etc.

Survey findings included the number of days used by leave-takers. Lengths of leave of more than 12 weeks, or 84 days, were recorded also. Except for care of a newborn, most family leave is taken for less than 8 days; this includes 76.3 percent of leave to care for an ill child, 65.5 percent of leave to care for an ill spouse and 56.3 percent of leave to care for an ill parent. Almost a quarter of employees that take leave to care for a newborn are out for 1 to 7 days with over 40 percent taking leave for 14 days or less. On the other end, over a third of leave-takers caring for a new child took leave for 29 to 84 days (see Tables 12 and 13, 'US' section).

Pregnancy-related Leave

Although the survey's categories for length of leave were used in this analysis, the 29-84 day (4 plus to 12 weeks) category was broken down into two-week sub-categories of 29 to 42 days, 43 to 56, 57 to 70 and 71 to 84 days for examining the effects of increases in leave within this time period (see Table 12). To replicate New York's 1990 rate and average length of pregnancy leave – 8.4 weeks – 60 percent of the number of employees in each leave category at national rates were moved up to the next time category or sub-category. This was limited to 84 days for employees taking leave to care for a newborn (12 weeks is the standard limit of leave for pregnancies without complications). The resulting distribution is due to the longer leaves taken in the state due to the availability of partially paid leave for pregnancy.

As explained earlier, the practice for granting pregnancy leave in New York is 4 weeks prior to delivery and 6 to 8 weeks following delivery depending on method of delivery. Lengthening the total available period of leave to 12 weeks under Assembly Bill 9463 would encourage people who take leave now to take more leave. This is particularly true for female employees who may take limited or no time off prior to delivery for a total of 6 to 10 weeks total leave. Employees who take less than 6 weeks currently are not likely to take more under this legislation because 6 to 8 weeks is available already after delivery for a total available leave of 10 to 12 weeks. Women who have pregnancies with complications are not likely to change their length of leave since 26 weeks of leave is available under the DBL to care for one's own health.

Therefore, we examined the effects if 10 to 100 percent of leave-takers caring for a new child in the 43 to 56 (6 plus to 8 weeks) and 57 to 70 days (8 plus to 10 weeks) sub-categories increased their leave by an average 14 days, or 2 weeks. Specifically, we examined the impact if 10, 20, 33.3, 50, 75 and 100 percent of female employees taking leaves of more than 6 weeks shifted. Some studies have claimed that as long as wages are partially replaced, all mothers would take leave to care for a newborn for the following reasons: 1) to recover from childbirth, 2) to breastfeed babies, 3) to develop a bond with the child, and, 4) because finding child care for infants is difficult. The increase in total weeks of leave was marginal, see Appendix, page 45; 33.3 percent is used in the presentation of final costs although how the range of alternative proportions affects total costs can be found in Table 17.

Leave to Care for Ill Family

It is clear from national survey findings that employees use paid leave from work to care for an ill family member or, they use unpaid leave. Available paid leave consists of sick, vacation or personal leave, voluntary employer-provided family leave or leave made available through collective bargaining agreements. Under the 1998 Assembly bill, leave to care for ill family members would be paid through the disability benefits program at the rate of one half of the employee's weekly wage up to a maximum of \$170 per week. Some employees may be induced to take leave given this wage replacement; however, others may not for various reasons including the lower rate of pay they would receive during such leave.

As discussed earlier, there are two sources on the likely use of leave to care for an ill family member: 1) the national Survey of Employees, which provides rates at which people have taken leave to care for an ill child, spouse or parent – both paid and unpaid; and, 2) the national rates which are adjusted based on actual pregnancy leave data in New York compared to the national survey's results. The latter indicates the sensitivity to the availability of partially paid family leave in New York. Both sets of rates were applied to leave-takers caring for an ill family member in estimating final costs (see Table 13).

In the final steps of analysis, the length of leave category of 85 or more days used by the Survey of Employees was truncated to 84 days since leaves greater than this length are not covered by the FMLA. Also, the 1-7 days leave category was omitted as only people taking longer leaves would receive benefits. For further information, see footnotes on tables with calculations.

Pay during Leave

Survey respondents were asked whether they received full, partial or no pay during their family leave. Almost half, 46.2 percent, of employees taking leave to care for a newborn, adopted or foster child were fully paid during their leave and almost one-quarter of new parents taking leave were partially paid. And more than half of the people taking leave to care for an ill family member were fully paid, ranging from 51.7 percent of those caring for an ill spouse to 57.6 percent of workers caring for an ill parent. The proportion of leave-takers caring for ill family members receiving partial pay was much lower relative to other leave-takers – 2.5 to 16.0 percent.

This is an important factor when estimating the costs of using disability benefits to replace wages for employees who take family leave in New York. Since the FMLA does not provide for paid leave, it is necessary to explore how leave-takers are getting paid and to what extent this would remain the same or change under Assembly Bill 9463. The Survey of Employees did not ask respondents the means by which they were paid when taking leave to care for a family member; survey analysts have inferred that most of this pay comes from traditional sources such as vacation and sick leave rather than newer types of leave. Under the provisions of the FMLA, an employer may require an employee to use available paid leave for family leave, or, an employee may choose to use such leave. There are voluntary employer policies or benefits gained through collective bargaining that would provide pay during family leave also.

**Table 12: Current Pregnancy-related Leave-takers at FMLA Covered Worksites:
Maternity-Disability and Care for New Child**

	1-7 days	8-14	15-28	29-42	43-56	57-70	71-84***	85-182	Avg # of weeks of leave	Total	Increase in total weeks with A9463
Average number of weeks	0.5	1.5	3	5	7	9	11	19			
Average number of days	3.5	10.5	21	35	49	63	77	133			
US										1,690,684	
<i>Maternity-Disability</i>											
Distribution	10.4%	7.3%	5.7%	8.6%	8.6%	8.6%	8.6%	42.4%			
Number of leave-takers	39,045	27,407	21,400	32,100	32,100	32,100	32,100	159,185		375,437	
Total length (weeks)	19,523	41,110	64,200	160,499	224,699	288,899	353,098	3,024,520	11.12	4,176,549	
<i>Care for New Child</i>											
Distribution	23.7%	17.1%	7.0%	9.0%	9.0%	9.0%	9.0%	16.2%			
Number of leave-takers	311,714	224,907	92,067	118,372	118,372	118,372	118,372	213,070		1,315,247	
Total length (weeks)	155,857	337,361	276,202	591,861	828,606	1,065,350	1,302,095	4,048,330	6.54	8,605,661	
Grand total length (weeks):	175,379	378,471	340,402	752,360	1,053,305	1,354,249	1,655,193	7,072,851	7.56	12,782,210	
NY											
<i>Longer leaves due to availability of paid leave*</i>										37,573	
<i>Maternity-Disability</i>											
Distribution	4.2%	9.2%	6.7%	6.8%	8.6%	8.6%	8.6%	47.5%			
Number of leave-takers	374	823	598	614	768	768	768	4,268		8,980	
Total length (weeks)	187	1,234	1,794	3,071	5,374	6,910	8,446	81,095	12.04	108,111	
<i>Care for New Child</i>											
Distribution	9.5%	21.1%	13.1%	7.8%	9.0%	9.0%	14.4%	16.2%			
Number of leave-takers	2,711	6,022	3,734	2,230	2,573	2,573	4,117	4,632		28,593	
Total length (weeks)	1,355	9,033	11,203	11,151	18,014	23,160	45,291	88,009	7.25	207,217	
Grand total length (weeks):	1,542	10,266	12,997	14,222	23,388	30,070	53,737	169,105	8.39	315,328	

Length of Leave in New York under Assembly Bill 9463: Maternity-Disability and Care for New Child

<i>Maternity-Disability</i>											
Distribution	4.2%	9.2%	6.7%	6.8%	8.6%	8.6%	8.6%	47.5%			
Number of leave-takers	374	823	598	614	768	768	768	4,268		8,980	
Total length (weeks)	187	1,234	1,794	3,071	5,374	6,910	8,446	81,095	12.04	108,111	0
<i>If 33.3 % of leave-takers in the 43-56, 57-70 and 71-84 days categories increase their leave by 2 weeks or up to 12 weeks (84 days)**</i>											
<i>Care for New Child</i>											
Distribution	9.5%	21.1%	13.1%	7.8%	6.0%	9.0%	17.4%	16.2%			
Number of leave-takers	2,711	6,022	3,734	2,230	1,724	2,573	4,967	4,632		28,593	
Total length (weeks)	1,355	9,033	11,203	11,151	12,069	23,160	57,116	88,009	7.45	213,097	5,880
Grand total length (weeks):	1,542	10,266	12,997	14,222	17,444	30,070	65,562	169,105	8.55	321,208	5,880

* The average number of weeks of leave in New York (8.4) is longer than what is found nationally (7.56, calculated using national survey data). This occurs because pregnancy leaves are covered by the disability benefits program in New York and leave may begin 4 weeks prior to delivery date for normal pregnancies. This period is not covered by the pregnancy-related leaves measured in the Survey of Employees; 'maternity-disability' refers to pregnancies with complications. Therefore, using the national distribution, 60% of New York leave-takers in each length category for pregnancy-related leaves were moved up to the next length category (limited to 84 days for care of a new child). This results in New York's average length of leave for pregnancy claims in 1990 - 8.4 weeks. See text for more explanation.

