

NEW YORK STATE DEPARTMENT OF CIVIL SERVICE  
**ATTENDANCE AND LEAVE MANUAL**  
POLICY BULLETIN 2017-02

Section 21.12

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TO: Manual Recipients  
FROM: Scott DeFruscio, Director Staffing Services Division  
SUBJECT: Implementation of Paid Family Leave Benefits for Management/Confidential Employees

### **Introduction**

Legislation enacted in April 2016 (Chapter 54, Laws of 2016) amended Workers' Compensation Law Article 9 to provide for a Paid Family Leave (PFL) benefit for eligible employees working in New York State. PFL is intended to balance the demands of the workplace with the needs of families by providing workers with reasonable amounts of paid time off. It encourages stability in the family and productivity in the workplace.

PFL affords eligible employees the right to take paid leave, *without charge to leave credits*, to participate in providing care, including physical or psychological care, for a serious health condition *of a family member of the employee*; to bond with the employee's biological, adopted, or foster child during the first twelve months after the child's birth or placement in the home; or to attend to obligations arising because the spouse, domestic partner, child, or parent of the employee is on active duty or has been notified of an impending call to active duty in the United States armed forces (a qualifying exigency).

**It should be noted that PFL is not available for an employee's own serious health condition or military activation. PFL is a separate and distinct benefit separate from any other leave available under the Attendance Rules. Payments for PFL will be financed by deductions withheld from an employee's biweekly wages and PFL benefits will be paid by an insurance carrier, MetLife.**

The PFL benefit will be available beginning January 1, 2018 for Management/Confidential (M/C)-designated employees in bargaining units 06, 18, 46, and 66. The PFL benefit may be extended to represented employees through the collective bargaining process. Further information will be provided about represented employees as it becomes available.

### **PFL Monetary Benefit**

The requirement to provide PFL, the amount of PFL authorized, and the amount of pay that an employee may receive will be phased in as follows:

1. On or after January 1, 2018, an employee may receive up to eight weeks of PFL benefits in any 52-week period at 50% of the employee's average weekly wage, not to exceed 50% of the New York State average weekly wage (SAWW).
2. On or after January 1, 2019, an employee may receive up to ten weeks of PFL benefits in any 52-week period at 55% of the employee's average weekly wage, not to exceed 55% of the SAWW.

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3. On or after January 1, 2020, an employee may receive up to ten weeks of PFL benefits in any 52-week period at 60% of the employee's average weekly wage, not to exceed 60% of the SAWW.
4. On or after January 1, 2021, and for each year thereafter, an employee may receive up to twelve weeks in any 52-week period at 67% of the employee's average weekly wage, not to exceed 67% of the SAWW.

### **Eligibility**

M/C employees, including hourly and per diem employees without Attendance Rules coverage, may be eligible for PFL. For purposes of PFL eligibility, New York State is considered one employer. An employee's eligibility for PFL will be determined by the Department of Civil Service and will be available for review and certification by agency Human Resource staff using the New York Benefits Eligibility and Accounting System (NYBEAS).

M/C employees working 20 hours or more per week become eligible for PFL upon completion of twenty-six consecutive weeks of State service. M/C employees who work less than 20 hours per week become eligible for PFL upon completion of one hundred seventy-five days of State service. Unlike the Family and Medical Leave Act (FMLA), there is no requirement of completion of a minimum number of hours worked before an employee becomes eligible for PFL.

A full-time employee who meets the twenty-six consecutive weeks of employment eligibility criteria, and has an agreed upon unpaid leave of absence or vacation, is entitled to PFL immediately upon return to pay status. The employee does not need to work an additional twenty-six consecutive weeks to be eligible for PFL again. Similarly, a part-time employee who meets the one hundred seventy-five days of regular employment eligibility criteria, and has an agreed upon unpaid leave of absence or vacation, is entitled to PFL immediately upon return to pay status. The employee does not need to work an additional one hundred seventy-five days to be eligible for PFL again.

To further clarify, the employee's use of any scheduled vacation time, personal leave, sick leave, other leaves at full pay, or other periods where the employee is away from work but is still considered to be an employee shall be counted toward the twenty-six consecutive work weeks for full-time employees or toward the one hundred seventy-five day requirement for part-time employees, so long as the biweekly premium payment the employee makes to the cost of PFL benefits have been paid for such periods of time.

For purposes of determining eligibility for PFL, separations of less than one year will not constitute a break in service. Once an employee has had a separation of more than one year they will once again have to meet the minimum eligibility requirements for PFL.

