DATE: January 8, 2019
HR Memo# 01-2019

TO: Employees serving in titles represented by District Council 37 (DC37)
FROM: Nicole Van Gendt, Director of Human Resources

SUBJECT: Paid Family Leave Benefit for Employees Serving in DC37 Represented Titles

Effective January 6, 2019, employees in titles represented by District Council 37 (DC37) will be eligible to Paid Family Leave Benefits (PFL). PFL is an employee-funded insurance policy that provides job protected paid time off to bond with a newly born, adopted or fostered child, to care for a family member with a serious health condition including preparation and recovery from surgery related to organ or tissue donation, or to assist loved ones when a family member is deployed in a foreign country on active military service.

I. General Provisions

A. Eligibility

1. Full time employees who work a regular schedule of 20 hours or more per week are eligible for PFL after 26 consecutive weeks of employment commencing with the employee’s City start date.

2. Part-time employees who work a regular schedule of less than 20 hours per week are eligible after working 175 days which need not be consecutive commencing with the employee’s City start date.

3. The annual period during which an employee is eligible for a defined number of weeks of Paid Family Leave as set forth in Section E. below is defined as a rolling 12-month period measured backward from the first date that the employee begins using PFL.

Once eligibility requirements are met, employees remain eligible until employment is terminated with the City of New York or if the employees moves to a non-eligible title.

B. Eligible employees may be entitled to benefits for leave taken from work for the following qualifying events:

1. 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. 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; or
   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. Due to any qualifying exigency pursuant to Family and Medical Leave Act (FMLA), arising out of active duty or an impeding 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.

C. No employee shall be entitled to PFL benefits
   1. For any disability intentionally caused by the employee to another or resulting from the employee’s illegal act.
   2. For any day of family leave during which the employee performed work for NYCHA for remuneration or profit.
   3. For any family leave commencing before the employee becomes eligible for PFL benefits.
   4. For any disability of the employee.

D. Payroll Deductions

The Paid Family Leave benefit is paid through payroll deductions. These rates are set by September 1st of the preceding year by the New York State Superintendent of Financial Services pursuant to Workers’ Compensation Law 209(3)(b) and Insurance Law § 4235(n)(1).

For 2019, the rates are 0.153% per paycheck to a maximum of $107.97 annually. Refer to the Paid Family Leave website www.paidfamilyleave.ny.gov for the latest information on rates.

Eligible employees will begin seeing the deductions in their paychecks starting January 31, 2019.

<table>
<thead>
<tr>
<th>Bi-Weekly Wage</th>
<th>Bi-weekly Paycheck Deduction (2019)</th>
<th>Annual PFL Deduction</th>
</tr>
</thead>
<tbody>
<tr>
<td>$1,200</td>
<td>$1.84</td>
<td>$47.84</td>
</tr>
<tr>
<td>$2,000</td>
<td>$3.06</td>
<td>$79.56</td>
</tr>
<tr>
<td>$4,000</td>
<td>$6.12</td>
<td>$107.97</td>
</tr>
</tbody>
</table>

Employees that do not expect to work for NYCHA for the minimum amount of time required for eligibility may opt out of PFL by completing the Employee Opt-Out of Paid Family Leave Benefits (PFL-Waiver) form. A waiver of PFL benefits may be granted when:

1. An employee’s work schedule is 20 hours or more per week and will not work for 26 consecutive weeks or
2. An employee’s work schedule is less than 20 hours per week and will not work 175 days in a 52-consecutive week period.

Human Resources will confirm that the employee will be employed for less than the minimum amount of time required for eligibility.

E. Computation of Benefits

For 2019, employees taking PFL will receive 55% of their average weekly wage (AWW) up to a maximum of 55% of the current Statewide Average Weekly Wage (SAWW) of $1,357.11. These rates are set by the New York State Department of Labor’s Research and Statistics Division. The maximum weekly benefit for 2019 is $746.41

<table>
<thead>
<tr>
<th>Bi-Weekly Wage</th>
<th>Average Weekly Wage</th>
<th>Weekly PFL Benefit (2019)</th>
</tr>
</thead>
<tbody>
<tr>
<td>$1,200</td>
<td>$600</td>
<td>$330</td>
</tr>
<tr>
<td>$2,000</td>
<td>$1,000</td>
<td>$550</td>
</tr>
<tr>
<td>$4,000</td>
<td>$2,000</td>
<td>$746.41</td>
</tr>
</tbody>
</table>

The Paid Family Leave entitlement period and benefit will increase through 2021 as follows:

