



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

The Director

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Memorandum for Heads of Executive Departments and Agencies

From: Kiran A. Ahuja
Director

Subject: Parental Bereavement Leave

The National Defense Authorization Act for Fiscal Year 2022 established a new paid leave entitlement for most Federal civilian employees. (See section 1111 of Public Law 117-81, December 27, 2021.) This new paid leave benefit is codified in a new section 6329d in title 5, United States Code. Under section 6329d, covered Federal employees are entitled to 2 workweeks of parental bereavement leave in connection with the death of an employee's qualifying child. This new provision became effective on the date of enactment, December 27, 2021.

In order to assist agencies in implementing this new leave benefit in an equitable and uniform way, the U.S. Office of Personnel Management (OPM) is issuing guidance that all covered agencies should follow. (See attached guidance.)

Additional Information

Agency headquarters-level human resources offices may contact Pay and Leave at OPM at pay-leave-policy@opm.gov. Component-level human resources offices must contact their agency headquarters for assistance. Because the parental leave benefit will be administered by the agencies, employees should contact their servicing agency human resources office for further information on the benefit.

cc: Chief Human Capital Officers (CHCOs), Deputy CHCOs, and Human Resources Directors

Guidance on Parental Bereavement Leave (5 U.S.C. 6329d)

A. General Information

1. Section 1111 of the National Defense Authorization Act for Fiscal Year 2022 (Public Law 117-81, December 27, 2021) added a new section 6329d in subchapter II of chapter 63 of title 5, United States Code. Section 6329d provides covered Federal employees with a new type of paid leave for purposes of bereavement in connection with the death of an employee’s qualifying child (see sections C.1 and C.3)—hereafter referred to as “bereavement leave.”
2. Section 1111—and thus section 6329d—took effect on the date of enactment, December 27, 2021. Bereavement leave may be taken in connection with the death of a covered Federal employee’s qualifying child occurring on or after that date, once all eligibility conditions have been met (see section B).
3. Each agency with eligible employees is responsible for implementing the new section 6329d. OPM is providing this guidance to support consistent implementation of the law across government.
4. Eligible employees (as defined in section B) may use bereavement leave, subject to the conditions and requirements set forth in this guidance.
5. Bereavement leave is a new, stand-alone type of paid leave entitlement that is administered independently from any other type of leave, including sick leave, to make arrangements necessitated by the death of a family member or to attend the funeral of a family member. Even though it links to certain statutory terms in the Family and Medical Leave Act (FMLA), bereavement leave is not authorized under the FMLA. The bereavement leave and FMLA leave limitations are separately administered. Bereavement leave may not be substituted for FMLA unpaid leave. Agencies should accommodate employees’ requests to use FMLA leave, sick leave, and bereavement leave in combination (for different hours that may or may not be adjacent), as appropriate. (For example, in the event that a child dies during the post-birth recovery period for an employee who gave birth to the child, the employee may be able to use FMLA leave, sick leave, or bereavement leave during certain periods of time.)

B. Eligible Employees

1. Under 5 U.S.C. 6329d, an individual is eligible for bereavement leave only if the individual meets the definition of “employee” in the title 5 FMLA provision in 5 U.S.C. 6381 at the time of the child’s death. Thus, all the following conditions must be met:
 - a. The individual is (i) covered under the title 5 annual and sick leave program (i.e., an “employee” as defined in 5 U.S.C. 6301(2)) or (ii) a DOD overseas teacher

holding a teaching position defined in 20 U.S.C. 901 (but excluding any individual employed by the government of the District of Columbia, the Government Accountability Office, or the Library of Congress);

- b. The individual is serving under a permanent or term appointment (i.e., does not have a temporary appointment of 1 year or less);
 - c. The individual has an established part-time or full-time work schedule (i.e., does not have an intermittent work schedule as described in 5 CFR 340.401 and 340.403); and
 - d. The individual has completed at least 12 months of service as an employee (as defined in 5 U.S.C. 2105) of the Government of the United States, including service with the United States Postal Service, the Postal Regulatory Commission, and a nonappropriated fund instrumentality as described in section 2105(c).
2. To be eligible to take bereavement leave, an employee must be in a status in which the employee must account for hours in the employee's tour of duty by work or leave. An employee with a seasonal work schedule is not eligible during the off-season when the employee is placed in nonduty/nonpay status. (See 5 CFR 340.401-340.402.)

