

## **New York Paid Family Leave**

Starting January 1, 2018, employees whose primary work location is in New York State may be eligible for up to eight weeks of compensation, benefits, and job-protected leave to care for covered family members for certain purposes. Both the duration and benefit amounts increase annually through January 2021. The New York Paid Family Leave (NY PFL) law was enacted as part of New York State's Statutory Disability Benefits Law ("NY DBL").

### **Eligibility**

Employees who work in New York will become eligible for NY PFL benefits as follows:

- If the employee's work schedule is **20 or more hours per week**, the employee will become eligible to receive NY PFL benefits once the employee has been in employment of the Company for at least 26 consecutive work weeks preceding the first full day leave begins.
- If the employee's work schedule is **fewer than 20 hours per week**, the employee will become eligible to receive NY PFL benefits during employment once the employee has been in employment of the Company for 175 days preceding the first full day leave begins.

Scheduled time off that has been approved by the Company (including but not limited to PTO) is counted as periods of employment for purposes of determining eligibility to receive NY PFL benefits as long as the required NY PFL premium is paid by the employee during such periods of time (see discussion below).

Periods of temporary disability taken pursuant to New York's DBL and/or the Company's Short- or Long-Term Disability Plan are not counted as days/weeks of employment for purposes of determining eligibility to receive PFL benefits during employment.

### **Purposes of NY PFL**

An eligible employee may be entitled to benefits for NY PFL taken from work for the following qualifying events:

1. **Caring for a family member.** To participate in providing care, including physical or psychological care for a family member of the employee made necessary by a serious health condition of the family member.
2. **Bonding with a new child.** For the employee to bond with the employee's child:
  - a. During the first 12 months after the child's birth
  - b. During the first 12 months after the placement of the child for adoption or foster care
  - c. Before the actual placement or adoption of a child if an absence from work is required for the placement for adoption or foster care to proceed
3. **For a military exigency.** Due to any qualifying exigency pursuant to the Family and Medical Leave Act (FMLA), arising out of active duty or an impending call or order to active duty in the Armed Forces of the United States for the spouse, domestic partner, child, or parent of the employee.

The following terms have the meanings set forth in the NY PFL law:

- **Child** means a biological, adopted, or foster son or daughter, a stepson or daughter, a legal ward, a son or daughter of a domestic partner, or the person to whom the employee stands in loco parentis (i.e., in the place of).
- **Family member** means a child, parent, grandparent, grandchild, spouse, or domestic partner.
- **Parent** means 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.
- **Providing care** includes necessary 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. The employee must be in close and continuing proximity to the care recipient. This means present at the same location as the family member during the majority of the employment period from which leave has been taken. Travel necessitated for the purpose of 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.
- **Serious health condition** means an illness, injury, impairment, or physical or mental condition that involves inpatient care in a hospital, hospice, or residential health care facility or continuing treatment or supervision by a health care provider.

If a child was born, adopted, or placed in 2017, an employee may take NY PFL to bond with that child for up to one year after birth, adoption, or placement. In addition, employees may take NY PFL starting January 1, 2018, to care for a family member with a serious health condition or to address a qualifying military exigency.

### **Premium Contributions by Employee Payroll deductions**

Except as described below under "Waivers of NY PFL coverage," all employees who work in New York State are subject to payroll deductions to fund the cost of NY PFL. The amount of the deduction will be established annually by the New York State Department of Financial Services (NY DFS).

For 2018, the NY DFS has established that the maximum employee contribution is 0.126% of an Employee's Average Weekly Wage, up to and not to exceed the statewide average weekly wage, which, as established by the New York State Department of Labor (NY DOL), was \$1,305.92 for 2016. Although employees cannot claim leave benefits until January 1, 2018, the

regulations permit employers to begin making payroll deductions on July 1, 2017. The Company will begin making payroll deductions on January 1, 2018

**Wages** include every form of remuneration for employment paid by the Company, whether paid directly or indirectly, including salaries, commissions, bonuses, and the reasonable money value of board, rent, housing, lodging, or similar benefit received. Tips are also included if the employee's position is one in which tips customarily constitute part of the employee's compensation. Wages do not include amounts made to or on behalf of an employee by the Company for benefits such as health and medical insurance, disability insurance, or retirement plans.

**Employee's Average Weekly Wage** means the amount determined by dividing either the total wages of an employee for the eight weeks or a portion thereof that the employee was in the Company's employment immediately preceding and including the last day worked prior to the first day of NY PFL, or the total wages of the last eight weeks or a 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.

**Note:** Employees are required to make NY PFL premium contributions during periods when the employee is receiving NY PFL benefits or NY DBL or benefits under the Company's Short- or Long-Term Disability Plans (provided that the employee has acquired eligibility for NY PFL benefits).

**Benefit Amounts**

NY PFL benefits are scheduled to increase on January 1 of each year through January 1, 2021. The schedule for the increases is below:

Year	# Weeks of Leave	Benefit Amount: % of Employee Average Weekly Wage	Maximum Benefit is subject to the Following % Cap on State Average Weekly Wage
1/1/2018	8	50%	50%
1/1/2019	10	55%	55%
1/1/2020	10	60%	60%
1/1/2021	12	67%	67%

The consecutive 52-week period is measured retroactively with respect to each day for which NY PFL benefits are claimed. A single claim may not cover more than 52 weeks.