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### **Amount of Paid Family Leave to be Granted**

An M/C employee is entitled to receive PFL benefits for up to eight, ten, or twelve weeks (depending on the phase/year) during any 52-week period beginning with the first full day of absence related to the qualifying event. There is no waiting period. PFL may be taken periodically or in a block of time. Please note that this 52-week period is not the same as a calendar year method for determining the amount of FMLA available to an eligible employee.

An employee's entitlement for PFL for bonding with a child after birth or adoption and/or foster care expires at the end of the consecutive 52-week period beginning on the date of the birth, or at the end of the consecutive 52-week period beginning on the date of the child's placement. An employee may use PFL for periodic bonding leave, **but may not charge accruals and receive PFL on the same day.**

It should be noted that an employee may opt to receive Income Protection Plan (IPP) benefits or PFL benefits during the post-partum period during which the employee is disabled, but may not receive both benefits simultaneously.

### **PFL Definitions**

Workers' Compensation Law section 201 provides the following definitions:

1. *Child* – a biological, adopted, or foster son or daughter, a stepson or stepdaughter, a legal ward, a son or daughter of a domestic partner, or the person to whom the employee stands in loco parentis.
2. *Domestic Partner* – has the same meaning as set forth in Section 4 of the Workers' Compensation Law.
3. *Serious Health Condition* – an illness, injury, impairment, or physical or mental condition 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.
4. *Parent* – 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.
5. *Family Member* – a child, parent, grandparent, grandchild, spouse, or domestic partner as defined in this section.
6. *Grandchild* – a child of the employee's child.
7. *Health Care Provider* – a physician, physician's assistant, chiropractor, dentist or dental hygienist, physical therapist or physical therapy assistant, nurse, midwife, podiatrist, optometrist, psychologist, social worker, occupational therapist, speech-language

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pathologist, mental health practitioner, or any person licensed under the NYS Public Health Law.

8. *Grandparent* – a parent of the employee’s parent.
9. *Providing Care* – Physical care, emotional support, visitation, assistance in treatment, transportation, arranging for a change in care, assistance with essential daily living matters, and personal attendant services.

### **Election of PFL Benefits**

The eight, ten, or twelve weeks (depending on the phase/year) of PFL may be taken on a continuous or on a periodic basis. When PFL is taken on a periodic basis, it must be used in **single** day increments. Partial day increments are **not** permitted.

In the event an employee wishes to take time off to care for a qualifying family member an employee **may** elect to receive full pay by using accrued and unused vacation, personal leave, holiday leave, and/or family sick leave available in accordance with the Attendance Rules and the FMLA, or to **not** charge available accrued leave credits and receive the statutory PFL benefit in accordance with the monetary PFL benefits noted above. *Time charged to leave accruals will not count against an employee’s annual PFL entitlement.*

An employee should provide at least 30 days’ advance notice if the reason for PFL is foreseeable. Foreseeable qualifying events include: an expected birth; placement for adoption or foster care; planned medical treatment for a serious health condition of a family member; the planned medical treatment for a serious injury or illness of a covered service member; or other known military exigency. If 30 days’ notice is not practicable then notice must be given as soon as reasonably possible. An employee must advise the employer as soon as possible when dates of a scheduled leave change, are extended, or were initially unknown.

### **Interplay of the Attendance Rules, FMLA, and PFL**

Like the FMLA, PFL provides for the following:

- Prohibition of retaliation against an employee for requesting or for receiving PFL benefits.
- Restoration to the same position or a similar position the employee previously held prior to taking PFL.
- Mandates employers to maintain an employee’s health insurance benefits during the period of PFL, provided the employee pays their share of the premium during the leave.

Statutory PFL benefits must be used concurrently with any entitlements an employee may be eligible for under the FMLA. Unlike the FMLA, PFL benefits are available in **full** day increments only. When an employee exercises the option to use FMLA in less than full day

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increments, the employee is not eligible for PFL. Additionally, unpaid leave taken under the FMLA counts against PFL if an employee wishes to use their PFL entitlement. If an employee wishes to charge accruals under the FMLA, they are not entitled to use their PFL and the time charged to leave credits **does not** count against their PFL entitlement.

*Examples (assume examples below relate to a full time annual salaried employee who meets the eligibility criteria for both FMLA and PFL benefits):*

Example 1:

In February 2018, an employee tells their agency they need to take eight weeks off to care for their 12-year-old child who had orthopedic surgery and requires 24/7 care. The employee has low accrual balances and wishes to use PFL. The employee is not required to exhaust their leave accruals and may submit a claim for PFL immediately. The eight-week absence counts toward both their PFL entitlement (eight weeks in 2018) and their 2018 calendar year FMLA entitlement.

