

RESEARCH FOUNDATION TIME & LEAVE PROCEDURE

Procedure

This procedure sets forth Operating Guidelines for the eligibility and usage of annual leave, sick leave [including leave for family medical care and other reasons set forth in the New York City Earned Safe and Sick Time Act (ESSTA)], Paid Family Leave (PFL), and Child Care Leave, and their interaction with leave under the Family and Medical Leave Act (FMLA).

Operating Guidelines

The following time and leave eligibility rules and accrual rates apply to all full-time and part-time Research Foundation employees, unless otherwise provided for in an applicable collective bargaining agreement.

Job Classification Annual and Sick Leave Eligibility Rules and Accrual Rates*

Full and Part-Time Employees**	Years of Service	Annual Leave Accrual Rates**		Sick Leave Accrual Rates***	
		days/year	hrs/hr worked	days/year	hrs/hr worked
	Less than 3 years	15	0.057692	20	0.078571
	3 years or more but less than 7 years	22	0.084615	20	0.078571
	8 years or more	25	0.096154	20	0.078571

The above accrual rates are based on a 35-hour workweek and are to be pro-rated for part-timers. In order to determine the amount of leave accrued by a part-time employee, multiply the number of hours worked by the appropriate factor (based on years of service). For example, a part-time employee with one year of service who works 20 hours per week (40 hours per pay period) will accrue 2.31 hours of annual leave per pay period (40 hours x 0.057692 hours/hour worked = 2.31 hours). Over 26 pay periods, that part-time employee will accrue 60 hours of annual leave.

* A lapse in employment by the Research Foundation lasting more than four (4) months constitutes a break in service for purposes of leave accrual rates, which results in an employee re-starting at 0 years of service for the purpose of accrual rates.

** Part-Time Instructional, Seasonal, Temporary, and On Call employees and Graduate Research Assistants accrue no annual leave.

*** Graduate Research Assistants are only eligible to accrue 40 hours of sick leave per calendar year, pursuant to the New York Earned Safe and Sick Time Act.

Credit for accrued leave of any type earned while employed on one project or college earnings account may not be carried over to another project (i.e., different account number) with the exception of up to 40 hours of sick leave accrued pursuant to the provisions of the New York City Earned Safe and Sick Time Act if the employee or Graduate Research Assistant is rehired or reappointed within six (6) months of termination.

Annual Leave

Annual Leave is to be used for vacation, personal business, family illness, or other family emergencies, religious holidays, days of special observance, etc. It is earned according to the above-referenced table. No annual leave accumulates while an employee is on leave without pay or after the last day actually worked before resignation, retirement, or termination.

Scheduling Annual Leave

The project director shall meet with the employee within 30 days of the employee's appointment or re-appointment start date to schedule the employee's annual leave during the appointment or re-appointment period. The use and scheduling of all annual leave must be approved in advance in writing by the employee's project director. Employees must be scheduled to take all accrued annual leave before their appointment end date unless other arrangements are made for its use or payment. Where the project director requires that the employee work a schedule which makes use of all or part of the employee's annual leave earned within the appointment period not feasible, any accrued and unused annual leave will be paid out within two months of the appointment end date.

If an employee takes all unused leave the month before the termination date, he/she will earn annual leave during that month. However, under no circumstances does an employee earn annual leave after termination. For example, a person with 10 days of accumulated leave as of June 1, who is to terminate June 30, will be advanced the two days additional leave he/she will be accumulating during that last month provided that he/she remains on the payroll until June 30. This would bring to 12 the total number of days to be taken as leave in the month of June.

Carryover of Annual Leave

No more than 175 hours (25 days) of annual leave (including annual leave segregated as accrued reserve) may be carried over from one calendar year to the next. Accrued reserve represents the balance of unused annual leave that an employee accrued on any appointment that expired prior to March 31, 2013.

There is no carryover of annual leave from one project to another and there is no carryover from one project year to the next. In the case where a project is transferred from one CUNY college to another and employees are transferred with the project, the leave accruals will follow the employee.

