

## **New York State Paid Family Leave Guidance**

In accordance with the New York State Paid Family Leave Benefits Law (“PFL”), employees of the auxiliary entities of the Fashion Institute of Technology, namely the Fashion Institute of Technology Foundation (the “Foundation”) and the Fashion Institute of Technology Student Housing Corporation (“SHC”), who work in New York State may request job-protected and partially-paid leave for specific family qualifying events. This policy does not apply to employees of the Fashion Institute of Technology or to the Fashion Institute of Technology Student Association.

### **1. Eligibility**

Employees<sup>1</sup> who are regularly scheduled to work 20 or more hours per week will become eligible for leave under the PFL after completing 26 consecutive weeks of employment with either the Foundation or SHC. The 26-week period will be tolled during any periods of absence that are due to the nature of that employment, such as semester breaks and other times the Foundation or SHC are customarily closed, and when employment is not terminated during those periods of absence.

Employees who are regularly scheduled to work less than 20 hours per week will be eligible for leave under the PFL after working for 175 days since their most recent hire date with the Foundation or SHC.

For determining eligibility, the use of scheduled vacation time, personal, sick, holidays, or other time away from work that has been approved by the Foundation or SHC, or other periods where the employee is away from work but is still considered to be an employee by the Foundation or SHC, count as continuous weeks of employment or days worked, as long as the employee contributes to the cost of PFL benefits during such periods of time. Absences during which the employee is receiving disability benefits are not counted as continuous weeks of employment or days worked.

Employees who become eligible for leave under the PFL will remain eligible for the remainder of their period of continuous employment with the Foundation or SHC. In the case of a rehire following a termination of employment, however, employees will be required to satisfy the eligibility criteria again before becoming eligible.

### **2. Qualifying Reasons for Leave**

Employees who are eligible for leave under the PFL may request leave for any of the following reasons:

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<sup>1</sup> Employees who perform work for the Foundation or SHC both inside and outside the state of New York may qualify for leave under the PFL, depending on the circumstances of their employment. Such determinations will be made in accordance with applicable law.

- To participate in ***Providing Care***, including physical or psychological care, for the employee's ***Spouse, Domestic Partner, Child, Parent, Grandparent, or Grandchild*** who has a ***Serious Health Condition***;
- To bond with a ***Child*** following birth or placement of a ***Child*** for adoption or foster care, within the first 12 months after the ***Child's*** birth, adoption, or placement (includes pre-adoption or placement for events required to effectuate adoption or placement in foster care); and/or
- Because of a ***Qualifying Exigency*** arising out of the fact that the employee's Spouse, Domestic Partner, Child, or Parent is on active military duty, or has been notified of an impending call to active duty in the armed forces of the United States.

An employee may not take leave under the PFL to address their own serious health condition or their own qualifying exigency.

### 3. **Definitions**

- “Child” means an employee’s 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*.
- “Domestic Partner” means an individual who is at least 18 years of age, who is not related by blood to the employee in a manner that would bar marriage to the employee in New York, and who is either:
  - registered as the domestic partner of the employee with any registry of domestic partnerships maintained by the employer of either party, the state, or any county, city, town, or village, or, if the employee is deceased, did so register before the employee’s death; or
  - dependent on the employee for support as shown by either unilateral dependence or mutual interdependence based on a nexus of factors including, but not limited to, the following: common ownership of real or personal property, common householding, children in common, signs of intent to marry, shared budgeting, and the length of the personal relationship with the employee or, if the employee is deceased, was so dependent on the employee immediately prior to the employee’s death.

This definition of “domestic partner” is not exclusive and the Foundation or SHC reserves the right to use any definition of “domestic partner” permitted by applicable law.

- “Grandchild” means a Child of the employee’s Child.

- “Grandparent” means a Parent of the employee’s Parent.
- “Parent” means biological, foster or adoptive Parent, parent-in-law, step-parent, legal guardian, or other person who stood *in loco parentis* to the employee when the employee was a Child.
- “Providing Care” includes providing 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, and requires that the employee must be in close and continuing proximity to the care recipient.
- “Serious Health Condition” means an illness, injury, impairment, or physical or mental condition that involves either: (a) an overnight stay in a hospital, hospice, or residential health care facility, or (b) continuing treatment or continuing supervision by a health care provider.
- “Qualifying Exigency” has the meaning as provided in the federal Family and Medical Leave Act, and may include the need to address issues arising from short-notice deployment, attending certain military events and related activities, arranging for alternative childcare, providing care for the parents of the service-member who are incapable of active care, addressing certain financial and legal arrangements, attending certain counseling sessions, spending time with a covered service-member who is on a short-term temporary rest and recuperation leave during deployment, attending post-deployment activities, and other activities that the employee and the Foundation or SHC agree upon.

**4. Length and Nature of Leave**

Length of Leave and Amount of Payment

During the calendar year January 1, 2021, eligible employees may request up to 12 weeks of leave under the PFL, during which the employee will be compensated at the rate of 67% of the employee’s average weekly wage or 67% of the statewide average weekly wage, whichever amount is less.

