



OPERATING PROCEDURE NO. 20-71
PAID FAMILY LEAVE

Effective Date¹: April 25, 2024 approved by Mitchell Katz, President and CEO 

Responsible Department: Human Resources

Regulatory Requirements: Title 12 of the NYCRR

I. PURPOSE

As set forth the NYC Health + Hospitals (herein referred to as the “System”) policy related to Paid Family Leave (**PFL**). System employees in managerial titles and titles represented by unions that have collectively bargained an agreement to opt into New York State (NYS) Paid Family Leave benefits will be eligible to take paid family leave (“PFL”). PFL is an employee-funded insurance policy that provides job-protected, partial paid time-off for covered NYS PFL leave types, not related to employee self-illness.

II. ELIGIBILITY

- A. Full-time employees in covered CBUs² who work a regular schedule of 20 hours or more per week are eligible for PFL after 26 consecutive weeks of employment in eligible title, based on the effective benefit start date.
- B. Effective **June 30, 2024** full-time managerial employees who work a regular schedule of 20 hours or more per week are eligible for PFL after 26 consecutive weeks of employment in eligible title, based on the effective benefit start date.
- C. Part-time employees in covered CBUs and managerial 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 effective benefit start date in eligible title.
- D. Once eligibility requirements are met, as determined by the third-party administrator and insurance carrier, employees remain eligible until employment is terminated with the System, or until the employee moves to a non-eligible title or CBU.

¹ This Operating Procedure replaces OP 20-71 dated January 6, 2019.

² Covered CBUs found on the Paid Family Leave page
[List-of-Represented-Unions-CBUs.pdf \(nychhc.org\)](#)

- E. **Exclusions:** No employee shall be entitled to PFL benefits:
1. For any illness or disability caused by the employee to another or resulting from the employee's illegal act;
 2. For any day of family leave during which the employee performed work for the employer for remuneration or profit;
 3. For any family leave commencing before the employee becomes eligible for PFL benefits;
 4. For any disability of the employee;
 5. Employees may only be in one approved leave status at any given time;
 6. Employees may not be actively paid on NYC H+H payroll and be paid by the insurance carrier or third-party administrator, for the same dates of absence.
 7. Any calculations regarding PFL benefits are determined by NYS PFL and are followed by NYC Health & Hospitals as published by the NYS PFL website.

III. **DEFINITIONS**

- A. **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.
- B. **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. Proof of relationship shall be required.
- C. **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. Supporting documentation will be required.
- D. **Domestic Partner** shall mean domestic partner as defined in Section 4 of the Workers' Compensation Law.
- E. **Family Leave** shall mean any eligible leave taken by an employee from work, as approved by the third-party administrator.
- F. **Family Member** shall be defined by NYS PFL.
- G. **Health Care Provider** is determined by NYS PFL
- H. **Serious health condition** is criteria as established by NYS PFL.
- I. **Qualifying event** is criteria as established by NYS PFL.

IV. POLICY

A. General Provisions:

1. The System will record Paid Family Leave to eligible employees who are represented by participating unions, as well as other System titles deemed eligible, in accordance with the New York State (NYS) Paid Family Leave Law (PFL). PFL is managed by a third-party administrator and insurance carrier 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:
 - 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. If an employee is already on Child Care Leave, pursuant to OP 20-21, and requests PFL beyond 12 weeks of the birth or adoption of the same child, the approved Child Care Leave will be deemed disrupted and will be replaced by PFL. The employee will be expected to return to work at the end of their PFL. The initially approved Child Care Leave will not be held in abeyance regardless of the initial Child Care Leave approval. In no instance may PFL be granted after 12 months of the birth or placement of a child; 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.

B. Intermittent PFL: Paid Family Leave may be taken continuously or intermittently. Intermittent PFL, as approved by third party administrator, must be taken in full day increments. Any changes to the employee's work schedule, based on the employee's request, must be addressed by the department and respective time keeping processes. As a reminder, Child Care Leave pursuant to Operating Procedure 20-21 cannot be taken intermittently.

C. Group Health Insurance: Must be maintained for an employee with active health care benefits. PFL approval is not considered a basis for enrollment in benefits by health insurance carriers. 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. Any benefits granted through a union welfare fund is addressed separately.

- D. 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. Birth parent employees may delay the start of their PFL related to bonding, to use accrued paid sick leave to recover from childbirth and delivery or because of a pregnancy-connected disability, that occurs during the applicable period of incapacity due to childbirth and delivery (6-8 weeks depending on birth type) as indicated in a medical certification for employee's own disability. Usage of accrued paid sick leave will not be permitted beyond the applicable period of incapacity medically documented.
- E. Workers Compensation Interaction with PFL: Workers Compensation Leaves cannot run concurrently with PFL.
- F. Child Care Leave Interaction with PFL: Leave taken under the System's Child Care Leave policy (OP 20-21) shall run concurrently with PFL, if the employee is eligible for Child Care Leave for the same qualifying event (e.g. bonding) for which the PFL is taken. Regardless of duration, child care leave must be used in one continuous absence. If an employee returns to work at the end of paid family leave, the ability to apply for additional child care leave will be forfeited. Child care leave may not be taken on an intermittent or reduced leave schedule. Employees found not to be eligible for Child Care leave, must return to work at the end of the PFL period. As a reminder, Residents and Fellows are not eligible for Child Care Leave under OP 20-21. Regardless if an employee is eligible for FMLA, PFL does not extend any total leave entitlement under Child Care Leave OP 20-21.
1. Birth parent employees are responsible for providing HRSS Leaves Administration medical documentation/ or attestation regarding the beginning and end of their disability related to the birth of the child. Any delay in receiving this information will result in delays for eligible approvals by the third-party administrator.
- G. Accrued Paid Leave Balances: An employee may not simultaneously receive pay from accrued leave balances and PFL benefits as managed by the third-party administrator and insurance carrier. An employee must elect, in advance of any PFL approval, to be paid using their existing leave accruals during PFL or to receive PFL benefits directly from the third-party administrator and insurance carrier. Once employee elects to receive PFL benefits from third party administrator, their pay status with NYC H+H will be suspended until the return from PFL. If an employee receives pay from their accrued leave balances for a PFL qualifying event, the leave taken will count towards the PFL entitlement by the third-party administrator. If an employee receives any overpayment by NYC H+H Payroll the employee must coordinate directly with Payroll to recoup the

