

The law, the contract and CUNY policy on family leave

By CLARION STAFF

CUNY does not currently provide paid parental or family leave to its faculty and staff – but the PSC is fighting to change that (see sidebar). CUNY's current policy on family leave is not only inadequate, it's also complex. The article below outlines information you need in order to navigate your way through it.

1) What is the FMLA?

The Family and Medical Leave Act (FMLA) is federal legislation that entitles employees to up to 12 weeks of unpaid leave per “leave year” to care for themselves or other family members because of a serious medical condition. At CUNY, the “leave year” is defined as September 1 through August 31. The employee is entitled to continuing health insurance coverage while on FMLA leave and to return to the same or equivalent position at the end of the leave.

2) When can you use it?

Full-time members of the CUNY instructional staff are eligible for FMLA leave if they have been employed for at least 12 cumulative (but not necessarily consecutive) months by CUNY. Part-time employees must have a minimum of 1,250 hours of CUNY service during the 12 consecutive months immediately before the effective date of the leave, so few CUNY part-timers qualify.

FMLA leave can be used 1) for the birth or care of a newborn or newly adopted child; 2) to care for a spouse, domestic partner, child or parent with a serious health condition; and 3) because of a serious health condition that makes the employee unable to perform the essential functions of his/her job.

3) What form of paid leave is available if I or my spouse give birth to a child or need to care for a sick family member?

Under the PSC contract, full-time employees can use accrued sick leave for the period that their doctors say they should not work during pregnancy or after childbirth. This applies only to the mother, not the father, and sick leave cannot be used to care for a newly adopted child. Except for CLIP teachers, part-timers at CUNY cannot accrue sick leave from one semester to the next.

Sick leave cannot be used for absence from work due to the illness of a family member or if a spouse gives birth. CUNY professional staff, as well as library and counseling faculty, have often used annual leave for this purpose.

4) How is paid sick leave or annual leave used in conjunction with an unpaid FMLA leave?

CUNY's present policy requires that paid sick leave, or annual leave

What are your rights today?



Taking time for a new family member is a challenge for CUNY workers.

used for illness of an employee or family member, must run concurrently with any unpaid FMLA leave. The union has objected to this policy, arguing that unpaid leave under the FMLA should begin only *after* the employee has used up all applicable paid leave. If this CUNY policy were changed, employees could get the benefit of up to 12 additional weeks of guaranteed leave. Although this time would be unpaid, it would extend the period during which employees have their health insurance paid for and their jobs protected.

5) What happens to my health and pension coverage when I'm on an FMLA leave or sick leave?

During an FMLA leave or paid sick leave, the University is required to maintain an employee's health coverage on the same terms as before.

If you take an unpaid Special Childcare Leave after your 12 weeks of FMLA leave are finished (see #7 below), CUNY will not pay to continue your health insurance coverage. To continue it yourself, you must pay the monthly premium through COBRA, covering the cost of the employer's contribution to the City health

plan, until you return to work.

Pension contributions are made only while you are on paid leave.

6) What change in family leave policy does the PSC want in this round of contract negotiations?

The union is demanding that CUNY provide a semester-long leave at full pay for the introduction of a new child into the household (by birth or adoption) or for the medical care of a family member. (See sidebar.)

7) What other forms of leave are currently available to PSC members, for full-time faculty, part-time faculty and other staff?

Full-timers earn sick leave under Article 16 of the contract, which provides for “temporary disability leave”; this can be used during pregnancy or after childbirth if a doctor determines that the employee is unable to work. (Federal law requires that any leave available for temporary disability be available for pregnancy.) Other kinds of leave include:

Special Leaves for Child Care: Unpaid leave for a new child for any full-

time member of the instructional staff for the care/support of the child for up to one semester. Can be used to care for a newborn infant by an individual member who has legal responsibility for the care and/or support of the child. Extensions granted for up to one year from end of the original leave. Child-care leave affects annual leave accruals but does not affect salary increments if leave is less than one calendar year. (For details see Article 16.8 of the PSC-CUNY contract available at www.psc-cuny.org.)

Leaves for Special Purposes: The college president may grant full-time members of the instructional staff paid leave for personal emergencies of not more than 10 working days. (For details see Bylaws of the City University of New York, Section 13.5.a.)

Leaves for Teaching and Non-teaching Adjuncts: Limited time, but not limited to illness. For up to 1/15 of the total number of clock hours in a particular session or semester, paid time off due to personal illness or personal emergencies including religious observance, death in the immediate family or similar personal needs that cannot be postponed. Reason must be satisfactory to the department chairperson or supervisor. (For details see Article 14.8 of the PSC-CUNY contract.)

8) Faculty librarians accumulate annual leave differently than other full-time faculty; the same is true for HEOs and CLTs. How do full-timers in these positions use annual or sick leave to attend to a family need as outlined by FMLA?

Faculty librarians, HEOs and CLTs accumulate annual leave and may take it at any time subject to supervisory approval. Thus, for their own medical conditions – including recovery from childbirth – faculty librarians, HEOs and CLTs first use all available sick leave, followed by accrued annual leave.

However, paid sick leave cannot be used to care for a family member, including to care for a newborn or adopted infant – so in this case only accrued annual leave can be charged. FMLA leave runs concurrently with any accrued paid leave – and lasts for up to 12 weeks, even if paid leave is exhausted sooner.

Other full-time faculty must take annual leave during the summer – except for faculty counselors, who may be assigned to take annual leave at certain other times at the discretion of the college. (See Articles 14.1 and 14.3 of the contract for details.)

PSC organizes for paid family leave

In the current round of contract bargaining, the PSC is demanding a semester-long leave at full pay for “the introduction of a new child into the household or for the medical care of an immediate family member.”

A committee of union members has been organizing a CUNY-wide network to build support for this demand, and actions on many campuses are planned for mid-February. For more information or to get involved, contact Nick Cruz at the PSC office, at (212) 354-1252 or ncruz@psccunyu.org.

The union's efforts have drawn some attention in the local press, including a report last semester on WNBC-TV. Lack of paid family leave “affects our ability to attract new faculty, and keep new faculty here,” Karen Strassler, an assistant professor of anthropology, told WNBC. “So it's really about the health of the institution as a whole, and I hope the CUNY administration will recognize that.”

See the full WNBC report at www.psc-cuny.org/psc-currents.htm.

– PH & DR

For full-time faculty who do not accumulate annual leave, time off to care for a family member can be requested either under Section 13.5.a of the Bylaws (paid – see #7 above) or under FMLA (unpaid).

9) If I need to take any unpaid FMLA leave before achieving tenure, does the tenure clock stop or pause? What about service credit for other kinds of job security (CCE or 13.3b)?

Regardless of length, the unpaid leave period serves as a “bridge in service” between the employment periods before and after it. The leave is not considered a break in service but “bridges” the period of creditable service (service that counts toward tenure, CCE or 13.3b) immediately preceding the leave with the creditable service achieved after the leave. The “bridge in service” itself does not count as creditable service.

For those who have already achieved tenure, CCE or 13.3b, the period of the FMLA leave is not considered a break in service.

10) Does CUNY provide financial assistance with child care expenses?

No, but the NYC Employee Benefits Program (which administers health insurance) permits payment for eligible dependent care expenses from a Dependent Care Flexible Spending Account. Employees may choose to enroll and contribute pre-tax payroll deductions which reduce taxable gross income.