



OPERATING PROCEDURE NO. 20-71
PAID FAMILY LEAVE FOR REPRESENTED EMPLOYEES

Effective Date: January 6, 2019, approved by Mitchell Katz, President and CEO

Responsible Department: Human Resources

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Sub-Department(s): Labor Relations

Regulatory Requirements: Section 355.4 of Title 12 of the NYCRR

Required Date of Review: January 31, 2021

I. PURPOSE:

To set forth the NYC Health + Hospitals (herein referred to as the "System") policy related to Paid Family Leave (PFL). 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 abroad on active military service.

II. ELIGIBILITY:

1. Full-time employees in covered Collective Bargaining Units (CBUs)¹ who work a regular schedule of 20 hours or more per week are eligible for PFL after 26 consecutive weeks of employment, commencing with the employee's System start date.
2. Part-time employees in covered CBUs 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 System start date.
3. Once eligibility requirements are met, employees remain eligible until employment is terminated with the System, or until the employee moves to a non-eligible CBU.
4. Waiver: An employee in a covered CBU who does not expect to work for the System for the minimum amount of time required for eligibility may opt out of

¹ Covered CBUs and copies of all forms are in the Section VIII. Attachments.

PFL by completing a PFL waiver form (see forms in Section VIII. Attachments). An employee's waiver request is subject to the System's confirmation that the employee will be hired for less than the minimum amount of time required for eligibility. A waiver 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.
5. Exclusions: No employee shall be entitled to PFL benefits:
- a. For any day of family leave during which the employee performed work for the employer for remuneration or profit;
 - b. For any family leave commencing before the employee becomes eligible for PFL benefits; or
 - c. For any illness or medical condition of the employee.

III. **DEFINITIONS:**

1. **Average Weekly Wage (AWW) (for purposes of calculating the PFL benefit)** shall mean, the amount determined by dividing either the total wages of the employee for the eight weeks or portion thereof that the employee was in employment with the System immediately preceding and including their 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.
2. **Care** shall mean physical, emotional support, visitation, assistance in treatment, transportation, arranging for a change in care, assistance with essential daily living matters and personal attendant services.
 - a. 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.
3. **Child** shall mean a biological, adopted, or foster child or stepchild of an eligible employee or a son or daughter of a domestic partner, legal ward of the employee; or a child for whom the employee stands in loco parentis. A child must be under the age of 18 or incapable of self-care because of a mental or physical disability.
4. **Contingency Operation** shall mean 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 abroad.

5. **Domestic Partner** shall mean domestic partner as defined in Section 4 of the Workers' Compensation Law.
6. **Eligible Employee** shall mean an employee who is in a CBU represented by a participating union or a confidential employee in a title represented, 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.
7. **Family Leave** shall mean any leave taken by an employee from work:
 - a. To participate in providing care, including physical or psychological care, for a family member with a serious health condition; or
 - b. To bond with the employee's child during the first twelve months after the child's birth, or after placement with the employee of the child for adoption or foster care; or
 - c. Because of any qualifying exigency as interpreted under the Family and Medical Leave Act (FMLA), 29 U.S.C.S § 2612(a)(1)(e) and 29 C.F.R. S.825.126(a)(1)-(8) arising out of the active duty deployment or notice of impending deployment abroad of a spouse, domestic partner, child, or parent in the armed forces of the United States.
8. **Family Member** shall mean a child, parent, grandparent, grandchild, spouse, or domestic partner as defined herein. Proof of relationship must be provided.
9. **Grandchild** shall mean a child of the employee's child.
10. **Grandparent** shall mean a parent of the employee's parent.
11. **Health Care Provider** shall include 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, and Audiologists.
12. **Military Active Duty** or **Call to Active Duty Status** shall mean duty under a call or order to active duty or notification of an impending call or order to

active duty abroad in support of a military operation defined as a contingent operation.

13. **Parent** shall mean 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.
14. **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.
15. **Qualifying event shall mean:**
 - a. the birth of a child(ren),
 - b. the formal adoption of child(ren) under the age of 18,
 - c. the foster care placement of child(ren) under the age of 18, or
 - d. to care for a child incapable of self-care because of mental or physical disability;
 - e. caring for a close relative with a serious health condition; or
 - f. assisting loved ones when a family member is deployed abroad on active military service.