<table>
<thead>
<tr>
<th>Year</th>
<th>Weeks of Leave</th>
<th>Paid Family Leave Benefit</th>
</tr>
</thead>
<tbody>
<tr>
<td>2019</td>
<td>10 weeks</td>
<td>55% of AWW up to 55% of SAWWW</td>
</tr>
<tr>
<td>2020</td>
<td>10 weeks</td>
<td>60% of AWW up to 60% of SAWWW</td>
</tr>
<tr>
<td>2021</td>
<td>12 weeks</td>
<td>67% of AWW up to 67% of SAWWW</td>
</tr>
</tbody>
</table>

F. Paid Family Leave Usage

1. PFL may be taken consecutively or intermittently in full day increments. Any changes to an employee’s work schedule requires prior verification by the Human Resources Department.

2. Employees cannot simultaneously receive pay from annual leave balances and PFL benefits. If an employee receives pay from annual balances for leave qualifying for PFL, the leave taken will count towards the entitlement.

3. Employees that use annual/sick leave balances during the PFL period will accrue annual/sick leave during the PFL period in accordance with the applicable leave regulations. Employees will not be credited with the annual/sick leave time accrued while on PFL until employee returns from PFL.

If an employee chooses not to use annual/sick leave balances during the PFL period and therefore on unpaid leave, the employee will not accrue any annual/sick leave balances during that period.
4. Leave under the Family and Medical Leave Act (FMLA) shall run concurrently with PFL, if the employee is eligible for FMLA for the same reason for which PFL is taken. The employee must be notified if eligible for both PFL and FMLA.

5. If an employee requests leave for a PFL qualifying purpose but does not request to use PFL, the leave will automatically be designated as PFL.

6. If leave to bond with the employee’s child is interrupted or ceased as a result of the child(ren) no longer being under the care of the eligible employee, the employee must immediately notify the Human Resources Department and end his/her PFL benefits.

7. Group Health Insurance must be maintained for employees on PFL on the same terms as if the employee had continued to work. If the employee contributes to his/her health insurance cost, the employee must continue to pay his/her portion of the premium cost while on PFL.

G. How To Apply for Benefits

If the need for PFL is foreseeable, the employee should request leave at least 30 calendar days before the leave begins by submitting a NYCHA Leave of Absence Request Form to his/her Department Director. If the need for leave is not foreseeable (e.g., a medical emergency), then the employee must provide the form as soon as practicable.

In either case, along with the Leave of Absence Request Form, the employee must complete and submit the following documentation for the appropriate type of leave to his/her supervisor for submission to Human Resources at pfl@nychacour.org.

- If PFL is to bond with newly born, adopted or fostered child, complete Applying for Paid Family Leave - Bonding and submit supporting documentation as follows
  
  o For birth of a child
    - Birth certificate or voluntary acknowledgement of paternity or court order of filiation or
    - Documentation of pregnancy or birth from a health care provider including the parents name and due date and documentation verifying the parent’s relationship with the birth mother or child.

  o For Foster Care
    Letter of placement issued by county or city department of social services or local voluntary agency. If a parent is not named on the documentation, must also submit documentation verifying relationship to the parent named in the foster care placement.

  o For Adoption
    Legal evidence of adoption process. If a parent is not named in legal document must also submit documents verifying the relationship to the parent named in the document.
• If the PFL is to care for a family member with a serious health condition, the family member’s health care provider must complete the Applying for Paid Family Leave-Care for Family Member. The PFL package must be submitted to the insurance carrier within 30 days of the first date of the PFL.

• If the PFL is for Military related leave, Complete the Applying for Paid Family Leave –Military form and attach copy of Military duty papers as well as other documentation supporting the reason for the leave (copy of meeting notice, or other meeting documentation, ceremony details, rest and recuperation orders, etc.)

Within 3 business days of receiving the completed package, Human Resources must complete and return the form to the insurance carrier for processing and provide a copy for his/her record. The insurance carrier must pay or deny the request within 18 calendar days of receiving the completed request.

H. Return To Work from PFL

An employee who returns from PFL must be restored to his/her previous position or to an equivalent position. An equivalent position is a position in the same civil service title which has the same pay, benefits and working conditions (including the same worksite or a geographically proximate worksite). A geographically proximate worksite is one that does not involve significant increase in commuting distance or time. If the employee is denied restoration or other benefits, NYCHA must be able to show that the employee would not have continued to be employed or to have received the benefits if the employee had been continuously employed during the leave period.

