

Family and Medical Leave Act (FMLA)

Note: Revision # should be listed in descending order starting with most recent version at the top.

Revision Date(For BCG Use Only)	Revision #	Description/Modification	Revision Section (s)	Author
3/28/2016	14	<p>Uploaded information to a new format. This policy had thirteen (13) revisions under the old format.</p> <p>Updated titles & HR designees</p> <p>Contingent workers are not eligible</p> <p>Management Employees - FML leave covers Domestic Partners</p> <p>Management Employees - revised Employee Medical Leave to use all accrued sick days, except 5 days, then employee receives salary continuation at full pay for remainder of FMLA</p> <p>Redefined Newborn and Adoption Leaves into new Parental Leave category</p> <p>Changed the word Salaried to Management</p> <p>Added Intermittent Leave to Parental Leave for Management Employees</p> <p>Replace Parental Leave 10 sick day cap with use all accrued sick time for Management Employees</p>	<p>N/A</p> <p>Various sections</p> <p>2.3</p> <p>Various sections</p> <p>5.2</p> <p>Various sections</p> <p>Various sections</p> <p>Various sections</p> <p>5.3</p>	<p>Karina Saslow, Director, Total Compensation & HRIS</p>

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		<p>Clarified that all references to FMLA time period are 12 weeks, not 3 months.</p> <p>Reasonable Accommodations can be requested for Leaves beyond 12 weeks</p> <p>Clarified that fraudulent activity may be subject to disciplinary action up to and including termination of employment</p>	<p>Various sections</p> <p>Various sections</p> <p>6</p>	
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Please refer to Employee Policy EP 0.0 NYPA **DISCLAIMERS** where you will find a statement which pertains to all Employee Policies including this one.

1 PURPOSE AND SCOPE

This policy applies to all employees at all NYPA sites and offices and provides guidelines for qualifying leaves under the Family and Medical Leave Act ("FMLA"). The Notice to Employees of Rights under the FMLA (WHD Publication 1420) ("Notice") is fully incorporated into this policy. The policies and guidelines stated in this FMLA policy shall be subject to such other terms and conditions as are provided in the FMLA and its regulations.

2 APPLICABILITY

- 2.1 To be eligible for FMLA leave, an employee must have been employed directly by the Authority for at least 12 months and must have worked at least 1,250 hours during the previous 12 months.
- 2.2 Contingent workers whose compensation is paid directly by a third party, who are not paid directly through the Company's payroll system, or who are classified by the Company as consultants and/or independent contractors, are not eligible for or entitled to participate in or receive benefits under any benefit plan, policy, or practice offered by the Authority, its parents, affiliates, subsidiaries, or successors.
- 2.3 In all cases, qualifying time absent will be applied toward the maximum 12-week FMLA time period. The use of sick time, vacation, floating holiday, salary continuation, no pay, or Workers Compensation does not alter the status of the leave as FMLA leave, nor does it extend any Authority provided job security periods.
- 2.4 The majority of this policy applies to both Management and employees covered under a Collective-Bargaining Agreement. However, the following provisions of this policy only apply to Management unless otherwise noted: Domestic Partners; intermittent Parental Leave; Section, 5.3.7; 5.4.4; 5.7.1; 5.7.2; 5.9.2; 5.9.4; 5.11.1; 5.11.2. Bargaining Unit employees are directed to their Human Resources Facilities Manager and the applicable Collective Bargaining Agreement or Benefit book.

3 INITIALISMS (ACRONYMS) AND DEFINITIONS

Type of Leaves Covered Under the FMLA

Employee Medical Leave ("EML") (see Section 5.3) – An employee's "serious health condition" that renders an employee unable to perform the functions of his or her position are eligible for EML., EML may be work related or non-work related and includes any time taken to recover from childbirth.

Family Medical Leave ("FML") (see Section 5.3) – To care for an employee's spouse/Domestic Partner, child, or parent (not parent-in-law) who suffers from a "serious health condition".

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Parental Leave (“PL”) (see Section 5.4) – To care for a newborn child or newly adopted or newly placed foster care child.

Military Family Leave (“MFL”) (see Section 5.5) – To care for a spouse/Domestic Partner, child, parent or next of kin of a covered service member.

Qualifying Exigency Military Family Leave (“QEL”) (see Section 5.6) – To take care of certain qualifying exigencies arising when a spouse/Domestic Partner, parent, or child has been called to, or is on, active duty in the National Guard or Reserves.

