

# PAID FAMILY LEAVE **NEW YORK**

WCB FINAL Regulations  
07/19/17



Section 355.2(c) of Title 12 of the NYCRR is hereby amended as follows:

- (c) Excluded from the definition of employee, cited as examples, are the following:
- (1) The spouse or a minor child of the employer for whom such person renders services.
  - (2) A duly ordained, commissioned, or licensed minister, priest or rabbi in the exercise of his ministry, a sexton, a Christian Science reader or a member of a religious order in the exercise of duties required by such order.
  - (3) A person engaged in a professional or teaching capacity in or for a religious, charitable or educational institution.
  - (4) A volunteer in or for a religious, charitable or educational institution.
  - (5) A person participating in and receiving rehabilitative services in a sheltered workshop operated by a religious, charitable or educational institution under a certificate issued by the United States Department of Labor.
  - (6) A recipient of charitable aid from a religious or charitable institution who performs work in or for the institution which is incidental to or in return for the aid conferred and not under an express contract of hire.
  - (7) Any individual who is an independent contractor.
  - (8) A livery driver covered for work-related injuries by the Independent Livery Disability Benefits Fund pursuant to Article 6-G of the Executive Law.
  - (9) A black car operator covered by the Black Car Operator's Fund pursuant to Article 6-F of the Executive Law.
  - (10) A jockey, apprentice jockey, exercise person, employee of a trainer or owner licensed under Article two or four of the racing, pari-mutuel wagering and breeding law, covered by the New York Jockey Injury Fund, Inc. pursuant to section 221 of the Racing, Pari-Mutuel Wagering and Breeding Law.

Section 355.4 of Title 12 of the NYCRR is hereby amended as follows:

§ 355.4 Covered employer

(a) An employer who has had in employment[, after July 1, 1949, four or more employees on each of at least 30 days in any calendar year, becomes a covered employer from and after January 1, 1950, or the expiration of four weeks following the 30th day of such employment, whichever is the later, and an employer, except as provided in subdivision (b) of this section, not otherwise a covered employer under Article 9 of the Workers' Compensation Law and this section, who has had in employment, after June 30, 1959, three or more employees on each of at least 30 days in any calendar year, becomes a covered employer from and after January 1, 1960, or the expiration of four weeks following the 30th day of such employment, whichever is the later, and an employer, except as provided in subdivision (b) of this section, not otherwise a covered employer under Article 9 of the Workers' Compensation Law and this section, who has had in employment, after June 30, 1960, two or more employees on each of at least 30 days in any calendar year, becomes a covered employer from and after January 1, 1961, or the expiration of four weeks following the 30th day of such employment, whichever is the later, and an employer, except as provided in subdivision (b) of this section, not otherwise a covered employer under Article 9 of the Workers' Compensation Law and this section, who has had in

employment, after June 30, 1961,] one or more employees on each of at least 30 days in any calendar year, becomes a covered employer [from and] after [January 1, 1962, or] the expiration of four weeks following the 30th day of such employment[, whichever is the later]. If an employer has two or more employments, as defined in section 355.3(e) of this Part, the employer's status shall for purposes of Article 9 of the Workers' Compensation Law and this section be determined separately with respect to each such employment. The "30 days" referred to in this section are not necessarily consecutive days, but each day worked within a calendar year, whether all or part of such day is worked, shall be considered a day.

(b) [An employer of personal or domestic employees in a private home on or after January 1, 1960 and prior to January 1, 1984 becomes a covered employer from and after the expiration of four weeks following the employment of four or more personal or domestic employees on each of at least 30 days in any calendar year.] An employer of personal or domestic employees in a private home [on or after January 1, 1984] becomes a covered employer from and after the expiration of four weeks following the employment of one or more personal or domestic employees who work for a minimum of 40 hours per week for such employer and are employed on each of at least 30 days in any calendar year.

(c) A substitute or relief employee regularly in employment substituting or relieving another employee who is temporarily absent shall not be counted in his or her capacity of substitute or relief employee as an additional employee in determining whether the employer is a covered employer.

(d) An employee who has filed or is eligible to file a waiver of benefits pursuant to [section 235 of the Workers' Compensation Law](#) or section 380-2.6 of this Subchapter shall nevertheless be counted as an employee in determining whether the employer is a covered employer.

Section 358-3.1 of Subpart 358-3 is amended as follows:

a) § 358-3.1 Benefits "at least as favorable" construed

On or after May 1, 1989 and prior to July 1, 1989:

(a) Benefits under any plan within the provisions of sections 358-1.1(b)(1), 358-1.2(b) and 358-2.1 of this Title may, in aggregate, be deemed to be "at least as favorable", provided:

(1) the aggregate benefits for each employee, including cash benefits and other benefits directly related to disability, are equivalent to or greater than the disability benefits under section 204 of the Workers' Compensation Law; and

(2) the cash disability benefits meet the minimum requirements under subdivision (b) of this section.

(b) The following are minimum requirements for the cash disability benefits provided under such plans:

(1) a weekly cash benefit rate at least:

(i) \$ 102 per week for an employee whose average weekly wage is \$ 204 or more;

(ii) fifty percent of average weekly wage for an employee whose average weekly wage is \$ 44 or more and less than \$ 204;

(iii) \$ 22 dollars per week for an employee whose average weekly wage is \$ 40 or more and less than \$ 44;

(iv) \$ 20 per week for an employee whose average weekly wage is \$ 20 or more and less than \$ 40; and

(v) average weekly wage for an employee whose average weekly wage is less than \$ 20;

(2) a waiting period of not more than seven days of disability;

(3) a duration benefit period of at least 13 weeks of disability during a period of 52 consecutive calendar weeks or during any one period of disability, unless the plan provides for full wage continuance in which event there shall be a duration benefit period of at least eight weeks; and

(4) cash disability benefits payable periodically, exclusive of all other benefits, of a value at least equal to 60 per cent of the disability benefits payable under section 204 of the Workers' Compensation Law.

(c) The chairman shall, by rule, prescribe a method for determining whether the aggregate benefits and the cash disability benefits under a plan meet the requirements of subdivision (a) of this section.

On or after July 1, 1989: (a) Cash disability benefits under any plan within the provisions of sections 358-1.1(b)(1), 358-1.2(b) and 358-2.1 of this Part may be deemed "at least as favorable" provided:

([a]1) the weekly disability benefit for each employee is equivalent to or greater than the weekly disability benefit provided by section 204(2) of the Workers' Compensation Law;

([b]2) the waiting period is no more than seven consecutive days of disability; and

([c]3) the duration of the benefit period is at least 26 weeks of disability during a period of 52 consecutive calendar weeks or during any one period of disability. [This section shall take effect July 1, 1989].

(d) Family leave benefits under any plan within the provisions of subdivisions (4) and (5) of section 211 of the Workers' Compensation Law, may, in aggregate, be deemed to be "at least as favorable," provided:

- (1) The aggregate benefits for each employee, including cash benefits and other benefits directly related to the qualifying event for family leave, are equivalent to or greater than the family leave benefits under section 204 of the Workers' Compensation Law; and
- (2) The cash family leave benefits meet the minimum requirements under subdivision (e) of this section.

(e) The following are minimum requirements for the cash family leave benefits provided under such plans:

- (1) When the employee is eligible (after 26 weeks or 175 days) there is no waiting period for family leave benefits;
- (2) A weekly cash benefit rate:
  - (i) on or after January 1, 2018 at least 50 percent of the employee's average weekly wage or 50 percent of the state average weekly wage, whichever is less;
  - (ii) on or after January 1, 2019 at least 55 percent of the employee's average weekly wage or 55 percent of the state average weekly wage, whichever is less;
  - (iii) on or after January 1, 2020 at least 60 percent of employee's average weekly wage or 60 percent of the state average weekly wage, whichever is less; and
  - (iv) on or after January first of each succeeding year, at least 67 percent of the employee's average weekly wage or 67 percent of the state average weekly wage, whichever is less;
- (3) A duration benefit period:
  - (i) on or after January 1, 2018, of at least eight weeks during any 52 week calendar period;
  - (ii) on or after January 1, 2019, of at least 10 weeks during any 52 week calendar period; and
  - (iii) on or after January 1, 2021, of at least 12 weeks during any 52 week calendar period.

([c] f) The Chair[man] shall, by rule, prescribe a method for determining whether the aggregate benefits and the cash disability and family leave benefits under a plan meet the requirements of [subdivision (a)of] this section.

Section 355.8 of Title 12 of NYCRR is hereby amended as follows:

### **355.8 Benefits "at least as favorable"**

Benefits under a plan shall provide for each employee, or for each employee of the class or classes of employees included under the plan, either (a) cash disability and family leave benefits, or (b) cash disability benefits plus other benefits directly related to disability including, without limitation, benefits to reimburse or provide for hospital, medical and surgical care. In either case, the cash disability and family leave benefits, exclusive of any other benefits that may be provided under the plan, shall meet the requirements of section 358-3.1 in order to be deemed "at least as favorable" as the disability and family leave benefits under section 204 of the Workers' Compensation Law. This section shall take effect July 1, 1989.

A new section 355.9 is added as follows:

## **Section 355.9 Paid Family Leave Definitions**

(a) As used in Part 380 of this Subchapter:

- (1) “Arbitration” means the submission of a dispute to one or more impartial persons for a final and binding decision, known as an award. 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) “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 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. For individual business owners, as defined in paragraph 11 herein, who elect coverage under Article 9 of the Workers’ Compensation Law, average weekly wage shall be determined by computing the individual business owner’s total net income in the 52 week period immediately preceding the period of leave and dividing such total wages by 52.
- (3) “Benefit” means the money payable to an eligible employee during family leave.
- (4) “Care recipient” means the family member receiving care from the employee taking paid family leave.
- (5) “Day of Paid Family Leave” means any full day in which the employee was prevented from performing work for the covered employer because the employee used family leave.
- (6) “Desk arbitration” means the submission of a dispute to one or more impartial persons for a final and binding decision, known as an award. There is no hearing, and the decision is based on the submissions made by the interested parties. 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.
- (7) “Dispute resolution forum” means the company responsible for handling the arbitration for paid family leave disputes, comprised of impartial persons who make the final and binding decision as to any awards.
- (8) “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.
- (9) “Group health insurance” means a plan (including a self-insured plan) of, or contributed to by, an employer (including a self-employed person) or employee organization to provide health care (directly or otherwise) to the employees, former employees, the employer, or others associated or formerly associated with the employer in a business relationship.
- (10) “Health care provider” means a person licensed under Article 131, 131-b, 132, 133, 136, 139, 141, 143, 144, 153, 154, 156, or 159 of the Education Law, or a person licensed under the Public Health Law, Article 140 of the Education Law or Article 163 of the Education Law as more fully set forth in subdivision 22 of section 201 of

- the Workers' Compensation Law. Health care provider also includes persons licensed and in good standing in the equivalent specialty in another state or another country when the care recipient resides in another state or another country.
- (11) "Individual business owner" means a sole proprietor, member of a limited liability company, partnership, limited liability partnership or self-employed person as set forth in subparagraph (b) of subdivision (4) of section 212 of the Workers' Compensation Law who is the exclusive owner of a business, and who is entitled to keep all profits after taxes have been paid but is liable for all losses, including LLCs or LLPs.
- (12) "Insurance carrier" means the State Insurance Fund, stock corporations, mutual corporations or reciprocal insurers with which employers have insured, and employers permitted to pay compensation directly under the provisions of Workers' Compensation Law section 50(3), (3-a) or (4). Insurance carrier also means, as applicable, an employer which has failed to obtain the required workers' compensation coverage pursuant to Workers' Compensation Law section 50.
- (13) "PFL" means the New York State Paid Family Leave Benefits Law.
- (14) "Premium" means the total amount paid for an insurance policy on an annual basis.
- (15) "Qualifying event" means an occurrence that causes an employee to be eligible for family leave.
- (16) "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) As used in this subchapter, "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) As used in this subchapter, 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 for purposes of leave under this subchapter.
- (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 under this subchapter. Restorative dental or plastic surgery after an injury or removal of cancerous growths are serious health conditions, provided all the other conditions of this paragraph are met. Mental illness or allergies may be serious health conditions, but only if all the conditions of this paragraph are met.