** Leave to care for newborns is likely to increase under the 1998 Assembly bill due to paid coverage. However, it will occur only for those who take leave currently and need more. Since there is a total of 10 to 12 weeks of disability leave for normal pregnancies available already in New York, people who take 6 weeks or less of leave will not be affected generally (ie, they could take more now if they needed it; see text).

*** The average length of leave under A9463 for people in this category was 11.5 weeks since some people in this category would lengthen their leave from 10 plus weeks to up to 12 weeks.

Source: Survey of Employees on the Impact of the Family and Medical Leave Act, 1995; Workers' Compensation Board, Disability Benefits Program, Claims Statistics: 1970-1989 and Claims Statistics: 1971-1990; New York State Department of Health, Vital Statistics of New York State: 1995.

**Table 13: Leave-takers at FMLA Covered Worksites:
Care for Ill Child, Spouse or Parent (Ill Family)**

	1-7 days	8-14	15-28	29-42	43-56	57-70	71-84	85-182	Avg # of weeks of leave	Total
Average number of weeks	0.5	1.5	3	5	7	9	11	19		
Average number of days	3.5	10.5	21	35	49	63	77	133		
US										1,957,987
<i>Care for Ill Child</i>										
Distribution	76.3%	15.6%	5.3%	0.4%	0.4%	0.4%	0.4%	1.4%		
Number of leave-takers	571,482	116,843	39,697	2,621	2,621	2,621	2,621	10,486		748,994
Total length (weeks)	285,741	175,265	119,090	13,107	18,350	23,593	28,836	199,232	1.15	863,216
<i>Care for Ill Spouse</i>										
Distribution	65.5%	16.1%	2.7%	2.0%	2.0%	2.0%	2.0%	7.9%		
Number of leave-takers	236,805	58,207	9,761	7,140	7,140	7,140	7,140	28,561		361,534
Total length (weeks)	118,402	87,310	29,284	35,701	49,982	64,263	78,543	542,663	2.78	1,006,149
<i>Care for Ill Parent</i>										
Distribution	56.3%	24.6%	8.4%	2.1%	2.1%	2.1%	2.1%	2.4%		
Number of leave-takers	477,119	208,475	71,187	17,585	17,585	17,585	17,585	20,339		847,459
Total length (weeks)	238,560	312,712	213,560	87,924	123,093	158,263	193,433	386,441	2.02	1,713,986
Grand total length (weeks):	642,703	575,287	361,934	136,733	191,426	246,119	300,812	1,128,336	1.83	3,583,351

Length of Leave in New York under Assembly Bill 9463: Care for Ill Family

If lengths of leave are the same as nationally

<i>Care for Ill Child</i>										80,142
Distribution	76.3%	15.6%	5.3%	0.4%	0.4%	0.4%	0.4%	1.4%		
Number of leave-takers	23,391	4,782	1,625	107	107	107	107	429		30,657
Total length (weeks)	11,696	7,174	4,874	536	751	966	1,180	8,155	1.15	35,332
<i>Care for Ill Spouse</i>										
Distribution	65.5%	16.1%	2.7%	2.0%	2.0%	2.0%	2.0%	7.9%		
Number of leave-takers	9,693	2,382	400	292	292	292	292	1,169		14,798
Total length (weeks)	4,846	3,574	1,199	1,461	2,046	2,630	3,215	22,212	2.78	41,183
<i>Care for Ill Parent</i>										
Distribution	56.3%	24.6%	8.4%	2.1%	2.1%	2.1%	2.1%	2.4%		
Number of leave-takers	19,529	8,533	2,914	720	720	720	720	832		34,687
Total length (weeks)	9,764	12,800	8,741	3,599	5,038	6,478	7,917	15,817	2.02	70,154
Grand total length (weeks):	26,306	23,547	14,814	5,597	7,835	10,074	12,312	46,184	1.83	146,669

*If leave lengthens as it does in New York for pregnancy-related leave**

<i>Care for Ill Child</i>										80,142
Distribution	30.5%	52.0%	11.5%	3.3%	0.4%	0.4%	0.6%	1.4%		
Number of leave-takers	9,357	15,948	3,519	1,018	107	107	172	429		30,657
Total length (weeks)	4,678	23,922	10,558	5,089	751	966	1,888	8,155	1.83	56,007
<i>Care for Ill Spouse</i>										
Distribution	26.2%	45.7%	10.7%	2.4%	2.0%	2.0%	3.2%	7.9%		
Number of leave-takers	3,877	6,769	1,589	357	292	292	468	1,169		14,798
Total length (weeks)	1,939	10,153	4,768	1,783	2,046	2,630	5,144	22,212	3.42	50,674
<i>Care for Ill Parent</i>										
Distribution	22.5%	43.6%	18.1%	5.9%	2.1%	2.1%	3.3%	2.4%		
Number of leave-takers	7,812	15,130	6,285	2,036	720	720	1,152	832		34,687
Total length (weeks)	3,906	22,696	18,856	10,181	5,038	6,478	12,668	15,817	2.76	95,639
Grand total length (weeks):	10,523	56,770	34,182	17,053	7,835	10,074	19,700	46,184	2.52	202,321

* As explained in the table on pregnancy-related leave, the distribution in length of leave for New York leave-takers differs from the national distribution. An average 60 percent of people in each length category take 2 weeks more leave. This shift is replicated for leave-takers caring for an ill family member.

Source: Survey of Employees on the Impact of the Family and Medical Leave Act, 1995.

There are some employees who may prefer to use leave that provides full pay in lieu of receiving partial pay through disability benefits under Assembly Bill 9463. However, others may choose to use disability benefits because they want to save their leave at full pay. In fact, over one-quarter of leave-needers cited this reason for not taking FMLA leave when they needed it (ie, they did not take leave because they wanted to save leave time). Therefore, there may be family leave-takers now who use some type of leave that provides full pay but would switch to using disability benefits for the same leave in the future.

Leave-needers

In the Survey of Employees, leave-needers provided reasons for not taking leave when needing it. The reason they cited most often - 63.9 percent - was that they could not afford it. This proportion ranged from 60.8 percent of people needing to take leave to care for an ill parent to 100 percent of employees who needed maternity-disability leave but did not take it. Given that respondents could choose more than one category in answering this question, it is significant that that no other reasons were cited by female employees who needed to take maternity-disability leave but did not do so.

For estimating the rate and lengths of leaves taken by the leave-needers who will become leave-takers, we looked at employees who take leave to care for an ill family member since they represent completely new leave-takers under the legislation. We computed the average proportion of these leave-takers in each time sub-category for all three types of care: ill child, spouse and parent. We calculated these average proportions for national rates found by the Survey of Employees and for rates adjusted for pregnancy leave experience in New York (see Table 14).

Under Assembly Bill 9463, we assume that only a proportion of workers who responded that they could not afford to take leave when needing it would likely become leave-takers. Partial wage replacement through the disability benefits program may not be sufficient incentive to encourage all leave-needers to take family leave (see Factors Affecting Costs). Therefore, we calculated the proportion of leave-takers caring for ill family that was partially paid out of the total who were fully and partially paid (19.3 percent). Since partial pay would be provided under the 1998 Assembly bill, we applied this percentage to the 63.9 percent nationally who said that they could not afford to take leave.

Average Weekly Benefit Amounts

The costs of providing paid family leave in New York under Assembly Bill 9463 vary depending on the leave-taking rates and average benefit amounts used to estimate such leave. In New York, some workers are covered at the statutory level only for disability benefits and some have benefits that go beyond statutory requirements. All of these employees will be covered by the new legislation (if they have FMLA coverage and eligibility) but it is unlikely that all of the employees covered by plans that go beyond statutory requirements will be affected by it because they may have benefits in place already that go beyond those provided by A9463. However, to estimate a

Table 14: Numbers of Leave-needers*

	US					NY**		
Care for Ill Family Member***	1,147,860					34,065		
	Length of Leave							
	1-7 days	8-14	15-28	29-42	43-56	57-70	71-84	85-182
Leave at national rates	65.6%	19.6%	6.2%	1.4%	1.4%	1.4%	1.4%	3.0%
Number of leave-takers	22,363	6,672	2,099	476	476	476	476	1,033
Leave at 'New York' rates	26.3%	47.2%	14.2%	4.3%	1.4%	1.4%	2.2%	3.0%
Number of leave-takers	8,945	16,087	4,843	1,450	476	476	761	1,033

* Leave-needers who require leave to care for one's own health, including pregnancy, are not included here. These categories are covered already in the disability benefits program in New York (women can take at least 6 weeks leave after childbirth).