Other Initialisms and Definitions

Designated Human Resources Representative (HR) – The NYPA representative responsible for overseeing and approving FMLA leaves at each site.

Domestic Partner – Applies to Management employees only. An employee must satisfy and have on file NYPA's Domestic Partner Benefits eligibility documentation (even if not subscribed to NYPA Domestic Partner benefits).

Management – Refers to NYPA non-bargaining unit employees

4 RESPONSIBILITY

Responsibility and oversight of this policy resides with the approver unless otherwise noted here in.

5 POLICY IMPLEMENTATION

5.1 Eligibility

Eligible employees may receive up to a total of 12 weeks of FMLA leave in a 12-month period calculated as the 12-month period measured forward from the date of an employee's first FMLA leave usage. However, Military Family Leave qualifies eligible employees to receive up to a combined total (with any other FMLA leave) of 26 weeks in a single 12-month period.

5.2 Notification/Certification

5.2.1 When the need for FMLA leave is foreseeable, an employee should notify his/her supervisor and Designated Human Resources Representative (HR) at least 30 days in advance of the start date of the intended leave, or as soon as it is foreseeable. When the approximate timing of the need for leave is not foreseeable, an employee must provide notice to his/her supervisor and HR as soon as practicable based on the facts and circumstances of the particular case. Absent unusual circumstances, an employee will be expected to comply with his/her site/department's normal procedures for requesting leave and calling in absences. Failure to follow such procedures may result in a delay or denial of FMLA protection.

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- 5.2.2 FMLA leaves can only be approved by a Designated HR Representative. Once approved, FMLA leave is applied retroactively to the first day of absence.
- 5.2.3 The applicable fully completed Certification of Health Care Provider form or Certification of Serious Injury or Illness of Covered Service member (“Certifications”), signed by a health care provider, is required for all types of FMLA leave other than Qualifying Exigency Military Family Leave, which has its own separate form and requirements. Parental Leave may require different documentation (see Section 5.4).
- 5.2.4 It is the employee’s responsibility to see that the applicable Certification is completed, and returned to the Authority within 15 calendar days from the date that the employee receives the Certification form from HR.
- 5.2.5 If the Certification is incomplete or insufficient, the Authority will notify the employee and provide him/her up to seven calendar days to remedy any deficiencies. After this opportunity to remedy deficiencies has passed, a HR, or management official may contact the health care provider for purposes of limited clarification or authentication of the Certification. Under no circumstances may the employee’s direct supervisor contact the employee’s health care provider. In addition, in those situations where NYPA seeks to speak to the health care provider directly to obtain or discuss medical information related to the Certification, the employee must need to provide his/her doctor a HIPAA authorization allowing NYPA to do so.
- 5.2.6 The employee’s request for FMLA leave may be denied in the event that an employee fails to: a) provide a Certification, b) timely remedy deficiencies in a Certification, or c) to provide a HIPAA authorization when requested as necessary for his/her health care provider to provide medical information directly to the Authority.
- 5.2.7 Recertification of the need for FMLA leave may be required at various intervals, but generally not more than every 30 days, unless the Certification indicates that the minimum duration of the condition is more than 30 days, there is a change in circumstances or return to work date, an extension of leave is requested, or other circumstances cast doubt on the continuing validity of the leave.

5.3 Employee Medical Leave (“EML”) and Family Medical Leave (“FML”)

- 5.3.1 When an employee has been absent from work for more than five (5) consecutive business days due to a “serious health condition,” or when it appears that an employee will not be returning to work for a lengthy or undetermined amount of time due to a “serious health condition,” he/she may be eligible for an Employee Medical Leave (“EML”) under the FMLA.
- 5.3.2 If more than five (5) business days (consecutive or intermittent) are needed to care for the “serious health condition” of a spouse/Domestic Partner, child, or parent (not parent-in-law), an employee may be eligible for Family Medical Leave (“FML”) under the FMLA.

