



Paid Family Leave for UUP-represented 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 apart from any other leave available to an employee. 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, The Standard.

Pursuant to the collective bargaining agreement between the State of New York and United University Professions (UUP), the PFL benefit will be available beginning January 1, 2019 for UUP-represented SUNY employees in bargaining unit 08. (See, Article 23.14 and Appendix A-42 of the State/UUP Agreement).

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, 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 New York State Average Weekly Wage (SAWW).
2. 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.
3. On or after January 1, 2021, an employee may receive up to twelve weeks of PFL benefits in any 52-week period at 67% of the employee's average weekly wage, not to exceed 67% of the SAWW.

The employee's average weekly wage is established based on the average of the employee's last eight weeks of pay received during the employee's regular professional obligation prior to starting Paid Family Leave. The amount will be determined by dividing either the last 8 weeks of wages that the employee was working immediately preceding the first day of PFL, or the closest 8 weeks of wages prior to start of the PFL leave, whichever results in the higher amount.

The SAWW is established annually by the NYS Department of Labor. Employees may estimate their weekly Paid Family Leave benefit amount by using the Weekly Benefits Calculator available at <https://www.ny.gov/PFLbenefitscalculator>.



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The employee's average daily rate will be calculated by dividing the employee's average weekly wage by the average number of days the employee worked per week during the eight weeks used to calculate the employee's average weekly wage. The daily benefits payable to an employee will be determined as follows:

- For eligible professional employees or academic employees (whose regular professional obligation, is primarily other than teaching classes) regardless of their percentage of full-time equivalent, the benefit payable will be based upon the number of workdays in the employee's regular professional obligation per workweek that such employee is absent for.
- For eligible academic employees (whose regular professional obligation is primarily teaching), the benefits payable will be based on the number of days routinely scheduled for teaching and student contact per workweek that such employee is absent for.

PFL Health Benefits Continuation

Employees are entitled to continuation of NYSHIP health benefits coverage during PFL-covered absences. While using PFL the employee will remain responsible for the employee share of premium. If the employee is using PFL on an intermittent basis and is still receiving a paycheck for days not charged to PFL during that period, health insurance premiums will be deducted from that paycheck so long as there is enough money in the check to account for the deductions. If the amount of the check is insufficient or if the employee is off the payroll and using PFL for one or more full pay periods, the employee will be direct billed by the Department of Civil Service for the employee share of premium.

Eligibility

PFL eligibility of UUP represented employees is covered by the collective bargaining agreement between NYS and UUP.

A professional employee or academic employee (whose regular professional obligation, is primarily other than teaching classes) whose regular professional obligation is at least 20 hours per week (based on the employee's percentage of full-time equivalent) is eligible for Paid Family Leave once they have completed 26 consecutive workweeks of such employment.

A professional employee or academic employee (whose regular professional obligation, is primarily other than teaching classes) whose regular professional obligation is less than 20 hours per week (based on the employee's percentage of full-time equivalent) is eligible for Paid Family Leave once they have completed 175 workdays of such employment. For eligibility purposes work days include days that the employee reports to the work location.

An academic employee (whose regular professional obligation is primarily teaching) who teaches at least 2 courses per semester is eligible for Paid Family Leave once they have completed 26 consecutive workweeks of such employment.

An academic employee (whose regular professional obligation is primarily teaching) who teaches less than 2 courses per semester is eligible for Paid Family Leave once they have completed 175 workdays of such employment. For eligibility purposes work days include days the employee is scheduled to teach/student contact plus one day per week.

Periods of professional obligation beginning prior to and/or ending after the respective semester will count for eligibility purposes. 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.

An employee who meets the 26 consecutive weeks of employment eligibility criteria, and has an unpaid leave of absence, is entitled to PFL immediately upon return to pay status. The employee does not need to work an additional 26 consecutive weeks to be eligible for PFL again. Similarly, an employee who meets the 175 days of regular employment



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eligibility criteria, and has an unpaid leave of absence, is entitled to PFL immediately upon return to pay status. The employee does not need to work an additional 175 days to be eligible for PFL again.

The employee's use of any scheduled vacation time, sick leave, holiday leave, or 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 26 consecutive work weeks for full-time employees or toward the 175 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.

Example 1:

A professional employee is employed at 40% of full-time equivalent. Pursuant to their professional obligation, they report to the work location 3 days per week. For PFL eligibility purposes only, based on a 40-hour work week, they are presumed to work 16 hours per week. As a result, they establish PFL eligibility after 175 days of work. Each day that they report to the work location (regardless of the number of hours worked), or charge accrued leave, counts as a day of work for eligibility purposes.

Example 2:

An academic employee (whose regular professional obligation, as determined by the Campus President, is primarily other than teaching classes) is employed on a 60% FTE basis. For PFL eligibility purposes only, based on a 40-hour work week, they are presumed to work 24 hours per week. Therefore, they establish PFL eligibility after 13 consecutive pay periods of work.

Example 3:

An academic employee (whose regular professional obligation is primarily teaching) teaches two courses a semester. They are paid on a bi-weekly basis over 10 pay periods for each semester and come off payroll for one pay period during winter break. Based on this professional obligation, they will establish PFL eligibility after 26 consecutive weeks of employment. They are credited with one pay period toward PFL eligibility for each pay period they are on payroll and have PFL premiums withheld. They are credited with 20 weeks toward eligibility for their first semester of work. Their service is tolled during the two weeks they are off payroll during winter break. They establish PFL eligibility after the first six weeks of the spring semester.

