

## RIDER

### FAMILY LEAVE BENEFITS

This rider amends your New York Statutory Disability Benefits Law (DBL) policy to provide family leave (PFL) benefits as required by law and described below. This rider replaces any previous family leave benefits rider. This rider is subject to all of the provisions of the DBL policy except as specifically modified by this rider. This rider and the DBL policy to which it is attached are governed by the laws of New York State.

This rider is effective [January 1, 2022/when issued.]

#### I. Definitions

**Arbitration** means the submission of a dispute to one or more impartial persons (as selected by the Chair) for a final and binding decision, known as an award.

**Average Weekly Wage** means 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 last covered employer for the eight weeks or portion thereof that the employee was in such employment immediately preceding and including his last day worked prior to the first day of PFL, or the total wages of 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.

For a sole proprietor, a member of a limited liability company, a member of a limited liability partnership, or other self-employed person who elects coverage under Article 9 of the Workers' Compensation Law (WCL), *average weekly wage* shall be determined by computing such person's total net income in the 52 week period immediately preceding the period of leave and dividing such total wages by 52.

**Chair** means the Chair of the NYS Workers' Compensation Board (WCB).

**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.

**Foreseeable Qualifying Events** 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.

**Grandchild** means a child of the employee's child.

**Grandparent** means the parent of the employee's parent.

**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.

**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.

***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, or continuing treatment or continuing supervision by a health care provider.

***Statewide Average Weekly Wage*** means the average weekly wage of employees in this State for the previous calendar year as reported by the NYS Commissioner of Labor.

***Superintendent*** means the Superintendent of the NYS Department of Financial Services.

***Wages*** means the money rate at which employment with a covered employer is recompensed by the employer as more fully set forth in 12 NYCRR 357.1 and in the case of a self-employed person, the person's self-employment income as defined in 26 U.S.C. § 1402(b).

## **II. Eligibility: Eligible Employees**

**A.** A New York employee of a New York covered employer whose regular employment schedule is 20 or more hours per week will become eligible to receive PFL benefits during employment with such employer if:

(1) the employee has been in employment of the covered employer for at least 26 consecutive work weeks preceding the first full day leave begins;

(2) the employee has been in employment of the covered employer during the work period usual to and available during the entirety of at least 26 consecutive weeks preceding the first full day leave begins in any trade or business in which the employee is regularly employed and in which hiring from day to day is the usual employment practice; or

(3) the employee has been in employment of the covered employer during the work period usual to and available during the entirety of at least 26 consecutive weeks preceding the first full day leave begins and such consecutive weeks are tolled by the employer during periods of absence that are due to the nonconsecutive nature of that employment and employment is not terminated during those periods of absence.

**B.** A New York employee of a New York covered employer whose regular employment schedule is less than 20 hours per week will become eligible to receive PFL benefits during employment with such employer if the employee has been in employment of the covered employer and has worked 175 days in such employment preceding the first full day leave begins.

**C.** The use of scheduled vacation time; the use of personal, sick or other time away from work that has been approved by the employer; or other periods where the employee is away from work but is still considered to be an employee by the employer are counted as days/weeks of employment for purposes of determining eligibility to receive PFL benefits during employment, so long as the required PFL premium is paid by the employee during such periods of time.

**D.** Periods of temporary disability taken pursuant to DBL shall not be counted as days/weeks of employment for purposes of determining eligibility to receive PFL benefits during employment.

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

**F. FMLA.** In the event that a period of PFL benefits received by an eligible employee is concurrently designated as leave pursuant to the Family and Medical Leave Act ("FMLA") by an employer, the employer shall comply with the notification requirements pursuant to 12 NYCRR 380-2.5(g).

### **III. Premium**

- A.** The employer is responsible to collect the premium contributions for the statutory PFL coverage from each covered employee. The employer is not required to fund any portion of the statutory PFL benefit.
- B.** The employer may collect employee premium contributions for PFL while an employee is receiving PFL benefits.
- C.** The employer may not collect employee premium contributions for PFL if an employee is taking DBL leave and has not yet acquired eligibility for PFL benefits.

