

## PERSONNEL SERVICES BULLETINS (PSBs)

**440-16**

**Subject:** Paid Family Leave Benefits for Represented Employees

**Source:** New York State Workers' Compensation Law, Article 9

**Date:** Updated December 23, 2019

### 1. INTRODUCTION

Employees in titles represented by unions that have collectively bargained an agreement to opt into New York State Paid Family Leave Benefits will be eligible to take paid family leave ("PFL"). PFL is an employee-funded insurance policy that provides job-protected, paid time-off to bond with a newly born, adopted or fostered child, to care for a family member with a serious health condition including preparation and recovery from surgery related to organ or tissue donation, or to assist loved ones when a family member is deployed in a foreign country on active military service. Each CBU has a specific effective date for this benefit. Please refer to the attachment "List of Covered Unions" for eligibility dates.

### 2. DEFINITIONS

"Family Leave" means any leave taken by an employee from work:

- (a) to participate in providing care, including physical or psychological care, for a family member of the employee made necessary by a serious health condition of the family member; or
- (b) to bond with the employee's child during the first twelve months after the child's birth, or the first twelve months after the placement of the child for adoption or foster care with the employee; or
- (c) because of any qualifying exigency as interpreted under the family and medical leave act, 29 U.S.C.S § 2612(a)(1)(e) and 29 C.F.R. § 825.126(a)(1)-(8), arising out of the fact that the spouse, domestic partner, child, or parent of the employee is on active duty (or has been notified of an impending call or order to active duty) in the armed forces of the United States.

"Care" means physical, emotional support, visitation, assistance in treatment, transportation, arranging for a change in care, assistance with essential daily living matters and personal attendant services.

The employee must be in close and continuing proximity to the care recipient (i.e., present at the same location as the family member requiring care during the majority of the leave requested. Travel necessitated for securing medication or

to arrange care for the family member, or other such deviations determined to be reasonably related to providing care, shall satisfy this definition.

“Child” means a biological, adopted or foster child or stepchild of the eligible employee or his/her domestic partner; legal ward of the employee; or a child for whom the employee stands in loco parentis. A child must either be under the age of 18 or incapable of self-care because of mental or physical disability.

“Domestic Partner” means domestic partner as defined in Section 4 of the Workers Compensation Law.

“Family Member” means a child, parent, grandparent, grandchild, spouse, or domestic partner as defined herein.

“Eligible employee” means an employee who is represented by a participating union, or a confidential employee in a title represented by a participating union, and is either full-time who works a regular schedule of 20 hours or more per week for 26 weeks; or part-time who works a regular schedule of less than 20 hours per week for 175 days, which need not be consecutive.

“Parent” means a biological, foster, or adoptive parent, a parent-in-law, a stepparent, a legal guardian, or other person who stood in loco parentis to the employee when the employee was a child.

“Grandchild” means a child of the employee's child.

“Grandparent” means a parent of the employee's parent.

“Serious health condition” means an illness, injury, impairment, or physical or mental condition, including transplantation preparation and recovery from surgery related to organ or tissue donation, that involves inpatient care in a hospital, hospice, or residential health care facility, continuing treatment or continuing supervision by a health care provider. Continuing supervision by a health care provider includes a period of incapacity which is permanent or long term due to a condition for which treatment may not be effective where the family member is under the continuing supervision of, but need not be receiving active treatment by, a health care provider.

“Health Care Provider” includes Physician, Physician Assistant, Chiropractor Dentist, Physical Therapist, Nurse Practitioner, Registered Professional Nurse, Podiatrist, Optometrist, Psychologist, Clinical Social Worker, Occupational Therapist, Midwife, Mental Health Practitioner, Speech-language Pathologists, Audiologists.

“Military Active Duty or “Call to Active Duty Status” means (1) in the case of a member of the Regular Armed Forces, deployment to a foreign country, and (2) in the case of a member of the Reserve components of the Armed Forces, duty during deployment in a foreign country under a call or order to active duty or notification of an impending call or order to active duty in support of a military operation defined as a contingency operation.

