

OLYMPIC REGIONAL DEVELOPMENT AUTHORITY
PAID FAMILY LEAVE POLICY

Effective May 2020

POLICY

It is the policy of the State of New York Olympic Regional Development Authority (ORDA) to opt-in to New York Paid Family Leave (PFL) to provide its eligible employees with the ability to request and take PFL to: bond with a newborn, adopted or fostered child; care for a close relative with a serious health condition; or assist with family situations when a family member is deployed abroad on active military service. It is further ORDA's policy to ensure that no employee will be the subject of discrimination or retaliation for requesting or taking PFL, and that upon return from leave an employee will either be reinstated to the same position or a position that is comparable to the one held by the employee at the time of taking leave. ORDA employees who request or take PFL will not be subject to any reduction in pay or benefits as a result.

This policy applies to only those staff who are designated as MC by ORDA's Human Resources Office. Staff subject to a collective bargaining agreement and those who work less than 600 hours per year are not covered by this policy.

DEFINITIONS

The term "close relative" means an employee's spouse, domestic partner, child, stepchild, parent, stepparent, parent-in-law, grandparent, or grandchild.

The term "serious health condition" means, as defined in 12 NYCRR 355.9[a][16] and as it may be amended from time to time, an illness, injury, impairment, or physical or mental condition that involves (a) inpatient care in a hospital, hospice, or residential health care facility, or (b) continuing treatment or continuing supervision by a health care provider¹.

The term, "domestic partner" means a person who is not related by blood to the employee and is at least eighteen years of age who is dependent upon the employee for support as defined in Section 4 of the Workers Compensation Law; or has registered as the domestic partner of an employee with any registry identified in Section 4 of the Workers Compensation Law. For the purposes of this section, the term "domestic partner" shall include the term "surviving domestic partner".

The term "M/C" shall mean only those staff designated Management Confidential by the Olympic Regional Development Authority Office of Human Resources.

¹ 12 NYCRR 355.9[a][16] was amended in March 27, 2020, to add the following as a definition of a serious health condition: Serious health condition also means a COVID-19 diagnosis by a health care provider. Said rule is effective for 90 days. See <http://www.wcb.ny.gov/content/main/wclaws/Covid-19SeriousHealthCondition/>

ELIGIBILITY

ORDA's current policy applies to employees who work a regular schedule of 20 or more hours per week. Eligibility for PFL will commence after 26 consecutive weeks of employment. M/C employees who work a regular schedule of fewer than 20 hours per week are eligible after working 175 days, which do not need to be consecutive.

Paid time off will count as a qualifying work day/days toward eligibility for PFL; However, during a period of PFL, employees will not continue to accrue either vacation or sick time. Accrual of time will resume once an employee has returned to work from PFL.

Neither citizenship nor immigration status are factors that will be considered in determining the eligibility of an employee for PFL.

Only one employee at a time may use PFL to bond with the same child or care for the same family member.

I. PFL BENEFITS

A. Time available under PFL

The PFL time available to eligible employees will be phased in on an annual basis up through 2021:

- up to 10 weeks in 2020
- up to 12 weeks in 2021

Leave may be taken all at once or intermittently, but must be taken in full-day increments. An employee may take the maximum time-off benefit in any given 52-week period.

B. Benefit payments under PFL

The payment of benefits to eligible employees will also be phased in on an annual basis up through 2021. Benefits are based on a percentage of the employee's average weekly wage, capped at the same percentage of the New York State Average Weekly Wage as calculated annually by New York State's Department of Labor. PFL benefit payments in 2020 and 2021 will be calculated as follows:

- 60% of the employee's average weekly wage in 2020;
- 67% of the employee's average weekly wage in 2021.

PFL benefits are subject to State and Federal income tax (*see* New York State Department of Tax and Finance [Notice N-17-12](#)).