Charging Time Against Annual Leave

- The minimum unit charged against annual leave is one hour, with additional leave charged in multiples of one-quarter hour. Charges of less than one-quarter hour are permitted on the last timesheet of the appointment.
- Authorized holidays during a full-time employee's authorized annual leave will not be charged against annual leave.
- If an employee provides a physician's or hospital certificate supporting a report of illness during his or her authorized annual leave, those days of illness may be converted to sick leave.

Advancement of Annual Leave

To the extent feasible, all annual leave must be approved in advance by the project director. In exigent circumstances, annual leave may be used in lieu of other paid leave, such as sick leave. Upon approval by the project director, in response to a written request from the employee, annual leave may be advanced for special or emergency situations to full time employees, including religious observances. Annual leave may be advanced up to the amount proportionate to the expected length of appointment.

Where the Research Foundation has advanced payment for annual leave and the individual's employment terminates before he or she accrues the leave advanced, the remaining amount of leave that was advanced and not earned may be deducted from regular pay to the extent permitted by law.

Annual Leave Payouts

Where the project director requires that the employee work a schedule which makes use of all or part of the employee's annual leave earned within the appointment period not feasible, any accrued and unused annual leave must be paid out within two months of the appointment end date. The amount of unused annual leave is to be paid for and charged against the project account number under which it was earned in accordance with Federal Uniform Guidance Section 200.431(3)(i). If there are no funds available from the sponsored project to charge the employee's unused annual leave balances, it is up to the College to determine which earnings account should fund this cost. Payments for annual leave not taken are subject to the availability of funds, sponsor regulations and may be forfeited if arrangements have not been made for payment.

Sick Leave

RFCUNY recognizes that employees may need days off from work to address their medical needs or the medical needs of a family member. For this purpose, RFCUNY offers a sick/family leave program through which eligible employees receive sick time off benefits each year. See above table for accrual rates.

New York City Earned Safe and Sick Time Leave Act (ESSTA Leave)

The NYC Earned Safe and Sick Time Act (ESSTA) requires that employees who work at least 80 hours per year within New York City be provided with 40 hours of safe and sick leave in a calendar year. Employees who are scheduled to work at least 80 hours per year within New York City and Graduate Research Assistants are eligible for ESSTA Leave under this procedure. The 40 hours of safe and sick leave under ESSTA can be used for the care and treatment of the employee or for a family member or for other qualifying reason under the ESSTA. The law sets 40 hours as the minimum required amount of sick leave an employer can offer to its employees. To comply with ESSTA (considering RF employees accrue more than the minimum required benefit), the first 40 hours of sick leave used by RF employees are designated as ESSTA Leave (independent of the reason the safe or sick leave was used - self or family member). ESSTA leave will run concurrently with regular sick leave benefits and the RF Sick Leave Benefit for the Care of a Family Member until all ESSTA Leave benefits are exhausted. When charging safe or sick leave, the employee's regular rate of pay for the scheduled hours will apply.

Permissible Purposes of Sick Leave (including ESSTA) Usage

Employees may use accrued sick leave which includes the 40 hours of ESSTA leave for absences from work during mandatory hours the employee was scheduled to work within the City of New York, for the following reasons:

- **Personal Medical Care:** The employee's mental or physical illness, injury or health condition; or need for medical diagnosis, care or treatment of a mental or physical illness, injury or health condition; or need for preventative medical care;
- **Family Medical Care:** Care of a family member (employee's child, spouse, domestic partner, parent, sibling, grandchild or grandparent, or child or parent of employee's spouse or domestic partner, any other individual related by blood to the employee, or any other individual whose close association with the employee is the equivalent of a family relationship) who needs medical diagnosis, care or treatment of a mental or physical illness, injury or health condition or who needs preventative medical care; or
- **Ordered Closure Due to Public Health Emergency:** Employees may be eligible to use leave in certain circumstances in the event of an ordered closure due to an officially-declared "public health emergency" issued by the NYC Commissioner of Health or NYC Mayor.
- **Safe Time (effective on and after May 5, 2018):** Employees may use ESSTA leave to address "safe time" issues, when the employee or employee's family member (employee's child, spouse, domestic partner, parent, sibling, grandchild or grandparent, or child or parent of employee's spouse or domestic partner, any other individual related by blood to the employee, or any other individual whose close association with the employee is the equivalent of a family relationship) has been the victim of a family offense matter, sexual offense, stalking, or human trafficking for the following reasons:
 - To obtain services from a domestic violence shelter, rape crisis center, or other shelter or services program for relief from a family offense matter, sexual offense, stalking, or human trafficking;
 - To participate in safety planning, temporarily or permanently relocate, or take other actions to increase the safety of the employee or employee's family members from future family offense matters, sexual offenses, stalking, or human trafficking;
 - To meet with a civil attorney or other social service provider to obtain information and advice on, and prepare for or participate in any criminal or civil proceeding, including but not limited to, matters related to a family offense matter, sexual offense, stalking, human trafficking, custody, visitation, matrimonial issues, orders of protection, immigration, housing, discrimination in employment, housing or consumer credit;
 - To file a complaint or domestic incident report with law enforcement;
 - To meet with a district attorney's office;

- To enroll children in a new school; or
- To take other actions necessary to maintain, improve, or restore the physical, psychological, or economic health or safety of the employee or the employee's family member or to protect those who associate or work with the employee.

Advance Notice of Leave Required

In order to use accrued sick leave including the 40 hours of ESSTA leave, employees must provide reasonable notice of the need to use safe or sick leave. If the need for safe or sick leave is foreseeable, the employee should provide notice as soon as possible in advance. Employees must give at least seven (7) days advance notice when the need for safe or sick leave including the 40 hours of ESSTA leave is foreseeable. If the need for such leave is not foreseeable at least seven (7) days in advance, the employee must give notice as soon as feasible or practicable.

When the need for use of safe or sick leave including ESSTA is foreseeable, the employee must submit notice at the request to use such leave in writing to the employee's supervisor in advance.

Verification/Documentation

If an employee requests use of safe or sick leave including the 40 hours of ESSTA Leave for absences of up to three (3) consecutive work days, the employee must submit written confirmation of the purpose for which the leave was used. Medical documentation is not required, except as required by law. For absences of more than three (3) consecutive work days relating to Personal Medical Care or Family Medical Care, as described above, the employee must provide documentation signed by a licensed health care provider verifying that the leave was used for an authorized purpose and verifying the need for the amount of leave taken. For absences of more than three (3) consecutive days relating to Safe Time, as described above, the employee must provide documentation verifying that safe time was used for an authorized purpose and verifying the need for the amount of safe time taken, such as documentation signed by an employee, agent, or volunteer of a victim services organization, an attorney, a member of the clergy, or a medical or other professional service provider from whom the employee or the employee's family member has sought assistance in addressing family offense matters, sexual offenses, stalking, or human trafficking and their effects; a police or court record; or a notarized letter from the employee explaining the need for such time.

Year End

The calendar year will run from January 1 to December 31. If an employee has accrued ESSTA leave remaining on December 31, the unused ESSTA leave will be carried over to the next year, up to a maximum of 40 hours. Regardless of the number of hours an employee carries over from the previous calendar year, an employee may only use up to 40 hours in a calendar year as ESSTA leave. Upon separation from employment, for any reason, any accrued but unused ESSTA leave will not be paid out.

Non-Retaliation

No employee who requests to use or uses ESSTA leave for purposes authorized under this procedure will be subject to retaliation. No employee who makes a good faith complaint regarding any alleged violation of this procedure will be subject to retaliation.

RF Sick Leave Benefit for the Care of a Family Member

Employees may use up to 40 hours of sick leave in a calendar year to care for a qualifying family member. A family member is defined as the employee's child, spouse, domestic partner, parent, sibling, grandchild or grandparent, or child or parent of employee's spouse or domestic partner.

Carryover of Sick Leave

There is no carryover of sick leave from one project to another with the exception of up to 40 hours of sick leave accrued pursuant to the provisions of the New York City Earned Safe and Sick Time Act (ESSTA). In the case where a project is transferred from one CUNY college to another and employees are transferred with the project, the leave accruals will follow the employee.