- (17) “Termination of employment” means the last day that the employee performs work in the service of a covered employer.
- (18) “Third Party Administrator” means an individual or entity licensed to represent self-insured employers or insurance carriers pursuant to subdivisions (3-b) and (3-d) of Workers’ Compensation Law section 50.
- (19) “Wages” means the money rate at which employment with a covered employer is recompensed by the employer as more fully set forth in section 357.1 of this chapter. For the purposes of paid family leave, the computation shall include the reasonable value of board, rent, housing, lodging or similar advantage received where such are withheld by the employer during the period of family leave and shall 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. Wages for an individual business owner, as that term is defined in paragraph (11) herein, shall be earnings subject to federal self-employment tax.

(b) The definitions included in this section may be used in this Subchapter when context so requires.

**Part 380 is added as follows:**  
**Paid Family Leave**

**Subpart 380-1 Applicability**

The provisions in this Part shall be applicable to Paid Family Leave. The definitions included in Part 355 of this Subchapter shall be applicable to the sections herein.

**Subpart 380-2 Eligibility**

**380-2.1 Providing care.**

- (a) For the purpose of this Part, the employee must be in close and continuing proximity to the care recipient. This means present at the same location as the family member during the majority of the employment period from which leave has been taken. Travel necessitated for the purpose of 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) For the purpose of this section, “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.

**380-2.2 Leave for birth, adoption, or foster care.**

- (a) An employee may take family leave 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. For example, the employee may be required to attend counseling sessions, appear in court, consult with his or her 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 for this purpose.
- (b) An employee's entitlement to family leave for a birth expires at the end of the consecutive 52-week period beginning on the date of the birth, and an employee's entitlement to family leave for adoption or foster care expires at the end of the consecutive 52-week period beginning on the date of the placement or first day of leave taken under subsection (a) herein.
- (c) An eligible employee may opt to receive disability and family leave benefits during the post-partum period but may not receive both benefits at the same time.

**380-2.3 Leave for qualifying exigency arising from the service of a family member in the armed forces of the United States.**

- (a) Family leave benefits for an eligible employee that are based upon a 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(b)(1)–(9), 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, shall be paid for no longer

than the maximum periods of time as set out in section 204 of the Workers' Compensation Law.

- (b) A claim for such benefits shall be made and processed in the same manner as other claims for family leave benefits.

**380-2.4 Family leave on or after January 1, 2018.**

- (a) Employees are entitled to family leave benefits under Article 9 of the Workers' Compensation Law only on or after January 1, 2018.
- (b) An employee shall only be entitled to the maximum number of family leave benefits permissible in a 52-consecutive week period under section 204 of the Workers' Compensation Law, even where such employee begins employment with a different covered employer during the 52-consecutive week period.
- (c) An employee may not receive both disability benefits and family leave benefits for the same period of time.
- (d) An employer is permitted, but not required, to collect the weekly employee contribution on July 1, 2017 for paid family leave coverage beginning on January 1, 2018.

**380-2.5 Employees who acquire eligibility during employment.**

- (a) An employee of a covered employer whose regular employment schedule is 20 or more hours per week will become eligible to take family leave during his or her employment with such employer, provided the employee has been either:
  - (1) In employment, as defined in this Title, of the covered employer for at least 26 consecutive work weeks preceding the first full day family leave begins; or
  - (2) In employment, as defined in this Title, of the covered employer during the work period usual to and available during the entirety of such 26 consecutive weeks preceding the first full day the leave begins in any trade or business in which he or she is regularly employed and in which hiring from day to day of such employees is the usual employment practice; or
  - (3) In employment, as defined in this Title, of the covered employer for at least 26 consecutive weeks, such consecutive weeks may be tolled during periods of absence that are due to the nature of that employment, such as semester breaks, and when employment is not terminated during those periods of absence.
- (b) An employee of a covered employer whose regular employment schedule is less than 20 hours per week will become eligible to take family leave from such employment after working 175 days in such employment preceding the first full day the leave begins.
- (c) Maximum family leave for all employees.
  - (1) Weekly leave. Any employee taking family leave in weekly increments will be eligible for the maximum number of weeks of leave in any 52 consecutive week period. Weekly benefits are payable in accordance with subdivision 2 of section 204 of the Workers' Compensation Law.
  - (2) Daily leave. When any employee takes family leave in daily increments, the employee's maximum period of paid family leave is calculated based on the average number of days worked per week with a maximum of 60 days per year for employees working at least five days per week. Thus, for example, an employee that works three days per week, will receive:

- (i) On January 1, 2018, the equivalent of three days per week for eight weeks, or a maximum of 24 days in any 52 consecutive week period.
- (ii) On January 1, 2019, the equivalent of three days per week for ten weeks, or a maximum of 30 days in any 52 consecutive week period.
- (iii) On January 1, 2021, the equivalent of three days per week for twelve weeks, or a maximum of 36 days in any 52 consecutive week period.
- (3) Computing the average daily rate for daily leave.
  - (i) When an employee requests family leave in daily increments (eg. every Monday for six weeks), rather than as a weekly benefit, the daily benefit shall be calculated based on the employee's average weekly wage (computed in the same manner as set forth in section 355.9) divided by the average number of days the employee worked per week.
  - (ii) 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 employer shall average the number of days the employee worked per week over the same eight weeks used in calculating the employee's average weekly wage under section 355.9(2). The average number of days worked may be fractional in order to accurately convert the average weekly wage to an equivalent daily wage.
- (d) In order to determine eligibility for family leave under this section, 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, shall be counted as consecutive weeks or consecutive work weeks, or days worked, as long as the contributions to the cost of family leave benefits, pursuant to section 209 of the Workers' Compensation Law and required by the employer of like employees, have been paid for such periods of time.
- (e) In order to determine eligibility for family leave under this section, periods of temporary disability taken pursuant to Article 9 of the Workers' Compensation Law shall not be counted as weeks of employment or days worked for determining eligibility for paid family leave.
- (f) An employee who is eligible for both disability benefits and family leave 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. No employee shall receive more than the maximum duration of family leave benefits, pursuant to section 204 of the Workers' Compensation Law, in any 52 consecutive calendar week period as such is defined in section 355.9 of this Subchapter.
- (g) (1) In the event that a period of family leave benefits received by an eligible employee under this Title is concurrently designated as leave pursuant to 29 U.S. Code Chapter 28 (the Family and Medical Leave Act or "FMLA") by an employer subject to FMLA, the employer shall notify the eligible employee of such designation and shall also provide the employee with the notice required under 29 CFR 825.301 and 825.305.  
 (2) If an employer fails to provide the notice required by this section, the employer will be deemed to have permitted the eligible employee to receive family leave benefits without concurrently using the benefits available under FMLA, as permitted under section 206 of the Workers' Compensation Law.

(3) If an employer designates a period of family leave to be covered by the FMLA for a reason also covered under section 201(15) of the Workers' Compensation Law, and if the employer informs the employee of their eligibility for family leave benefits and the employee declines to apply for payment under section 380-5.1 of this Part, the employer and its insurance carrier may count the leave against the employee's maximum duration of family leave in a 52 week period under section 204(2)(a).

(4) FMLA designated leave taken by an employee due to his or her own serious health condition is not family leave under section 201(15) of the Workers' Compensation Law and does not reduce the amount of paid family leave an employee is eligible for under section 204(2)(a).

(5) The employer may elect to track hours taken for FMLA for any day in which the employee is paid, works at least part of the day, and is thus not eligible for paid family leave pursuant to paragraph (d) of subdivision (3) of section 206 of the Workers' Compensation Law. 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 employer may deduct one day of paid family leave benefits from an employee's annual available family leave benefit. The employer shall not be entitled to reimbursement from its carrier for such paid FMLA hours.

### **380-2.6 Family leave waiver.**

- (a) An employee of a covered employer shall be provided the option to file a waiver of family leave benefits:
  - (i) When his or her regular employment schedule is 20 hours or more per week but the employee will not work 26 consecutive weeks; or
  - (ii) When 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.
- (b) Within eight weeks of any change in the regular work schedule of an employee that requires the employee to continue working for 26 consecutive weeks or 175 days in a 52 consecutive week period, any waiver filed under this section shall be deemed revoked. An employee of a covered employer whose waiver has been revoked shall be obligated to begin making contributions to the cost of family leave benefits, including any retroactive amounts due from date of hire, pursuant to section 209 of the Workers' Compensation Law, as soon as the employee is notified by the covered employer of such obligation.
- (c) The covered employer shall keep a copy of the fully executed waiver on file to be produced at the request of the Chair, for as long as the employee remains in employment with the covered employer.
- (d) An employee as described in subsection (a) of this section who elects not to enter into a waiver shall make regular family leave benefit contributions for the full duration of his or her employment with the covered employer, and the covered employer shall be obligated to provide family leave benefits for such employee when he or she is eligible pursuant to this Title.

### **380-2.7 Bonding leave for those born or placed prior to January 1, 2018.**

In the case of leave taken for the purpose of bonding with a child pursuant to section 201 of the Workers' Compensation Law, on or after January 1, 2018, employees may seek family leave benefits during the first twelve months after the child's birth, or during the first twelve months

after the placement of the child for adoption or foster care with the employee, even in the event the child was born or placed prior to January 1, 2018.

### **380-2.8 Fifty-two consecutive weeks.**

Fifty-two consecutive weeks shall be computed retroactively with respect to each day for which benefits are currently being claimed. In no case shall a single claim for periodic family leave cover more than fifty-two weeks, an employee with an eligible periodic claim must submit a new claim at the end of the fifty-two week period.

### **380-2.9 Employees subject to collective bargaining agreements**

Covered employers with employees or a class or classes of employees subject to a collective bargaining agreement shall not be required to supply such employees with paid family leave coverage when the collective bargaining agreement (i) provides paid family leave benefits at least as favorable as set forth in subdivision (e) of section 358-3.1 of this Subchapter; and, (ii) does not permit an eligible employee to waive his or her rights to paid family leave or otherwise opt-out of Article 9 except as permitted in section 380-2.6 of this Subpart. With the exception of the requirements set forth in the preceding sentence, a collective bargaining agreement may provide rules related to paid family leave that differ from the requirements set forth in this Subchapter. Where the collective bargaining agreement does not provide a different rule, the provision of this Subchapter shall apply to family leave benefits.

### **Subpart 380-3: Notice to employer of foreseeable qualifying event**

#### **380-3.1 Employee notice requirements for paid family leave.**

- (a) Foreseeable leave. An employee must provide the employer with at least 30 days advance notice before leave is to begin if the qualifying event is foreseeable. 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. If 30 days advance notice is not practicable for reasons such as a lack of knowledge of approximately when leave will be required to begin, a change in circumstances, or a medical emergency, notice must be given as soon as practicable. The employee shall advise the employer as soon as practicable if dates of scheduled leave change or are extended, or were initially unknown.
- (b) (1) When the approximate timing of the qualifying event and need for leave is not foreseeable, an employee shall provide notice to the employer as soon as practicable under the facts and circumstances of the qualifying event. It generally should be practicable for the employee to provide notice of leave that is unforeseeable within the time prescribed by the employer's usual and customary notice requirements applicable to such leave.  
(2) As soon as practicable means as soon as both possible and practical, taking into account all of the facts and circumstances in the individual case. 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. In all cases, however, the determination of when an employee

could practicably provide notice must take into account the individual facts and circumstances surrounding the qualifying event.

- (c) Intermittent leave. When an employee takes intermittent family leave the employer may require the employee to provide notice as soon as is practicable before each day of intermittent leave.
- (d) An employer may waive the notice requirements contained in subdivision (a) of this section.

### **380-3.2 Content of notice to employer.**

- (a) An employee shall provide notice sufficient to make the employer aware of the qualifying event and the anticipated timing and duration of the leave. The employee shall identify the type of family leave as listed in Subpart 380-2 of this Part when providing notice to the covered employer.
- (b) When an employee seeks leave for the first time for a qualifying event, the employee need not expressly assert rights under PFL or even mention family leave. In all cases, the employer should seek further information from the employee to determine whether paid family leave is being sought by the employee.