Example 2:

An employee adopts a child in June 2018 and elects to use twelve weeks of unpaid FMLA. In January 2019, the employee requests an additional ten weeks of leave to bond with the adopted child and is approved for an additional twelve weeks of FMLA. The employee may take this time as unpaid FMLA, FMLA charged to accruals, or may elect to submit a claim for up to ten weeks of PFL.

Example 3:

An employee who has exhausted all their sick leave credits tells their agency they require four months (sixteen weeks) off to care for their newborn child. The employee first uses IPP Short Term Disability (STD) benefits during the presumed period of disability following childbirth (generally six weeks under normal circumstances). The employee then opts to take six weeks of unpaid leave under FMLA exhausting their 12-week calendar year FMLA entitlement. Following exhaustion of their FMLA entitlement, the employee may opt to charge vacation and personal leave credits (under the State's longstanding child care leave policy) **or** may request to use PFL benefits by submitting a PFL claim to MetLife.

Example 4:

In July 2018, an employee requests time off to care for their domestic partner who has been diagnosed with a serious health condition. The employee requests every Tuesday, Thursday, and Friday off to accompany their partner to treatment. Since domestic partners are not covered under the FMLA, the employee is entitled to either charge appropriate leave accruals under the Attendance Rules or may elect to use PFL benefits. The employee has the choice of either option (charging appropriate accruals or submitting a claim for PFL) on any given day. However, it should be noted that the employee may not use both PFL and leave accruals on the same day.

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Example 5:

In September 2018, an employee requests eight weeks of time off to care for their spouse with a serious health condition. The employee is approved for FMLA and PFL. The employee chooses to use the entire eight weeks of their 2018 PFL entitlement which runs concurrently with their 2018 calendar year FMLA entitlement. The employee returns to work at the end of the eight-week absence.

In January 2019, the employee requests an additional twelve weeks of leave due to complications of their spouse's serious health condition. The employee once again meets the FMLA eligibility requirements and is granted their 2019 calendar year FMLA entitlement.

Due to the increased PFL benefit for 2019 (ten weeks), the employee is also entitled to, and elects to claim an additional two weeks of PFL, completing the PFL entitlement for the 52-week period from the onset of illness which began in September 2018. The additional two weeks of PFL used in January 2019 brings the employee to a total PFL benefit of ten weeks for the 52-week period which began in September 2018.

Upon exhausting their PFL benefits the employee may elect to use FMLA with or without charge to accruals for the remaining ten weeks.

### **PFL Claim Submission Procedure and Medical Documentation Provisions**

All eligible employees who elect PFL will be paid by MetLife, the insurance carrier – not New York State as their employer. In addition to an agency's normal medical documentation provisions and/or any documentation requirements applicable under the FMLA, an eligible employee who wishes to utilize PFL benefits must complete the appropriate Request for Paid Family Leave form(s):

- Employee Application for Paid Family Leave: Bond with a Newborn, a Newly Adopted or Fostered Child (MET-PFL-1 and MET-PFL-2)
- Employee Application for Paid Family Leave: Care for a Family Member with Serious Health Condition (MET-PFL-1, MET-PFL-3, and MET-PFL-4)
- Employee Application for Paid Family Leave: Assist Families in Connection with a Military Deployment (MET-PFL-1 and MET-PFL-5)

Once the agency is in receipt of the completed form(s) from an employee, the agency must complete the employer information contained in Part B of the MET-PFL-1, verify employee eligibility (using NYBEAS), and return the form to the employee within three business days.

The employee must then submit the request for PFL together with the information supplied by their employer and any necessary certifications or proof of claim documentation, medical, or otherwise, to MetLife. Generally, the medical documentation and/or necessary certifications will be comparable to information normally required by the agency (FMLA documentation or

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documentation from a medical provider which justifies use of leave accruals will normally satisfy this requirement).

The following are the documentation requirements for employees requesting PFL (the employee is not required to submit this information to the agency, but should submit it directly to MetLife):

*Childbirth*

The documentation requirement for a claim for PFL to bond with a newly born child depends on whether the applicant is the birth mother or the second parent.

The birth mother must submit a birth certificate, if available, or documentation of pregnancy or birth from a health care provider. The document must include the mother's name and the child's due date or birth date. The second parent must submit, if available, a birth certificate naming them as a parent. If a birth certificate naming the second parent is not available, the second parent may submit a Voluntary Acknowledgment of Paternity or a Court Order of Filiation naming them as a parent.