### **IV. Statutory PFL Benefits**

**A.** An eligible employee 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:

- during the first 12 months after the child's birth;
- during the first 12 months after the placement of the child for adoption or foster care; or
- 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; or

(3) Due to any qualifying exigency pursuant to 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.

**B.** The weekly benefit for family leave commencing between January 1, 2020 - December 31, 2020, shall be:

- up to 10 weeks during any 52 consecutive week period; and
- paid at 60% of the employee's average weekly wage, not to exceed 60% of the statewide average weekly wage.

The weekly benefit for family leave commencing on or after January 1, 2021 shall be:

- up to 12 weeks during any 52 consecutive week period; and
- paid at 67% of the employee's average weekly wage, not to exceed 67% of the statewide average weekly wage

The benefit rate for the employee's period of family leave shall be the rate that is in effect on the first day of family leave taken.

52 consecutive weeks is computed retroactively to the first day for which benefits are currently being claimed. A single claim may not cover more than 52 consecutive weeks.

**C.** Liability of the State Insurance Fund. The liability for PFL benefits payable for a single qualifying event in a 52-week period shall be the liability of the State Insurance Fund if the State Insurance Fund was providing coverage on the first day of family leave.

## **V. Requesting PFL Benefits**

### **A. Foreseeable leave.**

(1) The employee must provide 30-days advance notice to the employer prior to the first day of leave taken for a foreseeable qualifying event. If 30-days advance notice is not practicable, then notice must be given as soon as practicable. A sole proprietor, member of a limited liability company, member of a limited liability partnership or other self-employed person, must provide 30-days advance notice to the State Insurance Fund prior to the first day of leave taken for a foreseeable qualifying event or as soon as practicable.

(2) The advance notice must include the anticipated timing and duration of the leave for;

(a) continuous leave; or

(b) intermittent leave. The employee should consult the employer on whether the employer may require the employee to provide notice as soon as practicable before each day of intermittent leave. The employee shall advise the employer and the State Insurance Fund of the schedule of intermittent leave. The State Insurance Fund may withhold payment pending submission of a request for payment together with the dates of intermittent leave

(3) The employee shall advise the employer of any change in the timing and/or duration of the leave. The sole proprietor, member of a limited liability company, member of a limited liability partnership or other self-employed person shall advise the State Insurance Fund of any change in the timing and/or duration of the leave.

(4) If the employee fails to give 30-days advance notice of foreseeable leave to the employer, the employer may request that the State Insurance Fund delay the payment of benefits to the employee (known as a partial denial) for a period of up to 30 days from when the notice was given.

### **B. Unforeseeable Leave.**

(1) When the need for continuous leave is unforeseeable, the employee must provide notice to the employer as soon as practicable. When the need for leave is unforeseeable, the sole proprietor, member of a limited liability company, member of a limited liability partnership or other self-employed person must provide notice to the State Insurance Fund as soon as practicable.

(2) When the need for intermittent leave is unforeseeable, the employer may require the employee to provide notice as soon as practicable before each day of intermittent leave. The employee shall advise the employer and the State Insurance Fund of the schedule of intermittent leave. The State Insurance Fund may withhold payment pending submission of a request for payment together with the dates of intermittent leave.

### **C. Requirements for Filing a Claim.**

(1) The employee requests PFL benefits by completing the request for PFL which is either the PFL-1 claim form available on the New York State Paid Family Leave website or the format designated by the State Insurance Fund.

(2) The employee provides the employer with the request for PFL to complete the employer information section. The employer must complete its section and return the completed request to the employee within 3 business days. The State Insurance Fund may not deny a claim for failure of the employer to complete its section.

(3) The employee completes the appropriate certifications or proof of claim documentation. No benefits are required to be paid by the State Insurance Fund until the completed request for PFL together with the necessary certifications or proof of claim documentation have been submitted to the State Insurance Fund. (See item [H.] Certification/ Proof of Claim Documentation below for additional information.)