If the qualifying event is the placement of a child with an eligible employee for foster care, and 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 eligible employee will not be entitled to additional PFL for the adoption.

IV. **POLICY:**

1. **General Provisions:**

- a. The System will provide Paid Family Leave to eligible employees who are represented by participating unions in accordance with the New York State (NYS) Paid Family Leave Law (PFL or PFL) and this policy. PFL will be provided up to the maximum allowed in that year for a 12-month period rolling backwards. Paid Family Leave may be taken by an eligible employee:
 - i. To participate in providing care, including physical or psychological care, for a family member with a serious health condition; or
 - ii. To bond with the employee's child during the first twelve months after the child's birth, or after placement with the employee of the child for adoption or foster care; or

- iii. Because of any qualifying exigency as interpreted under the Family and Medical Leave Act (FMLA), 29 U.S.C.S § 2612(a)(1)(e) and 29 C.F.R. S.825.126(a)(1)-(8) arising out of the active duty deployment or notice of impending deployment abroad of a spouse, domestic partner, child, or parent in the armed forces of the United States.
2. Intermittent PFL: Paid Family Leave may be taken continuously or intermittently. Intermittent PFL must be taken in full day increments. Any changes to the employee's work schedule, must be pre-verified with HRSS Leaves.
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 costs of their health insurance, the employee must continue to pay their portion of the premium cost while on Paid Family Leave. The employee will be billed directly by the group health insurance carrier. If the employee fails to pay their portion of the group health insurance for 30 days, the group health insurance may be terminated upon 15 day notice to the employee.
4. FMLA Interaction with PFL: 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 reasons for which PFL is taken. If the employee is eligible for both PFL and FMLA, HRSS Leaves shall inform the employee at the time of initial request.
5. Child Care Leave Interaction with PFL: Leave taken under the System's Child Care Leave policy shall run concurrently with PFL, if the employee is eligible for Child Care Leave for the same qualifying event for which the PFL is taken. If the employee returns to work immediately following the PFL, the remaining portion of the Child Care Leave will not be forfeited. If the employee is eligible for both Child Care Leave and PFL, HRSS Leaves shall inform the employee at the time of initial request.
6. Accrued Paid Leave Balances: An employee may not simultaneously receive pay from accrued leave balances and PFL benefits. If an employee receives pay from their accrued leave for a PFL qualifying event, the leave taken will count towards the PFL entitlement.
7. The Accrual of Paid Leave While on PFL: An employee will not accrue annual and sick leave during the PFL when the employee is receiving PFL benefits. Annual and sick leave will accrue, however if the employee is using accrued leave balances while on PFL instead of receiving the PFL benefit. When the employee is using their paid accrued leave balances while on PFL,

the accrued leave time will not be credited until the employee returns to active service.

8. Return to Work; Extending PFL; and Terminating PFL: Any changes to the employee's return to work date must be pre-verified by HRSS Leaves Administration and communicated to the facility HR department and the employee's department.
- 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 HRSS 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.
 - Occupational Health Services (OHS) clearance is **not** required because absences for PFL are not related directly to the employee's health.
 - 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.

9. Job 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 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.

10. Payroll Deductions:

The Paid Family Leave benefit is paid through a payroll deduction from eligible employees. These rates are set annually, no later than September 1st 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.

PFL Payroll Deduction Example* for 2019		
Worker's Weekly Wage	Weekly PFL Deduction (2019)*	Annual PFL Deduction
\$600	\$0.92	\$47.85
\$1,000	\$1.53	\$79.56
\$2,000	\$3.06	\$107.97

*The example is based upon weekly wages. You may be paid biweekly.

11. Computation of Benefits

Beginning in January 2019, eligible employees taking Paid Family Leave (PFL) will receive 55% of their average weekly wage (AWW), up to 55% the current Statewide Average Weekly Wage (SAWW) of \$1357.11. These rates are set by the New York State Department of Labor's Research and Statistics Division. The maximum benefit for 2019 is \$746.41.

Paid Family Leave Benefits Example** for 2019	
Worker's Average Weekly Wage (AWW)**	Weekly PFL Benefit for 2019
\$600	\$330
\$1,000	\$550
\$2,000	\$746.41*

*\$746.41 is 55% of the SAWW of \$1357.13

**The example is based upon weekly wages. You may be paid biweekly.

Benefit Increases Through 2021		
Year	Weeks of Leave	Benefits
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

12. Overpayments to the Employee from the Carrier:

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

13. Protection from Discrimination and Retaliation:

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

14. Dispute Resolution

- a. Informal Resolution: The employee and insurance carrier shall make every effort to informally resolve a denial of PFL benefits.
- b. 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 Chair of the New York State 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.