Example 4:

An academic employee (whose regular professional obligation is primarily teaching) teaches one course a semester. Based on this professional obligation they will establish PFL eligibility after 175 days of work. The fall semester course meets 3 days per week, the spring semester course meets 2 days per week. They are credited with one day of work for each day a course meets. In addition, they will be credited with one work day per week for prep time. Therefore, for the fall semester they will be credited with 4 days per week and for the spring semester 3 days per week. Assuming each semester is 16 weeks they will be credited with 64 days of work for the fall semester and 48 days of work for the spring semester. If they repeat this course schedule the next year, they will establish PFL eligibility at the end of the fall semester their second year of work.

Amount of Paid Family Leave to be Granted

An employee is entitled to receive PFL benefits for up to 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.



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PFL may be taken periodically (in full day increments only) 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. **Regardless of the reason for the use of PFL, an employee may not charge accruals and receive PFL on the same day.**

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 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 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, holiday leave, family sick leave, or other leave available to the employee, 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



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change, are extended, or were initially unknown. When an employee is taking intermittent PFL, it must inform the employer, and The Standard, each day that is taken as PFL so that benefits can be confirmed and paid promptly.

Interplay of Attendance and Leave Benefits, 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 that an employee elects to use will be counted concurrently against any FMLA entitlements an employee may be eligible for during the period the employee elects to use PFL. 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 increments, the employee is not eligible for PFL. Additionally, unpaid leave taken in full day increments under the FMLA counts against PFL only if an employee elects 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** (Unless otherwise stated, assume examples below relate to a full-time employee who meets the eligibility criteria for both FMLA and PFL benefits):*

Example 1:

In February 2019, an employee tells their agency they need to take ten 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 ten-week absence counts toward both their PFL entitlement (ten weeks beginning in February 2019) and their 2019 calendar year FMLA entitlement.

Example 2:

An employee adopts a child in September 2019 and elects to use twelve weeks of unpaid FMLA. In January 2020, 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 the campus they require four months (sixteen weeks) off to care for their newborn child. The employee is entitled to leave without pay for child care for up to seven months following the date of delivery (see Appendix A-42 of the State/UUP collective bargaining agreement). The first twelve weeks is unpaid leave under FMLA thereby exhausting their 12-week calendar year FMLA entitlement. Following exhaustion of their FMLA entitlement, the employee may opt to charge vacation credits, if they have such credits or may request to use PFL benefits by submitting a PFL claim.

Example 4:

In July 2019, 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 or may elect to use PFL benefits. The employee has the choice of either option (charging



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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.

Example 5:

In September 2019, an employee requests 10 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 10 weeks of their PFL entitlement which runs concurrently with their 2019 calendar year FMLA entitlement. The employee returns to work at the end of the ten-week absence.

In January 2020, 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 2020 calendar year FMLA entitlement.

However, as 52 weeks have not passed since they initially used their PFL entitlement, the employee is not yet eligible to take time under the PFL. However, once September 2020 starts, and 52 weeks have passed, the employee can take time under the PFL for which they are entitled.

Example 6:

Beginning with the birth of his child in June 2019, an employee who works on a 12-month basis elects to take 22 weeks off first to care for his spouse during his spouse's post-delivery period of disability and then to bond with his new born child. The employee first elects to charge 30 days of family sick leave to care for his spouse as provided by State/UUP Agreement Article 23.4(f)(4). This six-week period counts against the employee's FMLA entitlement but not the employee's PFL entitlement. The employee then elects to take the remaining six weeks of FMLA entitlement on an unpaid basis. This period also does not count against the employee's PFL entitlement. After exhausting his FMLA entitlement for 2019, the employee then elects to use his 10-week PFL entitlement to cover the remaining 10 weeks of his 22-week leave.

PFL Claim Submission Procedure and Medical Documentation Provisions

All eligible employees who elect PFL will be paid by The Standard, the insurance carrier – not New York State as their employer. In addition to a campus'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). The following forms have been developed by The Standard for use by employees in the bargaining unit for leave associated with the leave available under PFL:

Bonding

- PFL 1 – Request for PFL
- PFL 2 – Bonding Certification

Care of Family Member:

- PFL 1 – Request for PFL
- PFL 3 – Release of Personal Health Info
- PFL 4 – Health Care Provider Certification

Military Exigency:

- PFL 1 – Request for PFL
- PFL 5 – Military Qualifying Event



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Once a campus is in receipt of the completed form(s) from an employee, the campus must complete the employer information contained in Part B of the PFL-1 form, verify employee eligibility 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 the campus and any necessary certifications or proof of claim documentation, medical, or otherwise, to The Standard. Generally, the medical documentation and/or necessary certifications will be comparable to information normally required by the campus

(FMLA documentation or 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 The Standard):

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 parent must submit a birth certificate, if available, or documentation of pregnancy or birth from a health care provider. The document must include the birth parent'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 parent'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 parent.

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 The Standard.

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.

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



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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 "Request for Paid Family Leave" (PFL-1), "Release of Personal Health Information (PFL-3) and Health Care Provider Certification of Family Member with Serious Health Condition Under the Paid Family Leave Law" (PFL-4).

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 "Request for Paid Family Leave" (PFL-1) and either "Military Qualifying Event" (PFL-4) 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.

The Standard will also accept the forms available at <https://paidfamilyleave.ny.gov/forms#employee-forms>.

Impact of PFL on Attendance and Leave Benefits

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

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 each month, or major fraction thereof.

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, 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.

Questions regarding PFL absences, including eligibility, should be directed to your campus Human Resource Office. Questions related to the claims process questions should be directed to via email to PFL@flexbene.com or phone at 888-PFL-SUNY (888-735-7869). Reporting questions, claim-specific issues, return to work notifications, and claims payment questions should be directed to 833-786-5638.