- 5.3.3 When the absences exceed this five day period for a “serious health condition,” the employee or their manager should provide notification to HR, at which point the FMLA process will be initiated for eligible employees.
- 5.3.4 EML and FML may be taken on a consecutive, intermittent or reduced work schedule basis as provided by the health care provider on the Certification.
- 5.3.5 EML or FML leave on an intermittent basis is leave which can be taken in fifteen (15) minute increments, on a non-regular basis, because of a single qualifying reason. Leave on a reduced schedule is leave which reduces the number of working hours in a basic work week or workday for a period of time. If an employee needs leave intermittently or on a reduced leave schedule for planned medical treatment, then the employee must make a reasonable effort to schedule the treatment so as not to unduly disrupt the Authority’s operations.
- 5.3.6 Management employees on approved EML must exhaust all accrued sick time, except 5 days, which can be saved for future use. Management employees on EML can then receive salary continuation to cover the remainder of their EML leave. For part-time or provisional management employees that are less than full-time and on EML, salary continuation will be paid on a prorated basis based on their weekly work schedule.
- Salary continuation is **only** available for Management employees on approved EML and not any other type of FMLA Leave. Eligible management employees on approved EML will then be placed on salary continuation (see Sick Leave Policy EP: 3.9), or on no pay status if not eligible. Salary continuation for EML is only available during a qualifying FMLA period and cannot exceed 12 weeks.
- Bargaining unit employees who qualify for EML or FML, must first exhaust all accrued sick time before electing to use vacation time or leave without pay.
- 5.3.7 Management employees that qualify for FML must first exhaust all accrued sick time (with the exception of 5 sick days, which can be saved for future use). After sick time is exhausted, employees may then request and utilize any accrued vacation or accrued floating holidays. Management employees on an FML are not eligible to receive salary continuation.
- 5.3.8 After three consecutive months of EML, and after all required accrued sick leave and salary continuation has been exhausted, a Management employee may be eligible for benefit payments under the Long-Term Disability (“LTD”) benefits. (See Sick Leave Policy EP: 3.9). Employees covered under a Collective Bargaining Agreement (“CBA”) may be entitled to short and/or long term disability benefits. Such employees should contact HR and refer to their applicable Collective Bargaining Agreement and Benefit book for information on their benefits.
- 5.3.9 Employees returning to work from an EML must provide HR with written medical documentation verifying their ability to return to work and fitness for duty. This should be provided at the earliest practicable time **before** returning to work. An employee will not be allowed back to work without sufficient written medical documentation.

5.4 Parental Leave (“PL”)

- 5.4.1 An employee may take Parental Leave (“PL”) to care for a newborn or for the adoption of a child under the FMLA within one year after birth or the adoption. Any time taken to recover from child birth should be taken as EML. The care for a newborn with a “serious health condition” should be taken as FML.
- 5.4.2 An employee may take Parental Leave in connection with travel for and placement of a child for adoption or foster care within one year of initial placement in the home, or adoption, whichever comes first. Documentation from an agency or attorney verifying such placement of a child must be submitted to HR within 15 business days or as soon as practicable.
- 5.4.3 Parental Leave may be taken as consecutive or intermittent in full day increments only. Intermittent PL is only available to Management employees. Employees must make a reasonable effort to schedule Parental Leave in advance so as not to disrupt unduly the Authority’s operations.
- 5.4.4 Management employees must first utilize all accrued sick time (with the exception of 5 sick days, which can be saved for future use) (see EP: 3.9 Sick Leave). Employees may then request to utilize any accrued vacation, accrued floating holidays, or take the remainder of the leave without pay. Management employees on PL are not eligible to receive salary continuation.
- 5.4.5 If both parents of a healthy newborn or a newly placed foster or adopted child work for the Authority, only one parent is entitled to these types of FMLA leave for each qualifying occurrence. However, both parents will be allowed leave for travel necessary for placement of a child for adoption or foster care.
- 5.4.6 Employees returning to work from a PL must notify HR as soon as practicable **before** returning to work.

5.5 Military Family Leave (“MFL”)

- 5.5.1 Military Family Leave (“MFL”) provides eligible employees unpaid leave to care for a covered family member who has incurred a serious injury or illness in the line of duty as a covered service member while on covered active duty in the Armed Forces.
- 5.5.2 A covered family member is a spouse/Domestic Partner, son, daughter, parent or next of kin. A covered service member is a person either in the military or a veteran for up to five years after he or she leaves military service, even if the injury did not manifest itself until the service member became a veteran.
- 5.5.3 An employee who is a covered family member may take up to 26 weeks of leave during a single 12-month period to care for the covered service member. This 26-week period is the maximum amount of leave that may be taken in combination with any other FMLA-qualifying leaves in a single 12-month period beginning with the employee’s first day out.
- 5.5.4 Such leaves may be on a consecutive basis, intermittent or a reduced schedule basis, as detailed by the health care provider on the Certification.

