Paragraph (2) of subdivision (a) of section 355.9 of Title 12 NYCRR is hereby amended to read as follows:

(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 and both worked and received wages immediately preceding and including [his] the last day worked prior to the first day of paid family leave, or the total wages of the last eight weeks or portion thereof that the employee was in such employment and both worked and received wages 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) of this subdivision, 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.

A new paragraph (20) of subdivision (a) of section 355.9 of Title 12 NYCRR is hereby added to read as follows:

(20) *Construction employee* means employees who perform construction, demolition, reconstruction, excavation, rehabilitation, repairs, renovations, alterations, or improvements for multiple employers pursuant to a collective bargaining agreement.

Subdivision (a) of Section 380-2.5 of Title 12 NYCRR is hereby amended to read as follows:

Section 380-2.5. Employees who acquire eligibility during employment
(a) Except for construction employees as outlined in section 203 of the Workers' Compensation Law and subdivision (h) of this section, [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] the employee 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.

Subdivision (b) of Section 380-2.5 of Title 12 NYCRR is hereby amended to read as follows:

(b) Except for construction employees as outlined in section 203 of the Workers' Compensation Law and subdivision (h) of this section, [A]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.

Subdivision (g) of Section 380-2.5 of Title 12 NYCRR is hereby amended to read as follows:

(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) of the Workers' Compensation Law.

(4) FMLA designated leave taken by an employee due to [his or her]the employee's 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) of the Workers' Compensation Law.

(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.

A new subdivision (h) of Section 380-2.5 of Title 12 NYCRR is hereby added to read as follows:

(h) Construction employees become eligible for paid family leave benefits by working in the employment of a covered employer and working the employer's normal work week for at least 26 of the last 39 weeks. The employer's normal work week for construction employees means working 20 or more hours per week.

Section 380-2.6 of Title 12 NYCRR is hereby amended to read as follows:

Section 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:

(1) When [his or her] the employee's regular employment schedule is 20 hours or more per week but the employee will not work 26 consecutive weeks or, in the case of a construction employee, the employee will not work for 26 of 39 weeks; or

(2) When [his or her] the employee's 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, in the case of a construction employee, the employee will not work for 26 of 39 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] their employment with the covered employer, and the covered employer shall be obligated to provide family leave benefits for such employee when [he or she] the employee is eligible pursuant to this Title.

Section 380-5.1 of Title 12 NYCRR is hereby amended to read as follows:

Section 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]the employer section 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.