C. Leave Entitlement

1. *General.* An eligible employee is entitled to a total of 2 workweeks of bereavement leave because of the death of a qualifying son or daughter of the employee, subject to the conditions set forth in this guidance. (See definition of "son or daughter" or "child" in section C.3.) Bereavement leave should only be made available when the death of the child occurs while the parent is an eligible employee. The death of an employee's child triggers the law's one-time entitlement to 2 workweeks of bereavement leave in connection with that death, which must be used within the single 12-month period described in section C.2 that is linked to the given child's death.
2. *Limitation in 12-month period.* An employee may not receive more than 2 workweeks of bereavement leave in any 12-month period.
 - a. The 12-month period used for this purpose commences on the date of the death of a child (or on the date of death for multiple children on the same day) of the employee and continues for 12 months. After that 12-month period expires, another 12-month period will not commence unless there is another later use of bereavement leave based on another child's death.
 - b. If one or more children of an employee dies at a later time during a 12-month period associated with the earlier death of another child of the employee, each later death will result in the commencement of a corresponding 12-month period. Thus, an employee may have overlapping 12-month periods. Any use of bereavement leave during an overlap period including parts of more than one 12-month period will count against the 2-week limit for each affected 12-month period.

3. *Definition of “son or daughter.”* The term “son or daughter” has the meaning given that term in the FMLA law at 5 U.S.C. 6381(6), as further described in OPM regulations in 5 CFR 630.1202. In this guidance, the term “child” will be used interchangeably with the term “son or daughter.” The definition of “son or daughter” in 5 CFR 630.1202 is presented below:

Son or daughter means a biological, adopted, or foster child; a step child; a legal ward; or a child of a person standing in loco parentis who is—

- (1) Under 18 years of age; or
- (2) 18 years of age or older and incapable of self-care because of a mental or physical disability. A son or daughter incapable of self-care requires active assistance or supervision to provide daily self-care in three or more of the “activities of daily living” (ADL’s) or “instrumental activities of daily living” (IADL’s). Activities of daily living include adaptive activities such as caring appropriately for one’s grooming and hygiene, bathing, dressing, and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using the telephones and directories, using a post office, etc. A “physical or mental disability” refers to a physical or mental impairment that substantially limits one or more of the major life activities of an individual as defined in 29 CFR 1630.2 (h), (i) and (j).

The term “adopted child” must be interpreted consistent with the definition of “adoption” in 5 CFR 630.1202, except that it includes a child who has been placed with an employee for the purpose of adoption pending finalization of the adoption process. The term “foster child” must be interpreted consistent with the definition of “foster care” in 5 CFR 630.1202. The term “in loco parentis” has the meaning given that term in 5 CFR 630.1202.

4. *Conversion to Hours.* The 2-workweek leave entitlement must be converted to hours based on the number of hours in the employee’s scheduled tour of duty (at the time the 12-month period of leave eligibility commences), subject to the following rules:
 - a. For a regular full-time employee with 80 hours in the scheduled tour of duty over a biweekly pay period, the hours equivalent of 2 workweeks is 80 hours.
 - b. For a full-time employee with an uncommon tour of duty (as defined in 5 CFR 630.201 and described in 5 CFR 630.210), the hours equivalent of 2 workweeks is equal to the number of hours in the employee’s biweekly scheduled tour of duty (or the average hours if the biweekly tour hours vary over an established cycle). For example, if an employee has an uncommon tour consisting of six 24-hour shifts (144 hours) per biweekly pay period, the leave entitlement would be 144 hours.
 - c. For a part-time employee, the hours equivalent of 2 administrative workweeks is equal to the number of hours over a biweekly pay period based on the employee’s scheduled tour of duty established for leave-charging purposes. For example, if

an employee has a part-time scheduled tour of duty that consists of 40 hours in a biweekly pay period, the leave entitlement would be 40 hours.

5. *Change in tour of duty.* If there is a change in an employee's scheduled tour of duty before the employee has used the full 2-workweek allotment of bereavement leave, the remaining balance of bereavement leave must be recalculated based on the change in the number of average hours in the employee's scheduled tour of duty. For example, if a regular full-time employee has a balance of 40 hours of unused bereavement leave and then converts to a part-time schedule of 24 hours per week, the balance would be recalculated to be 24 hours. (Since the old schedule was 80 hours biweekly and the new part-time schedule is 48 hours biweekly, the new part-time tour is 60 percent (48/80) of the former full-time tour. Thus, the converted unused balance should be 60 percent of the pre-conversion balance. 60 percent or 48/80 times 40 equals 24.)
6. *Negation of entitlement.* An employee is not entitled to bereavement leave if the employee is found by proper authority to have deliberately caused the death of the child whose death gave rise to the potential entitlement. Any bereavement leave that was provided to the employee prior to the finding of culpability must be retroactively canceled.