** Estimated leave-needers in New York who would be eligible for benefits under Assembly Bill 9463 are a proportion of private sector workers who are FMLA covered and eligible; (41.7% * 81,696, see Table 8). National survey results for leave-needers do not indicate level of coverage or eligibility.

*** Care for ill family member consists of care for ill child, spouse and parent combined; the distribution on length of leave here is obtained by averaging the proportions of FMLA covered leave-takers for all three types of care in each length category.

Source: Survey of Employees on the Impact of the Family and Medical Leave Act, 1995.

range of costs to provide paid family leave under the 1998 Assembly bill, it is useful to apply average weekly benefit amounts that represent the range of current disability coverage.

Both the Disability Benefits Bureau of the Workers' Compensation Board and the New York State Insurance Department produce data on average weekly benefits paid to disability leave-takers (see Table 15). While the DBB data represent all disability claims in New York, it is available for 1989 and 1990 only. And, while the State Insurance Department provides more recent data on average weekly benefit amounts, it covers insurance companies that provide statutory protection only. Therefore, we used both sets of data to estimate average weekly benefits paid to all claimants. Given that the trend in average weekly benefits paid to workers that have statutory coverage varied from 1989 through 1996, \$136 was estimated as an approximate amount in 1995 that would be paid to these employees. The estimated average weekly benefit paid to all workers in 1995, including claims allowed to employees covered by plans that go beyond statutory requirements, was \$284.

The Costs of Providing Paid Family Leave in New York

The 1995 costs of providing partially paid family leave based on national rates of leave found by the Survey of Employees are \$11.65 million with an average weekly benefit amount of \$136 and \$24.32 million with an average weekly benefit amount of \$284. The costs of providing partially paid family leave in New York based on national rates of leave adjusted for pregnancy leave experience in New York compared to the survey's results are \$17.35 million with an average weekly benefit amount of \$136 and \$36.24 million with an average weekly benefit amount of \$284.

These costs include the additional weeks of benefits paid if one-third of pregnancy-related leave-takers caring for newborns and currently taking at least 6 weeks of leave extend their leave by an average of two weeks or up to 12 weeks. The complete range of costs representing the different proportions of these leave-takers who extend their leave an average of two weeks is provided in Table 16. While the total costs are not high, the difference between leave-taking occurring at national survey, or, 'New York' rates, is substantial – costs of leave taken at national rates are 66 percent to 69 percent of 'New York' rates (see Table 17).

Given this likely increase in benefit payments, premiums may go up for New York employers who purchase disability benefits insurance. At a minimum, costs will shift for those employers who purchase disability insurance and provide full pay (voluntarily or through collective bargaining agreements) during disability leave. The weekly wage for an employee on leave will be made up from two sources: the insurance carrier who will provide the maximum amount that can be replaced according to law or the benefit plan in place, and, the usual payroll account which will provide the remainder of the wage. However, the employer's price for shifting the risk of disability leave-taking to insurance carriers will be higher premiums. Currently, protection which is limited to statutory coverage costs relatively little. Rates provided by the State Insurance Fund in July 1998 were \$38.90 for males and \$93.70 for females annually (see Appendix, page 46).

Table 15: Average Weekly Benefits

(Based on Disability Benefits Bureau data)

	Insurance Companies		Self-Insurers		All		
	Statutory	Plan	Statutory	Plan	Statutory	Plan	Total
1989							
Claims Allowed	209,931	73,646	41,488	314,161			
Average Weekly Benefit	\$121.63	\$173.29	\$138.46	\$407.81	\$124.41	\$363.27	\$269.32
1990							
Claims Allowed	201,118	73,770	45,114	293,973			
Average Weekly Benefit	\$133.71	\$180.43	\$149.36	\$408.77	\$136.58	\$362.96	\$272.17

Estimates for 1995 and 1996

		DBB	NYSID	DBB as % of NYSID	Average of %ages to apply to '95
Statutory					
	1989	\$124.41	\$127.64	97.47%	98.99%
	1990	\$136.58	\$135.88	100.51%	
	1995	\$131.06	\$132.40		
	1996	\$134.62	\$135.99		
Plan					
	1989	\$363.27			
	1990	\$362.96			
	1995	\$382.71			
	1996	\$393.09			
All					
	1989	\$269.32			
	1990	\$272.17			
	1995	\$283.73			
	1996	\$291.43			

Bolded items are actual figures.

Sources: Workers' Compensation Board, Disability Benefits Bureau (DBB),
Claims Statistics: 1970-1989 and Claims Statistics: 1971-1990; and New York State
Insurance Department (NYSID), DBL Experience for 1989; 1990; 1995 and 1996.

Table 16: Calculations Used to Estimate Total New Benefits Paid for Family Leave

Length of leave (days)	8-14	15-28	29-42	43-56	57-70	71-84	84	Total
Average weeks of benefits	0.5	2	4	6	8	10	11	
<i>Costs at national rates of leave</i>								
<i>New leave-takers</i>								
Care for ill child	4,782	1,625	107	107	107	107	429	7,266
Care for ill spouse	2,382	400	292	292	292	292	1,169	5,120
Care for ill parent	8,533	2,914	720	720	720	720	832	15,158
Leave-needers who will shift*	823	259	59	59	59	59	127	1,443
Total new leave-takers and needers	16,521	5,197	1,178	1,178	1,178	1,178	2,557	28,987
Total weeks of benefits	8,260	10,394	4,712	7,068	9,424	11,780	28,131	79,768
Additional weeks for new child**								5,880
Grand total weeks of benefits								85,648
Total benefits @ \$136/week	\$1,123,398	\$1,413,539	\$640,815	\$961,222	\$1,281,629	\$1,602,037	\$3,825,793	\$11,648,113
Total benefits @ \$284/week	\$2,345,919	\$2,951,802	\$1,338,172	\$2,007,258	\$2,676,344	\$3,345,430	\$7,989,157	\$24,324,001
<i>Costs at 'New York' rates of pregnancy leave</i>								
<i>Leave-takers</i>								
Care for ill child	15,948	3,519	1,018	107	107	172	429	21,300
Care for ill spouse	6,769	1,589	357	292	292	468	1,169	10,936
Care for ill parent	15,130	6,285	2,036	720	720	1,152	832	26,875
Leave-needers who will shift*	1,983	597	179	59	59	94	127	3,097
Total new leave-takers and needers	39,830	11,991	3,589	1,178	1,178	1,885	2,557	62,208
Total weeks of benefits	19,915	23,982	14,357	7,068	9,424	18,847	28,131	121,724
Additional weeks for new child**								5,880
Grand total weeks of benefits								127,604
Total benefits @ \$136/week	\$2,708,443	\$3,261,571	\$1,952,572	\$961,222	\$1,281,629	\$2,563,259	\$3,825,793	\$17,354,170
Total benefits @ \$284/week	\$5,655,867	\$6,810,927	\$4,077,431	\$2,007,258	\$2,676,344	\$5,352,688	\$7,989,157	\$36,239,590

* The leave-taking rates used to estimate leave-needers' length of leave are the average of the rates for the three types of care for ill family members (for both national and 'New York' rates). Even though 64 percent of leave-needers in the national survey stated that they could not afford to take leave, the availability of partial pay will not induce all leave-needers to take leave. Therefore, a proportion of these who could take leave if they were partially paid was estimated, this equals 19.3 percent (the portion of all paid leave-takers that are partially paid) of 64 percent of all leave-needers.

** Uses the scenario in which 33.3 percent of workers who take leave currently for pregnancy and care of a new child for at least 6 weeks will lengthen their leave an average of two weeks or up to 12 weeks.

Table 17: Total New Benefits Paid for Family Leave under A9463

Costs at national survey rates of leave

	Hypothetical percentages of current pregnancy leave-takers extending their leave*						
	0%	10%	20%	33.3%	50%	75%	100%
\$136**	\$10,848,433	\$11,285,945	\$11,443,433	\$11,648,113	\$11,915,897	\$12,309,617	\$12,703,337
\$284***	\$22,654,081	\$23,567,709	\$23,896,581	\$24,324,001	\$24,883,197	\$25,705,377	\$26,527,557

Costs at 'New York' rates of leave

	Hypothetical percentages of current pregnancy leave-takers extending their leave*						
	0%	10%	20%	33.3%	50%	75%	100%
\$136**	\$16,554,490	\$16,992,002	\$17,149,490	\$17,354,170	\$17,621,954	\$18,015,674	\$18,409,394
\$284***	\$34,569,670	\$35,483,298	\$35,812,170	\$36,239,590	\$36,798,786	\$37,620,966	\$38,443,146

National survey rates as a percent of 'New York' rates							
	65.5%	66.4%	66.7%	67.1%	67.6%	68.3%	69.0%

* Employees with pregnancies that do not have medical complications that currently take leave for at least 6 weeks and would lengthen their leave an average of two weeks (or up to 12 weeks for those taking 10 plus weeks of leave already).