(4) The employee submits the completed request for PFL together with the necessary certifications or proof of claim documentation to the State Insurance Fund no later than 30 days from the first day of leave. For a previously unspecified day of intermittent leave, the request for payment must be made within 30 days of the leave. If the Chair agrees that it was not reasonably possible to furnish the completed request for PFL together with the necessary certifications or proof of claim documentation within 30 days, then it must be submitted as soon as possible within the period of actual leave taken pursuant to Section IV. B. above.

(5) Once the State Insurance Fund receives the completed request for PFL together with the necessary certifications or proof of claim documentation, the State Insurance Fund must pay or deny the claim within 18 days.

(6) The State Insurance Fund shall make all reasonable efforts, consistent with the principles set forth in Executive Order 26, issued October 6, 2011, to communicate with respect to the PFL claim in the language identified by the employee in the request for PFL.

**D. Alternate Request for PFL (not using the PFL-1 claim form).**

(1) The State Insurance Fund will immediately provide an acknowledgment of receipt and a claim identification number when the State Insurance Fund receives a request for PFL in a format designated by the State Insurance Fund other than the PFL-1 claim form.

(2) Within 5 business days of receipt of an incomplete alternate request for PFL, the State Insurance Fund will provide the employee with a list of the required missing information and the following:

- (a) information on how to properly complete the request for PFL; and
- (b) information regarding arbitration.

(3) 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, the State Insurance Fund may deny the claim.

(4) Once the State Insurance Fund receives the completed request for PFL together with the necessary certifications or proof of claim documentation, the State Insurance Fund must pay or deny the claim within 18 days.

**E. Incomplete Request for PFL using the PFL-1 claim form.**

(1) The State Insurance Fund may deny a claim for PFL without prejudice within 18 days if:

- (a) the claim is incomplete; or
- (b) the certification or proof of claim documentation is insufficient.

(2) The State Insurance Fund must notify the employee of each piece of required missing information.

(3) When a PFL claim is denied without prejudice, 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, the State Insurance Fund may deny the claim.

(4) Once the State Insurance Fund receives the completed request for PFL together with the necessary certifications or proof of claim documentation, the State Insurance Fund must pay or deny the claim within 18 days.

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

(1) An Advance Request for PFL for a foreseeable qualifying event shall not be denied on the grounds that the request for PFL is incomplete.

(2) Within 5 business days of receipt of an incomplete request for PFL, the State Insurance Fund 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.

(3) Once the State Insurance Fund receives a completed request for PFL, the State Insurance Fund shall provide the employee a confirmation of receipt of the completed claim within 3 business days.

(4) If a completed request for PFL is received more than 18 days before the occurrence of a qualifying event, the State Insurance Fund shall send payment to the employee within 5 days following the qualifying event.

**G. Denial of PFL Benefits.** If the State Insurance Fund 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. A PFL denial must state the reason, repeat any relevant information filed in the request and include any other information considered by the State Insurance Fund in making the decision.

## **H. Certification/Proof of Claim Documentation.**

(1) **Certification Updates.** The State Insurance Fund may require updates to the request for PFL, certifications, or proof of claim documentation for subsequent periods of PFL not covered by the initial documentation during the 52-week period following the initial request for PFL.

(2) **Bonding Certification.** For PFL taken to bond with the employee's child, the required information to be included in the certification is contained in the PFL-2 form available on the New York State Paid Family Leave website or from the State Insurance Fund.

(3) **Certification of a Serious Health Condition.**

(a) It is the employee's responsibility to obtain a medical certification from a health care provider and to provide the State Insurance Fund with the complete and sufficient certification for PFL taken due to the serious health condition of a family member. Failure to provide the certification may result in the denial of PFL benefits.

(b) The required information to be included in the certification from the health care provider is contained in the PFL-4 form available on the New York State Paid Family Leave website or from the State Insurance Fund.

