

New York University

UNIVERSITY POLICIES

Title: New York Paid Family Leave Policy and Procedure
Effective Date: January 1, 2020
Supersedes: January 1, 2019
Issuing Authority: Executive Vice President
Responsible Officer: Human Resources

Statement of Policy

New York University (“NYU” or “the University”) will provide job-protected paid family leave (“family leave”) to eligible employees in accordance with the New York Paid Family Leave Law and applicable regulations (hereinafter, “PFL”), and the terms and conditions of this Policy. As detailed below, this Policy sets forth the eligibility requirements for leave, the conditions for using leave, the process for requesting leave, and other related provisions.

This Policy specifically addresses how family leave will interplay with other University leaves, including with leave taken under the Family and Medical Leave Act (“FMLA”) and paid time off. To learn more, please review the “Other University Leaves” section of the Policy below.

Please also note that, in accordance with the PFL, family leave will be funded through payroll deductions of all employees who are eligible for family leave under this Policy, at a maximum rate set forth by the Superintendent of the New York State Department of Financial Services. The maximum employee contribution for 2020 is 0.270% of an employee’s weekly wage or the New York State Average Weekly Wage (which is currently \$1,401.17), whichever is less.

To Whom the Policy Applies

Full-Time Employees. Subject to the exclusions listed in (a)-(d) below, “full-time employees” (defined only for purposes of this Policy as having a regular employment schedule of 20 or more hours per week) who work for NYU in New York are eligible to take family leave, provided that they have been employed for at least 26 consecutive work weeks preceding the first full day the leave begins.

Part-Time Employees. Subject to the exclusions listed in (a)-(d) below, “part-time employees” (defined only for purposes of this Policy as having a regular employment schedule of less than 20 hours per week) who work for NYU in New York are eligible to take family leave, provided that they have worked 175 days in such employment preceding the first full day the leave begins.

Note: Periods of temporary disability taken pursuant to the New York Disability Benefits Law (NYDBL) shall not count as “consecutive work weeks” or “days worked,” as applicable. All other approved paid or unpaid time off shall count as “consecutive work weeks” or “days worked,” as applicable. Moreover, “consecutive work weeks” will be “tolled” during periods of absence that are due to the nature of that employment, such as breaks between semesters, but only when employment is not terminated during that time.

Note: For eligible employees covered by a collective bargaining agreement (“CBA”), please also refer to the applicable CBA for any provisions on family leave. Nothing set forth in this Policy shall be construed to impede, infringe, or diminish the rights and benefits afforded under a CBA. Should this Policy conflict with any of the provisions of a CBA, the CBA shall prevail.

Exclusions. In accordance with the PFL, the following employees are *ineligible* for family leave under this Policy: (a) Faculty (including full-time and part-time faculty); (b) Professional Research Staff; (c) Graduate Employee Adjuncts; and (d) an employee who exercises the option to file a waiver* of family leave benefits where (i) his or her regular employment schedule is 20 hours or more per week, but the employee will not work 26 consecutive weeks, or (ii) his or her regular employment schedule is less than 20 hours per week, and the employee will not work 175 days in a 52 consecutive week period.

****Waivers.*** To request a waiver under subsection (d) above, the employee must complete the waiver request form issued by the New York State Worker’s Compensation Board, which can be accessed in a printable pdf format on the New York State website by clicking [here](#). The completed, signed form can be submitted either by mail to PeopleLink Services Center, 105 East 17th Street, 1st Floor, New York, NY 10003, or by email to askpeoplelink@nyu.edu. Should you have any issues accessing the form, please contact PeopleLink.

If the employee completes the waiver request form and it is approved by the University, the employee will not be eligible for family leave and, therefore, the employee will not have to contribute to the cost of family leave through the aforementioned payroll deductions. If, however, the employee does not complete the waiver request form, or if the employee completes the waiver request form but it is not approved by the University, the employee will have to contribute to the cost of family leave through the aforementioned payroll deductions, and the employee will be entitled to family leave if and when the employee meets the eligibility requirements under the PFL.