** Estimated average weekly level of benefits for leave-takers covered by the minimum required disability insurance - 1995.

*** Estimated average weekly level of benefits for all leave-takers, including both those covered by the minimum required disability insurance and those covered by more generous plans - 1995.

In turn, employees' payroll contributions may increase. The statutory limit on employee contributions currently is 1/2 of one percent of the first \$120 of weekly wages up to a maximum 60 cents per week. Some jointly agreed upon benefit plans require employees to pay more; these plans must be accepted by the chair of the Workers Compensation Board and the increased contributions must be related to the value of the benefits.

Additional costs under A9463 may result from covering the work of paid leave-takers while they are away from their jobs. The method most often mentioned to do this is to assign work to other employees; between 67.5 and 69 percent of respondents cited this response in both surveys. Also, respondents in the Survey of Employers reported that 33 percent of employees put their work on hold and 20 percent did work at home. Therefore, these costs are not likely to be substantial.

The Benefits of Providing Paid Family Leave in New York

Establishing a program of paid family leave would make it possible for workers, particularly women workers, to come back to work sooner; to continue to accrue seniority; to participate more continuously in the labor force; and therefore, to take less time searching for jobs and receiving unemployment compensation benefits.

Paid family leave provides a greater level of economic security for any recipient than unpaid leave. Earnings of new mothers using paid leave under temporary disability insurance are greater than earnings of mothers who do not have such leave. This is particularly significant for women who are single parents.

In addition, expanding New York State's temporary disability insurance program to provide paid family leave could reduce the amount of public funds that go to welfare, unemployment compensation, food stamps, Medicaid and other public programs that support workers who give up jobs to care for family, at no additional cost to the taxpayer. At the same time, the increased cost to employees and employers would be very low. Administrative costs would be virtually nonexistent since a well-established program would be used to provide benefits.

The Disadvantages of Using the Disability Benefits Program to Provide Paid Family Leave

Premium rates for disability benefits insurance would be likely to increase for employers and employees' payroll contributions may increase.

Issues to be Considered

Assembly Bill 9463 does not increase access to family leave overall; the legislation limits it to those workers who meet the eligibility criteria of both New York's DBL and the federal FMLA, and whose employers are FMLA covered - taken together, about half of New York's employed population. FMLA eligibility for employees is met if they have worked 1,250 hours for a covered

employer in the 12 months preceding leave (eligibility for disability benefits is less strict). FMLA coverage is limited to employers with 50 or more employees at the worksite or within a 75-mile radius. The combined DBL and FMLA criteria act to omit public sector workers, employees who work for small businesses, many part-time employees and others. Therefore, access to unpaid family leave, which secures an employee's job and benefits under the FMLA, would not increase under this legislation. It is important to note, however, that A9463 does expand access to paid family leave.

Currently, the disability benefits program covers all private sector workers in New York (if they have worked at least 4 consecutive weeks; there are many exclusions in the law). As explained above, some of these employees work for FMLA covered employers and some do not. Furthermore, some of the FMLA covered employees are eligible to take FMLA leave while other covered employees are not eligible to do so. However, as the size of worksite increases, the likelihood that employees have access to job-protected leave and benefits increases. Also, employees at smaller worksites tend to be younger, women, non-union and less educated compared with employees at larger worksites. Therefore under the 1998 Assembly bill, those employees that are FMLA covered and likely possess more benefits compared to other employees, will have access to another benefit - family leave that is paid.

Employers who now buy disability benefits insurance fall into either of two categories: those that are FMLA covered and those that are non-FMLA covered. Under Assembly Bill 9463, would these categories become 2 separate risk pools or one risk pool with 2 sets of ratings? Should this legislation spell out how insurance carriers respond to this situation? Given that the disability benefits law is broader in its coverage than the FMLA, should non-FMLA covered worksites be able to opt into the insurance provided to FMLA covered firms? Could it become another type of additional cover to be offered? Insurance companies know how to and do so provide coverage beyond the statutory requirements already.

Finally, it is likely that a large number of people would be deterred from taking paid leave because the wage replacement rate under New York's disability benefits program is one half of the employee's average weekly wage with a maximum \$170 replaced per week. Findings from the Survey of Employees indicate that losing wages was a major reason for not taking leave. The partial pay made available with Assembly Bill 9463 may not be sufficient to induce many employees to take paid family leave. Clearly, this is an issue for further discussion.

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STATE OF NEW YORK

9463--A

IN ASSEMBLY

February 26, 1998

Introduced by M. of A. NOLAN, CLARK, VANN, COLTON, JACOBS -- Multi-Sponsored by -- M. of A. AUBRY, BOYLAND, D. BUTLER, DENIS, DIAZ, GLICK, GOTTFRIED, GREENE, HILL, JOHN, PERRY, RAMIREZ, STRINGER, TOCCI, WRIGHT -- read once and referred to the Committee on Labor -- reported and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the workers' compensation law, in relation to the provision of disability benefits during family and medical leave

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The workers' compensation law is amended by adding a new
2 section 201-a to read as follows:

3 § 201-A. FAMILY AND MEDICAL LEAVE. 1. NOTWITHSTANDING ANY OTHER
4 PROVISION OF LAW, EMPLOYEES WHO ARE NOT OTHERWISE DISABLED AND WHO HAVE
5 BEEN GRANTED A LEAVE OF ABSENCE PURSUANT TO THE PROVISIONS OF THE FEDERAL
6 FAMILY AND MEDICAL LEAVE ACT SHALL BE ENTITLED TO DISABILITY BENEFITS
7 FOR THE PERIOD OF SUCH LEAVE.

8 2. NOTHING SET FORTH IN THIS SUBDIVISION SHALL BE CONSTRUED TO IMPEDE,
9 INFRINGE OR DIMINISH THE RIGHTS AND BENEFITS WHICH ACCRUE TO EMPLOYEES
10 THROUGH BONA FIDE COLLECTIVE BARGAINING AGREEMENTS, OR OTHERWISE DIMIN-
11 ISH THE INTEGRITY OF THE EXISTING COLLECTIVE BARGAINING RELATIONSHIP.

12 § 2. This act shall take effect on the sixtieth day after it shall
13 have become a law.

Workers' Compensation Law, Article 9, Disability Benefits (a summary)

On July 1, 1950, Article 9 of the Workers' Compensation Law - or the Disability Benefits Law - became effective. New York was the fourth state to mandate the payment of benefits to eligible workers for off-the-job (nonoccupational) injury or illness. Like the Workers' Compensation program, the Disability Benefits program is 'a privately-insured, direct-payment type of social insurance.' (Worker's Compensation Board, Office of Research and Statistics, *Disability Benefits Program Claims Statistics: 1970-1989*, p 6) The New York State Disability Benefits program is referred to also as statutory disability benefits (DBL) insurance or in general as temporary disability insurance (TDI) or short term disability benefits.

History

Several amendments to the disability benefits law, which became effective in 1962, 1977 and 1981, altered certain definitions under the law and repealed specific statutory exclusions. First, an employer of one or more employees became a 'covered employer' (for exclusions, see paragraph below and following section). Also, pregnancy became an eligible disability both for normal pregnancies and complications arising from pregnancy. Finally, disabilities resulting from using a motor vehicle in which payments are made in relation to the 'no-fault' insurance law became covered.

Coverage

To receive disability benefits, employees must work for a covered employer for at least four consecutive weeks. Employees who become disabled within four weeks of termination of their employment are eligible to receive disability benefits from their former employer (if working for a covered employer). However, if the employee starts working for another covered employer during that four-week period, and becomes disabled, the new employer is required to pay disability benefits immediately (section 203). In addition, employees who work for more than one covered employer and who meet the eligibility requirements under each employer receive disability benefits from each employer in proportion to their average weekly wage payments (section 204).

The following individuals are not covered under the disability benefits law: government, railroad and maritime employees; certain persons working for religious, charitable or educational institutions; licensed religious personnel; officers of privately-held corporations; some licensed real estate brokers or sales associates; farm laborers; golf caddies; domestic workers who work less than 40 hours per week; and minor children of employers. Please see later information for specific language on exclusions from the law and meeting eligibility requirements.

After four weeks of unemployment, employees who become disabled within 26 weeks of unemployment from a covered employer receive benefits from the Special Fund set up in Article 9. Because the employee can no longer meet the requirements to receive unemployment

insurance, the employee becomes eligible to receive disability benefits from the Special Fund. Also, those employees who become disabled directly after employment and who earned wages that are not high enough to qualify for unemployment insurance but who have shown 'continued attachment to the labor market', are eligible to receive disability benefits from the Special Fund (section 207).