<b>Effective date</b>	<b>Maximum Leave Amount</b>	<b>Benefit Amount</b>	<b>Maximum Benefit</b>
January 1, 2021	12 weeks or 60 days	67% of average weekly wage	67% of statewide average weekly wage

To the extent the New York State Department of Financial Services (“DFS”) delays any of the increases described above, the Foundation or SHC reserves the right to consistently modify the benefit schedule in accordance with applicable law.

Employees who take PFL in weekly increments are eligible for the maximum number of weeks of leave, as indicated in the above chart, using a 12-month rolling look back period.

Employees who take PFL in daily increments are eligible for paid leave based on the average number of days worked per week during the applicable 12-week base period. For example, a part-time employee who works 3 days per week during the base period would be entitled to 36 days of PFL in 2021 (12 weeks x 3 days per week).

An employee may not be entitled to be paid for leave under the PFL under the following circumstances, and for any other circumstance outlined in the PFL certificate of insurance:

- The employee otherwise received full pay for the leave;
- The employee performed any work for pay on that day;
- The employee is receiving workers’ compensation benefits (except, under certain circumstances reduced leave benefits);
- The employee does not provide the required notice or certification, as described below; or
- Any other reason permitted by law.

#### Determining the Applicable 12-month Period

For all leave under the PFL, the 12-month period is a “rolling” 12-month period measured backward from each day that leave is taken.

### **5. Intermittent Use**

Eligible employees may take leave under the PFL on an intermittent basis, in full-day increments. Employees may not take partial-day leave under the PFL.

When an employee takes intermittent PFL leave, the employee must provide notice to the Office of Human Resources (“Human Resources”) as soon as is practicable before each day of intermittent leave.

An employee’s use of intermittent FMLA leave on a partial-day basis may, under certain circumstances, reduce an employee’s PFL benefit amount. Specifically, each time an employee takes enough partial-day intermittent FMLA leaves during a 12-month period that add up to the number of hours in an employee’s usual work day, the Foundation or SHC will deduct one day of PFL benefits from the employee’s annual PFL benefit allotment.

## **6. Multiple Employees Requesting Leave**

If more than one family member works for the Foundation or SHC, the Foundation or SHC may limit PFL usage so that more than one employee cannot use the same period of PFL to care for the same family member at the same time. In that circumstance, employees may be required to stagger their PFL usage, but all employees will retain their full PFL entitlement.

## **7. Funding and Contributions for PFL Benefits**

PFL benefits are provided by an insurance carrier and details regarding terms and conditions of the PFL benefits are described in the PFL certificate of insurance.

FIT reserves the right, pursuant to the PFL, to fund PFL benefits by employee contributions through automatic payroll deductions from employees' paychecks. Any payroll deductions will be collected from employees' after-tax wages. Employee contributions are calculated on a weekly basis at the rate set by the DFS. This rate is adjusted annually by DFS.

In some circumstances, the Foundation or SHC may cover the cost of PFL benefits for employees of the Foundation or SHC. In that case, employees will be subject to income and employment tax on the employer contribution.

### Option to Waive PFL Benefits for Ineligible Employees

Employees who do not expect to become eligible for PFL benefits, because they fall into one of the following categories, have the option of waiving PFL benefits:

- Employees who are regularly scheduled to work 20 hours or more per week, but will not work 26 consecutive weeks; or
- Employees who are regularly scheduled to work less than 20 hours per week and will not work 175 days in a 12-month consecutive period.

Employees who are eligible to waive PFL benefits and wish to do so must file a waiver form with Human Resources. Employees who file a waiver form will not make any contributions for PFL benefits, FIT will not cover any contributions on their behalf, and the employees will not be eligible to receive PFL benefits. If the schedule of an employee who has waived PFL benefits changes such that it is anticipated that the employee will become eligible to receive PFL benefits, the waiver will be revoked and the employee must make contributions going forward (or have such costs covered by FIT, at its discretion) and must pay retroactive contributions to the date the employee claimed the waiver.

## **8. Employee Notice Requirements**

Employees must provide notice to Human Resources of their request to take leave under the PFL. For any type of foreseeable PFL, an employee must provide at least 30 days' notice before the leave begins.

If the employee is unable to foresee the need for PFL leave 30 days in advance, then the employee must give Human Resources notice as soon as practicable. Usually, this means giving notice the same day the employee receives notice or the next business day. If an employee does not give Human Resources timely notice, the employee's PFL leave may be delayed or denied.

In giving notice, an employee must provide sufficient information for Human Resources to determine if the leave qualifies for PFL protection and the anticipated timing and duration of the leave.

Employees requesting leave under the PFL must complete and submit a Request for Paid Family Leave Form (PFL-1) to Human Resources.

**9. Notice to Employees Following Potential PFL Qualifying Leave**

The Foundation or SHC will notify employees who are absent from work for more than seven consecutive days because of a PFL-qualifying event of the employee's rights under the PFL.