Note: A waiver will be revoked within eight weeks of any change in an employee’s regular work schedule requiring the employee to continue working for 26 consecutive weeks or 175 days in a 52 consecutive week period. A waiver also may be revoked at the option of the employee. In accordance with the PFL, an employee whose waiver has been revoked must begin making contributions to the cost of family leave benefits, including any retroactive amounts due from date of hire, as soon as the University notifies the employee of such obligation.

Policy and Procedures

Leave Entitlement

Permissible Purposes

An eligible employee may take family leave for the following purposes:

(A) Care. To participate in providing care, including physical or psychological care, for a family member with a serious health condition.

Providing care may include 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, *i.e.*, present at the same location as the family member during the majority of the leave period. Travel necessitated for securing medication or to arrange care for the family member, or other such deviations determined to be reasonably related to providing care, shall satisfy this definition.

(B) Bonding. To bond with the employee's child during the first twelve months after the child's birth, or the first twelve months after the placement of the child for adoption or foster care with the employee.

An employee may take leave before the actual placement or adoption of a child if the absence is required for the placement for adoption or foster care to proceed (*e.g.*, to attend counseling sessions, appear in court, consult with an attorney or the doctor(s) representing the birth parent, submit to a physical examination, or travel to another country to complete an adoption.) The source of an adopted child (*e.g.*, whether from a licensed placement agency or otherwise) is not a factor in determining eligibility for leave.

(C) Active Duty Deployment. Because of any qualifying exigency, as interpreted under the applicable provisions of the FMLA, arising out of the fact that the spouse, domestic partner, child, or parent of the employee is on active duty (or has been notified of an impending call or order to active duty) in the armed forces of the United States.

Amount and Duration of Benefit

When an employee meets the eligibility requirements for leave, there is no waiting period for receiving family leave benefits. The maximum weekly cash benefit rate for employees on family leave, and the maximum duration of the benefit period are as follows:

Beginning on	Number of weeks of family leave an employee will be entitled to receive during any 52-week calendar period	Percent an employee will receive of his/her average weekly wage or New York State Average Weekly Wage, whichever is less
1/1/20	10 weeks	60%
1/1/21 and thereafter	12 weeks	67%

An employee shall only be entitled to the maximum number of family leave benefits permissible in a 52-consecutive week period, even where such employee begins employment with a different covered employer during the 52-consecutive week period.

An employee may not receive both disability benefits under the NYDBL and family leave benefits under this Policy for the same period of time. Moreover, an employee who is eligible for both disability benefits under the NYDBL and family leave under this Policy during the same period of 52 consecutive calendar weeks shall not receive more than 26 total weeks of disability and family leave benefits during that period of time.

Incremental/Intermittent Leave

Weekly leave. Any eligible employee taking leave in weekly increments will be eligible for the maximum number of weeks of leave in any 52 consecutive week period.

Daily leave. An eligible employee may take family leave in increments of no less than one (1) day. When any eligible employee takes leave in daily increments, the employee's maximum period of leave is calculated based on the average number of days worked per week (e.g., an employee that works three days per week, will receive, on January 1, 2020, the equivalent of three days per week for ten weeks, or a maximum of 30 days in any 52 consecutive week period.)

Note: When an employee requests family leave in daily increments (e.g., every Monday for six weeks), rather than as a weekly benefit, the daily benefit shall be calculated based on the employee's AWW divided by the average number of days the employee worked per week.

*In arriving at the average number of days the employee worked per week for the purpose of determining the employee's wage for one day, the University shall average the number of days the employee worked per week over the same eight weeks used in calculating the employee's AWW. The average number of days worked may be fractional in order to accurately convert the AWW to an equivalent daily wage.

The Process for Requesting Family Leave

1. Where the need for family leave is a foreseeable, the employee shall provide Lincoln Financial Group (the University's family leave provider) and his or her supervisor with at least 30 days advance notice before leave is to begin, where practicable.* Where the need for leave is unforeseeable, the employee shall inform Lincoln Financial Group and his or her supervisor as soon as practicable.

**Note:* When an employee becomes aware of a qualifying event less than 30 days in advance, it should be practicable for the employee to provide notice of the need for leave either the same day or the next business day. When an employee takes intermittent family leave, the University may require the employee to provide notice as soon as is practicable before each day of intermittent leave.