D. Usage of Leave and Payments

1. *Use at employee request.* An employee is entitled to use bereavement leave upon request if the employee meets all conditions and requirements, as described in this guidance.
2. *Relationship to other leave.* Bereavement leave is a stand-alone paid leave entitlement that is used separately from other leave or time off an employee might otherwise use. Bereavement leave does not affect the accrual or balances of other paid leave or paid time off. An employee may continue to use sick leave for bereavement under 5 CFR 630.402(a)(2)(iv) for different hours not covered by bereavement leave. That sick leave may be used for the specific limited purposes of making arrangements necessitated by the death of the employee's child or to attend the child's funeral; it does not cover the broader purpose of bereavement.
3. *Leave payment.*
 - a. Bereavement leave is paid at the same hourly rate as other paid leave that is not subject to the 8-hour rule governing the inclusion of night pay. (See paragraphs c and d below.)

Note: Sunday premium pay under 5 U.S.C. 5546(a) or other law is not included in payment of any type of paid leave. See Public Law 105–277, div. A, §101(h) [title VI, §624], October 21, 1998: “Notwithstanding any other provision of law, no part of any funds provided by this Act or any other Act beginning in fiscal year 1999 and thereafter shall be available for paying Sunday premium pay to any employee unless such employee actually performed work during the time corresponding to such premium pay.”

- b. For most employees, the hourly leave payment is equal to the employee's hourly adjusted rate of basic pay (including any applicable locality payment, special rate supplement, or the equivalent).
 - c. For certain employees, the leave payment reflects certain additional payments such as—
 - recurring overtime/premium payments (such as standby duty premium pay and related FLSA overtime pay associated with regularly scheduled overtime hours; law enforcement availability pay; Border Patrol overtime supplements);
 - nonforeign area cost-of-living allowances and post differentials; or
 - night pay under 5 U.S.C. 5545(a), as described in paragraph d.
 - d. For employees receiving bereavement leave, night pay under 5 U.S.C. 5545(a) for hours within an employee's regularly scheduled tour of duty established for leave-charging purposes is payable without regard to the 8-hour rule in 5 U.S.C. 5545(a)(2) and 5 CFR 550.122(b). Since, by law, bereavement leave must be provided without any reduction in pay, it is not considered in applying the 8-hour rule. Applicable night pay is payable for hours of bereavement leave that occur during qualifying night hours (generally hours between 6:00 p.m. and 6:00 a.m.; however, special rules can be established under 5 U.S.C. 5545(b), and night pay for certain nightwork hours may be excluded for employees with flexible work schedules as described in 5 U.S.C. 6123(c)(1)).
4. *Leave increments.* Bereavement leave is used in the same hourly increments (hours and specified fractions of an hour) as regular paid leave under the timekeeping system applicable to the employee (i.e., fractions such as 1/10th or 1/4th of an hour).
 5. *Scheduled hours.* An employee must use bereavement leave during scheduled hours within the employee's tour of duty established for leave-charging purposes when the employee would otherwise be working or using other paid leave.
 - a. A seasonal employee may not use bereavement leave during off-season periods.
 - b. An employee may not use bereavement leave during furlough periods.
 - c. An employee may not use bereavement leave during a period of suspension.
 - d. An employee who is on leave without pay for service in the uniformed services ("Absent-US") may not use bereavement leave during periods of service in the uniformed services. (Only the types of civilian leave specified in 5 CFR 353.208 may be used during service in the uniformed services.)
 - e. An employee may not use bereavement leave during a period of separation from Federal service (i.e., the employee must be currently employed).
 6. *Timing of use.* Once bereavement leave commences, it must be used continuously (non-intermittently) unless there is a mutual agreement between the employing agency and the employee to allow intermittent use.