The benefit rate for an employee's period of NY PFL is the rate and benefit that is in effect on the first day NY PFL is taken.

An employee who is eligible for both NY DBL benefits and NY PFL benefits during the same 52 consecutive calendar weeks shall not receive more than 26 total weeks of combined DBL benefits and PFL benefits during that time.

**Waivers of NY PFL coverage**

In most cases, employees are not allowed to waive coverage in the NY PFL program. The only exception is if (1) an employee's schedule is 20 hours or more per week but the employee is not expected to work 26 weeks in a 52-consecutive-week period or (2) the employee's schedule is

fewer than 20 hours per week and the employee is not expected to work 175 days in a 52-consecutive-week period. If an employee meets either of those conditions, the Company will provide the employee with an option, in writing, to waive NY PFL benefits and thereby become exempt from the obligation to incur payroll deductions.

However, if the employee subsequently meets these thresholds, the employee will be required to make the premium contributions/payroll deductions. In addition, the Company may collect back premiums.

### **Interaction of NY PFL with other laws**

Employees may not use NY PFL while they are collecting either workers' compensation or NY DBL benefits.

Employees are eligible for a total of 26 weeks of combined NY Statutory Disability Leave and NY PFL, although the leaves may not be taken at the same time.

If an employee is eligible for leave under the FMLA, the Company requires that NY PFL benefits be taken concurrently with FMLA benefits.<sup>1</sup>

If the Company designates a period of leave to be covered by the FMLA for a reason also eligible for NY PFL, and if the Company informs the employee of his or her eligibility for NY PFL benefits and the employee declines to file a request for NY PFL benefits, the Company may count the FMLA leave against the employee's maximum duration of NY PFL.

### **Intermittent leave**

NY PFL may be used on an intermittent-leave basis in increments of no less than one work day. If an employee works any part of a day, he or she is not eligible for NY PFL for that day.

As discussed further below, employees are required to identify the dates for intermittent leave in their NY PFL request. If dates are not provided, payment may be delayed until the dates are submitted. Employees must submit requests for NY PFL benefits within 30 days of the absence.

### **Interaction with employer paid time off policies**

Employees who have accrued but unused vacation time or personal leave available may charge all or part of a period of family leave time to accrued but unused vacation or personal leave and receive full salary. Or, employees may choose to not charge family leave time to accrued but unused vacation or personal leave and receive the NY PFL benefit. With the election of either option, the employee is eligible for the job reinstatement protections of the NY PFL and shall concurrently use allotted NY PFL.

### **Disqualification of Eligibility**

Employees are disqualified from eligibility and no NY PFL benefits will be paid for the following:

1. Any disability caused by willful intention of an employee to cause injury to himself/herself or another or resulting from injury or sickness sustained in perpetration of an illegal act

2. Any period when an employee is subject to suspension or disqualification of accumulation of unemployment insurance benefit rights
3. Any disability due to act of war
4. Any family leave commencing before the employee becomes eligible for benefits
5. During periods when the employee receives total disability payments pursuant to a claim for workers' compensation, volunteer firefighters' benefits, or volunteer ambulance workers' benefits unless it is partial disability or reduced earnings
6. When an employee is not employed or is on administrative leave from employment
7. For any period of family leave when notice and medical certification has not been filed

### **Employee notice requirements**

- **Foreseeable leave.** Employees must provide the Company no fewer than 30 days' notice if they foresee the need for the leave. If notice for foreseeable leave is not provided 30 days in advance, the leave may be denied for up to 30 days after the notice is provided.
- **Unforeseeable leave.** If the need for the leave is not foreseeable, the employee must provide advance notice as soon as practicable and, absent unusual circumstances, must comply with the College's notification policies.
- **Intermittent leave.** Employees are required to submit a schedule for foreseeable intermittent leave in their request for NY PFL benefits, and NY PFL benefits may be withheld until such schedule is submitted. If the need for intermittent leave is not foreseeable, employees are required to provide advance notice to the employer as soon as practicable once the need for leave becomes foreseeable. Absent unusual circumstances, employees must follow the Company's Call-in Procedures.

Employees are required to advise the Company of any change in the timing and/or duration of NY PFL. Such notice should be provided as soon as practicable.

The NY PFL law requires that when an employee seeks leave for the first time for a qualifying event, that employee need not expressly assert rights under the NY PFL law or even mention family leave.

Absent unusual circumstances, in order to properly provide notice, employees should do both of the following:

- Notify his/her manager **and**
- Notify Human Resources.

Further, an employee must submit a request for NY PFL leave and certification within 30 days of taking the leave to be eligible for benefits under the NY PFL law.

Employees of the Company should provide written notice of their need for NY PFL to: The Human Resources Department at Marymount Manhattan College.