“Contingency Operation” is a military operation that is designated by the Secretary of Defense as an operation in which members of the Armed Forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an

opposing military force.

"Qualifying event" means the birth of a child(ren), the formal adoption of child(ren) under the age of 18, the placement of child(ren) under the age of 18 in foster care, or to care for a child incapable of self-care because of mental or physical disability; caring for a close relative with a serious health condition; or assist loved ones when a family member is deployed in a foreign country on active military service. If the qualifying event is the placement of a child with an eligible employee for foster care, the eligible employee uses PFL during that qualifying event, and such placement subsequently becomes an adoption of that same child by the same employee, the adoption will not be considered a qualifying event, and the eligible employee will not be entitled to additional PFL for the adoption.

"Average Weekly Wage" means for the purpose of computing the PFL benefit, the amount determined by dividing either the total wages of the employee in the employment of his/her last covered employer for the eight weeks or portion thereof that the employee was in such employment immediately preceding and including his/her last day worked prior to the first day of PFL, or the total wages of the last eight weeks or portion thereof immediately preceding and excluding the week in which PFL began, whichever is the higher amount, by the number of weeks or portion thereof of such employment.

### **3. GENERAL PROVISIONS**

#### **A. Paid Family Leave Benefits**

1. An eligible employee may be entitled to benefits for leave taken from work for the following qualifying events:
  - a. To participate in providing care, including physical or psychological care for a family member of the employee made necessary by a serious health condition of the family member;
  - b. For the employee to bond with the employee's child:
    - during the first 12 months after the child's birth;
    - during the first 12 months after the placement of the child for adoption or foster care; or
    - before the actual placement or adoption of a child if an absence from work is required for the placement for adoption or foster care to proceed.
  - c. Due to any qualifying exigency pursuant to FMLA, arising out of active duty or an impending call or order to active duty in the Armed Forces of the United States for the spouse, domestic partner, child or parent of the employee.

2. No employee shall be entitled to PFL benefits:
  - a. For any disability intentionally caused by the employee to another or resulting from the employee's illegal act;
  - b. For any day of family leave during which the employee performed work for the employer for remuneration or profit;
  - c. For any family leave commencing before the employee becomes eligible for PFL benefits;
  - d. For any disability of the employee.

B. Eligibility

1. Full-time employees who work a regular schedule of 20 hours or more per week are eligible for Paid Family Leave after 26 consecutive weeks of employment, commencing with the employee's City Start date.
2. Part-time employees who work a regular schedule of less than 20 hours per week are eligible after working 175 days, which need not be consecutive, commencing with the employee's City Start date.
3. The annual period during which an employee is eligible for a defined number of weeks of Paid Family Leave, as set forth below in subsection "C," below, is defined as a rolling 12-month period measured backward from the first date that the employee begins using PFL.
4. Once eligibility requirements are met, employees remain eligible until employment is terminated with the City of New York, or if the employee moves to a non-eligible title.
5. The Paid Family Leave benefit is paid through a small payroll deduction. These rates are set annually, no later than September 1 of the preceding year, by the New York State Superintendent of Financial Services pursuant to Workers' Compensation Law 209(3)(b) and Insurance Law § 4235(n)(1). Please refer to the Paid Family Leave website (<https://paidfamilyleave.ny.gov/>) for the latest information on rates. An employee who does not expect to work for the City for the minimum amount of time required for eligibility may opt out of PFL by completing a PFL waiver. The agency must confirm that the employee will be hired for less than the minimum amount of time required for eligibility. A waiver of PFL benefits may be granted when:
  - a. An employee whose work schedule is 20 hours or more per week, will not work for 26 consecutive weeks; or
  - b. An employee whose work schedule is less than 20 hours per week will not work 175 days in a 52-consecutive week period.

Paid Family Leave Deduction Example for 2020		
Worker's Weekly Wage	Weekly PFL Deduction (2020)	Annual PFL Deduction
\$600	\$1.62	\$84.24
\$1,000	\$2.70	\$140.40
\$2,000	\$5.40	\$196.72

Please note these are weekly wages. You may be paid biweekly.

