



Legislative Affairs
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2023 – 2024 Legislative Memorandum

**Subject: Temporary Disability Insurance/ Paid Family Leave
S.9840 (Ramos) / A.10561 (Solages)**

Position: SUPPORT WITH RECOMMENDATION

Most New Yorkers do not have the ability to take time off from work to address their own serious health needs – whether to undergo cancer treatments, recover from major injuries or illnesses, or to prevent or recover from a pregnancy loss or neonatal loss – without risking their economic security and taking the chance that they will not have a job to return to. That is because New York’s Temporary Disability Insurance (TDI) program that provides medical leave benefits to New Yorkers who need time off from work to tend to their own health needs has been capped since 1989 at \$170/week – far below cost of living in 2023 – and it does not include job protection.

S.9840 (Ramos) / A.10561 (Solages) would update New York’s medical leave program to create a sustainable paid family and medical leave system that supports New Yorkers in caring for their family members as well as their own health.

The NYCLU supports this bill and urges its expedient passage.

S.9840/A.10561 will remove the \$170/week cap on medical leave benefits and align the first twelve weeks of medical leave benefits with the more generous benefits the state offers New Yorkers who need paid family leave. It will also build a pathway for the Workers’ Compensation Board to align medical leave benefits for the remaining fourteen weeks of TDI with paid family leave’s more generous benefits. It will phase-in the medical leave increase in a progressive way that will enable low-income workers to access the program sooner. And for those who need to access New York’s TDI program, it will ensure job protection and continuity of health insurance – necessary benefits already provided to those who take paid family leave.

Importantly, S.9840/A.10561 also includes intermittent leave for anyone who needs it to address their own serious health needs. This option that is already available to those

who need paid family leave. Intermittent leave is particularly critical for people going through cancer or mental health treatments, who may need a day off to undergo treatment and then be able to work normally for a period of weeks before needing another day for treatment. It is equally important for those struggling with ME-CFS, Long COVID, or another fatiguing condition, who may need to phase-in a return to work, and for those experiencing a complicated pregnancy, who may need bedrest for a week at a time a few different times during a pregnancy, among many others.

Updating New York’s medical leave program is a gender and racial justice imperative. The United States faces a maternal health crisis that disproportionately impacts Black women.¹ New York has seen a quadrupling of the maternal mortality rate for Black women in the last seven years.² S.9840/A.10561 will ensure that pregnant New Yorkers can afford to take time off to keep themselves and their pregnancies healthy, without risking economic insecurity.

And, if a person experiences pregnancy loss, this bill will ensure that they can take job-protected leave to recover without sacrificing their income. Perversely, under current law, when a person experiences a pregnancy complication or loss, they are not able to take leave without losing their income and risking their job. But a family member can take job-protected leave with a sustainable wage to care for them.

Importantly, S.9840/A.10561 addresses an immediate gap in the law by providing people who experience stillbirth³ access to paid family leave for six weeks until TDI’s benefit increase is fully in effect. However, disappointingly, the proposal excludes others who are similarly situated from accessing this benefit. Specifically, by only including people who have had a stillbirth, the bill creates a cruel exclusion for people who were pregnant, applied to take paid family leave, received news that made these plans impossible, and received abortion care later in pregnancy. People who experience later pregnancy loss – whether it is stillbirth or abortion – must often go through labor and delivery, requiring intense physical recovery, and for those who have applied for paid family leave, this pregnancy outcome also represents profound loss. Separating out those who have experienced a stillbirth from those who have

¹ Donna L. Hoyert, Ph.D., Maternal Mortality Rates in the United States, 2020, Division of Vital Statistics, Centers for Disease Control and Prevention, <https://www.cdc.gov/nchs/data/hestat/maternal-mortality/2020/maternal-mortality-rates-2020.htm>.

² New York State Report on Pregnancy Associated Deaths in 2018, N.Y. Dept. of Health, p.1, https://www.health.ny.gov/community/adults/women/docs/maternal_mortality_review_2018.pdf (2022) citing New York State Vital Statistics Tables (https://www.health.ny.gov/statistics/vital_statistics/vs_reports_tables_list.htm).

³ Stillbirth is defined as “the unintended intrauterine death of a fetus that occurs after the clinical estimate of the twentieth week of gestation.” N.Y. Pub. Health Law § 4160-a (McKinney).

experienced later abortion care creates a false distinction that is not only callous but reinforces harmful stigma in our law. At a moment in time when abortion care is being criminalized across the country, New York must do better.

For these reasons, the NYCLU urges the legislature to amend S.9840/A.10561 to ensure that every pregnant person who applied to take paid family leave and received news that made these plans impossible is able to take six weeks of paid family leave until TDI's wage replacement rate increase is fully implemented. There may be an impression that this would open up the paid family leave program to all pregnancy loss – which would be unworkable in light of the cost estimates and counter to the experience of the majority of people seeking abortion care. It would not. We should be including all those similarly situated, namely a subset of abortion seekers who applied to take paid family leave, received news that made these plans impossible, and received later abortion care.

With this improvement and the crucial updates laid out in S.9840/A.10561, the legislature has an opportunity to ensure that all New Yorkers, including pregnant workers, workers with disabilities, workers who struggle with substance use, and workers living with Long COVID, have a paid family and medical leave program that truly meets their needs.

Because New Yorkers deserve a paid family and medical leave program that will open the door for equity in the workforce and support healthy and thriving communities, the NYCLU urges the legislature to prioritize swift passage of S.9840/A.10561.