Benefits

Disability benefits are offered to employees on the eighth consecutive day of disability for a maximum period of 26 weeks. (section 205) The weekly benefit is one half of the employee's average weekly wage, with a maximum of \$170 and a minimum of \$20 or the employee's average weekly wage if it is less than \$20. If they are not separated by more than three months, successive periods of disability from the same injury are considered to be a single period of disability (section 204).

Cost of Benefits

The disability benefits program is paid for in two ways: by the employer and employee, or, by the employer. In 1989, 4,061,228 of 6,319,381 covered employees, or 64.3 percent, contributed toward providing disability insurance. In 1990, 3,938,611 of 6,296,221 employees, or 62.6 percent, contributed.

Who provides insurance under the law and who regulates the law?

Insurance Providers

Insurance is provided by private insurance carriers and the State Insurance Fund. Or, an employer may self-insure by showing evidence of financial ability to pay benefits. Besides employers, self-insurers may be associations of employers or employees (trade organizations or labor unions). The State Insurance Fund was established in 1914 to provide the lowest possible rates for workers' compensation insurance to New York State employers. It was authorized to provide insurance for disability benefits when the Disability Benefits Law was enacted in 1949.

Albeit a state-created and state-owned company, the State Insurance Fund is a competitive insurance carrier which provides statutory coverage only. It uses premiums and investment income to support itself and does not use revenue raised by taxation. In 1989, it reported that 27 percent of its TDI program's expenditures went to administration and profit. This is the highest proportion compared to three other TDI states - California, New Jersey, and Rhode Island (Hawaii is the remaining state with a TDI program), which spend 4.6 percent, 5.9 percent and 7.4 percent respectively on administration. (Institute of Women's Policy Research, *What is Temporary Disability Insurance?*)

Employers may purchase 'statutory' or 'plan' coverage. Before July 1, 1989, employers were able to purchase disability benefits insurance that was 'equivalent' to the statutory requirements. This meant those employers' total disability benefits package had to 'equal' or be greater than the total statutory requirements. Therefore, if an employer offered less than the law in one area, it offered more in another area. In 1989, employers were required to meet at least all of the statutory requirements and could go beyond these under approved 'plan' coverage. Some employers eliminate the waiting period to receive benefits, offer benefits for a longer period than 26 weeks, replace wages at a higher rate than is mandatory or offer medical and surgical benefits.

Insurance Regulators

State Insurance Department

The State Insurance Department (SID) regulates private insurance carriers and the State Insurance Fund. Insurers submit proposals with justifications for rate changes to the State Insurance Department. Or, if they are copying the rates of larger companies, which have already changed their rates, they supply this information. These new rates are then 'placed on file' with the State Insurance Department. They are not formally approved but accepted.

This information is not published but the public may look at it and copy it. Anyone may go to the State Insurance Department and look through files of rate placements by carriers. The State Insurance Department suggests that people come with someone experienced in disability insurance to help them find and interpret the available information.

Insurance carriers, including the State Insurance Fund, submit annual reports to the State Insurance Department with the following information: 1) number of covered employees; 2) amount of covered payroll; 3) number of initial claims allowed; and, 4) total number of weeks paid. The State Insurance Department summarizes statutory coverage data (precisely and statutory combined, the SID explained that precisely and statutory are very close, that employers became confused by the distinction between them and that SID decided to combine statistics for both) annually and break them down by gender. These data do not include the experience of self-insurers. The State Insurance Department may be able to provide statistics broken apart by pregnancy and non-pregnancy related claims also.

Workers' Compensation Board: Disability Benefits Bureau

Insurance carriers, including the State Insurance Fund, and self-insurers also submit a claims report annually to the Disability Benefits Bureau (DBB) of the Workers' Compensation Board. For both statutory and plan coverage and for pregnancy-related disabilities, the Disability Benefits Bureau asks for information similar to that required by the State Insurance Department. Their annual report summarizes and totals these categories of statistics (available only through 1990, preliminary statistics are available for 1991 and 1992).

The reports sent to the DBB by insurance carriers and self-insurers are available to the public also.

New York State Disability Benefits Law - Sections 201 through 203

S 201. Definitions. As used in this article:

"Board" means the workmen's compensation board created under this chapter.

"Chairman" means the chairman of the workmen's compensation board of the state of New York.

"State fund" means the state insurance fund created under article six of this chapter.

"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.

"Employee" means a person engaged in the service of an employer in any employment defined in subdivision six of this section, except

1. a minor child of the employer,
2. a domestic or personal worker in a private home who is employed for less than forty hours per week by any one employer,
3. a duly ordained, commissioned, or licensed minister, priest or rabbi, a sexton, a christian science reader, or member of a religious order,
4. 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,
5. an executive officer of an incorporated religious, charitable or educational institution,
6. persons engaged in a professional or teaching capacity in or for a religious, charitable or educational institution,
7. volunteers in or for a religious, charitable or educational institution,
8. 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,

9. 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:

(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.

"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:

1. services performed for the state, a municipal corporation, local governmental agency, other political subdivision or public authority;
2. employment subject to the federal railroad unemployment insurance act;
3. 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;
4. service as farm laborers;
5. casual employment and the first forty-five days of extra employment of employees not regularly in employment as otherwise defined herein;
6. service as golf caddies;
7. 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.
8. 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 paragraph (b) herein 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 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.

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.

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.

"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.

"Injury" and "sickness" mean accidental injury, disease, infection or illness or incapacitation as a

result of being an organ donor in a transplant operation.

"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.

"Disability" also includes disability caused by or in connection with a pregnancy.

"Benefits" means the money allowances during disability payable to an employee who is eligible to receive such benefits, as provided in this article.

"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.

"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.

"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 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. (See end of S 204)

"A day of disability" means any day on which the employee was prevented from performing work because of disability and for which he has not received his regular remuneration.

S 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.

S 203. Employees eligible for benefits under section two hundred four.

Employees in employment of a covered employer for four or more consecutive weeks and employees in employment during the work period usual to and available during such four or

more consecutive weeks in any trade or business in which they are regularly employed and in which hiring from day to day of such employees is the usual employment practice shall be eligible for disability benefits as provided in section two hundred four. Every such employee shall continue to be eligible during such employment and for a period of four weeks after such employment terminates regardless of whether the employee performs any work for remuneration or profit in non-covered employment.

If during such four week period the employee performs any work for remuneration or profit for another covered employer the employee shall become eligible for benefits immediately with respect to that employment. In addition every such employee who returns to work with the same employer after an agreed and specified unpaid leave of absence or vacation without pay shall become eligible for benefits immediately with respect to such employment.

An employee who during a period in which he or she is eligible to receive benefits under subdivision two of section two hundred seven returns to employment with a covered employer and an employee who is currently receiving unemployment insurance benefits or benefits under section two hundred seven and who returns to employment with a covered employer shall become eligible for benefits immediately with respect to such employment.

An employee regularly in the employment of a single employer on a work schedule less than the employer's normal work week shall become eligible for benefits on the twenty-fifth day of such regular employment. An employee who becomes disabled while eligible for benefits in the employment of a covered employer shall not be deemed, for the purposes of this article, to have such employment terminated during any period he or she is eligible to receive benefits under section two hundred four with respect to such employment.

Who's not covered by New York State's statutorily mandated temporary disability insurance requirement?¹

1. Individuals who work for the state government, a municipal corporation, a local governmental agency, other political subdivisions or a public authority. (NOTE: some employees in this category are covered as the result of collective bargaining agreements.)
2. a minor child of the employer,
3. a domestic or personal worker in a private home who is employed for less than forty hours per week by any one employer,
4. a duly ordained, commissioned, or licensed minister, priest or rabbi, a sexton, a christian science reader, or member of a religious order,
5. 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,
6. an executive officer of an incorporated religious, charitable or educational institution,²

¹ The law covering the temporary disability insurance program was amended to make explicitly clear that the law does cover (A) professional musicians and persons otherwise engaged in the performing arts who perform services as such for a television or radio station or network, a film production, a theatre, hotel, restaurant, night club or similar establishment. (For the purposes of this clarification, "engaged in the performing arts," was defined to mean "performing service in connection with the production of or performance in any artistic endeavor which requires artistic or technical skill or expertise."); and (B) professional models, who (a) perform modeling services for; or (b) consent 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.)

² For the purposes of this law, 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.

7. persons engaged in a professional or teaching capacity in or for a religious, charitable or educational institution,
8. volunteers in or for a religious, charitable or educational institution,
9. 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,
10. 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.
11. employees subject to the federal railroad unemployment insurance act;
12. officers and members of the crews of a vessel on the navigable water of the United States or outside the United States,
13. farm laborers,
14. individuals engaged in casual employment and the first forty-five days of extra employment of employees not regularly in employment as otherwise defined herein,
15. golf caddies,
16. persons actually in regular attendance during the day time as a student in an elementary or secondary school who work during all or any part of the school year or regular vacation periods as a part-time worker, and
17. individuals who work as licensed real estate brokers or sales associates 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 paragraph (b) herein 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 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.