C. Computation of Benefits

1. The Paid Family Leave wage replacement benefit is increasing. In 2020, employees taking Paid Family Leave will receive **60% of their average weekly wage**, up to a cap of 60% of the current Statewide Average Weekly Wage (SAWW) of \$1,401.17. These rates are set by the New York State Department of Labor's Research and Statistics Division. The **maximum weekly benefit for 2020 is \$840.70**.

Paid Family Leave Benefits Examples for 2020	
Worker's Average Weekly Wage	Weekly PFL Benefit (2020)
\$600	\$360
\$1,000	\$600
\$2,000	\$840.70

The PFL benefit will increase through 2021 as provided below.

Benefits Increase Through 2021		
Year	Weeks of Leave	Benefit
2019	10 weeks	55% of employee's AWW, up to 55% of SAWW
2020	10 weeks	60% of employee's AWW, up to 60% of SAWW
2021	12 weeks	67% of employee's AWW, up to 67% of SAWW

Please note your AWW is based on your wages weekly. You may be paid biweekly.

2. PFL may be taken consecutively or intermittently.
3. Group Health Insurance must be maintained for an employee on PFL on the same terms as if the employee had continued to work. If the employee contributes to the cost of their health insurance, the employee must continue to pay his/her portion of the premium cost while on Paid Family Leave.

#### D. Other Conditions

1. Leave under the Family and Medical Leave Act (FMLA) shall run concurrently with PFL, if the employee is eligible for FMLA leave for the same reason for which PFL leave is taken. If the employee is eligible for both PFL and FMLA, the agency should inform the employee at the time of the initial request.
2. When an employee requests leave for a PFL qualifying purpose but does not request to use PFL leave, it is the agency's responsibility to designate such leave as PFL leave.
3. If leave to bond with the employee's child is interrupted or ceased as a result of the child(ren) no longer being under the care of the eligible employee, the eligible employee must immediately notify the human resources department of his/her agency and end his/her PFL benefits,
4. An employee may not simultaneously receive pay from accrued leave balances and PFL benefits. If an employee receives pay from accrued leave balances for leave qualifying for PFL, the leave taken will count towards the PFL entitlement.
5. An employee who uses applicable leave balances during the PFL period will accrue annual and sick leave during the PFL period in accordance with the applicable leave regulations. An employee will not be credited with the annual and sick leave time accrued while on PFL until the employee returns from PFL. If an employee chooses not to use applicable leave balances during the PFL period, and therefore, is on unpaid leave, the employee will not accrue any annual and sick leave balances during that period in accordance with the applicable leave regulations.
6. PFL must be taken intermittently in full day increments only. Any changes to the employee's work schedule must be pre-verified by the employee's Agency.
7. Any changes to an employee's Return to Work date must be pre-verified by the employee's Agency.

#### E. Restoration

An employee who returns from PFL must be restored to his or her previous position or to an equivalent position. An equivalent position is a position in the same civil service title which has the same pay, benefits, and working conditions (including the same worksite or a geographically proximate worksite). A geographically proximate worksite is one that does not involve a significant increase in commuting distance or time. If the employee is denied restoration or other benefits, the agency must be able to show that the employee would not have continued to be employed, or to have received the benefits, if the employee had been continuously employed during the leave period.