### **NY PFL request and certification forms**

Forms to request NY PFL ("Request") and certification/documentation forms ("Certification") to support the need for NY PFL are available on MMCs HR website.

A portion of the Request must be completed by the employee and also by the College. Once you have completed the employee section of the NY PFL Request, please submit the form to Kevin Ng for completion by the College.

The Company has 3 (three) business days to complete its section of the form and return it to the

employee.

Employees must submit both the NY PFL Request and Certification forms (and supporting documentation if any) to Hartford.

Hartford Contact information:

Phone: 1-877-838-2924

Website: <https://www.thehartford.com/resources/gb/ny-paid-family-leave>

As detailed in the certification forms, employees must submit the following certification and/or documentation to support Requests for NY PFL for the following reasons:

- **Bonding leave:** An employee must provide verification of the child's birth, adoption, or foster placement.
- **Care for a family member:** An employee must submit a medical certification from the family member's health care provider.
- **Military exigency leave:** An employee must submit a copy of the family member's military orders and other documentation regarding the reasons for the leave.

#### **Request review/approval process**

1. Within five days of receipt of a Request, Hartford will provide the employee with the following:
  - a. An acknowledgment of receipt of the Request
  - b. A claim identification number
  - c. A list of required information that is missing from either the Request or the Certification;
  - d. Information on how to properly complete the Request; and
  - e. Information regarding arbitration (see discussion below).

2. When a PFL claim is denied without prejudice because it is incomplete, the employee must refile within 30 days of the first day of leave. If the employee does not refile the completed request for PFL together with the necessary certifications or proof of claim documentation within 30 days of the first day of leave, Hartford may deny the claim.
3. Once Hartford receives the completed request for PFL together with the necessary certifications or proof of claim documentation, Hartford must pay or deny the claim within 18 days.

### **Incomplete Request/Certification**

Hartford may deny a claim for PFL without prejudice within 18 days if:

- The claim is incomplete; or
- The certification or proof of claim documentation is insufficient.

Hartford will notify the employee of each piece of required missing information.

Once Hartford receives the completed request for PFL together with the necessary certifications or proof of claim documentation, [the insurance carrier] must pay or deny the claim within 18 days.

### **Advance Request for PFL for Foreseeable Qualifying Events**

Employees may file a Request for NY PFL in advance of a foreseeable qualifying event (Advance Request). If such an Advance Request is filed, the following procedures will apply:

1. Within five business days of receipt of an Advance Request, Hartford will provide the employee with:
  - a. Notice that the claim is pending
  - b. A list of the required missing information
  - c. Instructions for how to submit the missing information; and
  - d. Contact information
2. Once Hartford receives a completed Request, Hartford will provide the employee a confirmation of receipt of the completed claim within three business days.
3. If a completed request for PFL is received more than 18 days before the occurrence of a qualifying event, Hartford will send payment to the employee within five days following the qualifying event.

### **Denial of NY PFL Benefits**

Hartford may deny a Request for NY PFL for, among others, the following reasons:

1. The employee has not been employed by the Company for a sufficient length of time to be eligible for benefits.
2. The family member that the employee is seeking leave to care for is not a covered family member.
3. The amount of leave requested exceeds the statutory maximum benefit period for family leave or disability benefits under the NY PFL.
4. The amount of family leave requested exceeds the statutory maximum or the family leave needed as stated in the medical certification of the employee or the qualifying

event was foreseeable and the employee failed to provide the employer with sufficient notice. In such a case, Hartford may issue a partial denial of any excess leave or a partial denial for 30 days when the qualifying event was foreseeable and the employee failed to provide the employer with notice.

5. The employee requesting leave is the perpetrator of domestic violence or child abuse against the care recipient; or
6. The claim was not made in a timely manner.

If Hartford denies a request for PFL for reasons other than the claim is incomplete or the certification or proof of claim documentation is insufficient, the employee may not refile.

### **Health insurance**

The NY PFL law requires employers to continue health insurance benefits while an employee is on NY PFL according to the same conditions prescribed by the FMLA. Please consult the Employee Handbook for the Company's FMLA policy. Employees must pay their portion of the health insurance premium and employers may terminate coverage if an employee fails to do so.

### **Job protection/No retaliation or discrimination**

Upon returning from NY PFL, an employee is entitled to reinstatement to his/her prior job position or to a comparable position with comparable pay, benefits, and other terms and conditions of employment. In addition, an employee may not be disciplined or retaliated against for requesting NY PFL or for absences that are covered under the NY PFL law.

### **Disputes**

Any disputes relating to NY PFL are required to be arbitrated in accordance with procedures established by the New York Worker's Compensation Board (WCB). Further information concerning the arbitration procedure can be found at <http://www.wcb.ny.gov/content/main/Contact.jsp>

Requests for arbitration must be submitted to the WCB within 26 weeks of the denial of the Request for NY PFL.

### **Summary only**

This is intended only to be a summary of the requirements of the NY PFL. Additional requirements and benefits relating to NY PFL may be set forth in the NY PFL law. If there is a conflict between this document and the NY PFL law, the terms of the NY PFL law will govern.