If those documents are not available, the second parent can submit birth documentation from the birth mother's health care provider **and** either a marriage certificate or evidence of a civil union or domestic partnership to demonstrate the relationship to the birth mother.

If none of these documents are available, the second parent may submit other documentary evidence of parental relationship to the child, to be evaluated on a case-by-case basis by MetLife.

*Foster Care*

A claim for PFL to bond with a fostered child requires the submission of a letter of placement issued by a county or city department of social services or local voluntary agency. If a second parent is not named in documentation, a copy of the document plus a document verifying the relation to the parent named in the foster care placement will be needed.

*Adoption*

A claim for PFL to bond with an adopted child requires a court document finalizing adoption or, for PFL taken before the adoption is complete, a document showing that the adoption process is underway. Examples of proof of a pending adoption include a signed statement from an attorney, adoption agency, or adoption-related social service provider stating the employee is in the process of adopting a child.

If the second parent is not named in that document, they must also file documentation verifying the relationship to the parent named in the adoption.

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Employees electing PFL to bond with a newborn, or a newly fostered or adopted child must complete MET-PFL-1 “Request for Paid Family Leave” and MET-PFL-2 “Bonding Certification”.

*Serious Health Condition*

A claim for PFL to care for a family member with a serious health condition requires a medical certification completed by the care recipient’s health care provider.

An authorization for personal health disclosure form is required by the HIPAA Privacy Rule and must be completed by the care recipient and retained on file with the health care provider in order to submit the required medical information.

Employees electing PFL to care for a family member with a serious health condition must complete MET-PFL-1 “Request for Paid Family Leave” and MET-PFL-3/MET-PFL-4 “Release of Personal Health Information/Health Care Provider Certification of Family Member with Serious Health Condition Under the Paid Family Leave Law”.

*Active Military Duty Deployment*

A claim for PFL to assist loved ones when a family member is deployed abroad on active military duty generally requires MET-PFL-1 “Request for Paid Family Leave” and either MET-PFL-5 “Military Qualifying Event” certification, or a US Department of Labor “Certificate of Qualifying Exigency for Military Family Leave.” Those forms include (1) military documentation of the family member’s deployment or impending deployment (active duty orders or other notice from the military), and (2) documentation of the reason for leave.

**Impact of PFL on Attendance and Leave Benefits**

PFL does not allow for the accrual of seniority or other benefits during the leave. Employees utilizing PFL benefits are deemed to be in leave without pay status for purposes of the Attendance Rules.

An employee on PFL is not entitled to any credit for holidays (including floating holidays) which fall during a period of such leave. The employee may not be granted leave with full pay or compensatory time off for any such holiday.

An employee on PFL does not earn biweekly vacation or sick leave accruals. Employees on periodic PFL will earn accruals only so long as they are in full pay status (working, charging leave accruals, or on any other leave at full pay) for 7 out of 10 days in a pay period.

An employee's vacation anniversary date is **not** adjusted for periods of statutory PFL. (Note: there may be circumstances when an employee’s PFL is contiguous to another type of leave

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and an adjustment to their vacation anniversary date may be necessary if the total of the leave exceeds six months.) An employee on PFL on their anniversary date is eligible to be credited with vacation bonus days upon return to the payroll.

An employee on PFL on their personal leave anniversary date is not credited with personal leave until they return to the payroll, and that date becomes the new personal leave anniversary date.

Time spent on PFL does not count as service credit toward eligibility for sick leave at half-pay.

An employee on PFL on their IPP grant date is not credited with sick leave until they return to the payroll. For example, an employee's sick leave grant dates are January 1 and July 1. The employee receives four days of sick leave on January 1 and goes on PFL from June 15 through August 1. The employee returns to the payroll on August 2. The employee receives four days of sick leave on August 2 which then becomes one of the two revised sick leave grant dates. (The second grant date then becomes February 2.)

An employee on PFL for 28 consecutive calendar days will have their Voluntary Reduction in Work Schedule (VRWS) agreement suspended.

Employees are not permitted to use PFL benefits during any period they are on leave for any other reason. An employee who is out of work due to a personal or work related disability, or any other type of short or long term leave, may not receive PFL benefits while in such status (e.g., charging leave accruals, workers' comp, leave donation, the disability period following child birth using IPP benefits, disciplinary suspension, etc.). While employees aren't required to return to duty prior to receiving PFL, it must be clear that the leave they were on previously has ended. For example, an employee who was injured at work and was receiving workers' compensation benefits may not elect PFL benefits until the day after they are cleared to return to duty.

It should be noted that PFL may not be used to extend employment beyond the point it would otherwise end by operation of law, rule, or regulation.