18. Individuals employed by employers other than covered employers.

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.

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.

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.

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.

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.

19. Individuals who do not meet the following eligibility requirements:

Employees in employment of a covered employer for four or more consecutive weeks and employees in employment during the work period usual to and available during such four or more consecutive weeks in any trade or business in which they are regularly employed and in which hiring from day to day of such employees is the usual employment practice shall be eligible for disability benefits as provided in section two hundred four. Every such employee shall continue to be eligible during such employment and for a period of four weeks after such employment terminates regardless of whether the employee performs any work for remuneration or profit in non-covered employment.

If during such four week period the employee performs any work for remuneration or profit for another covered employer the employee shall become eligible for benefits immediately with respect to that employment. In addition every such employee who returns to work with the same employer after an agreed and specified unpaid leave of absence or vacation without pay shall become eligible for benefits immediately with respect to such employment.

An employee who during a period in which he or she is eligible to receive benefits under subdivision two of section two hundred seven returns to employment with a covered employer and an employee who is currently receiving unemployment insurance benefits or benefits under section two hundred seven and who returns to employment with a covered employer shall become eligible for benefits immediately with respect to such employment.

An employee regularly in the employment of a single employer on a work schedule less than the employer's normal work week shall become eligible for benefits on the twenty-fifth day of such regular employment. An employee who becomes disabled while eligible for benefits in the employment of a covered employer shall not be deemed, for the purposes of this article, to have such employment terminated during any period he or she is eligible to receive benefits under section two hundred four with respect to such employment.

Insurance Rates for Statutory Disability Benefits Law Coverage
(Per employee)

State Insurance Fund (as of July 22, 1998)

	Per \$100 Payroll*	Monthly	Annually
Males	\$0.22	\$3.24	\$38.90
Females	\$0.53	\$7.81	\$93.70

Capital Risk Associates (as of April 1, 1998)

	Per \$100 Payroll*	Monthly	Annually
Males	\$0.21	\$3.15	\$37.80
Females	\$0.44	\$6.50	\$78.00

Capital Risk Associates (as of July 1, 1998)

	Per \$100 Payroll*	Monthly	Annually
Males	\$0.20	\$2.90	\$34.80
Females	\$0.43	\$6.40	\$76.80

* Up to a \$340.00 cap on payroll

Bolded figures were provided by representatives of the above organizations.

Length of Leave in New York under Assembly Bill 9463: Care for New Child

*Alternative distributions if leave-takers in the 43-56, 57-70 and 71-84 days categories increase their leave an average of 2 weeks or up to 12 weeks: **

	1-7 days	8-14	15-28	29-42	43-56	57-70	71-84**	85-182	Avg # of weeks of leave	Total	Net increase in total weeks with A9463
Average number of weeks	0.5	1.5	3	5	7	9	11	19			
Average number of days	3.5	10.5	21	35	49	63	77	133			
Distribution if 10% move up	9.5%	21.1%	13.1%	7.8%	8.1%	9.0%	15.3%	16.2%			
Number of leave-takers	2,711	6,022	3,734	2,230	2,316	2,573	4,375	4,632			
Total length (weeks)	1,355	9,033	11,203	11,151	16,212	23,160	50,309	88,009	7.36	210,433	3,217
Distribution if 20% move up	9.5%	21.1%	13.1%	7.8%	7.2%	9.0%	16.2%	16.2%			
Number of leave-takers	2,711	6,022	3,734	2,230	2,059	2,573	4,632	4,632			
Total length (weeks)	1,355	9,033	11,203	11,151	14,411	23,160	53,269	88,009	7.40	211,591	4,375
Distribution if 33% move up	9.5%	21.1%	13.1%	7.8%	6.0%	9.0%	17.4%	16.2%			
Number of leave-takers	2,711	6,022	3,734	2,230	1,724	2,573	4,967	4,632			
Total length (weeks)	1,355	9,033	11,203	11,151	12,069	23,160	57,116	88,009	7.45	213,097	5,880
Distribution if 50% move up	9.5%	21.1%	13.1%	7.8%	4.5%	9.0%	18.9%	16.2%			
Number of leave-takers	2,711	6,022	3,734	2,230	1,287	2,573	5,404	4,632			
Total length (weeks)	1,355	9,033	11,203	11,151	9,007	23,160	62,147	88,009	7.52	215,066	7,849
Distribution if 75% move up	9.5%	21.1%	13.1%	7.8%	2.3%	9.0%	21.2%	16.2%			
Number of leave-takers	2,711	6,022	3,734	2,230	643	2,573	6,047	4,632			
Total length (weeks)	1,355	9,033	11,203	11,151	4,503	23,160	69,545	88,009	7.62	217,961	10,744
Distribution if 100% move u	9.5%	21.1%	13.1%	7.8%	0.0%	9.0%	23.4%	16.2%			
Number of leave-takers	2,711	6,022	3,734	2,230	0	2,573	6,691	4,632			
Total length (weeks)	1,355	9,033	11,203	11,151	0	23,160	76,944	88,009	7.72	220,856	13,639

* Leave to care for newborns is likely to increase under the Assembly Bill due to paid coverage. However, it will occur only for those who take leave currently and need more. Since there is a total of 10 to 12 weeks of disability leave for normal pregnancies available already in New York, people who take under 6 to 8 weeks of leave will not be affected generally (ie, they could take more now if they needed it; see text).

** The average length of leave under A9463 for people in this category was 11.5 weeks since some people in this category would lengthen their leave from 10 weeks to up to 12 weeks.

Source: Survey of Employees on the Impact of the Family and Medical Leave Act, 1993; Workers' Compensation Board, Disability Benefits Program, Claims Statistics: 1970-1989 and Claims Statistics: 1971-1990; New York State Department of Health, Vital Statistics of New York State: 1995.

Disability Claims Statistics - New York State*

Year	Initial indemnity benefit claims allowed			Weeks for which indemnity benefits were paid			Indemnity benefits paid			Average number of employees covered			Amount of covered payroll** (000s)		
	Statutory	Plan	Total	Statutory	Plan	Total	Statutory	Plan	Total	Statutory	Plan	Total	Statutory	Plan	Total
1970	199,333	627,559	826,892	1,530,007	2,035,892	3,565,899	\$77,232,629	\$164,042,732	\$241,275,361	3,382,156	2,540,484	5,922,640	\$10,191,194	\$7,979,742	\$18,170,935
1971	193,989	644,387	838,376	1,494,802	1,936,513	3,431,315	\$82,896,440	\$161,050,070	\$243,946,510	3,431,223	2,439,335	5,870,558	\$10,243,921	\$7,414,125	\$17,658,046
1972	191,622	644,938	836,560	1,420,187	1,823,773	3,243,960	\$83,809,112	\$170,501,461	\$254,310,573	3,604,023	2,661,247	6,265,270	\$13,428,229	\$9,614,917	\$23,043,146
1973	204,443	616,312	820,755	1,548,045	1,786,186	3,334,231	\$91,387,859	\$176,843,766	\$268,231,625	3,691,156	2,290,804	5,981,960	\$13,974,253	\$9,521,350	\$23,496,603
1974	196,764	656,822	853,586	1,484,637	1,770,897	3,255,534	\$94,043,295	\$192,187,331	\$286,230,626	3,566,650	2,211,528	5,778,178	\$14,630,725	\$9,241,610	\$23,872,335
1975	185,982	607,088	793,070	1,414,037	1,528,961	2,942,998	\$98,557,074	\$195,736,134	\$294,293,208	3,642,126	2,080,032	5,722,158	\$14,736,130	\$8,912,327	\$23,648,457
1976	179,345	619,203	798,548	1,388,411	1,538,918	2,928,329	\$101,908,511	\$209,592,969	\$311,501,480	3,770,411	1,976,478	5,746,889	\$15,502,723	\$8,248,073	\$23,750,796
1977	178,990	580,753	759,743	1,389,343	1,468,162	2,857,505	\$104,326,313	\$212,701,437	\$317,027,750	3,834,257	1,939,372	5,773,629	\$14,823,727	\$8,278,361	\$23,104,088
1978	212,212	607,979	820,191	1,580,767	1,618,651	3,199,418	\$125,004,466	\$238,570,271	\$363,574,737	3,935,728	1,898,713	5,834,441	\$21,492,715	\$11,031,188	\$32,523,903
1979	203,378	621,314	824,692	1,645,767	1,677,725	3,323,492	\$130,831,853	\$259,035,559	\$389,867,412	4,018,927	1,836,371	5,855,298	\$22,378,904	\$10,661,533	\$33,040,437
1980	203,864	618,390	822,254	1,729,266	1,566,911	3,296,177	\$140,873,176	\$274,958,781	\$415,831,957	4,291,954	1,796,583	6,088,537	\$24,385,041	\$10,502,868	\$34,887,909
1981	215,067	621,716	836,783	1,834,193	1,528,583	3,362,776	\$152,507,375	\$290,072,347	\$442,579,722	4,340,438	1,745,612	6,086,050	\$23,801,504	\$10,580,917	\$34,382,421
1982	216,142	594,050	810,192	1,876,137	1,367,256	3,243,393	\$156,271,711	\$287,125,119	\$443,396,830	4,409,937	1,566,588	5,976,525	\$27,192,276	\$10,580,917	\$37,773,193
1983	218,824	549,467	768,291	1,851,377	1,184,881	3,036,258	\$163,629,387	\$275,553,132	\$439,182,519	4,434,836	1,563,918	5,998,754	\$28,227,323	\$10,587,031	\$38,814,354
1984	227,783	519,053	746,836	1,916,897	1,146,115	3,063,012	\$195,954,271	\$279,775,045	\$475,729,316	4,500,824	1,532,963	6,033,787	\$29,893,824	\$10,196,822	\$40,090,645
1985	227,856	523,525	751,381	1,976,529	1,073,750	3,050,279	\$218,372,375	\$286,808,233	\$505,180,608	4,795,198	1,416,085	6,211,283	\$31,533,053	\$9,528,869	\$41,061,922
1986	238,790	508,229	747,019	2,040,215	991,536	3,031,751	\$227,892,059	\$277,502,334	\$505,394,393	4,930,068	1,495,066	6,425,134	\$31,367,321	\$10,040,141	\$41,407,462
1987	238,548	484,879	723,427	2,002,682	1,032,283	3,034,965	\$230,686,934	\$296,067,152	\$526,754,086	4,907,689	1,422,008	6,329,697	\$31,981,397	\$9,208,488	\$41,189,885
1988	238,377	446,956	685,333	1,970,649	967,860	2,938,509	\$233,792,552	\$288,666,129	\$522,458,681	4,943,789	1,375,592	6,319,381	\$32,221,623	\$9,056,298	\$41,277,921
1989	251,419	387,807	639,226	2,100,289	883,834	2,984,123	\$259,922,384	\$271,702,423	\$531,624,807	4,876,579	1,419,642	6,296,221	\$31,794,550	\$9,280,612	\$41,075,162
1990	246,132	367,743	613,875	2,093,655	886,999	2,980,654	\$284,336,410	\$272,797,281	\$557,133,691						