### **380-3.3 Compliance with employer policy.**

To the extent that a covered employer's rules about requesting leave are less stringent than the rules contained herein, an employer may require an employee to comply with the employer's usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances. Where an employee does not comply with the employer's usual notice and procedural requirements, and no unusual circumstances justify the failure to comply, PFL may be delayed or denied.

### **380-3.4 Advance notice to carrier by employees not required; Advance notice to carrier by individual business owner.**

- (a) The employee is not responsible for providing advance notice of foreseeable leave to the carrier beyond the requirements stated in filing a request for paid family leave as set forth in section 380-5.1 and section 217 of the Workers' Compensation Law.
- (b) An individual business owner who has purchased family leave coverage must give 30 days notice to his, her, or their carrier and otherwise comply with the provisions of this Subpart.

### **380-3.5 Failure to give 30 days advance notice for foreseeable leave.**

When the need for family leave is foreseeable and an employee fails to give 30 days advance notice, the self-insured employer or the carrier may file a partial denial of the family leave claim for a period of up to 30 days from the date notice is provided.

## **Subpart 380-4: Request for Paid Family Leave, Medical Certification and HIPAA authorization**

### **380-4.1 Request for Paid Family Leave and Certification, general rule.**

- (a) A claim for paid family leave shall be considered complete when an eligible employee submits a Request for Paid Family Leave and Certification to the self-insured employer or carrier as set forth in section 380-5.1.
- (b) An employee shall advise the employer and carrier of the schedule for intermittent leave. When the dates for leave are not specified on the Request for Paid Family Leave, the carrier, the employer, or, when the employer is uninsured, the Special Fund for Disability Benefits, may withhold payment pending submission of a request for payment together with the date of leave. Payment shall be completed as soon as possible, but in no event more than 18 days from the date of the request. As required by Workers' Compensation Law section 217, an employee must request payment for a previously unspecified day of family leave within thirty days of the leave.

### **380-4.2 Content of medical certification taken because of the serious health condition of a family member.**

- (a) Required information. When leave is taken because of the serious health condition of a family member, the employee must obtain a medical certification from a health care provider that sets forth the following information:
  - (1) Name, address, telephone number, email address (if available), license number and state of license of the health care provider, and the type of medical practice/specialization;
  - (2) Approximate date on which the serious health condition commenced, and its probable duration;
  - (3) Certification regarding the patient's health condition for which PFL is requested. The certification must be sufficient to support the need for leave; and
  - (4) An estimate of the frequency and duration of the leave required to care for the family member, including whether the need for care is continuing or on an intermittent basis.
- (b) A health care provider may refuse to supply a certification for family leave when the employee requesting the leave is the perpetrator of domestic violence or child abuse against the care recipient.
- (c) In all instances in which certification is required, it is the employee's responsibility to provide the carrier with a complete and sufficient certification, and failure to do so may result in the denial of family leave. The authorization, release, or waiver executed by the care recipient shall be subject to the authorization rules and exceptions thereto of the HIPAA Privacy Rule (45 C.F.R. parts 160 and 164 [2005]).

### **380-4.3 Certification for leave taken because of a qualifying military exigency.**

- (a) Active Duty Orders. The first time an employee requests leave because of a qualifying exigency arising out of the covered active duty or call to covered active duty status (or notification of an impending call or order to covered active duty) of a military member, a carrier or self-insured employer 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 covered active duty or call to covered active duty status, and the dates of the military member's covered active duty service. This information need only be provided to the carrier or self-insured employer once. A copy of new active duty orders or other documentation issued by the military may be required by



the carrier or self-insured employer if the need for leave because of a qualifying exigency arises out of a different covered active duty or call to covered active duty status (or notification of an impending call or order to covered active duty) of the same or a different military member.

(b) Required Information. A request for paid family leave for any qualifying exigency specified in section 380-2.3 must be supported by a certification from the employee that sets forth the following information:

- (1) Statement or description, signed by the employee, of appropriate facts regarding the qualifying exigency for which paid family leave is requested. The facts must be sufficient to support the need for leave. Such facts include information on the type of qualifying exigency for which leave is requested and any available written documentation which supports the request for leave; such documentation, for example, may include a copy of a meeting announcement for informational briefings sponsored by the military, a document confirming an appointment with a counselor or school official, or a copy of a bill for services for the handling of legal or financial affairs;
- (2) Approximate date on which the qualifying exigency commenced or will commence;
- (3) If an employee requests leave because of a qualifying exigency for a single, continuous period of time, the beginning and end dates for such absence;
- (4) If an employee requests leave because of a qualifying exigency on an intermittent basis, an estimate of the frequency and duration of the qualifying exigency;
- (5) If the qualifying exigency involves meeting with a third party, appropriate contact information for the individual or entity with whom the employee is meeting (such as the name, title, organization, address, telephone number, fax number, and email address [if available]) and a brief description of the purpose of the meeting; and
- (6) If the qualifying exigency involves rest and recuperation leave, 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.

(c) Verification. If an employee submits a complete and sufficient certification to support his or her request for leave because of a qualifying exigency, the carrier or self-insured employer may not request additional information from the employee. However, if the qualifying exigency involves meeting with a third party, the carrier or self-insured employer may contact the individual or entity with whom the employee is meeting for purposes of verifying a meeting or appointment schedule and the nature of the meeting between the employee and the specified individual or entity. The employee's permission is not required in order to verify meetings or appointments with third parties, but no additional information may be requested by the carrier or self-insured employer. A carrier or self-insured employer also may contact an appropriate unit of the Department of Defense to request verification that a military member is on covered active duty or call to covered active duty status (or has been notified of an impending call or order to covered active duty); no additional information may be requested, and the employee's permission is not required.

#### **380-4.4 Proof of eligibility for leave taken to bond with a child.**

- (a) A birth mother's claim for paid family leave to bond with a child must be supported by documentation in the form of:
  - (1) If available, a birth certificate; or
  - (2) If a birth certificate is unavailable, documentation of pregnancy or birth from a health care provider that includes the mother's name and the child's due or birth date.
- (b) A parent's (other than a birth mother) claim for paid family leave to bond with a child must be supported by documentation in the form of:
  - (1) If available, a birth certificate;
  - (2) If no birth certificate is available, a voluntary acknowledgment of paternity or court order of filiation.
  - (3) If the documents in (1) and (2) herein are not available, then the employee must provide (A) a copy of documentation of pregnancy or birth from a health care provider that includes the mother's name and the child's due or birth date (see section (a)(2) above), and (B) a second document verifying the parent's relationship with the birth mother or child (i.e. marriage certificate, civil union documents, or domestic partner documents).
  - (4) If the documents in (B) of subparagraph (3) herein are not available a parent may submit other documentary evidence of parental relationship for evaluation on a case-by-case basis. The Chair may update the list of acceptable documentation.
- (c) An adoptive parent's claim for paid family leave to bond with a child must be supported by documentation in the form of:
  - (1) A court document indicating that an adoption is in process or is being finalized; or
  - (2) When leave is taken prior to completion of the adoption, a document evidencing that the adoption process is underway, including but not limited to, a signed statement from an attorney, adoption agency, or adoption-related social service provider that the employee is in the process of adopting a child.
  - (3) If the second parent is not named in the document(s) in (1) or (2) herein, the employee must provide (A) a copy of the document evidencing the adoption, and (B) a second document verifying the relationship to the parent named in the document (i.e. marriage certificate, civil union documents, or domestic partnership documents).
- (d) A foster parent's claim for paid family leave to bond with a child must be supported by documentation in the form of:
  - (1) A letter of placement issued by the county or city department of social services or local volunteer agency.
  - (2) If the employee is not named in the placement document, submit (A) a copy of the document evidencing the placement, and (B) a second document verifying the relationship to the parent named in the document (i.e. marriage certificate, civil union documents, or domestic partnership documents).

## **Subpart 380-5: Payment and Denials**

### **380-5.1 Requesting Paid Family Leave.**

An employee wishing to make a claim for paid family leave must complete the Request for Paid Family Leave in the format prescribed by the Chair (currently the form PFL-1) or give notice of a claim in another format designated by the carrier or self-insured employer, including using an electronic portal or by telephone. A carrier or self-insured employer that designates another format for filing a request for family leave must continue to accept the Request for Paid Family Leave in the format prescribed by the Chair, in addition to any other designated format. Any method of filing a request for family leave designated by a carrier or self-insured employer must solicit the same information as the Request for Paid Family Leave (form PFL-1), Parts A and B. The Chair shall have discretion to mandate the means of transmission of a claim, including an electronic portal maintained by carriers or the Board for receipt of family leave claims. Any such mandate by the Chair shall contain a means for transmission available to employees that do not have the means to submit via the mandated method.

- (a) Once the employer receives a request for family leave from an employee, the employer shall complete the employer information contained in Part B of the Request for Paid Family Leave (currently form PFL-1), or any other carrier or self-insured employer designated format, and return it to the employee within three business days.
- (b) The employee shall submit the request for family leave together with the information supplied by the employer, and with any necessary certifications or proof of claim documentation, medical or otherwise, to the carrier or designated third-party administrator. The carrier or self-insured employer must accept certification and proof of claim forms in the format prescribed by the Chair (currently forms PFL-2, 3, 4, and 5), but may also accept certifications in another format that complies with the requirements of sections 380-4.2, 380-4.3, 380-4.4 of this Part.
- (c) An employee must submit a completed request for paid family leave to the carrier. No benefits shall be required to be paid by the carrier until the completed request for paid family leave, together with any necessary certifications or proof of claim documentation, has been submitted to the carrier.

### **380-5.2 Alternate Method for Filing a Claim.**

- (a) A carrier or self-insured employer who receives a request for paid family leave in any format other than the format prescribed by the Chair shall immediately provide the employee with an acknowledgment of receipt with a claim identification number.
- (b) If the carrier or self-insured employer determines the request for paid family leave is incomplete, it shall provide the employee within five business days:
  - (1) A list of each piece of required information which is missing with the corresponding data field on the Request for Paid Family Leave prescribed by the Chair identified. Such list shall also provide the employee with an explanation of how to properly complete the request for paid family leave (and information regarding arbitration should the employee have any disputes.

### **380-5.3 Prefiling Request for Paid Family Leave.**

- (a) A carrier or self-insured employer may receive a request for paid family leave in advance of the happening of a foreseeable qualifying event as identified in Subpart

380-3 of this Part, in which one or more pieces of required information, contained in Part A of the Request for Paid Family Leave (currently form PFL-1) or as set forth in sections 380-4.2, 380-4.3, and 380-4.4, is missing. The Request for Paid Family Leave shall indicate that it is being submitted in advance of the qualifying event. Such missing information must be supplied upon the happening of the qualifying event.

- (b) When a carrier or self-insured employer receives a request for paid family leave under this section, the carrier or self-insured employer shall not deny the claim for incomplete claim package. The carrier or self-insured employer shall provide the employee within five business days:
- (1) A notice indicating the employee's claim is pending until all missing information is received upon the happening of the qualifying event;
  - (2) Each piece of required information, as identified in sections 380-4.2, 380-4.3, and 380-4.4 of this Part, which is missing from the employee's Request for Paid Family leave (currently PFL-1); and
  - (3) Instructions outlining the preferred method in which the employee shall submit the missing pieces of required information upon the happening of the qualifying event, including a contact office or person's name, mailing address, email, and contact phone number.
  - (4) Once the carrier or self-insured employer receives all missing pieces of required information, the carrier or self-insured employer must pay the claim or deny the completed claim within 18 days, and shall provide the employee within three business days a confirmation of receipt of a complete claim. A carrier may not deny a claim on the grounds of incompleteness after issuing such a confirmation.
- (c) If the claim is the responsibility of the Board as a result of the employer's lack of paid family leave coverage, a prefiled Request for Paid Family Leave may take more than five business days.