2. An employee shall provide notice that identifies the type of family leave requested, and that makes the University aware of the qualifying event and the anticipated timing and duration of the leave. To apply for family leave benefits, the employee must submit a Request for Paid Family Leave to Lincoln Financial Group. The employee may report a claim online (using MyLincolnPortal® at <https://www.mylincolnportal.com>) or telephonically (at 888-339-6830). First time users of the MyLincolnPortal must register using Company Code NEWYORKUNIV.

**Note:* An employee shall advise Lincoln Financial Group of the schedule for intermittent leave, where applicable.

3. As applicable, the employee also may be required to furnish a certification from a health care provider for the employee's leave to care for a family member with a serious health condition; provide proof of eligibility for purposes of bonding with a child; or, depending on the circumstances of a qualifying exigency, submit a copy of the military member's active duty orders/other appropriate documentation, and/or a certification.

4. Once Lincoln Financial Group receives a completed request for family leave, with the necessary certification, it shall pay the claim or deny the claim within eighteen (18) days, in accordance with the PFL. In the event a completed request is received more than eighteen (18) days before the occurrence of a qualifying event, Lincoln Financial Group shall send payment (if approved) to the employee within five (5) days following the qualifying event, in accordance with the PFL.

Health Insurance

An employee who receives health insurance from the University is entitled to the continuation of coverage during family leave on the same terms as if he or she had continued to work. The employee must continue to make any normal contributions to the cost of the health insurance premiums.

Other University Leaves

FMLA. The University requires that family leave run concurrently with FMLA leave in accordance with the University's Federal FMLA Policy and Procedure.

Note: If the University designates a period of family leave as covered by the FMLA and informs the employee of his or her eligibility for family leave benefits, should the employee decline to apply for payment, the University may count the leave against the his or her maximum duration of family leave in a 52 week period. When the total hours taken for FMLA in less than full day increments reaches the number of hours in an employee's usual work day, the University may deduct one day of family leave benefits from an employee's annual available benefit.

Note: FMLA leave taken by an employee due to his or her own serious health condition does not reduce the amount of family leave for which the employee is eligible.

Paid Time Off: Where family leave runs concurrently with FMLA, the University also will require that accrued but unused paid time off (PTO) run concurrently, in accordance with the University's Federal FMLA Policy and Procedure. In all other instances, where an employee has accrued but unused PTO available at the time of use of available family leave, the employee may choose whether to charge all or part of the family leave to accrued but unused PTO (to the extent the employee is eligible for such PTO). Where family leave runs concurrently with PTO, the employee will be paid full salary and not the benefit rate under the PFL.

Accrual: Whether an employee who is on family leave continues to accrue leave provided under another University policy depends on the terms and conditions of that policy. For more information, please refer to the specific leave policy in question.

Additional Restrictions

(1) Family leave benefits are not payable during periods when the employee is receiving total disability payments pursuant to a claim for workers' compensation, volunteer firefighters' benefits or volunteer ambulance workers' benefits. *When the employee is receiving payments for partial disability or reduced earnings under such laws, the family leave benefit, when combined with the benefits under such laws, may not exceed the AWW.

(2) University policy allows only one employee at a time to receive family leave to bond with the same child or care for the same family member.

Reinstatement

An employee who takes family leave shall be entitled, on return from such leave, to be restored to the position of employment that he or she held when the leave commenced, or to a comparable position with comparable employment benefits, pay and other terms and conditions of employment. The taking of family leave shall not result in the loss of any employment benefit accrued prior to the date on which the leave commenced. However, nothing in this Policy shall entitle an employee to the accrual of any seniority or employment benefits during any period of family leave, or any right, benefit or position to which the employee would have been entitled had the employee not taken the leave.

Anti-Discrimination/Anti-Retaliation

University policy prohibits discrimination or retaliation against an employee for requesting or taking family leave.

Definitions

Average Weekly Wage (AWW) means, for the purpose of computing the rate of payment of family leave benefits, the amount determined by dividing either the total wages of such employee in the employment of his last covered employer for the eight weeks or portion thereof that the employee was in such employment immediately preceding and including his or her last day worked prior to the first day of paid family leave, or the total wages of the last eight weeks or portion thereof immediately preceding and excluding the week in which the paid family leave began, whichever is the higher amount, by the number of weeks or portion thereof of such employment.