* Does not include Special Fund.

** The first \$7,000 of earnings paid to each eligible employee.

Source: New York State Workers' Compensation Board, Disability Benefits Program, Claims Statistics: 1970-1989 and Claims Statistics: 1971-1990.

Claims Statistics - New York State

Claims Statistics - New York State: 1989 (Disability Benefits Bureau), by Type of Insurer

	Insurance Cos			Self-Insurers			Special Fund	Total
	Statutory	Plan*	Subtotal	Statutory	Plan*	Subtotal		
Claims Allowed	209,931	73,646	283,577	41,488	314,161	355,649	2,932	642,158
Total Weeks Paid	1,835,228	378,360	2,213,588	265,061	505,474	770,535	36,478	3,020,601
Indemnity Benefits Paid**	\$223,222,774	\$65,565,741	\$288,788,515	\$36,699,610	\$206,136,682	\$242,836,292	\$4,563,083	\$536,187,890
Avg Wkly Benefit Rate	\$121.63	\$173.29	\$130.46	\$138.46	\$407.81	\$315.15	\$125.09	\$177.51
Avg Duration of Benefits (Wks)	8.7	5.1	7.8	6.4	1.6	2.2	12.4	4.7
Avg # of Employees Covered	4,475,642	726,946	5,202,588	468,147	648,646	1,116,793	na	6,319,381
Amount of Covered Payroll (000s)***	\$28,976,878.4	\$4,684,912.0	\$33,661,790.4	\$3,244,744.8	\$4,371,385.9	\$7,616,130.7	na	\$41,277,921.1
Claims per 100 Employees	4.7	10.1	5.5	8.9	48.4	31.8	na	na
Avg Payment per Claim	\$1,063.31	\$890.28	\$1,018.38	\$884.58	\$656.15	\$682.80	\$1,556.30	\$834.98

Claims Statistics - New York State: 1989 (Disability Benefits Bureau), by Kind of Coverage

	Statutory			Plan*			Special Fund	Total
	Insurance Cos	Self-Insurers	Subtotal	Insurance Cos	Self-Insurers	Subtotal		
Claims Allowed	209,931	41,488	251,419	73,646	314,161	387,807	2,932	642,158
Total Weeks Paid	1,835,228	265,061	2,100,289	378,360	505,474	883,834	36,478	3,020,601
Indemnity Benefits Paid**	\$223,222,774	\$36,699,610	\$259,922,384	\$65,565,741	\$206,136,682	\$271,702,423	\$4,563,083	\$536,187,890
Avg Wkly Benefit Rate	\$121.63	\$138.46	\$123.76	\$173.29	\$407.81	\$307.41	\$125.09	\$177.51
Avg Duration of Benefits (Wks)	8.7	6.4	8.4	5.1	1.6	2.3	12.4	4.7
Avg # of Employees Covered	4,475,642	468,147	4,943,789	726,946	648,646	1,375,592	na	6,319,381
Amount of Covered Payroll (000s)***	\$28,976,878.4	\$3,244,744.8	\$32,221,623.2	\$4,684,912.0	\$4,371,385.9	\$9,056,297.9	na	\$41,277,921.1
Claims per 100 Employees	4.7	8.9	5.1	10.1	48.4	28.2	na	na
Avg Payment per Claim	\$1,063.31	\$884.58	\$1,033.82	\$890.28	\$656.15	\$700.61	\$1,556.30	\$834.98

Claims Statistics - New York State: 1990 (Disability Benefits Bureau), by Type of Insurer

	Insurance Cos			Self-Insurers			Special Fund	Total
	Statutory	Plan*	Subtotal	Statutory	Plan*	Subtotal		
Claims Allowed	201,018	73,770	274,788	45,114	293,973	339,087	2,942	616,817
Total Weeks Paid	1,811,144	393,184	2,204,328	282,511	493,815	776,326	38,891	3,019,545
Indemnity Benefits Paid**	\$242,161,758	\$70,942,528	\$313,104,286	\$42,194,652	\$201,854,753	\$244,049,405	\$5,300,623	\$562,454,314
Average Weekly Benefit Rate	\$133.71	\$180.43	\$142.04	\$149.36	\$408.77	\$314.36	\$136.29	\$186.27
Average Duration of Benefits (Wks)	9.0	5.3	8.0	6.3	1.7	2.3	13.2	4.9
Average # of Employees Covered	4,396,763	778,255	5,175,018	479,816	641,387	1,121,203	na	6,296,221
Amount of Covered Payroll (000s)***	\$28,589,119.7	\$4,978,819.3	\$33,567,939.0	\$3,205,430.2	\$4,301,793.0	\$7,507,223.2	na	\$41,075,162.2
Claims per 100 Employees	4.6	9.5	5.3	9.4	45.8	30.2	na	na
Average Payment per Claim	\$1,204.68	\$961.67	\$1,139.44	\$935.29	\$686.64	\$719.73	\$1,801.71	\$911.87

Claims Statistics - New York State: 1990 (Disability Benefits Bureau), by Kind of Coverage

	Statutory			Plan*			Special Fund	Total
	Insurance Cos	Self-Insurers	Subtotal	Insurance Cos	Self-Insurers	Subtotal		
Claims Allowed	201,018	45,114	246,132	73,770	293,973	367,743	2,942	616,817
Total Weeks Paid	1,811,144	282,511	2,093,655	393,184	493,815	886,999	38,891	3,019,545
Indemnity Benefits Paid**	\$242,161,758	\$42,194,652	\$284,356,410	\$70,942,528	\$201,854,753	\$272,797,281	\$5,300,623	\$562,454,314
Average Weekly Benefit Rate	\$133.71	\$149.36	\$135.82	\$180.43	\$408.77	\$307.55	\$136.29	\$186.27
Average Duration of Benefits (Wks)	9.0	6.3	8.5	5.3	1.7	2.4	13.2	4.9
Average # of Employees Covered	4,396,763	479,816	4,876,579	778,255	641,387	1,419,642	na	6,296,221
Amount of Covered Payroll (000s)***	\$28,589,119.7	\$3,205,430.2	\$31,794,549.9	\$4,978,819.3	\$4,301,793.0	\$9,280,612.3	na	\$41,075,162.2
Claims per 100 Employees	4.6	9.4	5.0	9.5	45.8	25.9	na	9.8
Average Payment per Claim	\$1,204.68	\$935.29	\$1,155.30	\$961.67	\$686.64	\$741.82	\$1,801.71	\$911.87

* Plan coverage provides benefits beyond what is required under statutory coverage (i.e. elimination of the waiting period, benefit period for longer than the required 26 weeks, etc.).