#### **380-5.4 Acceptance or Denial of Claim.**

- (a) Once the carrier or self-insured employer receives a completed request for paid family leave with the necessary certification as identified in Subpart 380-4 of this Part, the carrier or self-insured employer must pay the claim or deny the claim within 18 days. In the event a completed request is received more than 18 days before the occurrence of a qualifying event, the carrier or self-insured employer shall send payment to the employee within five days following the qualifying event.
- (1) The Chair may prescribe the format of a denial for request for paid family leave, and with the first payment or denial, the carrier or self-insured employer must provide contact information, including a contact person's name or office, mailing address, email, and contact phone number, as well as any form identifiers prescribed by the Chair such as name, number or bar code. A paid family leave denial must state the reason, repeat any relevant information filed in the Request for Paid Family Leave, and include any other information considered by the carrier in making the decision.
  - (2) Unless the employee requests to receive correspondence by regular mail, the carrier or self-insured employer may send the denial and accompanying information by email.

- (3) Whenever a claim for paid family leave is the responsibility of the Special Fund for Disability Benefits pursuant to section 213 of the Workers' Compensation Law, the Chair may waive the Special Fund for Disability Benefits' obligation to pay or deny within 18 days.
- (b) The carrier or self-insured employer may deny the claim without prejudice for the following reasons:
- (1) Incomplete claim package; or
  - (2) Insufficient certification or proof of eligibility.
- (c) If the claim is denied without prejudice due to an incomplete claim package, the carrier or self-insured employer must notify the employee of each piece of required information, as identified in the Request for Paid Family Leave (currently form PFL-1) and 380-4.2, 380-4.3, and 380-4.4 of this Part, which is missing from the employee's request for paid family leave. If the claim is not refiled within 30 days from when leave was first taken, the carrier or self-insured employer may deny the claim.
- (d) The carrier or self-insured employer may deny the claim for the following reasons:
- (1) Employee has not been employed by the employer for a sufficient length of time to be eligible for benefits;
  - (2) Employee is not an employee of the employer;
  - (3) Employee is not an employee of a covered employer;
  - (4) The family member that the employee is seeking leave to care for is not a covered family member under subdivision (20) of section 201 of the Workers' Compensation Law; or
  - (5) The amount of leave requested exceeds the statutory maximum benefit period for family leave or disability benefits under Article 9 of the Workers' Compensation Law.
  - (6) The amount of family leave requested exceeds the statutory maximum or the family leave needed as stated in the medical certification of the employee or the qualifying event was foreseeable and the employee failed to provide the employer with notice as required in Subpart 380-3 of this Part. In such a case, the carrier may issue a partial denial of any excess leave or a partial denial for 30 days when the qualifying event was foreseeable and the employee failed to provide the employer with notice. All benefits requested that have not been denied must be paid within the statutory time frame.
  - (7) The employee requesting leave is the perpetrator of domestic violence or child abuse against the care recipient; or
  - (8) The claim was not timely made.
  - (9) The employer did not have coverage on the date family leave began.
    - (i) When the Board has identified a carrier as providing coverage, the carrier shall pay family leave benefits to the employee without prejudice while the dispute regarding coverage is resolved. Whenever a claim for paid family leave is the responsibility of the Special Fund for Disability Benefits pursuant to section 213 of the Workers' Compensation Law, the Chair may waive the Special Fund for Disability Benefit's obligation to pay without prejudice.
    - (ii) When a basis for a denial is lack of insurance coverage, the insurance carrier shall provide the Board with a copy of the denial.

- (e) Failure of the employer to complete, or inadequate completion by the employer, of the employer section on the request for paid family leave is not a valid basis for denial by the carrier.
- (f) If the employee is eligible to receive benefits at the time of submission of the Request for Paid Family Leave with the carrier, the carrier or self-insured employer must accept the claim and make payment to the employee within 18 days. In addition to any other applicable penalties, any benefits paid after 18 days shall draw simple interest from 10 days after notice was given, at the rate provided in section 5004 of the Civil Practice Law and Rules.
- (g) The employee and carrier or self-insured employer should make every effort to informally resolve a denial of benefits.
- (h) The carrier or self-insured employer 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 paid family leave claim in the language identified by the employee on the Request for Paid Family Leave form.
- (i) The insurance carrier on the first date of paid family leave taken by the employee will be deemed the insurance carrier for the whole period of paid family leave for a 52 week period from the first date of leave taken, except that when an employee changes employers with a different insurance carrier, the existing carrier's coverage of the employee is terminated and the employee must become eligible under the new covered employer's coverage.

### **380-5.5 Uninsured Employers.**

- (a) In the event that an employee makes a claim for paid family leave upon an uninsured employer and is entitled to such benefits, the Special Fund for Disability Benefits shall make payment of the benefits to the employee.
- (b) The Special Fund for Disability Benefits will attempt to seek reimbursement from the uninsured employer of any benefit payments made on behalf of the uninsured employer. If the Special Fund for Disability Benefits seeks reimbursement of such payments from the uninsured employer, the employer cannot seek contributions from its employees to pay the required reimbursement.
- (c) Whenever a claim for disability benefits or paid family leave is the responsibility of the Special Fund for Disability Benefits pursuant to section 213 of the Workers' Compensation Law, the Chair or the Chair's designee may take any action necessary to defend the assets and interests of the Special Fund for Disability Benefits (as outlined in section 214 of the Workers' Compensation Law). These actions include, but are not limited to, making an investigation or inquiry, commencing or participating in any arbitration action and participating in a hearing.

### **380-5.6 Methods of payment of paid family leave benefits.**

- (a) Employees may be paid family leave benefits in like manner as wages, including the following methods:
  - (1) Debit card;
  - (2) Direct deposit; or

- (3) Check.
- (b) Definitions. For the purposes of this Part:
- (1) “Debit card” shall mean a card that provides access to an account with a financial institution established directly or indirectly by the carrier or self-insured employer, and to which transfers of the employee’s paid family leave benefits are made.
  - (2) “Consent” shall mean an express, advance, written authorization given voluntarily by the employee and only given following receipt by the employee of written notice of all terms and conditions of the method of payment. Consent may be withdrawn at any time, provided however, that the carrier or self-insured employer shall be given a reasonable period of time to finalize such change.
  - (3) “Direct deposit” shall mean the transfer of paid family leave benefits into an account, of the employee’s choosing, of a financial institution.
- (c) Choice of method of payment. If the carrier or self-insured employer offers a choice of method of payment, the carrier or self-insured employer shall contact the employee upon receipt of a paid family leave claim and may require the employee to choose between direct deposit or debit card as the method of payment, unless the employee certifies the need for payment by check.
- (d) If the employee fails to choose a method of payment, the carrier, or employer if self-insured, may elect to make payment using either a debit card or a check. The employee may elect at a later time to change this default method of payment, but the carrier or employer is not required to rescind the original payment transaction on the debit card or check.
- (e) Written notice. A carrier or self-insured employer who uses methods of payment other than check shall provide employees with a written notice that identifies the following:
- (1) A plain language description of all of the employee’s options for receiving payment of benefits;
  - (2) A statement that the carrier or self-insured employer may give the employee the choice between receiving benefits by debit card or direct deposit, but cannot prohibit the employee, upon the employee’s certification that it is necessary, from receiving benefits by check;
  - (3) A statement that the employee may not be charged any fees for services that are necessary for the employee to access his or her benefits in full; and
  - (4) If offering employees the option of receiving payment via debit card, a list of locations (current at the time the carrier or self-insured employer provides the list to the employee) where employees can access and withdraw wages at no charge to the employees within reasonable proximity to their place of residence or place of work.
- (f) Prohibited practices. A carrier or self-insured employer, or agent, shall not engage in unfair, deceptive or abusive practices in relation to the method or methods of payment of benefits. No carrier, employer, or agent, shall discharge, penalize or in any other manner discriminate against any employee because such employee has not consented to receive his or her benefits through direct deposit or debit card.

**Subpart 380-6: Benefit Rate and Use of Accruals**  
**380-6.1 Benefit Rate.**

- (a) The benefit rate an employee may receive during family leave for a single qualifying event in a 52 week period is the maximum rate as set forth in Workers' Compensation Law section 204 in effect on the first day of family leave. The family leave benefits payable for the qualifying event in that 52 week period shall be the liability of the carrier providing coverage on the first day of family leave. The carrier may require updates to the Request for Family Leave, or certifications under sections 380-4.2, 380-4.3 and 380-4.4 of this Part, during the 52 week period for subsequent periods of family leave not covered by the initial claim documentation.
- (b) When an employee has multiple covered employers:
  - (i) An employee with multiple covered employers is not required to take paid family leave from each covered employer during a single period of family leave.
  - (ii) An employee with multiple covered employers may not take paid family leave for a single qualifying event from different covered employers at separate intervals, but must take family leave from all covered employers during the same family leave period.

### **380-6.2 Use of accruals for family leave benefits and reimbursement.**

- (a) In the event an employer offers, and the eligible employee exercises, an option to charge all or part of his or her family leave time to unused accruals or other paid time off and receive full salary, the employer may request reimbursement out of any family leave benefits due or to become due by filing its claim for reimbursement with the carrier prior to the carrier's payment of such family leave benefits. The actual reimbursement amount may be computed after family leave is complete.
- (b) With the election of this option, the employee shall receive the full protection of the reinstatement provision set forth in section 203-b of the Workers' Compensation Law.
- (c) An employer covered by the FMLA (29 U.S. Code Chapter 28) that designates a concurrent period of family leave under section 380-2.5(g) of this Part may charge an employee's accrued paid time off in accordance with the provisions of the FMLA.
- (d) In no event can an employee utilize family leave beyond 12 weeks, or the maximum duration permitted as set forth in paragraph (a) of subdivision two of section 204, per any consecutive 52-week period.
- (e) This section may not be construed in a manner that relieves an employer of any duty of collective bargaining the employer may have with respect to the subject matter of this section.

## **Subpart 380-7: Compliance and Coverage**

### **380-7.1 Paid family leave coverage.**

A disability benefits policy issued to satisfy a covered employer's statutory obligations pursuant to Article 9 of the Workers' Compensation Law must also provide paid family leave coverage as of January 1, 2018.

### **380-7.2 Employer obligations.**

- (a) (1) If a covered employer maintains written guidance for employees concerning employee benefits or leave rights, such as in an employee handbook, information concerning leave under PFL and employee obligations under PFL shall be included in the handbook or other written guidance.



- (2) If a covered employer does not have written policies, manuals, or handbooks describing employee benefits and leave provisions, the employer shall provide written guidance to each of his or her employees concerning all of the employee's rights and obligations under PFL, including information on how to file a claim for paid family leave.
- (b) (1) A covered employer may deduct employee contributions prior to the effective date of the policy and prior to an employee's eligibility for paid family leave.  
(2) A covered employer may be responsible for payment of premium prior to collection of all employee contributions for a policy year. Under these circumstances, the covered employer may collect employee contributions after the premium payment in order to cover the cost of the paid family leave coverage.  
(3) A covered employer shall use his or her employees' contributions to provide PFL benefits to employees and shall promptly return to employees any surplus in employee contributions that exceed the annual premium.  
(4) A covered employer may continue to deduct the employee contributions set forth in Workers' Compensation Law section 209 when an employee is receiving benefits pursuant to Workers' Compensation Law section 204. A covered employer may not collect employee contributions for an employee who has not yet acquired eligibility for PFL under Workers' Compensation Law section 203 and section 380-2.5 of this Part, while that employee is taking disability leave.
- (c) The weekly contribution from an employee is the maximum per week that can be withheld. Unless otherwise specified in this Part or section 209 of the Workers' Compensation Law, an employer's failure to withhold may not be recovered by withholding larger than the maximum employee contribution at a later date.
- (d) If an employer does not comply with the provisions of Article 9 to provide coverage for family leave benefits, a penalty shall be imposed on the employer, not in excess of a sum equal to one-half of a per centum of the employer's weekly payroll for the period of such failure, and a further sum not in excess of 500 dollars.
- (e) Every covered employer must display or post, and keep posted, a typewritten or printed notice concerning PFL in a form prescribed by the Chair. The notice must be displayed in plain view where all employees and/or applicants can readily see it.
- (f) An employer who by operation of law becomes successor to a covered employer, or who acquires by purchase or otherwise the trade or business of a covered employer, immediately becomes a covered employer and must maintain PFL benefits for his or her employees.
- (g) A covered employer that closes or dissolves its business and no longer has any employees may discontinue paid family coverage on the date the business closes or is dissolved with no employees. An employee who is out of work due to the closing or dissolution of the employer's business shall not be eligible for paid family leave as of the date his or her employment terminates. An employee whose employer has changed pursuant to subdivision (4) of section 202 of the Workers' Compensation Law shall be eligible for family leave benefits if he or she was eligible under the previous covered employer.
- (h) The Chair or his or her designee may audit an employer, at his or her discretion, for any purpose related to the administration of this section, including but not limited to, claim filing, dates of leave, return to work, payroll information, and written guidance

to employees concerning employee benefits or leave rights, employer use of employee contributions to provide PFL, and employer compliance with posting requirements.