(4) **Certification Relating to a Qualifying Military Exigency.**

(a) It is the employee's responsibility to submit a certification for PFL taken due to a qualifying military exigency. The information to be included in the certification is contained in the PFL-5 form on the New York State Paid Family Leave website or from the State Insurance Fund.

(b) The State Insurance Fund may require the employee to provide a copy of the military member's active duty orders or other documentation issued by the military which indicates that the military member is on active duty or called to active duty status, and the dates of the military member's active duty service.

(c) If the qualifying military exigency involves rest and recuperation leave, the employee must provide a copy of the military member's rest and recuperation orders, or other documentation issued by the military which indicates that the military member has been granted rest and recuperation leave and the dates of the military member's rest and recuperation leave.

(d) The State Insurance Fund may independently verify the employee's appointments with third parties and may verify the military member's active duty status.

## **VI. Payment of Benefits**

**A.** The first payment of benefits shall be paid within 18 days of receipt of a completed request for PFL with the necessary certification or proof of claim documentation. Thereafter, PFL benefits shall be paid biweekly. In the event a completed request for PFL is received more than 18 days before the occurrence of a qualifying event, the State Insurance Fund shall send payment to the employee within five days following the qualifying event.

**B.** Payment of PFL benefits may be made in the same manner as the employee is paid wages from the employer (such as debit card, direct deposit, or check).

**C. Payment Options.** If the State Insurance Fund offers a choice of method of payment, the State Insurance Fund will contact the employee upon the receipt of the request for PFL and may require the employee to choose between debit card or direct deposit as the method of payment, unless the employee certifies the need for payment by check. If the employee fails to choose a method of payment, the State Insurance Fund may elect to make payment using either a debit card or a check. The employee may elect at a later time to change the default method of payment.

**D.** If the State Insurance Fund provides for payment methods in addition to a check, the State Insurance Fund must provide employees with written notice that meets the requirements of 12 NYCRR 380-5.6(e).

## **VII. Employee Use of Accruals and Employer Request for Reimbursement**

Where an employer provides an option to employees to charge all or part of unused accruals or other paid time off to receive full salary during the period of family leave and the employee exercises that option, and the employee does not file a request for PFL benefits with the State Insurance Fund, the employer may request reimbursement from PFL benefits due by filing its claim for reimbursement with the State Insurance Fund in accordance with Workers' Compensation Law §205(2)(c).

## **VIII. Dispute Resolution**

**A. Informal Resolution.** The employee and the State Insurance Fund shall make every effort to informally resolve a denial of PFL benefits.

**B. 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 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.

## **IX. Exclusions and Limitations**

(1) Prohibition on concurrent payments. DBL and PFL benefits are not payable concurrently.

(2) No employee shall be entitled to PFL benefits:

(a) For any disability occasioned by the willful intention of the employee to bring about injury to or the sickness of himself or another, or resulting from any injury or sickness sustained in the perpetration by the employee of an illegal act;

(b) For any day of PFL during which the employee performed work for the employer for remuneration or profit;

(c) For any family leave commencing before the employee becomes eligible for PFL benefits.

(3) A sole proprietor, a member of a limited liability company, a member of a limited liability partnership, or other self-employed person who elects coverage under Article 9 of the WCL shall be subject to a waiting period of 2 years from the effective date of this rider before PFL benefits are payable. During the 2 year waiting period, premium contributions for PFL coverage shall be payable.

## **X. Renewal/Cancellation/Termination**

The renewal/cancellation/termination provision of the DBL policy shall apply to this PFL rider. The benefits contained within this PFL rider shall renew or cancel/terminate on the same renewal date or cancellation/termination date as the DBL policy.

## **XI. Discontinuance**

If the State Insurance Fund elects to discontinue all DBL/PFL policies in one or more group sizes (small, medium, large), the State Insurance Fund will provide written notification of the proposed discontinuance to the Superintendent, in accordance with 11 NYCRR 363.6(l) and (m), at least 90 days prior to the date of discontinuance of the coverage. This notification shall be in addition to the notification to the employer required in the underlying DBL policy.



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