** Does not include medical, surgical and hospital benefits provided under plan coverage.

*** The first \$7,000 of earnings paid to each eligible employee.

na - not applicable

Claims Statistics - New York State, Pregnancy Only

Claims Statistics - New York State: 1989 (Disability Benefits Bureau), Pregnancy Only, by Type of Insurer

	Insurance Cos			Self-Insurers			Special Fund	Total
	Statutory	Plan*	Subtotal	Statutory	Plan*	Subtotal		
Claims Allowed	54,243	12,139	66,382	8,011	6,351	14,362	870	81,614
Total Weeks Paid	520,765	53,644	574,409	70,854	56,437	127,291	7,996	709,696
Indemnity Benefits Paid**	\$60,694,566	\$9,051,969	\$69,746,535	\$9,369,213	\$13,666,509	\$23,035,722	\$918,482	\$93,700,739
Average Weekly Benefit Rate	\$116.55	\$168.74	\$121.42	\$132.23	\$242.16	\$180.97	\$114.87	\$132.03
Average Duration of Benefits (Wks)	9.6	4.4	8.7	8.8	8.9	8.9	9.2	8.7
Average Payment per Claim	\$1,118.94	\$745.69	\$1,050.68	\$1,169.54	\$2,151.87	\$1,603.94	\$1,055.73	\$1,148.10

Claims Statistics - New York State: 1989 (Disability Benefits Bureau), Pregnancy Only, by Kind of Coverage

	Statutory			Plan*			Special Fund	Total
	Insurance Cos	Self-Insurers	Subtotal	Insurance Cos	Self-Insurers	Subtotal		
Claims Allowed	54,243	8,011	62,254	12,139	6,351	18,490	870	81,614
Total Weeks Paid	520,765	70,854	591,619	53,644	56,437	110,081	7,996	709,696
Indemnity Benefits Paid**	\$60,694,566	\$9,369,213	\$70,063,779	\$9,051,969	\$13,666,509	\$22,718,478	\$918,482	\$93,700,739
Average Weekly Benefit Rate	\$116.55	\$132.23	\$118.43	\$168.74	\$242.16	\$206.38	\$114.87	\$132.03
Average Duration of Benefits (Wks)	9.6	8.8	9.5	4.4	8.9	6.0	9.2	8.7
Average Payment per Claim	\$1,118.94	\$1,169.54	\$1,125.45	\$745.69	\$2,151.87	\$1,228.69	\$1,055.73	\$1,148.10

Claims Statistics - New York State: 1990 (Disability Benefits Bureau), Pregnancy Only, by Type of Insurer

	Insurance Cos			Self-Insurers			Special Fund	Total
	Statutory	Plan*	Subtotal	Statutory	Plan*	Subtotal		
Claims Allowed	55,802	13,192	68,994	9,342	7,313	16,655	940	86,589
Total Weeks Paid	515,868	68,217	584,085	78,626	60,183	138,809	8,664	731,558
Indemnity Benefits Paid**	\$69,099,331	\$11,276,284	\$80,375,615	\$10,908,777	\$14,783,415	\$25,692,192	\$1,081,449	\$107,149,256
Average Weekly Benefit Rate	\$133.95	\$165.30	\$137.61	\$138.74	\$245.64	\$185.09	\$124.82	\$146.47
Average Duration of Benefits (Wks)	9.2	5.2	8.5	8.4	8.2	8.3	9.2	8.4
Average Payment per Claim	\$1,238.29	\$854.78	\$1,164.97	\$1,167.71	\$2,021.53	\$1,542.61	\$1,150.48	\$1,237.45

Claims Statistics - New York State: 1990 (Disability Benefits Bureau), Pregnancy Only, by Kind of Coverage

	Statutory			Plan*			Special Fund	Total
	Insurance Cos	Self-Insurers	Subtotal	Insurance Cos	Self-Insurers	Subtotal		
Claims Allowed	55,802	9,342	65,144	13,192	7,313	20,505	940	86,589
Total Weeks Paid	515,868	78,626	594,494	68,217	60,183	128,400	8,664	731,558
Indemnity Benefits Paid**	\$69,099,331	\$10,908,777	\$80,008,108	\$11,276,284	\$14,783,415	\$26,059,699	\$1,081,449	\$107,149,256
Average Weekly Benefit Rate	\$133.95	\$138.74	\$134.58	\$165.30	\$245.64	\$202.96	\$124.82	\$146.47
Average Duration of Benefits (Wks)	9.2	8.4	9.1	5.2	8.2	6.3	9.2	8.4
Average Payment per Claim	\$1,238.29	\$1,167.71	\$1,228.17	\$854.78	\$2,021.53	\$1,270.89	\$1,150.48	\$1,237.45

* Plan coverage provides benefits beyond what is required under statutory coverage (i.e., elimination of the waiting period, benefit period for longer than the required 26 weeks, etc.).

** Does not include medical, surgical and hospital benefits provided under plan coverage.

Data Sources

U.S. Department of Commerce, Bureau of the Census

July 1995 Current Population Survey data (found in the U.S. Department of Labor, Bureau of Labor Statistics *Employment and Earnings* reports)
County Business Patterns series

U.S. Department of Labor, Bureau of Labor Statistics

Benchmark historical employment data
Employment and Earnings series, particularly, Vol. 43, No. 7 July 1996.

The Employee Benefits Survey (<http://www.stats.bls.gov/ebshome.htm>) is a routine survey of small (less than 100 employees) and medium to large employers (100 or more employees) based on representative samples for all private sector, non-farm establishments. It provides data on access to maternity leave, paternity leave and sick leave. It defines parental leave as unpaid or paid maternity and paternity leave to care for a newborn/adopted child. It does not include maternity disability leave used for disability surrounding pregnancy and childbirth.

U.S. Commission on Family and Medical Leave

The Commission contracted with the Bureau of Labor Statistics to do two surveys - an employer survey and an employee survey. The Survey of Employers was conducted by Westat, Inc. and the Survey of Employees on the Impact of the Family and Medical Leave Act was completed by the Survey Research Center, University of Michigan.

The Survey of Employers is a national, random sample telephone survey of employers of diverse sizes which measures employers' experience with the FMLA and family and medical leave policies. The respondents were drawn from a probability sample of private sector businesses stratified by size and industrial classification (SIC) provided by Dun & Bradstreet (DUNS Market Services file-DMS). The survey size is 1,206 cases (unit of analysis is the worksite).

The Survey of Employees on the Impact of the Family and Medical Leave Act is a national, random sample telephone survey which measures employees' leave-taking activity conducted by Robert Groves and Catherine McGonagle at the University of Michigan. Employees were interviewed at 2,352 households.

The Commission on Leave commissioned other research including a nationally representative random sample survey of primarily small businesses undertaken by the Census Bureau as part of its Economic Census. There were also surveys conducted of state laws and education professionals, and a non-random employee survey completed by Westat of employees who work for firms that participated in the Employer Survey. Four case studies were also completed to provide qualitative data to the Commission.

The Commission's Report, *A Workable Balance: Report to Congress on Family and Medical Leave Policies* (*A Workable Balance*, or, *AWB*), 1996, contains much of the findings of the research listed above.

Data from New York State Agencies

New York State Department of Health

Vital Statistics of New York State, 1995

State Insurance Department

Disability Benefits Law (DBL) Claims Statistics (precisely and statutory coverage provided by insurance carriers broken apart by gender): 1989, 1990, 1995, 1996

Workers' Compensation Board/ Disability Benefits Bureau

Disability Benefits Program Claims Statistics (statutory and plan coverage provided by insurance carriers and self-insurers broken apart for all claims and pregnancy-related claims; pregnancy-related data for 1989 and 1990 only): 1970-1989 and 1971-1990

The Nelson A. Rockefeller Institute of Government

New York State Statistical Yearbook

Other Researchers' Work

Institute for Women's Policy Research (IWPR)

Research-in-Brief: Using Temporary Disability Insurance to Provide Paid Family Leave: A Comparison with the Family and Medical Leave Act

Research-in-Brief: What is Temporary Disability Insurance?

Temporary Disability Insurance: A Model to Provide Income Security for Women Over the Life Cycle; presented at Women's Lives and Economic Participation, 1995 Annual meetings of the American Economics Association, Allied Social Science Associations; January 8, 1995

Michele I. Naples, Associate Professor, The College of New Jersey, written and phone communications in April 1998

Greg Williams, Senior Research Associate, Office of Legislative Services, New Jersey State Legislature

Cost Estimates for A-3016/S-2102: July 5, 1997 (internal memorandum)

Response to 7:31:97 PFL cost estimate: August 16, 1997 (internal memorandum)