

**2008 Comparison of NYS family leave proposals to federal FMLA 05/30/08**

<u>Topic</u>	<u>Federal FMLA</u>	<u>S.5821</u>	<u>A.9245</u>	<u>Remarks</u>
1. Covered Employers	Public agencies including state, local and federal employers and schools plus private employers with 50 or more employees	All private employers regardless of size subject to the NYS Disability law. Government workers are excluded from the DBL law.	Same as S.5821	State proposals would include hundreds of thousands of small businesses.  Congress recognized the difficulty that small businesses would have in complying with unpaid leave and excluded them.
2. Situations covered	Absence for individual serious health condition, child bonding and care of seriously ill or injured immediate family member	Adds "family leave" which includes child bonding and family care to the definition of disability under NYS DBL law.	Same as S.5821	Adds these new non-disabling conditions to the state's disability law
3. Benefits paid and duration	Unpaid 12 week leave in a 52 week period	Up to \$170 per week in disability payments for absence for child bonding and family care for up to 12 weeks in 52 week period	Same as S.5821	Pays disability benefits to non-disabled employees.  Employers who voluntarily pay a higher weekly disability benefit for disabled employees will modify their programs and set up a second lower payment tier of \$170/week for non-disabled employees.
4. Requirement for leave	Yes, for employers of 50 or more employees	No current explicit leave requirement in NYS DBL law. However, proposed changes may be interpreted to include an independent right to leave through discrimination litigation.	Same as S.5821  Both bills use "...leave from work..." language	A back door approach to require small businesses in NYS to provide paid leave. Small businesses were specifically excluded by Congress from having to provide leave on the federal level.  Some Legislators think that the state bills would provide an independent right to a leave.

5. Total leave allowance	12 week maximum in a 52 week period for employee's serious health condition, child bonding and family care	NYS DBL law will maintain current 26 week period for employee's disability, then add a separate 12 weeks for child bonding and family care.	Same as S.5821	State proposal will allow 24 weeks total leave when employee combines federal FMLA absence with non-FMLA state absence.
6. Waiting period for eligibility	Employee must have worked for covered employer for a total of 12 months and 1250 hrs. over the previous 12 months	Full time employees are covered by the state DBL law after 4 consecutive weeks of employment; part time employees on the 25 <sup>th</sup> day of employment	Same as S.5821	Employees would be eligible for 12 weeks of FMLA-like state leave after only 4 weeks of full time employment.
7. Waiting period for benefits	Unpaid leave- no paid benefits	First day benefits for child bonding or family care.  The 7 day waiting period for employee disability does not apply to family care situations.	Same as S.5821	Since there will be no waiting period for family care benefit payments, each individual family care event will be individually payable in daily increments.  Non-disabled employees will receive disability benefits sooner than disabled employees.
8. Family members included for family care	Parent, spouse and child	Parent, spouse, child, domestic partner & grandchild	Same as S.5821 plus mother-in-law and father-in-law	Requires a new tier of family member coverage well beyond the current federal FMLA.  Employees could take 12 weeks federal FMLA for parent, child or spouse family care and then take a second 12 weeks of state leave for domestic partner, grandchild, mother or father-in-law family care.

9. Required workplace posting	Yes, BB poster	DBL notice currently required. Would require an additional notification to current and new employees that the employer has "...provided for the payment of disability benefits..."	Same as S.5821	Yet another notification requirement for NYS employers
10. Recordkeeping requirements	Extensive request, attendance & medical documents already required	A lengthy DB-450 form currently required from employer, employee & doctor	Same as S.5821	With child bonding & family care leave being taken in daily increments, the recordkeeping will be enormous.
11. Health care providers recognized includes...	Religion based Christian Science practitioners	Any practitioner whose church or denomination depends on prayer for healing	Same as S.5821	Broader than the federal FMLA