ORDA employees who take PFL are responsible for assuring that the proper tax withholding is applied to PFL benefits:

- to withhold federal taxes the employee must complete an [IRS Form W-4S](#) (Request for Federal Income Tax Withholding From Sick Pay) and submit it to the Arch Insurance Company² with the initial claim form.
- to withhold New York State taxes the employee must provide a written notice to the Arch Insurance Company² specifying the dollar amount to be withheld from each weekly benefit check. Written notice can be provided by using the New York State Paid Family Leave [State Tax Withholding Request Form](#) for this notice.

Note: If you wish to withhold New York State taxes you must also withhold federal taxes. Questions concerning how much to withhold should be directed to a tax professional.

C. Relationship with other benefits and other types of leave

PFL benefits are paid directly by the insurance carrier. As a result, any deductions other than as authorized above to pay taxes, will not be taken out of the PFL benefit check. Any employee who is out of work on PFL may keep his or her health insurance benefits while out on leave, by directly paying the required portion of the premiums that would otherwise be deducted from their paycheck.

Employees should contact ORDA's Benefit Administrator to arrange for payment of insurance premiums while out of work on PFL

Employees may access PFL benefits in accordance with the eligibility requirements established herein; however, PFL is a stand-alone benefit and employees may not use accrued time to supplement PFL.

Employees who are unable to work and who qualify for Workers Compensation Benefits may not use PFL benefits at the same time that they receive Workers Compensation Benefits. However, if an employee is receiving reduced earnings, he or she may be eligible for PFL and should contact the Office of Human Resources at 518-302-5307 or 518-302-5346

II. COST, PREMIUM PAYMENTS AND PAYROLL DEDUCTIONS

ORDA will provide PFL benefits and pay the premium on behalf of M/C staff.

² Or other carrier as it may be changed from time to time. For the most recent carrier information, please contact ORDA's Benefits Administrator

III. PROCESS FOR REQUESTING AND APPROVING PFL

- A. Requests for PFL must be made by the requesting employee directly to the insurance carrier as soon as possible but no later than 30 days after the leave commences.

Applications for PFL may be found here: <https://paidfamilyleave.ny.gov/forms>. Employees may also obtain the required forms by contacting ORDA's Benefits Administrator. Be sure to choose the correct form when applying (form PFL-1, PFL-2, PFL-3, PFL-4, or PFL-5). Note that PFL-1 is required for all applications and additional forms may be required depending the basis for the leave request.

- B. In addition, employees who wish to take PFL must notify ORDA's Office of Human Resources. The requesting employee should give as much notice as is practicable, in writing. Notice should include, to the extent possible, the amount of time the requesting employee plans to take for leave.

Requests submitted to ORDA are to be made using ORDA's Paid Family Leave Request Form and should include a request that ORDA complete Part B of the Request for Paid Family Leave Form (<https://paidfamilyleave.ny.gov/forms>) . ORDA's Human Resources Office will return the form with Part B completed to the requesting employee. The information returned by ORDA to the requesting employee will include the employee's last 8 weeks of gross wages and a calculation of the employee's average weekly wage. **ORDA is required to complete and return the form to the requesting employee within three business days.** If the employee does not receive the completed form from ORDA within three days, s/he should submit *Form PFL-1*, along with the rest of your request package, to ORDA's PFL insurance carrier.

- C. Depending on the basis for the PFL, the following documentation should be submitted by the requesting employee, to the insurance carrier, along with the request:

1. For bonding with a newborn

a. If the requesting employee is the birth parent: submit a copy of the newborn's birth certificate if available, or an original copy of a health care provider certification of birth.

b. If the requesting employee is not the birth parent: A copy of the child's birth certificate, if available, naming you as the second parent, a Voluntary Acknowledgement of Paternity (Form LDSS-4418), or a Court Order of Filiation.

Or

Provide the same documentation as would be required of the birth parent plus a second document verifying the relationship to the birth parent, such as a marriage certificate, civil union, or domestic partnership document.