funds. Any delays in repayment will impact third-party administrator processing PFL benefits.

- H. The Accrual of Paid Leave While on PFL: An employee will not accrue leave balances during the PFL when the employee is receiving PFL benefits as managed under the third-party administrator and insurance carrier. 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 work from leave.
- I. Return to Work; Extending PFL; and Terminating PFL: Any changes to the employee's return to work date must be approved by HRSS Leaves Administration. If employment is terminated or if the employee moves to a non-eligible title, the System shall notify the third-party administrator and insurance carrier that benefits are to be terminated.
- J. Occupational Health Services (OHS): OHS clearance will **not** be required for birth parents returning from child care and bonding leaves, whose total continuous leave is one year or more and no medical issues being raised at time of return. OHS clearance for other types of Leaves under PFL is **not** required as these absences are not related directly to the employee's health or illness.
- K. Job Restoration: An employee who returns from PFL must be restored to their 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 System shall demonstrate 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.
- L. Payroll Deductions: The Paid Family Leave benefit is paid through a payroll deduction from eligible employees. These rates are set annually 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.
- M. Computation of Benefits
 - 1. Eligible employees taking Paid Family Leave (PFL) will receive **67% of their average weekly wage (AWW)**, not to exceed the maximum weekly benefit established. These rates are set by the NYS PFL.
- N. Protection from Discrimination and Retaliation
 - 1. The employer is strictly prohibited from unlawfully discriminating or retaliating against an employee for requesting or taking Paid Family Leave.

O. Dispute Resolution

1. Informal Resolution: The employee and insurance carrier shall make every effort to informally resolve a denial of PFL benefits. The third-party administrator may assist employee in the process; notably denials are not reviewed by HRSS Leaves Administration.
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 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

A. How to Apply

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

1. When the PFL is foreseeable, an employee shall give HRSS Leaves Administration and the third-party administrator 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.
2. The employee may visit ESS.nychhc.org/paid-family-leave.html to review related information. The employee contacts the third-party administrator for any questions regarding eligibility. The employee will complete the application process through the third-party administrator.
3. The third-party administrator provides HRSS Leaves Administration with access to information on leave requests and the status of claims so PeopleSoft HR can be updated.
4. HRSS Leaves Administration notifies reports to manager, as reflected in PeopleSoft, of any third-party approvals for PFL.

B. Supporting Documentation Required

As established by third party administrator: Employee is required to comply with inquiries and clarification requested by third party administrator. Failure to comply with third party administrator requests may result in the denial of benefits.

VI. DUTIES AND RESPONSIBILITIES

A. Employee Responsibility

1. Notifies HRSS Leaves Administration, the employee's department and the Third-Party Administrator at least 30 calendar days in advance of a need to take PFL.
2. Requests PFL at least 30 calendar days in advance using third party administrator application process.
3. Provides all required supporting documentation directly to the third-party administrator with the application, as required.

4. Birth parent employees are required to provide HRSS Leaves Administration with documentation regarding disability/dates of incapacity. Employee is responsible to enroll dependent for health care benefit related matters within 30 calendar days of qualifying event.
5. Must record time according to specific intermittent leave approval and usage. It cannot be taken continuously.

B. HRSS Leaves Administration Responsibility

1. Tracks leave taken by employees that run concurrently and designates accordingly. Sends employee information as related to PFL-1, Part B- Employer Information section of the application process.
2. Updates PeopleSoft Job Data to reflect approved PFL.

C. Department Responsibility

1. To appropriately record timekeeping record for employee's leave dates.

D. Payroll Responsibility

1. Stops the pay of employees who have been approved for a Paid Family Leave as managed by the third-party administrator and paid directly by the insurance carrier.
2. If an employee is overpaid, recoups such overpayment(s) directly with employee.

E. System Responsibility

1. Provides the Third-Party Administrator or insurance carrier with the most recent 8 weeks of wages prior to the leave start date.
2. Sends employee information regarding PFL -1 Part A, Employee Information.

VII. INTERPRETATION

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

VIII. RESOURCES

List of Covered Unions/Collective Bargaining Units

<https://ess.nychhc.org/uploads/List-of-Represented-Unions-CBUs.pdf>

PFL-Statement of Rights

[NYS-PFL-Statement-of-Rights-New-York-City-Health-Hospitals.pdf \(nychhc.org\)](#)

PFL- Covered Family Members

[Paid Family Leave for Family Care | Paid Family Leave \(ny.gov\)](#)

PFL – Bonding Application

[ML-PFL-NYS-Bonding-Application.pdf \(nychhc.org\)](#)

PFL – Care for a Family Member Application

[ML-PFL-NYS-Care-for-Family-Member-Application.pdf \(nychhc.org\)](#)

PFL – Military Application

[ML-PFL-NYS-Military-Application.pdf \(nychhc.org\)](#)