### **380-7.3 Health insurance during paid family leave.**

In accordance with the Family and Medical Leave Act (29 U.S.C. Sections 2601–2654):

- (a) An employee who is provided health insurance by his or her employer is entitled to the continuation of that group health insurance coverage during paid 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.
- (b) If an employer provides a new health plan or benefits, or changes health plans or benefits while an employee is on paid family leave, the employee is entitled to the new or changed plan or benefits to the same extent as if the employee was not on leave.
- (c) Any share of health plan premiums which had been paid by the employee prior to paid family leave shall continue to be paid by the employee during the paid family leave period. If the premiums are raised or lowered, the employee is required to pay the new premium rates.
- (d) (1) A covered employer's obligations to maintain health insurance coverage cease under PFL if an employee's premium payment during a period of family leave is more than 30 days late. In order to drop the coverage for an employee whose premium payment is late, the employer must provide written notice to the employee that the payment has not been received. Such notice must be mailed to the employee 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.  
(2) If the employer has established policies regarding other forms of unpaid leave that provide for the employer to cease coverage retroactively to the date the unpaid premium payment was due, the employer may drop the employee retroactively in accordance with that policy, provided the 15-day notice was given. In the absence of such a policy, coverage for the employee may be terminated at the end of the 30 day grace period, where the required 15-day notice has been provided.
- (e) If health insurance coverage lapses because an employee has not made the required premium payments, upon the employee's return from paid family leave the covered employer must restore the employee to coverage/benefits equivalent to those the employee would have had if paid family leave had not been taken and premium payment(s) had not been missed, including family or dependent coverage.
- (f) If an employee chooses not to retain health plan coverage during paid family leave, upon the employee's return from paid family leave, the employee shall be reinstated into the health plan on the same terms the employee had prior to taking leave.
- (g) A covered employer shall provide notice of any opportunity to change plans or benefits to an employee on paid family leave.

### **380-7.4 Group health insurance benefits during paid family leave.**

An employee's group health insurance benefits provided to him or her prior to taking paid family leave must be maintained during paid family leave. If an employee is provided family member health insurance coverage by his or her employer, the family member health insurance coverage

must be maintained by the employer during paid family leave. The employee must continue to make any normal contributions to the cost of the health insurance premiums.

### **380-7.5 Coverage information.**

- (a) Carriers shall timely notify the Board of changes in coverage for paid family leave and disability benefits as prescribed by the Chair. Carriers who fail to update coverage information in the format prescribed by the Chair may face penalties.
- (b) Carriers providing paid family leave coverage may create or coordinate efforts to create an electronic portal in order to file and administer claims or paid family leave and in order to coordinate benefits.

### **380-7.6 Rights under PFL.**

Except as provided in section 380-2.6, employees cannot waive their prospective rights under PFL. Under no circumstance may an employer induce employees to waive any rights under PFL.

### **380-7.7 Coverage.**

- (a) On January 1, 2018, and continuing thereafter, every disability benefits policy effective on that date that satisfies the employer's obligation to provide disability benefits coverage under Article 9, and that is not subject to any exemption under the law, shall also include paid family leave coverage in the disability benefits policy.
- (b) Every carrier that provides statutory disability benefits policies in New York State shall also offer paid family leave coverage.
- (c) Each employee covered by his or her employer's statutory disability benefits policy on January 1, 2018, who is not subject to any exemption under the law, shall on that date be provided paid family leave coverage by the same carrier regardless of whether his or her employer has updated their policy or has paid additional premiums to include paid family leave coverage in their disability benefits coverage.
- (d) In order to deny a claim based on cancellation of paid family leave coverage, the cancellation must have been made effective by the carrier notifying the Board of such cancellation.
- (e) Employers who purchase disability benefits insurance coverage from the State Insurance Fund or a private carrier shall purchase paid family leave coverage from the same carrier and waive the option of self-insuring for paid family leave coverage purposes.
- (f) A carrier that disputes that it provided paid family leave coverage for an employer, must make payments to the employee during the family leave period or pendency of the dispute, whichever is shorter. Such payments are subject to reimbursement by the employer, Special Fund for Disability Benefits, or another insurance carrier identified during dispute resolution.
- (g) A carrier who elects to discontinue offering coverage to employers for disability and paid family leave benefits must provide to the Chair, or the Chair's designee, a copy of the written notification of proposed discontinuance of coverage as required by the Department of Financial Services by:
  - (1) The later of July 1, 2017, or within 60 days of the date the Superintendent of Financial Services publishes the community rate for premiums for family leave benefits coverage for the policy benefit period beginning on January 1, 2018, if discontinuing coverage for calendar year 2018; or

- (2) At least 90 days prior to the date of discontinuance of such coverage if discontinuing coverage on or after January 1, 2018.
- (h) A carrier who discontinues offering all coverage for disability and family leave benefits may re-enter the market upon approval of the Superintendent of Financial Services and the Chair.
  - (i) A carrier who provides a disability benefits policy together with a rider for paid family leave benefits shall calculate the premium payment as a total amount for both the disability benefits policy and paid family leave rider. When a partial payment of the premium is received by the carrier, the amount must be applied to both the policy and the rider, and any cancellation resulting from unpaid premiums will apply to both the disability benefits policy and the paid family leave benefits rider.
  - (j) An employer will be required to refund to its employees any contribution collected for paid family leave and disability benefits coverage that corresponds to any policy coverage period cancelled by the insurance carrier.

### **380-7.8 Proof of coverage.**

- (a) The State Insurance Fund and private carriers shall provide proof of paid family leave coverage to the Board for all covered employers in the format prescribed by the Chair.
- (b) Board employees investigating compliance with PFL shall be provided with all requested information by the employer upon request.

### **380-7.9 Penalty review process.**

Whenever a penalty is issued to an employer and/or carrier under this Part or Article 9, the employer and/or carrier shall have 30 days from the date of penalty assessment to request review of the penalty. Such request shall be made in writing and submitted to the Bureau of Compliance at the Workers' Compensation Board. The request for review should set forth the legal and factual basis for the review. If the employer and/or carrier does not seek such a review, or fails to do so in a timely manner, the penalty shall constitute the final determination of the Chair. If the Chair determines that the penalty was correctly issued, the employer and/or carrier shall have 10 days from the date of determination to pay the penalty sum to the Chair and such sum will be credited to the Special Fund for Disability Benefits.

### **380-7.10 Reports.**

- (a) As requested by the Chair, carriers and self-insured employers providing family leave benefits coverage and the arbitration association overseeing the arbitration of paid family leave disputes shall provide reports to the Board. Such reports may be requested quarterly and may include requests for the number of paid family leave claims received per quarter, the number of family leave benefit weeks used by employees, the type of benefits used by employees, the genders of the employees using the benefits, the ages of the employees using the benefits, the size of the employers, the employers' zip codes, and the benefit rates. The Chair has the discretion to require additional information relevant to the regulation of PFL be included in such reports.
- (b) The Chair may also request that carriers providing family leave benefits coverage and the arbitration association overseeing the arbitration of PFL matters provide the Board with

reports that identify the number of benefit denials, the reason for such denials, the number of arbitration requests received, and the results of arbitrations.

- (c) Self-insured employers will be subject to the regulations of the Department of Financial Services at Part 363 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (11 NYCRR 363).

### **Subpart 380-8: Reinstatement to Employment**

#### **380-8.1 Reinstatement.**

- (a) A covered employee who has received family leave benefits shall be reinstated to his or her employment upon conclusion of his or her leave in accordance with section 203-b of the Workers' Compensation Law, and need not take any action.
- (b) In the event the covered employer declines to reinstate the eligible employee, or otherwise violates the provisions of section 203-b or 120 of the Workers' Compensation Law, such employee shall file with the employer and the Chair a formal request on the form prescribed by the Chair that the employer come into compliance with the provisions of sections 203-b and 120 of the Workers' Compensation Law.
- (c) Within 30 days of the date of a request under subsection (b) of this section, the covered employer shall either take corrective action or file a formal response to the employee, any attorney or representative who the employee may have retained, and the Chair, explaining the reason that corrective action will or will not need to be taken. The failure of the employer to fully complete the formal response in a timely fashion may result in adverse findings and conclusions.
- (d) In the event the employer takes corrective action to the satisfaction of the employee, no further action is needed.

#### **380-8.2 Discrimination or Retaliation.**

- (a) The date of the employer's response to a formal written request under subsection (b) of section 380-8.1, or the day after 30 days after the date of the employee's formal request if no such response has been provided, shall be the date as of which the employee then has two years to file a complaint under section 120 of the Workers' Compensation Law.
- (b) An eligible employee who wishes to file a complaint under section 120 shall do so in the format prescribed by the Chair.
- (1) An employee complaint under this section must be served on the employer at the time it is filed with the Board, and must contain:
- (i) Date upon which the formal request under subsection (b) of section 380-8.1 was filed with the employer and the Board;
  - (ii) Proof of the employee's receipt of family leave benefits or claim for family leave benefits, if family leave benefits were not received;
  - (iii) Information regarding the manner in which the employer has failed to comply with section 203-b of the Workers' Compensation Law; and
  - (iv) Any other information that the Chair deems relevant in order to process such complaint.
- (2) The Board will not consider a complaint under this section unless the formal request under subsection (b) of section 380-8.1 has been received, and unless either the time that the employer is given to respond under subsection (d) of section 380-8.1 has passed, or an employer response has been received.

- (3) A complaint that does not include the information required under subsection (b)(1) of this section may be rejected by the Board.
- (c) (1) After the Board has determined that a complaint has been received that meets all of the requirements of subsection (b) of this section, the Board shall schedule hearings, including a preliminary conference. (2) The employer shall file an answer to the employee's complaint within 30 days receipt of notice from the Board. Failure of an employer to file an answer may result in waiver of defenses to the complaint.
- (d) The fact that an employee was ineligible to receive family leave benefits at the time he or she made such claim may serve as a basis to disallow a discrimination or retaliation claim under section 120 of the Workers' Compensation Law.
- (e) In evaluating a complaint brought under this section, the Board may consider whether the employer's actions are related to the taking of family leave or if the employer's actions would have affected the employee if he or she was not on family leave. For example, if a shift has been eliminated, or overtime has been decreased, an employee would not be entitled to return to work that shift or the original overtime hours. If an employee is laid off during the period of family leave, the employer must be able to demonstrate that the lay-off is not in retaliation for filing a claim for family leave benefits.
- (f) The absence of the eligible employee from the workplace shall not be considered a valid or legitimate basis for an employer's failure to reinstate, or for any other action taken by the employer in violation of the provisions of section 203-b of the Workers' Compensation Law.
- (g) An employee's claim for family leave benefits that has been falsified may be considered a valid and legitimate basis for an employer's failure to reinstate such employee, or for taking other associated employer action.

## **Subpart 380-9: Disputes**

### **380-9.1 Eligibility for arbitration.**

Any claim-related dispute, including eligibility, benefit rate, and duration of paid family leave, arising under the PFL is subject to arbitration as set forth in section 221 of the Workers' Compensation Law.

### **380-9.2 Appointment of arbitrators.**

- (a) The Chair shall review the qualifications of applicants for the position of arbitrator of disputed requests for family leave, make appointments, and review the arbitrator's performance.
- (b) An arbitrator shall be an attorney admitted to practice in New York State and have a knowledge of the PFL.
- (c) All arbitrators shall be appointed by, and serve at the pleasure of, the Chair. An arbitrator candidate shall disclose to the Chair any circumstance which is likely to create an appearance of bias or which might disqualify such person as an arbitrator, and the Chair shall determine whether the candidate should be disqualified. The Chair shall forward the names of all arbitrators to the dispute resolution forum, and promptly inform the dispute resolution forum of all additions to, and deletions from, the panel of arbitrators.