2. For bonding with an adopted child, provide one of the following:

- a. A copy of the court documents finalizing the adoption
- b. Documentation in furtherance of adoption
- c. A court order finalizing the adoption

If the employee requesting PFL is not the parent named in the documents, the insurance carrier may require proof verifying the employee's relationship to the parent named in the documents, such as a marriage certificate, civil union, or domestic partnership document.

3. For bonding with a fostered child

The requesting employee must submit a foster care placement letter issued by the county or city Department of Social Services or authorized voluntary foster care agency. If the requesting employee is not the parent named in the placement letter, the employee must provide proof verifying his or her relationship to the parent named in the placement letter, such as a marriage certificate, civil union, or domestic partnership document.

4. For care of a close relative with a serious health condition

Any forms and documentation as required by the insurance carrier.

5. For assisting when a family member is deployed abroad on active military service

The requesting employee must submit verification that the family member is in active military service through submission of one of the following:

- a. Covered active duty orders.
- b. A letter from the military unit documenting impending call or order to covered duty.
- c. Documentation of military leave signed by the approval authority for the military member's Rest and Recuperation.
- d. Any additional forms and documentation that may be required by the insurance carrier.

- D.** Determinations regarding benefit approval/denial are made by the insurance carrier. The carrier must pay or deny the employee's request within 18 calendar days of receipt of a completed request for PFL, or the employee's first day of leave, whichever is later.

1. **If the PFL request is granted.** Upon completion of PFL, the employee will be returned to the same or similar job that s/he was performing upon initiation of PFL. Employees need to keep Office of Human Resources apprised of their anticipated return date to ensure a seamless transition back to work.
2. **If the PFL request is denied.** If your PFL claim is denied, the insurance carrier or employer, if self-insured, will provide you with information about how to request arbitration. A neutral arbitrator will decide claim-related disputes. Employees may request arbitration at www.nyspfla.com.

IV. PROCESS FOR FILING COMPLAINTS OF PFL DISCRIMINATION

Any employee who believes that he or she was discriminated against for requesting and/or taking PFL by having been terminated, having his or her pay and/or benefits reduced, having been disciplined, or otherwise retaliated against, should submit a formal request for job reinstatement to the Office of Human Resources using the Formal Request For Reinstatement Regarding Paid Family Leave (Form PFL-DC-119), which can be found at: <http://www.wcb.ny.gov/content/main/forms/PFL-DC-119.pdf>.

The employee must also submit a copy of this form to:

Paid Family Leave
PO Box 9030
Endicott, NY 13761-9030

Should ORDA not comply with the request for reinstatement within thirty (30) days of the date of submission, the affected employee has the right to a hearing with the Workers' Compensation Board (Board) using the Paid Family Leave Discrimination/Retaliation Complaint (Form PFL-DC-120), which is also available on the Paid Family Leave website. See <http://www.wcb.ny.gov/content/main/forms/PFL-DC-120.pdf>.

The Workers Compensation Board will assemble the employee's case and schedule a hearing within forty-five (45) calendar days of receipt of the complaint.

Note: To be eligible to file a complaint and have the right to a hearing before the Workers Compensation Board the employee must have first requested reinstatement and filed a complaint with ORDA's Office of Human Resources.

The relief available to an employee by an administrative law judge who presides over the Workers Compensation Board Hearing includes reinstatement, payment for any lost wages, payment for attorney's fees. The law also provides for penalties against ORDA of up to \$500.

In addition to protections under the Workers' Compensation Law, in certain situations an employee may have viable claims under the New York Human Rights Law which makes it illegal for employers to discriminate against employees based on certain protected grounds, including but not limited to, sexual orientation, sex, age, marital status, pregnancy-related conditions, or familial status. For more information, please visit the Division of Human Rights website at: <https://dhr.ny.gov/complaint#howto>.

For more information on Paid Family Leave, you may call the New York State PFL Hotline at 844-337-6303, visit www.ny.gov/PaidFamilyLeave, or contact your venue's Human Resources office.