For additional information on PFL benefits for M/C employees, including Frequently Asked Questions and claim forms, visit [www.cs.ny.gov/pfl](http://www.cs.ny.gov/pfl).

Questions regarding PFL absences should be directed to the Attendance and Leave Unit at (518) 457-2295. Questions concerning PFL Eligibility should be directed to the Employee Benefits Division at (518) 549-2027. Questions related to the payment of PFL claims should be directed to MetLife at 1-800-300-4296.

**Attached is a chart comparing the provisions of the Attendance Rules, FMLA, and PFL.**

**Comparison of Provisions:  
NYS Attendance Rules, Federal Family Medical Leave Act, and NYS Paid Family Leave**

<b>Family Relationship</b>			
<b>Relationship</b>	<b>New York State Attendance Rules Family Sick Leave (FSL)</b>	<b>Federal Family and Medical Leave Act (FMLA)</b>	<b>New York State Paid Family Leave (PFL)</b>
Spouse	Yes	Yes	Yes
Spousal Equivalent	Only if residing with employee	No, regardless of residence	Yes, Domestic Partner as defined in Workers' Compensation Law (WCL) Section 4
Child Under 18 or Impaired	Yes	Yes	Yes
Child Over 18, not Impaired	Yes	No	Yes
Foster Child or Child <i>in Loco Parentis</i>	Only if residing with employee	Yes, regardless of residence	Yes, regardless of residence
Parents	Yes	Yes	Yes
Parent-in-Law	Yes	No	Yes
Foster Parent or Parent <i>in Loco Parentis</i>	Only if residing with employee	Yes, regardless of residence	Yes
Other Relatives or Relatives-in-Law	Yes, any relative or relative-in-law regardless of residence or any persons with whom an employee has been making his/her home*	No	Yes (Grandparent, Grandchild and Parent-in-Law)

\* Security Units have a broader definition of Family, including the employee's spouse, child, parent, grandparent, brother, sister, parent-in-law, brother-in-law, sister-in-law, grandchild or other relative living in the employee's household.

Impact on Salary and Benefits			
Leave Status	New York State Attendance Rules Family Sick Leave (FSL)	Federal Family and Medical Leave Act (FMLA)	New York State Paid Family Leave (PFL)
Leave at Full Pay	<p>Employee may charge available accrued leave credits. Sick Leave is used first (up to 15 days of Sick Leave may be used for illness of family member). Employee is entitled to use other accruals upon exhaustion of Sick Leave for personal disability.**</p> <p>Use of credits other than Sick Leave for illness in family is discretionary with Appointing Authority.</p>	<p>FMLA does not require an employer to authorize use of paid leave where it would not otherwise be authorized. As a matter of State policy, when use of leave credits would be allowed under the Attendance Rules, employee may elect to use appropriate leave credits during a period of FMLA leave or may choose not to use credits at the employee's option.</p>	<p>Employee may choose to use of Family Sick Leave, Vacation, or Personal Leave for all or part of absence. Time charged to leave accruals does not count against an employee's annual entitlement of PFL.</p>
Leave at Partial Pay	<p>Sick Leave at Half-Pay M/C IPP Benefits (STD 50% / LTD 60%). Both are only available for personal disability of the employee.</p>	<p>Sick Leave at Half-Pay M/C IPP Benefits (STD 50% / LTD 60%). Both are only available for personal disability of the employee.</p>	<p>Employee who <b>chooses</b> not to charge Leave Accruals or Sick Leave at Half-Pay will receive 8 weeks in 2018 and up to 12 weeks of partial pay when fully implemented in 2021 (50% - 67% State Average Weekly Wage) in accordance with WCL section 204, upon the first full day of absence.</p>

\*\* Sick leave credits for absences necessitated by illness in the employee's family are generally restricted to absences occasioned by the need for the services of the employee.

<b>Eligibility</b>			
	<b>New York State Attendance Rules Family Sick Leave (FSL)</b>	<b>Federal Family and Medical Leave Act (FMLA)</b>	<b>New York State Paid Family Leave (PFL)</b>
Full or Partial Day Absences	Employee option of full or partial days.	Employee option of full or partial days.	Full day absences only.
Service Requirements	Immediate Coverage for Annual Salaried Employees.	One Cumulative Year of State Service and 1250 work hours during the 52 consecutive weeks immediately preceding the date FMLA leave begins.	Employees working 20 hours or more per week become eligible for PFL upon completion of twenty-six consecutive weeks of State service. Employees who work less than 20 hours per week become eligible for PFL upon completion of one hundred seventy-five days of State service