Paid Family Leave (PFL)

New York's Paid Family Leave (PFL) program provides wage replacement insurance benefits to employees to help them (i) bond with a newly born, adopted, or fostered child, (ii) care for a family member with a serious health condition, or (iii) help relieve family pressures when someone is called to active military service.

Eligibility

- Employees with a regular work schedule of 20 or more hours per week are eligible after 26 weeks of employment.
- Employees with a regular work schedule of less than 20 hours per week are eligible after 175 days worked.

Health Insurance

An employee who receives health insurance benefits from the Research Foundation is entitled to the continuation of that group health insurance coverage during PFL on the same terms as if the employee had continued to work. The employee must continue to make any normal contributions to the cost of the health insurance premiums while on PFL.

Payroll Deductions

PFL benefits are generally paid for by employees via automatic payroll deductions. Employees taking leave under the PFL must continue to make contributions during the PFL leave.

Beginning on January 1, 2018, the Research Foundation will be deducting a percentage of your weekly wages to fund PFL benefits. The New York State Department of Financial Services (DFS) sets the deduction rate, which changes each year. For 2018, the deduction rate is 0.126% of each employee's weekly wages.

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

PFL Benefits

PFL are currently scheduled to phase in over a 4 year period with a gradually increasing benefit amount and duration, as depicted below.

Effective Date	Maximum Length of Paid Leave	Amount of PFL Benefits (expressed as % of the employee's average weekly wage (AWW))	Maximum Amount of PFL Benefits Payable (expressed as % of the NY AWW)
January 1, 2018	8 weeks	50%	50%
January 1, 2019	10 weeks	55%	55%
January 1, 2020	10 weeks	60%	60%
January 1, 2021	12 weeks	67%	67%

If the DFS modifies any of the increases described above, the Research Foundation reserves the right to modify the benefit schedule in accordance with applicable law. Employees may take the maximum benefit length in any given 52-week period. Eligible employees may request PFL for a single block of time or on an intermittent basis, in at least full-day increments. If more than one family member works for the Research Foundation, the Research foundation may limit PFL usage so that more than one employee cannot use the same period of PFL to care for the same family member at the same time. In that circumstance, employees may be required to stagger their PFL usage, but all employees will retain their full PFL entitlement.

Use of Annual Leave Accruals During PFL

Employees may exercise an option to charge all or part of their unused Annual Leave accruals in partial-day increments in order to supplement their PFL benefits and receive full salary. Any such Annual Leave will run concurrently with the approved PFL leave, such that employees will not be permitted to make more than 100% of their full pay during leave. Employees wishing to use Annual Leave in connection with a qualified leave under the PFL must follow the requirements set forth in the Research Foundation's Time and Leave Benefits for All Research Foundation Employees procedure. In the event the employee uses Annual Leave in connection with a PFL absence, the employee will receive a check from the PFL insurance carrier for the statutory PFL benefit, and will receive a separate check from the Research Foundation for the Annual Leave the employee uses. Employees cannot use Sick Leave to supplement PFL benefits.

Interaction Between PFL and Other Types of Leave

If an employee takes PFL leave for an event that also qualifies as leave under the FMLA, the employee's PFL leave will run concurrently with available FMLA leave and deplete both leave banks at the same time. If an employee takes PFL leave for an event that also qualifies as leave under the Research Foundation's Child Care Leave procedure, the employee's PFL leave will run concurrently with the Child Care Leave. Employees cannot use PFL and short-term disability benefits at the same time, but can use them consecutively. Employees are also limited to a maximum of 26 weeks of disability and PFL benefits combined in a rolling 52-week period. For more information on FMLA, go to the FMLA web page.

PFL Leave to Bond with a Child

Employees with a new child, whether by birth, adoption or placement into foster care, with proper documentation, may be eligible to take PFL to bond with the child. PFL only begins after birth and is not available for prenatal conditions. PFL is also available to eligible employees for pre-adoption or placement into foster care for events required to effectuate adoption or placement in foster care. A parent may take PFL during the first 12 months following the birth, adoption, or fostering of a child.