- 5.5.5 Employees must utilize accrued sick time first until sick leave accruals are exhausted. Employees may then request and utilize any accrued floating holidays (Management only), vacation or other accrued paid time off (see Section 5.8.6 below) or be placed on no-pay status.
- 5.5.6 In all cases, time absent, whether paid or not, will be applied toward the applicable 26-week FMLA time period.

5.6 Qualifying Exigency Military Family Leave (“QEL”)

- 5.6.1 An employee who is a spouse/Domestic Partner, son, daughter, or parent of a covered service member called to, or on, covered active duty in regular or reserve components of the Armed Forces during a deployment of the service member to a foreign country may take up to 12 workweeks of leave during any 12 month period for a “qualifying exigency.”
- 5.6.2 Reasonable documentation of family relationship may be required.
- 5.6.3 A “qualifying exigency” is limited to the following: a) short notice deployment; b) attending certain military events and related activities; c) arranging for alternative childcare and school activities; d) addressing financial and legal arrangements; e) counseling; f) rest and recuperation; g) attending post-deployment activities; and h) additional activities that arise out of active duty, provided that the employer and employee agree, including agreement on time and duration of the leave.
- 5.6.4 Leaves for Qualifying Exigencies shall be unpaid, unless the employee requests and is given permission to use accrued vacation time, floating holidays (Management only) or other accrued time off (excluding sick time).
- 5.6.5 In all cases, time absent, whether paid or not, will be applied toward the applicable 12-week FMLA time period.

5.7 Job Security for Management Employees While on FMLA or Extended Medical Leave

- 5.7.1 When a Management employee is absent from work on any qualified consecutive FMLA leave, other than Military Family Leave, their position will only be held open for a period of 12 weeks beginning on the first day of absence for the first FMLA leave within a 12-month period, even if the employee has accumulated sick and/or vacation leave that extends beyond that 12 week period.
- 5.7.2 If a department intends to fill a Management position held by someone on FMLA leave (other than qualifying Military Family Leave) at any time after the expiration of the 12 week job security period, the employee’s supervisor must notify site/headquarters HR and the employee of this intent.
- 5.7.3 For all FMLA leaves other than Military Family Leave, any extended leave beyond the 12 weeks FMLA and job security period up to, but not exceeding, six months must be approved by the employee’s Business Unit head or Regional Manager in conjunction with HR and the Affirmative Action Officer, prior to informing the employee of the approval of the extension. Reasonable accommodations will be considered according to CP 1-11. By approving the extension, the Authority will attempt to maintain the availability of a position, but not

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necessarily the same position, for the agreed upon leave period. In these circumstances, there is no guarantee that the employee's current position will remain open. The Authority will attempt to place the employee in a similar (or lesser) position for which they are qualified at the time of return. A position will not be created. If the employee is unable to return to work at the conclusion of six months, the employee will be advised that his/her continued employment has been terminated.

- 5.7.4 When an employee is absent from work on a qualifying Military Family Leave, their position will be held open for a period of up to six months beginning on the first day of absence for the first FMLA leave within a 12-month period, even if the employee has accumulated sick and/or vacation leave that extends beyond that six month period. If the employee is unable to return to work at the conclusion of six months, the employee will be advised that his/her employment has been terminated.
- 5.7.5 Extensions of leave beyond the six month period will be considered on an individual basis. Such a request must be made in writing and can only be approved by the Human Resources Department Head. Such requests should be made as soon as practicable before the end of the six-month period and must include information from the health care provider about the employee's current medical status, expected return to work dates as well as any return to work conditions or limitations. Any remaining accrued sick leave will also be taken into consideration in reviewing the request for an extension of the leave. For extensions of Military Family Leave beyond the six month period, the military member's current medical status and the employee's expected return to work date must be provided.

5.8 Workers' Compensation

- 5.8.1 If an employee is out on a Workers' Compensation leave for a health condition which also qualifies as an FMLA leave, it will be treated concurrently as an FMLA leave.
- 5.8.2 In such cases, employees have the option of applying unused accrued sick and/or vacation time to their first three months of absence from work. The employee must complete a "Use of Vacation/Sick Accruals" form (provided by HR) to make their election, which is irrevocable. If the employee chooses to apply sick/vacation time towards a Workers' Compensation/FMLA leave and the Workers' Compensation claim is found to be compensable, sick/vacation time will be credited back to the employee on a prorated basis in a proportionate manner based on the amount of the award and the amount of sick/vacation time used or other Collective Bargaining Agreement contractual language.