Wages *include* every form of remuneration for employment paid by the University to the employee, whether paid directly or indirectly, including salaries, commissions, and bonuses, as well as the reasonable money value of board, rent, housing, lodging or similar advantage received where such are withheld by the University during the period of family leave.

Wages do *not* include: the cash value of benefits, the receipt of which by an employee is not subject to the New York State personal income tax; severance payments which the University is not legally required to make by statute; and the amount of any payment made to, or on behalf of, any employee under a plan or system established by the University for insurance or annuities, or into a fund to provide for any such payment, on account of retirement, or sickness or accident disability, or medical and hospitalization expenses in connection with sickness or accident disability, or death.

Child means 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.

Family member means a child, parent, grandparent, grandchild, spouse, or domestic partner.

Fifty-two consecutive weeks means 52 consecutive weeks or calendar weeks and shall be computed retroactively with respect to each day for which benefits are currently being claimed.

Qualifying event means an occurrence that causes an employee to be eligible for family leave. Foreseeable qualifying events can 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.

New York State Average Weekly Wage is the average weekly wage paid in New York State during the previous calendar year as reported by the Commissioner of Labor to the Superintendent of Financial Services on March 31 of each year.

Parent means 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.

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 continuing supervision by a health care provider.

- i. "Continuing treatment or continuing supervision by a health care provider" means one or more of the following:
 - a. A period of more than three consecutive, full days during which a family member is unable to work, attend school, perform regular daily activities, or is otherwise incapacitated due to illness, injury, impairment, or physical or mental conditions, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:
 1. Treatment two or more times by a health care provider; or
 2. Treatment on at least one occasion by a health care provider, which results in a regimen of continuing treatment under the supervision of the health care provider.
 - b. Any period during which a family member is unable to work, attend school, perform regular daily activities, or is otherwise incapacitated due to a chronic serious health condition. A chronic serious health condition is one which:
 1. Requires periodic visits for treatment by a health care provider;
 2. Continues over an extended period of time (including recurring episodes of a single underlying condition); and
 3. May cause episodic rather than a continuing period of incapacity. Examples of such episodic incapacity include but are not limited to asthma, diabetes, and epilepsy.
 - c. A long-term or permanent period during which a family member is unable to work, attend school, perform regular daily activities, or is otherwise incapacitated due to an illness, injury, impairment, or physical or mental condition for which treatment may not be effective. The family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include, but are not limited to, Alzheimer's, a severe stroke, or the terminal stages of a disease.
 - d. A period during which a family member is unable to work, attend school, perform regular daily activities, or is otherwise incapacitated because he or she is receiving treatment (including any period of recovery therefrom) by a health care provider for:
 1. Restorative surgery after an accident or other injury; or
 2. A condition that would likely result in a period of incapacity of more than three consecutive full days in the absence of medical intervention or treatment. Examples include, but are not limited to, cancer (e.g., chemotherapy and radiation), severe arthritis (physical therapy), or kidney disease (dialysis).
- ii. The term treatment includes (but is not limited to) examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine examinations. Examples of a regimen of continuing treatment includes, but is not limited to,

a course of prescription medication (e.g., an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition (e.g., oxygen). A regimen of continuing treatment that includes the taking of over-the-counter medications (e.g., aspirin, antihistamines, or salves), bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider, is not, by itself, sufficient to constitute a regimen of continuing treatment.

- iii. Conditions for which cosmetic treatments are administered (such as most treatments for acne or plastic surgery) are not serious health conditions unless inpatient hospital care is required or unless complications develop. Ordinarily, unless complications arise, the common cold, the flu, ear aches, upset stomach, minor ulcers, headaches other than migraine, routine dental or orthodontia problems, periodontal disease, etc., are examples of conditions that do not meet the definition of a serious health condition and do not qualify for leave. Restorative dental or plastic surgery after an injury or removal of cancerous growths are serious health conditions provided all the other conditions herein are met. Mental illness or allergies may be serious health conditions, but only if all the conditions herein are met.