Caring for a Close Relative with a Serious Health Condition

Employees may use PFL to care for a family member with a serious health condition. A qualifying family member includes: Spouse, Domestic partner, Child, Parent, Grandparent, or Grandchild. A serious health condition is 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. For example, an employee may need one or more full days to care for the employee's mother when she undergoes chemotherapy; or the employee's father is having surgery followed by extensive recuperation; or the employee's child is undergoing intense psychotherapy and is unable to attend school for a period of time. An employee may not take leave under the PFL to address their own serious health condition.

Active Duty Deployment

PFL is available for leave due to a "qualified exigency," as defined by the federal Family Medical Leave Act (FMLA), when a spouse, child, domestic partner or parent of the employee is on active military duty or has been notified of an impending call or order of active duty. An employee may not take leave under the PFL to address their own qualifying exigency.

Definitions

- "Child" means an employee's biological, adopted, or foster son or daughter, a stepson or stepdaughter, a legal ward, a son or daughter of a domestic partner, or the person to whom the employee stands in loco parentis.
- "Grandchild" means a child of the employee's child.
- "Grandparent" means a parent of the employee's parent.
- "Parent" means biological, foster or adoptive parent, parent-in-law, step-parent, legal guardian, or other person who stood in loco parentis to the employee when the employee was a child.

How to Apply for PFL

Employees must notify their employer 30 days prior to leave, when foreseeable. If the employee cannot foresee the need for PFL leave 30 days in advance, then the employee must give the Research Foundation notice as soon as practicable. Claim forms are available on the Research Foundations' website, but can also be obtained by contacting the Leaves Management Administrator. Employees requesting leave under the PFL must complete and submit a Request for Paid Family Leave Form (PFL-1) to the Leaves Management Administrator in the Department of Human Resources. Employees must obtain supporting documentation for PFL (birth certificate, military deployment certification, etc.) and submit their claim form and supporting documentation to the Leaves Management Administrator, who will provide such documents to the Research Foundation's PFL insurance carrier.

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

Employment Continuation under PFL

Any eligible employee who takes PFL shall be entitled, on return from such leave, to be restored to the position held by the employee when the leave commenced, or to be restored to a comparable position with comparable employment benefits and other terms and conditions of employment. In no case will PFL exceed the project or Personnel Action Form expected termination date of the employee.

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

Option to Waive PFL Benefits for Ineligible Employees

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

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

Employees who are eligible to waive PFL benefits and wish to do so must file a waiver form with the Department of Human Resources. Employees who file a waiver form will not make any contributions for PFL benefits and will not be eligible to receive PFL benefits. If the schedule of an employee who has waived PFL benefits changes such that it is anticipated that the employee will become eligible to receive PFL benefits, the waiver will be revoked and the employee must start making contributions on a going forward basis and must pay retroactive contributions to the employee's date of hire.

Child Care Leave

Child Care Leave (which may include sick leave for the period of a certified disability and/or annual leave) is unpaid leave granted for a period of up to six months from an infant's date of birth. It may not extend beyond the project or Personnel Action Form expected termination date.

To be granted this leave, the employee (male or female) must have legal responsibility for the care and/or support of the child, have been employed full-time by the Foundation for at least one year before the requested leave, and apply in writing to the project director for such leave. Documentation of legal responsibility may be required.

During a period of approved Child Care Leave without pay, fringe benefits may be retained, not to extend the leave period, if employee pays the Foundation for costs of continued coverage. Employee should contact their Benefits Coordinator to arrange payment for benefits. See Benefits for Project Employees, Policy No. 507-G for details. Child Care Leave will run concurrently with any available PFL or FMLA leave.

Guidelines that Pertain to Exempt and Non-Exempt Employees

Except for ESSTA Leave, leave accruals are earned on the hours worked up to and including seventy (70) hours per pay period. Leave accruals (other than ESSTA Leave accruals) are not earned on hours worked over 70 hours in a pay period. Leave accruals (other than ESSTA Leave accruals) are not earned on "FLSA" hours.