5.9 Payroll Status While on FMLA Leave

- 5.9.1 Depending on the particular type of leave and an employee's individual circumstances, an employee may be eligible for income while on a FMLA leave through sick leave, salary continuation for Management employees only, vacation leave, short term disability for bargaining unit employees, and/or long term disability, or all or part of a FMLA leave may be unpaid.

- 5.9.2 Management employees: If an employee works on a part-time schedule prior to going out on FMLA leave, and is receiving compensation while on that leave, they will be paid based on the days they work on their part-time schedule.
- 5.9.3 An employee on an FMLA leave who wants to use their accrued vacation time to cover any part of that leave must make a request to HR. Without notification, accrued vacation time will not be automatically applied.
- 5.9.4 Management employees: Holidays will be fully paid only if an employee is on a full-pay status (using sick or vacation leave or floating holiday) on the business day prior to the holiday. Employees on unpaid status on the day prior to a holiday will not be paid for the holiday.
- 5.9.5 Bargaining unit employees: Holidays will be fully paid if during the calendar week in which such holiday occurs the employee has been on paid status at least two full days and all absences from work on the employee's remaining regularly scheduled work days during that week are approved in writing by the supervisor in accordance with the applicable Collective Bargaining Agreement. Employees on unpaid status prior to the calendar week of the holiday will not be paid for the holiday.

5.10 Deductions and Credits

- 5.10.1 Applicable benefits and associated payroll deductions (taxes, flexible benefit credits, benefit deductions, Powerflex, waive coverage stipend, NYS Retirement System contributions, Voluntary Defined Contribution Plan contributions, Employees' Savings Plan contributions, Deferred Compensation Plan contributions, loans, Liberty Mutual insurance, other insurance, etc.) will continue while an employee is out on any qualified FMLA leave and is still receiving compensation from NYPA.
- 5.10.2 Deductions are prioritized by the Payroll Department. Any questions concerning the priority of deductions should be addressed to the Payroll Department and/or HR.
- 5.10.3 Benefits while on a no pay status – Employees have the following options:
 - a. An employee can pay their applicable contributions to the Authority monthly during their leave on an after-tax basis. Management employees contact HR to make payment arrangements. Bargaining unit employees should contact the HR Department for appropriate no pay status form; or
 - b. An employee can arrange with HR and Payroll to pay back any missed deductions when he/she returns to work. Deductions will be doubled per pay period until all of the missed deductions have been made up. Powerflex deductions must be paid in the same calendar year; or
 - c. The Authority's obligation to maintain benefits coverage ceases if the contribution is more than 30 days late. The Authority must give 15 days' notice to the employee prior to the termination of benefits.

Bargaining Unit employees' payments will be based on their benefit elections and applicable contractual contribution.

5.11 Benefits Coverage Period

- 5.11.1 Management employee's benefits will continue for 6 months (from first day of absence) as long as an employee pays the required employee contributions while they are out on leave.
- 5.11.2 A Management employees: Benefits will cease once the employee has been absent for six months from their first day of absence, even if their leave is approved to be extended beyond six months under the provisions of Section 5.7.5. If the employee has 10 or more years of service with the Authority and is collecting long-term disability payments (see the Employee Benefits Handbook for Management Employees for LTD eligibility criteria), their medical coverage will be continued at a cost to them. The cost will be based on flex credits, minus the cost of the medical plan.
- 5.11.3 Bargaining unit employees should contact HR and refer to their applicable Collective Bargaining Agreement and Benefit book for benefit coverage period during leaves.

6 VIOLATIONS

Employees attempting to obtain, or obtaining, FMLA leave by fraudulent means, shall be denied the utilization of paid time for time out of work, the restoration of their job or any other job at the Authority and may be subject to disciplinary action up to and including termination of employment.

7 REFERENCES

- 7.1 1-11 Reasonable Accommodation Policy
- 7.2 Benefit Handbook
- 7.3 EP 3.9 Sick Leave Policy
- 7.4 Collective Bargaining Agreement or Benefit book

8 POLICY REVIEW AND EXPIRATION

This document will be reviewed and updated as business needs require. However, a mandatory review will be required on the anniversary date of the approved document.

Revision Cycle: Every Year

9 ATTACHMENTS

N/A