- a. If bereavement leave is subject to the continuous-use requirement, a holiday or other nonworkday is not considered to be an interruption in continuous use even though bereavement leave is not charged for those hours in the employee's tour of duty (see section D.8.); also, a period of time described in section D.6. is not considered to be an interruption in continuous use. If an employee is subject to the continuous-use requirement and does not use all available bereavement leave for the given 12-month period, the employee will not be able to use the remaining balance unless the employee experiences the death of another child within the 12-month period.
 - b. If intermittent use of bereavement leave is authorized, it may be scheduled in such a way that the employee works partial workdays (i.e., a reduced work schedule) or schedules other types of paid leave or other paid time off on the same workday (e.g., sick leave for some hours and bereavement leave for other hours).
7. *Holidays and other nonworkdays.* A holiday is a nonworkday; thus, bereavement leave may not be used on a holiday. It also may not be used on any other nonworkday established by Federal statute, Executive order, or administrative order. (See section D.7.)
8. *Flexible work schedule.* Employees with a flexible work schedule may have fixed basic work requirement hours per day or may be allowed to elect to vary basic work requirement hours by day. In the case of a flexible work schedule under which an employee may elect to vary daily work hours, the employing agency may allow the employee to determine (within agency-established limits) the number of scheduled hours during which bereavement leave will be used on a given day, if the agency determines the employee is entitled to bereavement leave during the specified time periods.
9. *Change in employing agency.* A change in an employee's agency while using bereavement leave during a 12-month period does not affect application of the 2-workweek limit. The gaining agency must determine whether a newly hired or transferred employee is within a 12-month period based on the date of death of the employee's child, and, if so, how many hours of bereavement leave the employee has already used. Any agreement between the employee and the previous employing agency regarding intermittent use of bereavement leave is not binding on the new employing agency.
10. *Retroactive use.* An employee may request, and an employing agency must grant, bereavement leave for which the employee is eligible to cover a past period of leave without pay occurring during a qualifying period. If an agency determines that an employee used other paid leave to cover a period of time for which bereavement leave could have been used, an agency may allow the employee to retroactively substitute bereavement leave for such other paid leave upon making a determination that the employee lacked information or was not allowed to use bereavement leave at the time. However, an employee may not use bereavement leave prior to December 27, 2021, the date of enactment of Public Law 117-81.

11. *Unused balance at transfer or separation.* If an employee with an unused balance of bereavement leave transfers between eligible positions, the bereavement leave balance transfers with the employee as long as the employee is within the 12-month eligibility period for bereavement leave. If an employee has an unused balance of bereavement leave at the time of separation from Federal service, any right to the unused amount of leave is extinguished unless the employee returns to an eligible Federal position within the 12-month eligibility period. No cash payment may be made for unused bereavement leave at any time, including transfer to another agency or separation from Federal service.

E. Employee Notification and Recordkeeping

1. In any case in which the necessity for leave under this subsection is foreseeable (for example, if the employee would like to schedule the leave on an intermittent basis, rather than continuous usage as provided under section D.7 above), the employee must provide the employing agency with such advance notice as is reasonable and practicable.
2. An employing agency may require that an employee provide a written self-certification or other documentation (e.g., death certificate) to verify that the requested bereavement leave is being used for bereavement purposes.
3. OPM will create a new leave data element in its Enterprise Human Resources Integration (EHRI) database. Until that data element is established, agencies should report bereavement leave under an existing paid leave category (e.g., administrative leave).
4. When an agency prepares a Standard Form 1150, Record of Leave Data, for a transferring employee who is in the middle of a bereavement leave 12-month period, it should record in the Remarks section (block 24) (i) the commencing date of the 12-month period and (ii) the aggregate amount of bereavement leave used by the employee (as of the time of transfer).

F. Legislation

Section 1111 of the National Defense Authorization Act for Fiscal Year 2022 (Public Law 117-81, December 27, 2021) added a new section 6329d in subchapter II of chapter 63 of title 5, United States Code.

§ 6329d. Parental bereavement leave

(a) DEFINITIONS.—In this section—

(1) the terms “employee” and “son or daughter” have the meanings given those terms in section 6381; and

(2) the term “paid leave” means, with respect to an employee, leave without loss of or reduction in—

(A) pay;

(B) leave to which the employee is otherwise entitled under law; or

(C) credit for time or service.

(b) BEREAVEMENT LEAVE.—

(1) IN GENERAL.—Subject to paragraphs (2) and (3), an employee shall be entitled to a total of 2 administrative workweeks of paid leave during any 12-month period because of the death of a son or daughter of the employee.

(2) LIMITATION.—Leave under paragraph (1) may not be taken by an employee intermittently or on a reduced leave schedule unless the employee and the employing agency of the employee agree otherwise.

(3) NOTICE.—In any case in which the necessity for leave under this subsection is foreseeable, the employee shall provide the employing agency with such notice as is reasonable and practicable.