- (d) Any arbitrator appointed by the Chair shall be subject to disqualification with respect to a particular case for the reasons specified in section 380-9.7.
- (e) All arbitrators shall be required to take an annual oath of office. Arbitrators shall require all witnesses to testify under oath or affirm that their statements are true under penalty of perjury.

### **380-9.3 Requests for arbitration.**

- (a) A request for arbitration shall be submitted to the dispute resolution forum within 26 weeks of written notice of denial of the claim for paid family leave in the format prescribed by the Chair. The party requesting arbitration shall submit a complete copy of the request for arbitration to the other parties to the claim. When it is alleged that the employer did not have paid family leave insurance or was not self-insured, the Board shall be sent a complete copy of the request for arbitration. In these cases, the initiating party should send the Board the complete copy of the request for arbitration.
- (b) When the basis for a dispute is identification of the proper insurance carrier or establishing coverage for a paid family leave period, the carrier, employer, or Board on behalf of the Special Fund for Disability Benefits, may file a request for arbitration to resolve the dispute.
  - (1) When the employee's eligibility for benefits is not in dispute, the carrier or employer that has been identified by the Board as being responsible for the claim shall make payments to the employee during the family leave period or pendency of the dispute, whichever is shorter.
  - (2) Such payments are subject to reimbursement upon resolution of the dispute as set forth in section 380-7.7 herein.

### **380-9.4 Initiation of process.**

- (a) All requests for arbitration shall be initiated by submitting the completed request for arbitration to the dispute resolution forum and the responding party, and by submitting to the dispute resolution forum a filing fee in the amount of 25 dollars that may be refunded as set forth in paragraph (3) herein.
  - (1) If the request is initiated by an employee (including an employee claiming employment or eligibility), the employee shall attach copies of all documents previously submitted to the carrier or self-insured employer as proof of eligibility, and the rejection of claim form.
  - (2) If the request is initiated to dispute the identity of the proper insurance carrier or to establish coverage for a paid family leave period, the party initiating arbitration must attach documentation to support its request.
  - (3) If the employee prevails on his or her claim, 25 dollars will be added to the benefits paid to an employee by the insurance carrier or self-insured employer.
- (b) Within two business days of receipt of the completed request for arbitration and filing fee, the dispute resolution forum shall acknowledge receipt of the request for arbitration by notifying all parties by electronic communication. In his or her request for arbitration, an employee may request communication by regular mail.
- (c) Any request for arbitration which is not accompanied by the necessary documents or filing fee shall be returned with an acknowledgment stating there will be no further action

on the claim. An incomplete request for arbitration may be completed and resubmitted in its entirety subject to subdivision (a) of section 380-9.3 and receipt of the filing fee of 25 dollars.

- (d) Within 14 days after receipt of acknowledgment of the completed request for arbitration from the dispute resolution forum, the responding party shall submit to the dispute resolution forum, and all other parties, a response to the request for arbitration and copies of any documents supporting its denial of the request for family leave benefits.

### **380-9.5 Fee structure.**

- (a) The carrier, self-insured employer, or if applicable, the Board, shall submit the arbitration fee, together with its response to the initiating party's request for arbitration. In the event that the carrier, self-insured employer, or the Board initiates the arbitration, such arbitration fee shall be due when the request for arbitration is filed.
- (b) The Chair shall set the maximum fees for arbitration. Such maximum fees may be adjusted from time to time but no more frequently than annually. For the year beginning January 1, 2018:
- (1) For desk arbitrations, the dispute resolution forum will receive a fee not to exceed 350 dollars, and the arbitrator shall receive a fee not to exceed 200 dollars.
  - (2) For arbitrations in which an oral hearing is held, the dispute resolution forum will receive a fee not to exceed 450 dollars, and the arbitrator shall receive a fee not to exceed 175 dollars per hour.
- (c) If multiple carriers or self-insured employers are parties to an arbitration, or the Board is a party, each will be charged an equal shares of the fees.
- (d) Unless a different arrangement is agreed to between the dispute resolution forum and the carrier or self-insured employer, a carrier that fails to submit the required filing fee to the dispute resolution forum with its response to an employee's request for arbitration, within 14 days, may result in a finding that the carrier or self-insured employer has waived all defenses. The carrier or self-insured employer shall be responsible for the arbitration fees together with simple interest thereon.

### **380-9.6 Withdrawal of arbitration requests.**

- (a) The parties may, by mutual agreement, withdraw the request for arbitration in writing. The document must be signed by the parties and filed with the dispute resolution forum.
- (b) Additionally, the party requesting arbitration may unilaterally withdraw a request for arbitration by filing such request for withdrawal with the dispute resolution forum and sending a copy to all other parties.
- (c) Where the request for arbitration has been withdrawn, fees paid to the dispute resolution forum shall not be refundable.
- (d) When a request for arbitration is withdrawn prior to receipt of a response from the opposing party and submission of the request for arbitration to an arbitrator, no fee shall be due other than the 25 dollar filing fee.

### **380-9.7 Assignment of arbitrators.**

- (a) The dispute resolution forum shall select from the panel of arbitrators, on a rotational basis, an arbitrator who will hear the case and shall submit the name of the arbitrator to



each party to the arbitration no later than 14 days after sending the acknowledgment of the request for arbitration.

- (b) Any person appointed as an arbitrator shall disclose to the dispute resolution forum any circumstance likely to affect impartiality, including any bias, or any actual or apparent conflict of interest from financial or personal interest in an arbitration. Upon receipt of such information from the arbitrator or another source, the dispute resolution forum shall communicate the information to the parties, and if it deems appropriate to do so, to the arbitrator and other interested parties.
- (c) If a party objects to the appointment of an arbitrator, the specific grounds for such objection shall be submitted in writing to the dispute resolution forum, which shall determine within seven days after receipt of the challenge whether the arbitrator shall be disqualified. The dispute resolution forum shall determine whether the arbitrator shall be disqualified and shall notify the parties of its decision, which shall be final and binding.
- (d) In the event an arbitrator shall resign, be disqualified or be otherwise unable to perform his or her duties, the dispute resolution forum shall appoint another arbitrator.

### **380-9.8 Desk arbitration and further development of the record.**

All disputes shall be resolved by desk arbitration unless the arbitrator, after review of the parties' submissions, finds further development of the record necessary.

- (a) Whenever an arbitrator finds further development of the record necessary, he or she must also obtain:
  - (1) The consent of the carrier or self-insured employer paying for the arbitration to proceed with such further development of the record; or
  - (2) When the carrier or self-insured employer does not consent, the arbitrator must obtain the consent of the Chair's designee to proceed with such further development of the record.
- (b) Further development of the record may include submission of additional documentary evidence including sworn affidavits as directed by the arbitrator in addition to, or together with, a telephone conference to determine what evidence shall be produced and the time-line for such submission. The arbitrator shall make a record of the directions for additional evidence as well as the terms of a telephone conference.
- (c) In the event that submission of such additional evidence is not adequate to resolve the issue, further development of the record may include an oral hearing. The arbitration association shall notify the parties of the location, date, and time of the oral hearing.

### **380-9.9 Review of arbitration requests; medical examinations.**

- (a) The arbitrator shall not be bound by common law or statutory rules of evidence or by technical or formal rules of procedure. Upon compliance with section 380-9.7 herein, the arbitrator may make such investigation, inquiry, or conduct a hearing, in such manner as he or she deems proper and necessary, and shall have the power to issue subpoenas, in accordance with section 7505 of the Civil Practice Law and Rules.
- (b) Medical examinations of the care recipient shall only be required when so directed by the arbitrator. In the event that the arbitrator directs the submission of a medical examination, it must be a records review unless the arbitrator can cite extraordinary circumstances warranting the submission of an Independent Medical Examination based on a physical examination.

**380-9.10 Decisions of the arbitrator; awards; interest.**

- (a) The arbitrator shall make a decision in writing no later than 14 days after submission of all evidence in the matter. The decision shall specify the basis of the decision on the form prescribed by the dispute resolution forum for such purpose. The decision may include any stipulation made by the parties. The decision shall be delivered to each party in the manner prescribed by the Chair.
- (b) Awards in favor of a represented employee will specify the portion of the award to be paid to the employee's attorney as a fee commensurate with the services rendered.
  - (1) To apply for a fee, an employee's attorney must complete the portion of the request for arbitration relating to attorneys' fees and attach a detailed description of services rendered and time spent. If an oral hearing is held, the attorney may apply for an additional fee.
  - (2) If the employee indicates in the request for arbitration that he or she objects to the fee, the employee may submit a written statement to the dispute resolution forum within 14 days.
  - (3) The arbitrator will determine the amount of an employee's attorney's fee having due regard for the time spent, complexity of the case, the financial status of the employee, and the quality of the legal services rendered.
- (c) Awards shall be paid to the prevailing party no later than 10 days after filing of the decision. Any awards remaining unpaid after said 10-day period shall draw simple interest from 10 days after the making of the award at the rate provided in section 5004 of the Civil Practice Law and Rules.

**380-9.11 Enforcement and appeals of decisions.**

- (a) Any decisions of an arbitrator made pursuant to the provisions of this Subpart may be enforced, vacated, or modified in accordance with the applicable provisions of sections 7509, 7510, 7511, and 7514 of the Civil Practice Law and Rules. No other provisions of Article 75 of the Civil Practice Law and Rules, except as may be otherwise provided in this Subpart, shall be applicable to arbitration pursuant to this Subpart.
- (b) The arbitrator and dispute resolution forum shall not be made parties to a court proceeding relating to an arbitration. The Board shall not be made a party to a court proceeding related to an arbitration award unless its presence as a party is pertinent to any issue raised in the litigation.
- (c) The participation of a party in such an arbitration proceeding shall be a waiver of any claim against an arbitrator or the dispute resolution forum for any act or omission in connection with any arbitration conducted under this Subpart.

**380-9.12 Dispute Resolution Forum and Board Guidelines.**

- (a) The dispute resolution forum and its arbitrators shall adhere to any guidelines published by the Board for the resolution of paid family leave disputes.
- (b) All parties subject to the provisions of this Subpart shall be subject to any rules promulgated by the dispute resolution forum with respect to its own internal procedures regarding the administration of disputed claims, to the extent that such rules are not inconsistent with guidelines published by the Board or this Subpart.

## **Subpart 380-10: Voluntary Coverage**

### **380-10.1 Public Employers that Opt In.**

- (a) In the event that a public employer as defined in section 212-b of the Workers' Compensation Law elects to offer family leave benefits to public employees who are not represented by an employee organization as described in section 212-b, such entity shall:
- (1) Provide written notice to the Chair and to all public employees who will be required to make contributions no less than 90 days prior to collecting the first employee contribution. The notice does not need to include the amount of the employee contribution, as long as it states that the amount will not exceed the maximum permitted by section 209 of the Workers' Compensation Law;
  - (2) Follow all applicable statutory and regulatory requirements for the provision of family leave benefits in accordance with sections 211 and 212-a of the Workers' Compensation Law, including self-insurance requirements in the event the entity intends to self-insure;
  - (3) Submit the public employer's paid family leave plan to the Board; and
  - (4) Provide 12 months written notice to the Chair and all public employees who have been making contributions in accordance with section 209 of the Workers' Compensation Law of any decision by the entity to discontinue the provision of voluntary coverage.
    - (i) Failure to provide proper written notice in accordance with this subsection shall subject the public employer to fines, assessments, and other penalties as prescribed by law, including but not limited to, section 220 of the Workers' Compensation Law.
- (b) In the event that a public employer and employee organization as defined in section 212-b of the Workers' Compensation Law agree, pursuant to collective bargaining, to offer family leave benefits to public employees who are members of an employee organization as defined in section 212-b of the Workers' Compensation Law, the public employer, or if agreed to, the employee organization, shall:
- (1) Provide written notice to the Chair that such agreement has been reached, and shall include a list of employees and effective dates or other coverage information required by the Chair;
  - (2) Submit the paid family leave plan to the Board;
  - (3) Follow all applicable statutory and regulatory requirements for the provision of family leave benefits in accordance with sections 211 and 212-a of the Workers' Compensation Law, including self-insurance requirements in the event the entity intends to self-insure; and
  - (4) Provide 12 months written notice to the Chair and all public employees who have been making contributions in accordance with section 209 of the Workers' Compensation Law of any decision by the entity to discontinue the provision of voluntary coverage.