### **4. PROCEDURES**

#### A. How to Apply for Benefits

1. There are four basic steps for an employee to request PFL.

- a. When the PFL is foreseeable, an employee must give his/her agency at least 30 calendar days notice before the leave begins. Otherwise, the employee must notify the agency as soon as possible. This requirement may be waived at the discretion of the agency head.
  - b. Next, the employee request form package from agency human resources (HR) and complete the Request for Paid Family Leave (Form PFL-1).
  - c. The agency must fill out their section of the form within three business days and send it to the insurance carrier for processing. The employer should provide the employee a copy of the form for his/her records.
  - d. The insurance carrier must pay or deny the employee's request within 18 calendar days of receiving the completed request. Visit the How to Apply section linked at the end of the document for complete details and links to forms.
2. Required Supporting Documentation: When requesting PFL, the employee will need to file a Request for Paid Family Leave form as well as documentation in support of the PFL request. The specific documentation required varies based on the type of leave, as outlined below:
- a. For the Birth of a Child:
    - i. The Birth mother will need the following documentation:
      - Birth certificate; or
      - Documentation of pregnancy or birth from a health care provider (includes mother's name and due/birth dates).
    - ii. A second parent will need the following documentation:
      - Birth certificate, or if not available, a voluntary acknowledgement of paternity or court order of filiation; or
      - A copy of documentation of pregnancy or birth from a health care provider (includes mother's name and due/birth dates) and a second document verifying then parent's relationship with the birth mother or child.
  - b. For Foster Care:
    - i. Letter of placement issued by county or city department of social services or local voluntary agency.
    - ii. If second parent is not named in documentation, a copy of that documentation plus a second document verifying relationship to the parent named in the foster care placement.
  - c. For Adoption:
    - i. Legal evidence of adoption process.

- ii. If second parent is not named in legal documents, the second parent must provide a copy of the legal evidence of adoption process and a second document verifying the relationship to the parent named in the document.

d. For Leave to Care for a Serious Medical Condition:

If the employee is planning to request Paid Family Leave to care for a family member with a serious health condition, make sure the family member's health care provider completes the Health Care of a Family Member with Serious Health Condition (Form PFL-4) as soon as possible. This form is a required part of the request for PFL, so it must be submitted to the PFL insurance carrier within 30 days of the first date of the PFL.

e. For Military-related Leave:

- a. US Department of Labor Military Family Leave Certification (Federal Military Leave Form).
- b. Copy of Military Duty Papers.
- c. Other documentation supporting the reason for the leave (copy of meeting notice or other meeting documentation, ceremony details, rest and recuperation orders, etc.).
- f. Please contact the insurance carrier directly for additional information or with any questions regarding Paid Family Leave. Their contact information is listed on the bottom of "Paid Family Leave Application Process Steps."

**B. Returning from PFL Early, Extending PFL, and Termination of PFL**

1. If an employee would like to return from PFL earlier than initially requested, or would like to extend the PFL, the employee must send the request to the agency HR for verification. Once verification is obtained, the employee must notify the insurance carrier of the change in schedule. The insurance carrier will then contact the agency to verify the information.
2. If employment is terminated with the City of New York, or if the employee moves to a non-eligible title, the Agency must notify the insurance carrier that benefits are to be terminated.



C. Dispute Resolution

1. Informal Resolution. The employee and insurance carrier shall make every effort to informally resolve a denial of PFL benefits.
2. Arbitration. In the event an informal resolution is unsuccessful, any party may seek a formal resolution through arbitration. Any claim-related dispute, including eligibility, benefit rate, and duration of family leave, is subject to arbitration pursuant to procedures promulgated or approved by the New York State Chair of the Workers' Compensation Board. Awards are made in writing and are final and binding on the parties in the case subject to Article 75 of the Civil Practice Law and Rules.

D. Overpayment to the Employee from the Carrier

The employee is responsible for any overpayment made from the insurance carrier to the employee.

E. Protection from Discrimination and Retaliation

The employer is strictly prohibited from discriminating or retaliating against an employee for requesting or taking Paid Family Leave.

**PFL Forms:**

[PFL-1 Instructions](#)

[Absolve Portal Login Instructions](#)

[PFL-1 Bond with a Newborn, a Newly Adopted or Foster Child](#)

[PFL-1 Assist Families in Connection with a Military Deployment](#)

[PFL-1 Care for a Family Member with a Serious Health Condition](#)

[Agency Handoff Document](#)

[PFL-Waiver](#)

[List of Covered Unions](#)

[PFL Employee Fact Sheet](#)

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