**10. Certification and Other Documentation**

An employee who requests leave under the PFL may be required to complete a certification and/or submit additional documentation to support the request for leave. Certification forms and documentation vary by leave type. The types of supporting documentation required are described in each certification form. Employees should contact Human Resources for copies of the necessary forms to take leave under the PFL. Employees should submit completed PFL certification forms and supporting documentation to the PFL insurance carrier.

Once the PFL insurance carrier receives a completed request for PFL leave with the necessary certification and supporting documentation, the PFL insurance carrier will either pay or deny the claim within 18 days of receipt of a completed claim, in its sole discretion.

**11. Compensation During Leave**

With the exception of leave under the New York City Earned Safe and Sick Time Act ("ESSTA"), discussed below, an employee may not use leave accruals and take PFL leave on the same day. However, where an employee wishes to take time off to care for a qualifying family member, that employee has the option to elect to receive full pay by using accrued leave (which, except for ESSTA leave, will **not** count against the employee's annual PFL entitlement), or elect not to charge accrued leave and receive the statutory PFL benefits.

If an employee takes PFL leave for an event that also qualifies as leave under the FMLA, the employee's PFL leave will run concurrently with available FMLA leave and deplete both leave banks at the same time.

Employees cannot use PFL and short-term disability benefits at the same time, but can use them consecutively. Employees are also limited to a maximum of 26 weeks of disability and PFL benefits combined in a rolling 12-month period.

When an employee's request for PFL leave also qualifies for ESSTA, employees have the option to use accrued and available ESSTA time to supplement their approved PFL benefits and receive full pay during their PFL leave. In order to receive this benefit, employees must use accrued and available ESSTA in full-day increments during a period of approved PFL leave. If an employee uses ESSTA time to receive full pay during a period of approved PFL leave, such ESSTA time will run concurrently with the approved PFL leave and, if applicable, approved FMLA leave. Employees wishing to use ESSTA time in connection with a qualified leave under the PFL must comply with the requirements described in the Foundation or SHC's ESSTA policy.

## **12. Benefits During Leave**

During an approved leave under the PFL, the employee will remain covered under the Foundation or SHC's group health insurance plan and other group benefit plans on the same conditions as coverage would have been provided had the employee not been on leave. As such, an employee is required to continue paying the employee's portion of the cost of coverage during any leave under the PFL (unless an employee elects not to continue any of the employee's medical or other group insurance coverages). Human Resources will provide information to employees regarding procedures for the payment of contributions, if any, during leave at or around the time PFL leave is requested.

Benefits coverage will cease if an employee's premium payment is more than 30 days late. If the health care premium, if applicable, is overdue, Human Resources will notify the employee in writing at least 15 days before coverage is to cease, advising that coverage will be dropped on a specified date at least 15 days after the date of the letter unless payment has been received by that date.

If group health plan benefits lapse because an employee has not made the required premium payments, then upon the employee's return from PFL, the employee will be restored to coverage/benefits equivalent to those the employee would have had if PFL had not been taken and premium payment(s) had not been missed.

If an employee chooses not to retain group health plan coverage during PFL leave, then upon the employee's return from leave, the employee shall be reinstated into the health plan on the same terms the employee had prior to taking leave.

An employee's use of PFL leave will not result in the loss of any employment benefits that accrued prior to the start of an employee's PFL leave (unless such accrued benefits, such as paid time off, were used during PFL leave). The employee, however, will not accrue any additional benefits or seniority during any period of PFL leave that is not paid through use of accrued leave benefits, unless otherwise required by law.

**13. Periodic Status Reports**

The Foundation or SHC may require an employee on PFL leave to report periodically on the employee's status and intent to return to work.

**14. Return from Leave**

If an employee is able to return to work at or before the end of the applicable PFL leave period, an employee will be entitled to return to the same position the employee held when leave began, or to an equivalent position with equivalent pay and other terms and conditions of employment.

**15. Non-Discrimination/Federal, State, and Local Laws**

The PFL does not affect any federal, state, or local law prohibiting discrimination or retaliation, or supersede any federal, state, or local law that provides greater family or medical leave rights. Employees covered by the PFL and any applicable federal, state, or local leave law will receive the greater benefit. However, there will be no duplication of leave or benefits under this policy and under the various federal, state, and local laws.

The Foundation or SHC will not discriminate or retaliate against any employee for requesting, taking, or attempting to take leave to which they are entitled under the PFL or any similar federal, state, or local law.

**16. Other Terms and Conditions**

The policies and guidelines stated in this policy shall be subject to such other terms and conditions as are provided in the Family and Medical Leave Act of 1993, the New York State Paid Family Leave Benefits Law, their respective implementing regulations, and any other applicable federal, state, and local leave laws, and the PFL certificate of insurance or governing plan documents.

The Foundation or SHC will not interfere with, restrain, or deny the exercise of any right provided under PFL; or discharge or discriminate against any person for opposing any practice made unlawful by PFL or for involvement in any proceeding under or relating to these statutes.

Employees who have questions about their exercise of PFL rights should contact Human Resources.