**380-10.2 Voluntary coverage for family leave when already providing voluntary disability benefits coverage.**

- (a) An employer or individual approved for, and providing, voluntary disability benefits coverage pursuant to section 212 of the Workers' Compensation Law prior to January 1, 2018, is approved to provide voluntary coverage for family leave benefits if desired; however, the disability and family leave benefits must be provided under a single insurance policy.
- (b) An employer or individual approved for, and providing, self-insured voluntary disability benefits coverage prior to January 1, 2018 who wishes to obtain a separate family leave benefits policy, must notify the Chair that such policy has been obtained.
- (c) An employer who provides voluntary disability benefits to its employees on December 1, 2017, and is permitted under sections 212, 212-a and 212-b of the Workers' Compensation Law to provide only disability benefits or family leave benefits to its employees, must notify its employees and the Board that it will or will not be providing family leave benefits to its employees prior to December 1, 2017.
- (d) An employer or individual who is permitted and wishes to elect to become a covered employer to provide family leave benefits in accordance with section 212 of the Workers' Compensation Law who is not an employer or individual described in subsection (a) or (b) herein:
  - (1) Shall seek prior authorization from the Chair even where such employer had previously received authorization for and canceled such election; and
  - (2) May be required to explain, to the satisfaction of the Chair or his or her designee, the reason for the cancellation of a prior election before re-authorization is provided.
- (e) Where required, authorization may be denied if the Chair or his or her designee finds that the election is being made in such a manner as to manipulate or exploit the use of family leave benefits. In making such a determination, the Chair or his or her designee will consider the number of prior elections and cancellations made by the employer or individual, the type and size of the employer or business, and any other information that the Chair or his or her designee deems to be relevant.
- (f) Those employers and individuals providing voluntary coverage pursuant to this Title and section 212 of the Workers' Compensation Law shall maintain such coverage for at least one year, and may only cancel such coverage after having provided 90 days notice of such cancellation to all affected employees. Those employers must also provide notice of cancellation to the Board in the format prescribed by the Chair.

**Amendments to Existing Regulations**

**Part 358 Plans**

**358-3.8 Accepted Plans**

- (a) The chairman shall give to the carrier, and if the carrier is not the employer or association of employers or association of employees by whom the application for acceptance was filed, then also to the applicant, written notice that the plan is accepted as satisfying the obligation of the employer or employers to provide for the payment of benefits, or that it is not accepted. From and after the effective date of notice of acceptance, the provision

for benefits and employee contributions under such plan shall be effective for the employees, or the class or classes of employees, entitled to benefits under the plan, in lieu of the provision for benefits under section 204 of the Workers' Compensation Law and for employee contributions under section 209.

- (b) In the event a self-insured employer, association of employers, or association of employees subject to an accepted plan fail to pay benefits after being found liable under section 221 of the Workers' Compensation Law, the Board shall draw on the security deposit required by section 361.3 of this Article to pay benefits at the rate provided for in section 204 of the Workers' Compensation Law.

**Part [§] 360[.1] The insurance contract.**

(a) Every contract of insurance, including any amendment, endorsement, or rider thereto, which provides for employee benefits under [the Disability Benefits Law,] Workers' Compensation Law, Article 9, whether such benefits are statutory benefits or benefits under a plan, shall meet the requirements of the Superintendent of [Insurance] Financial Services.

(b) To make effective a contract of insurance to provide benefits pursuant to [section 211 of the Workers' Compensation Law](#) [and other obligations under the Disability Benefits Law], each insurance carrier shall either:

(1) Apply for acceptance by the Chair[man] of one or more forms of insurance contract, on acceptance of each such form the Chair[man] will assign to it an identifying number. The carrier may thereafter, and until acceptance of such contract form has been revoked by the [c]Chair[man] or its approval rescinded by the Superintendent of [Insurance] Financial Services, file with the C[c]hair[man] a satisfactory certificate that it has issued an insurance contract in the accepted form, giving the required information with regard thereto; or

(2) Apply promptly to the C[c]hair[man] for acceptance of an insurance contract as written and issued.

(c) Subject to acceptance of the underlying plan, if any, acceptance of each insurance contract shall be effective as follows:

(1) A contract for which a certificate is filed pursuant to paragraph (b)(1) of this section shall be effective as of the issue date of the contract, provided the certificate is promptly filed with the Chair[man].

(2) A contract for which an application is filed pursuant to paragraph (b)(2) of this section shall be effective as of the issue date of the contract, provided the insurance carrier's application for acceptance of the contract and preliminary certificate, both in form prescribed by the C[c]hair[man], have been promptly filed with the C[c]hair[man].

(d) If an insurance contract is intended to insure the obligations of an employer who desires to provide benefits by a plan under subdivision four or five of section 211, the insurance contract will not be acceptable, either under paragraph (b)(1) or (2) of this section, as of a date prior to the effective date of acceptance of the plan, the benefits of which the insurance contract is intended to insure.

(e) The C[c]hair[man] shall, by rule, prescribe the procedure for applications under paragraphs (b)(1)–(2) of this section and the [several] forms or format to be used.

## **Part 361 Self-Insurance-Regulations**

### **361.1 Application.**

(a) Every employer and every association of employers or employees, or trustee or trustees paying benefits under a plan or agreement authorized under subdivision four or five of section 211 of the Workers' Compensation Law desiring to provide for the payment of benefits through approved self-insurance under subdivision three of section 211 of the Workers' Compensation Law shall apply to the C[c]hair for the privilege of becoming a self-insurer. Such application shall be in form prescribed by the C[c]hair.

(b) If the applicant is an association of employers or employees, or a trustee or trustees, each employer of employees for whom benefits under a plan pursuant to subdivision four or five of section 211 of the Workers' Compensation Law are to be provided by the applicant shall apply, in form prescribed by the chair, for acceptance of the plan of the association of employers or employees, trustee or trustees as the plan of the employer.

(c) If the C[c]hair shall be satisfied as to the financial and administrative ability of the applicant to make payment of the benefits provided and that the applicant's tangible assets make reasonably certain the payment of all obligations that may arise under A[a]rticle 9 of the Workers' Compensation Law, the application may be granted on the conditions provided herein [herein provided] and such other conditions, in the discretion of the Chair, as may be necessary or desirable in any case.

(d) Each applicant for self-insurance shall file the most recent certified, independently audited financial statement and copy of form 10K, if any, filed by the applicant with the Securities and Exchange Commission. A subsidiary corporation may submit the consolidated financial statement of the parent corporation in lieu of its own individual financial statement. In such event, however, the parent corporation must guarantee the liability of the subsidiary corporation under A[a]rticle 9 of the Workers' Compensation Law by filing with the C[c]hair an agreement of assumption and guarantee, in form approved by the C[c]hair.

(e) Employers self-insured under the provisions of section 204 of the Workers' Compensation Law prior to the effective date of the family leave benefit provisions of 204 and continuing to self-insure shall have the option to elect to be self-insured for family leave benefits or obtain

alternative coverage pursuant to subdivisions one and two of section 211 of the Workers' Compensation Law.

(f) Such election to self-insure for family leave benefits under section 204 must occur no later than September 30, 2017, and will require the self-insurer to post additional security and execute a binding agreement acknowledging acceptance of all liability for benefits paid that exceed the funds collected from employees, provided that the said contributions were at the mandatory maximum rate allowed by law. Employers self-insured under the provisions of section 204 of the Workers' Compensation Law prior to the effective date of the family leave benefit provisions of section 204, who are electing to self-insure for paid family leave benefits, must submit a payroll report on a form prescribed by the Chair. Such report shall include the full annual payroll of the self-insurer and its self-insured subsidiaries as of December 31, 2016. This report must be submitted no later than September 30, 2017.

(g) No employee shall bear any additional cost above the maximum employee contribution rate allowed by law and as published by the Superintendent of Financial Services and no employer may collect any contributions above the maximum rate allowed, except as part of an enhanced benefits plan approved by the Chair pursuant to subdivision five of section 211 of the Workers' Compensation Law.

### **361.2 Agreement.**

Each applicant for self-insurance and each self-insurer active as of the effective date of family leave benefits of section 204 of the Workers' Compensation Law, and electing to self-insure for paid family leave benefits, shall execute and file with the Chair an agreement, in form prescribed by the Chair:

(a) To pay disability benefits and paid family leave, if applicable to employees eligible under section 203 of the Workers' Compensation Law:

(1) As provided under section 204 of the Workers' Compensation Law, if there is no plan applicable to such employees; and

(2) As provided by a plan accepted under subdivision 4 or 5 of section 211 of the Workers' Compensation Law for employees covered by the plan;

(b) To deposit securities, and/or cash, and/or file a surety bond, and/or irrevocable letters of credit with the C[c]hair as required by section 361.3 of this Part;

(1) Self-insurance applicant agrees to post additional security if electing to self-insure family leave benefits under section 204 in an amount determined by the method described in Part 361.3(d).

(c) To pay all obligations, including benefits, fines, expenses, and assessments imposed pursuant to A[a]rticle 9 of the Workers' Compensation Law;

(d) To permit the C[c]hair's authorized representatives access to the premises of applicant or self-insurer and of each employer, for the purpose of examining operations and records pertaining to financial conditions and all obligations under A[a]rticle 9 of the Workers' Compensation Law;

(e) That the C[c]hair may sell any part of the securities deposited, draw upon the letters of credit or require the surety to pay forthwith to the chair all or any part of the penal sum of the bond, and from the proceeds of the securities, from such penal sum, from the amount drawn, or from the applicant's deposit of cash pay any benefit, obligations, expense, or assessments imposed by law:

(1) When such applicant or self-insurer neglects or refuses to pay such benefit, obligations, expense, or assessments; or

(2) Within 30 days prior to the expiration date of any letters of credit when the applicant or self-insurer shall have failed to renew or replace such letters or have substituted cash, securities, or a surety bond.

(f) Self-insurer electing to self-insure family leave benefits under section 204 of the Workers' Compensation Law agrees to and acknowledges acceptance of all expenses and liability in excess of the sum of the collected employee contributions, provided that the contributions were at the mandatory maximum rate allowed by law.

(g) Self-insurer acknowledges that no employee shall bear any additional cost above the maximum contribution rate allowed by law and may not collect any contributions above the maximum rate allowed, except as part of an enhanced benefits plan approved by the Chair pursuant to subdivision five of section 211 of the Workers' Compensation Law.

(h) Self-insurer agrees that funds collected for disability benefits and paid family leave will be combined into a single trust fund for the purpose of making benefit payments to eligible employees under this Article.

(i) Self-insurer agrees that contributions and funds collected for the purposes of this Article shall not be commingled with any other funds of the employer.

(j) Self-insurer agrees to submit all reports as required by Part 361.4, and any other reports or information as requested or required by the Chair or the Superintendent of the Financial Services.

### **361.3 Required deposit or surety.**

(a) The security deposit posted by a self-insurer shall be a combined deposit to cover disability benefits and paid family leave, if applicable, obligations, and liabilities under section 204 of the Workers' Compensation Law.