If an employee would like to return to work from PFL earlier than initially requested or would like to extend the PFL, the employee must submit the request to Human Resources for verification. Once verification is obtained, the employee must notify the insurance carrier of the change in schedule. The insurance carrier will contact Human Resources to confirm this information.

I. Termination of PFL

If employment is terminated or if the employee moves to a non-eligible title, Human Resources must notify the insurance carrier that benefits are to be terminated.

II. Definitions

“Eligible employee” means an employee who is represented by DC37 and is either full-time working a regular schedule of 20 hours or more per week for 26 weeks or part-time working a regular schedule of less than 20 hours per week for 175 days, which need not be consecutive.

“Family Leave” means any leave taken by an employee from work

1. 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; or
2. to bond with the employee's child during the first twelve months after the child's birth or first 12 months after the placement of the child for adoption or foster care with the employee or

3. because of any qualifying exigency as interpreted under the family and medical leave act, 29 U.S.C.S. § 2612(a)(1)(e) and 29 C.F.R. § 825.126(a)(1)-(8), 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.

“Care” means physical, 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 requiring care during the majority of the leave requested. 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.

“Serious Health Condition” means an illness, injury, impairment or physical or mental condition including transplantation preparation and recovery from surgery related to organ or tissue donation 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.

“Health Care Provider” includes Physician, Physician Assistant, Chiropractor, Dentist, Physical Therapist, Nurse Practitioner, Registered Professional Nurse, Podiatrist, Optometrist, Psychologist, Clinical Social Worker, Occupational Therapist, Midwife, Mental Health Practitioner, Speech-language Pathologist, Audiologist.

“Family Member” means a child, parent, grandparent, grandchild, spouse or domestic partner as defined herein.

“Child” means a biological adopted or foster child or stepchild of the eligible employee or his/her domestic partner; legal ward of the employee or a child for whom the employee stands in loco parentis. A child must either be under the age of 18 or incapable of self-care because of mental or physical disability.

“Domestic Partner” means domestic partner as a defined in Section 4 of the Workers’ Compensation Law.

“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.

“Grandchild” means a child of the employee’s child.

“Grandparent” means a parent of the employee’s parent.
“Military Active Duty” or “Call to Active Duty Status” means (1) in the case of a member of the Regular Armed Forces, deployment to a foreign country and (2) in case of a member of the Reserve components of the Armed Forces duty, during deployment in a foreign country under a call or order to active duty or notification of an impending call or order to active duty in support of a military operation defined as a contingency operation.

“Contingency Operation” is a military operation that is designated by the Secretary of Defense as an operation in which members of the Armed Forces are or may become involved in military actions, operations or hostilities against an enemy of the United States or against an opposing military force.

“Qualifying event” means the birth of a child(ren), the formal adoption of child(ren) under the age of 18, the placement of child(ren) under the age of 18 in foster care or to care for a child incapable of self-care because of mental or physical disability; caring for a close relative with a serious health condition; or assist loved ones when a family member is deployed in a foreign country on active military service. If the qualifying event is the placement of a child with an eligible employee for foster care, the eligible employee uses PFL during that qualifying event and such placement subsequently becomes an adoption of that same child by the same employee, the adoption will not be considered a qualifying event and the eligible employee will not be entitled to additional PFL for the adoption.

“Average Weekly Wage” for the purpose of computing the PFL benefit, the amount determined by dividing either the total wages of the employee in the employment of his/her last covered employer for the eight weeks or portion thereof that the employee was in such employment immediately preceding and including his/her last day worked prior to the first day of PFL or the total wages for the last eight weeks or 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.

III. Other Conditions

1. Dispute Resolution

Informal Resolution - The employee and insurance carrier shall make every effort to informally resolve a denial of PFL benefits.

Arbitration – In the event an informal resolution is unsuccessful, any party may seek a formal resolution through arbitration. Any claim-related dispute, including eligibility, benefit rate and duration of family leave is subject to arbitration pursuant to procedures promulgated or approved by the New York State Chair of the Workers' Compensation Board. Awards are made in writing and are final and binding on the parties in the case subject to Article 75 of the Civil Practice Law and Rules.

2. The employee is responsible for any overpayment made from the insurance carrier to the employee.
3. NYCHA is strictly prohibited from discriminating or retaliating against an employee for requesting or taking Paid Family Leave.

4. Contact the insurance carrier directly for additional information or questions regarding Paid Family Leave.

SUPERVISORS: Please Print and Post in a conspicuous area.