V. **PROCEDURES:**

1. **How to Apply:**

There are four basic steps for an employee to request PFL:

- a. When the PFL is foreseeable, an employee must give their department and the Insurance carrier at least 30-calendar-days-notice before the leave begins. When the need for a leave is not foreseeable, the employee must give notice as soon as possible.
- b. The employee visits ESS.nychhc.org to review application forms and calls the toll free number to begin an application with the carrier. The carrier explains the process to the employee and will complete the application by asking the employee questions. The carrier sends the employee the application to sign and certify its accuracy and also sends the form to HRSS Leaves to verify the information. Once completed, the forms are signed by HRSS Leaves and sent back to the carrier for processing.
- c. The carrier provides HRSS Leaves Administration with access to data on leave requests and the status of claims so PeopleSoft HR can be updated.
- d. The insurance carrier must pay or deny the employee's request within 18 calendar days of receiving the completed request.

2. **Supporting Documentation Required:**

When requesting PFL, the employee will need to complete a Request for Paid Family Leave form directly with the insurance carrier over the telephone and must also submit to the carrier certain documentation in support of the PFL request. The specific documentation required varies based on the type of leave, as outlined below:

- a. To Bond With a Child the birth mother will need a copy of the birth certificate, if available. If a copy of the birth certification is not available, then documentation of pregnancy or birth from a health care provider (must include mother's name and due/birth dates).
- b. A second parent will need:
 - i. Birth certificate, or if not available, a voluntary acknowledgement of paternity or court order of filiation; or
 - ii. 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 the parent's relationship with the birth mother or child.
- c. For Foster Care Placement:
 - i. A 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 the relationship to the parent named in the foster care placement.
- d. For Adoption:
 - i. Legal evidence of adoption
 - 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.
- e. To Care for a Family Member with a Serious Health Condition:
 - i. 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.
 - ii. 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.
- f. For Military-related Leave:
 - i. US Department of Labor Military Family Leave Certification (Federal Military Leave Form).
 - ii. Copy of Military Duty Papers.
 - iii. Other documentation supporting the reason for the leave (copy of meeting notice or other meeting documentation, ceremony details, rest and recuperation orders, etc.).

VI. **RESPONSIBILITIES:**

1. **Employee Responsibility:**
 - a. Notifies HRSS Leaves, the employee's Department and the insurance carrier at least 30 days in advance of a need to take PFL.
 - b. Requests PFL at least 30 days in advance when foreseeable using insurance carrier forms.
 - c. Provides all required supporting documentation directly to the insurance carrier with the application.
 - d. Signs and dates the application and return to the carrier promptly.
2. **HRSS Leaves Administration Responsibility:**
 - a. Informs employee at the time of request if the employee taking PFL is eligible for any other type of leave that runs concurrently or sequentially with PFL.
 - b. Verifies and validates PFL -1 Application, Parts A & B with the carrier.

- c. Keeps track of all leave taken by employees that runs concurrently and designate accordingly.
- d. Reviews and make determinations about waivers based on the established criteria in Section II.4.
- e. Provides wage data as requested to establish the average weekly wages and benefits of employees requesting PFL.

3. **Payroll Responsibility:**

- a. Provides information to assist HRSS Leaves in making determinations about waivers.

4. **EITS Responsibility:**

- a. Establishes a data feed process whereby the insurance carrier will have sufficient employee data on eligible employees to complete the employer sections of the Request for a PFL leave form.
- b. Submits that data to the insurance carrier on the agreed upon frequency.

VII. INTERPRETATION:

The Vice President of Human Resources is responsible for interpreting this Operating Procedure through additional memorandums as necessary.

VIII. ATTACHMENTS:

List of Covered Unions/Collective Bargaining Units (CBUs)

PFL – Bonding Application

PFL - Care for a Family Member Application

PFL - Military Application

How to Apply for PFL– Process Flow

PFL Denial Form

PFL - Waiver for Employees to Opt-out of Paid Family Leave Benefits

PFL Employee Statement of Rights