(b) An applicant which has been approved to become a self-insurer shall either:

(1) Deposit with the Chair, and keep on deposit, securities of the kind specified in subdivisions one, two, three, four, and five and paragraph (a) of subdivision seven of



section 235 of the New York State Banking Law, in an amount required by the C[c]hair. Securities deposited shall be registered in the name of “Chair, Workers' Compensation Board, State of New York.” Interest paid on securities deposited with the C[c]hair shall be remitted to the self-insurer for whose account they are deposited, as long as the self-insurer complies with A[a]rticle 9 of the Workers' Compensation Law and with these regulations and rules; or

(2) Deposit with the C[c]hair and keep on deposit cash in an amount required by the C[c]hair. Cash deposits shall be deposited in an interest bearing account in the name of “Chair, Workers' Compensation Board, State of New York” and shall be in an account authorized by the Comptroller of the State of New York. Such cash deposit is to be by certified check, Automated Clearing House (ACH), or Wire Transfer. Interest paid on the cash deposit shall be remitted to the self-insurer for whose account the cash is deposited, so long as such self-insurer complies with A[a]rticle 9 of the Workers' Compensation Law and with these regulations and rules; or

(3) File irrevocable letters of credit issued by a qualified bank; or

(4) In lieu of securities, cash, or letters of credit, and at the discretion of the C[c]hair, file with the C[c]hair the bond of a surety company authorized to do business in this State, in form and penal sum acceptable to the chair, and conditioned on the payment by the self-insurer of all its obligations and the obligations of each and every employer for whose employees the self-insurer provides benefits under A[a]rticle 9 of the Workers' Compensation Law. Each surety bond shall be undertaken and may be enforced in the name of “Chair, Workers' Compensation Board, State of New York”;

(i) To be a qualified surety company, the surety company must have a credit rating of B+ or better from A.M. Best or the equivalent from any other rating service;

(ii) If the rating of the surety bond issuer falls below the criteria established in Part 361.3(b)(4)(i), the self-insurer will have to replace the surety bond within 60 days of the rating determination by the Chair with another deposit allowable under the law;

or

(5) Deposit or file with the C[c]hair a combination of such securities, cash, irrevocable letters of credit, and surety bonds.

(c) To be acceptable, a letter of credit filed pursuant to paragraph (a)(3) of this section must comply with all requirements set forth in Regulation 133 of the New York State Insurance Department, codified as 11 NYCRR Part 79, except that:

(1) The “beneficiary” shall be the “Chair, Workers' Compensation Board, State of New York”;

(2) The “evergreen clause” shall provide for at least 60 days' written notice to the C[c]hair of the Workers' Compensation Board prior to the expiry date for nonrenewal;

(3) A bank, to be a “qualified bank,” may, in lieu of a determination by the Securities Evaluation Office of the National Association of Insurance Commissioners for purposes of 11 NYCRR 79.1 (e)(3), have either a long-term debt rating equal to Baa/BBB or better by Moody's or Standard & Poor's or the equivalent thereto from any other securities rating service, and/or a short-term debt rating of P2/A2 from Moody's or Standard & Poor's or the equivalent thereto from any other securities rating service;

(i) If the rating of the issuing bank falls below the criteria established in Part 361.3(c)(3), the self-insurer will have to replace the letter of credit within 60 days of the rating determination by the Chair with another deposit allowable under the law.

(4) The letter of credit shall additionally provide that any legal proceedings with respect thereto be subject to the jurisdiction of the courts of the State of New York; and

(5) The form, amount, and content thereof shall be acceptable to the C[c]hair.

(d) For employers self-insuring for both disability benefits and paid family leave benefits, the self-insurer shall deposit securities and/or cash with the Chair, and/or file an acceptable surety bond and/or irrevocable letters of credit, in an aggregate amount and/or penal sum [determined by the Chair, but not less than the lesser of] calculated as follows and subject to the Chair's discretion:

(1) Employers' full annual wages multiplied by up to one percentum;

(2) In no case an amount less than 10,000 dollars.

(e)For employers self-insuring for disability benefits only, the self-insurer shall deposit securities and/or cash with the Chair, and/or file an acceptable surety bond and/or irrevocable letters of credit, in an aggregate amount and/or penal sum calculated as follows and subject to the Chair's discretion:

(1) One-half the estimated contributions of the employees of the employer for the ensuing year or one-half of the estimated or actual contributions of the employees which would have been paid by the employees during the preceding year, whichever is the greater; or

(2) At the Chair's discretion, as determined under Table 1 in Part 376.1(c).

(f) Consolidation of security deposits.

(1) A corporation which has qualified as, or has applied to become, a self-insurer pursuant to the provisions of subdivision 3 of section 211 of the Workers' Compensation Law may apply to the Chair for permission to establish a consolidated deposit with one or more subsidiary corporations of which it is the owner, directly or indirectly, of at least a majority of the voting shares. Such application shall be accompanied by an agreement, in the form prescribed by the Chair, duly approved by the board of directors of each corporation that the corporate parties and the

aggregate amount of securities and/or cash, the aggregate amount of the penal sums of the surety bonds and/or the aggregate amount of the letters of credit deposited or to be deposited with the Chair by them, individually and collectively, at all times shall be liable and shall be available, at the discretion of the Chair, for the payment of any and all compensation, death benefits, administrative expenses, assessments, and/or other charges or obligations for which the corporation and/or each and every one of the subsidiary corporations shall be liable under the Workers' Compensation Law and under the rules and regulations of the Workers' Compensation Board and/or of its Chair.

(2) A not-for-profit corporation which has qualified as, or has applied to become, a self-insurer pursuant to the provisions of subdivision 3 of section 211 of the Workers' Compensation Law may apply to the Chair for permission to establish a consolidated deposit with one or more not-for-profit corporations of which it is the owner, directly or indirectly, of at least a majority interest. For purposes of this section, a determination of majority interest shall be based on: (1) the majority of the members of each such entity; or (2) the majority of the board of directors or comparable governing body of each such entity; or (3) the same central authority which appoints or controls the appointment of the board of trustees or similar body and exercises direct, complete and active control over the finances, properties, operations and activities of separate legal entities. Such application shall be accompanied by an agreement, in the form prescribed by the Chair, duly approved by the board of directors of each not-for-profit corporation that the corporate parties and the aggregate amount of securities and/or cash, the aggregate amount of the penal sums of the surety bonds and/or the aggregate amount of the letters of credit deposited or to be deposited with the Chair by them, individually and collectively, at all times shall be liable and shall be available, at the discretion of the chair, for the payment of administrative expenses, assessment, and/or other charges or obligations for which the corporation and/or each and every one of the entities in which the not-for-profit corporation has a majority ownership interest shall be liable under the Workers' Compensation Law and under the rules and regulations of the Workers' Compensation Board and/or of its Chair.

(3) The Chair, in his or her discretion, may permit the establishment of a consolidated deposit of securities and/or cash in an amount and/or the filing of surety bonds in an aggregate penal sum and/or of letters of credit in an aggregate amount which shall be determined in accordance with the provisions of the Workers' Compensation Law and with the rules and regulations promulgated thereunder.

[(1) one-half the estimated contributions of the employees of the employer for the ensuing year or one-half of the contributions of the employees which would have been paid by the employees during the preceding year, whichever is the greater; or

(2) if such amount calculated under paragraph (1) of this subdivision is more than \$50,000, an amount not less than \$50,000.

(d) Notwithstanding the provisions of subdivision (c) of this section, the initial deposit of securities and/or cash, and/or the initial filing of a surety bond and/or irrevocable letters of credit, shall be in an amount and/or penal sum of at least \$10,000.]

### **361.4 Periodic reports.**

(a) E[e]ach self-insurer, and each employer, shall file annually verified reports in form prescribed by the Chair, which (without limitations) shall report the following information:

(1) Number of eligible employees;

(2) Amount of covered payrolls;

[(3) Number of employees who received benefits;

(4) Amount of benefits paid;]

[(5)] (3) Amount of employee contributions; and

[(6)] (4) Estimate of amount of employee contributions in the ensuing year.

[(b) The information under paragraphs (1) to (6) inclusive of subdivision (a) of this section shall be reported for the calendar year, and such report shall be filed not later than January 31st of the following year.

(c) Other reports required from time to time shall be filed not later than 15 days after notice of such requirement.]

(b) When the information is deemed necessary, the Chair or the Superintendent of Financial Services may require the self-insurer to submit reports to the Department of Financial Services as set forth in Department of Financial Services regulations at 11 NYCRR 363.

(c) Other reports requested by the Chair pursuant to paragraph (b) of this section shall be filed not later than 15 days after notice of such requirement.

### **361.5 Proof of ability to process claims.**

Each applicant shall submit proof satisfactory to the chair that adequate provision has been made by the applicant to comply with the obligation to pay benefits, and upon request, shall satisfy the Chair that such provision is kept effective. The use of third-party administrators is restricted to those third-party administrators that are licensed by the Workers' Compensation Board.

### **361.6 Obligations.**

The obligations of a self-insurer shall include all its obligations, and those of each and every employer for whose employees the self-insurer provides benefits under section 211 of the Workers' Compensation Law.

### **361.7 Termination of self-insurer's status and withdrawal of security deposit.**

(a) A self-insurer which has terminated its self-insurer status, or as to which approval for self-insurance has been withdrawn pursuant to section 361.8 of this Part, may apply to the C[c]hair for termination of its status as a self-insurer and for the return of its security deposit or cash, letter of credit, or cancellation of the surety bond.

(b) After the lapse of 24 months and proof satisfactory to the C[c]hair that all claims have been finally adjudicated and paid; that all fines, penalties, expenses and assessments have been paid; that the balance of employee contributions have been disposed of satisfactorily; and that the self-insurer has otherwise complied with the applicable provisions of law, regulations and rules, and provisions of the self-insurer's agreement, the C[c]hair may release the securities or cash, letter of credit deposited, or permit cancellation of the surety bond.

### **361.8 Revocation of self-insurance status; self-insurance deposit credit.**

(a) The C[c]hair may revoke consent to self-insurance at any time for good cause. Failure to comply with these regulations and rules, or with any award, order or direction of the Chair, or the B[b]oard, either by the self-insurer or an employer or employers for whose employees benefits are provided by the self-insurer, is cause for revocation.

(b) If an approved self-insurer has deposited securities, irrevocable letters of credit, or cash under subdivision three of section 50 of the Workers' Compensation Law, the Chair in his or her discretion may reduce the amount of deposit or of the penal sum of the bond required under A[a]rticle 9 of the Workers' Compensation Law, provided the self-insurer has, by agreement satisfactory to the C[c]hair, made all such deposited securities, irrevocable letters of credit, or cash available for the payment of unpaid benefits under A[a]rticle 9 of the Workers' Compensation Law with respect to obligations incurred for disabilities commencing prior to the effective date of the C[c]hair's revocation of his or her approval of an applicant's self-insurer status under A[a]rticle 9 of the Workers' Compensation Law.

## **Part 376. Self-Insurance-Rules**

### **376.1 Amount of securities, cash or bond.**

(a) The amount of securities, cash, or the penal sum of the surety bond which a self-insurer is required to deposit, pursuant to section 361.3 of this Title, shall be determined by the Chair [chairman]. The number of employees involved, the covered payroll of employees eligible for benefits, the exposure, the financial standing of the applicant, and other factors which the Chair [chairman] may deem proper shall be given effect in fixing the amount.

(b) If employees contribute toward the cost of providing disability benefits only, under Section 204 of the Workers' Compensation Law, the minimum amount of deposit, subject to the deposit credit authorized under section 361.[3] 8 of this Title, may be computed under Table I of this section, on the basis of the estimated number of employees to be covered under the self-

insurance program during the ensuing 12 months or the number who would have been covered during the preceding 12 months, whichever is the greater.

(c) In the Chair's [chairman's] discretion, a deposit in excess of the minimum under section 361.3 of this Title, or this section, may be required.

**TABLE I**

<i>Number of employees</i>	<i>Minimum deposit</i>
Less than 8	\$10,000
8- 19	11,000
20- 40	12,000
41- 62	13,000
63- 84	14,000
85-107	15,000
108-130	16,000
131-153	17,000
154-176	18,000
177-199	19,000
200-221	20,000
222-244	21,000

245-267	22,000
268-290	23,000
291-313	24,000
314-341	25,000
342-373	26,000
374-405	27,000
406-437	28,000
438-469	29,000
470-505	30,000
506- 545	\$31,000
546- 585	32,000
586- 625	33,000
626- 671	34,000
672- 724	35,000
725- 778	36,000
779- 831	37,000

832- 885	38,000
866- 938	39,000
939-1018	40,000
1019-1125	41,000
1126-1231	42,000
1232-1338	43,000
1339-1444	44,000
1445-1551	45,000
1552-1764	46,000
1765-2084	47,000
2085-2484	48,000
2485-2964	49,000
2965 and over	50,000