

PAID PARENTAL LEAVE

INTRODUCTION

The Federal Employee Paid Leave Act was included in the National Defense Authorization Act for Fiscal Year 2020 and entitles certain Department of Defense (DoD) employees to 12 weeks of paid parental leave (PPL) in connection with the birth, adoption, or foster care placement of a child that occurs on or after October 1, 2020. The regulations for the new paid leave entitlement are located in part 630, Subpart Q of title 5, Code of Federal Regulations.

ELIGIBILITY

To be eligible for PPL, under the authority in title 5, United States Code (U.S.C.), a DoD employee must be eligible for the Family and Medical Leave Act (FMLA) under title 5.

An employee must meet FMLA eligibility requirements, including the following:

- Has completed at least 12 months of Federal service that is covered under the title 5 FMLA provisions
- Has a part-time or full-time work schedule (i.e., employees with an intermittent work schedule are ineligible); and
- Has an appointment of more than 1 year in duration

Employees with an intermittent work schedule are ineligible for paid parental leave. Additionally, employees with temporary appointments not to exceed one year are ineligible for paid parental leave.

The employee must have a qualifying birth or placement event—that is, the birth or placement (for adoption or foster care) of the employee's child must occur on or after October 1, 2020.

An employee who is ineligible for FMLA leave at the time of a qualifying birth or placement event may establish FMLA leave eligibility during the 12-month period following the qualifying birth or placement and use paid parental leave during that period.

ELIGIBILITY EXAMPLES

Example 1. An employee gives birth to a baby on October 3, 2020 and is a full time employee with two years of service. They are eligible for FMLA leave. They are immediately eligible for PPL and may substitute FMLA unpaid leave for PPL.

Example 2. An employee gives birth to a baby on September 28, 2020 and is a full time employee with two years of service. They are eligible for FMLA leave. However, they are not eligible for PPL because the qualifying event (the birth) occurred prior to October 1, 2020. None of their FMLA unpaid leave based on the birth may be substituted with PPL.

Example 3. An employee gives birth to a baby on October 3, 2020 and is a full time employee with 11 months of service. On November 3, 2020, the employee completes 12 months of federal service and becomes eligible for FMLA leave. When FMLA leave eligibility is established on November 3, 2020, the employee becomes eligible for PPL and may substitute PPL for unpaid leave used on or after November 3, 2020.

LEAVE ENTITLEMENT AND USAGE

Paid parental leave is defined as paid time off that is granted to cover periods of time within the 12-month period commencing on the date of birth or placement to an employee who has a current parental role in connection with the child whose birth or placement was the basis for granting FMLA unpaid leave under 5 CFR 630.1203(a)(1) or (2).

PPL is limited to 12 administrative workweeks in connection with a birth or placement of an employee's child. An employee must first invoke FMLA unpaid leave for the birth of a child or placement of a child with the employee for adoption or foster care in order to receive paid parental leave. Paid parental leave is provided via substitution for FMLA unpaid leave. The FMLA unpaid leave is provided under the normal rules in the title 5 law and regulations.

If two covered Federal employees are parents of the same newly born or placed child, each employee would have their own separate FMLA leave entitlement based on the birth/placement event. Additionally, each employee-parent would have a separate entitlement to substitute PPL.

Any FMLA leave for purposes other than the birth or placement of the child during a 12-month period may reduce the FMLA leave available. In this case, it would also reduce the amount of available PPL, since the substitution of PPL requires the use of FMLA leave.

FMLA leave for the purposes of the birth or placement of a child and PPL may only be used during the 12-month period following the birth or placement event. It is important for employees to calculate any applicable FMLA periods and the period based on the birth/placement event, separately, to ensure they understand their entitlements.

LEAVE ENTITLEMENT EXAMPLES

Example 1. An employee has not previously invoked FMLA. On October 12, 2020, their qualifying birth event occurs. They invoke FMLA unpaid leave on October 12, 2020 and substitute PPL on the same date. In this example, the FMLA period is from October 12, 2020 – October 11, 2021. The one year period based on the birth/placement event is also from October 12, 2020- October 11, 2021. The employee would be entitled to substitute 12 weeks of PPL during this period.

Example 2. An employee has not previously invoked FMLA. On October 12, 2020, their qualifying birth event occurs. The employee takes six weeks of sick leave for their recovery from childbirth. They do not invoke FMLA during this time since it is not necessary to do so. The employee invokes FMLA leave on November 23, 2020 and substitutes PPL, starting on the same date. In this example, the FMLA period is from November 23, 2020- October 11, 2021. Even though the employee did not invoke FMLA on the day of the birth event, the FMLA period must end 12 months after the birth event. The employee would be entitled to substitute 12 weeks of PPL between November 23, 2020-October 11, 2021.

Example 3. An employee invoked FMLA to care for a sick family member on April 20, 2020 and used 2 weeks of FMLA leave. On October 12, 2020, their qualifying birth event occurs. On October 12, 2020, they invoke FMLA unpaid leave based on the birth of their child and substitute 10 weeks of PPL. In this example, FMLA leave and the substitution of PPL is limited to 10 weeks, since the employee already used 2 weeks of FMLA leave, and they may not exceed a total of 12 weeks of FMLA leave during the FMLA period. The FMLA period is from April 20, 2020-April 19, 2021. The one year period based on

the birth/placement event is from October 12, 2020 – October 11, 2021. On April 20, 2021, a new FMLA period begins and the employee may invoke FMLA and substitute 2 weeks of PPL for FMLA leave at this point, since they have 2 additional weeks of PPL still available. The remaining PPL must be used from April 20, 2021 – October 11, 2021.

MULTIPLE BIRTH/PLACEMENT EVENTS

If an employee has multiple children born or placed on the same day, the multiple-child birth/placement event is considered to be a single event that initiates a single entitlement of up to 12 weeks of PPL.

If an employee has one or more children born or placed during the 12-month period following the date of an earlier birth or placement of a child of the employee, each event will generate a 12-week leave entitlement to be used during the 12-month period following birth/placement. Any use of PPL during an overlap period (period containing more than one 12-month period following birth/placement) will count toward the 12-week limit for each birth/placement involved.

Example: An employee has not previously invoked FMLA. On October 12, 2020, their qualifying birth event occurs. The employee immediately invokes FMLA unpaid leave on October 12, 2020, and substitutes PPL on the same date. The employee substitutes 12 weeks of PPL for FMLA leave. The employee's FMLA period and the one year period based on the birth/placement event is from October 12, 2020 – October 11, 2021. On August 23, 2021, the employee adopts a child. Since the date of the placement is within the one year period based on the previous birth, and the employee has already utilized 12 weeks of PPL, the employee would not have any PPL or FMLA leave available for use. On October 12, 2021, the employee may invoke FMLA based on the placement event and the new FMLA period begins. The employee may then substitute 12 weeks of PPL for 12 weeks of FMLA leave. The PPL must be used during the new FMLA period from October 12, 2021-August 22, 2022.

DOCUMENTATION

Prior to using PPL, an employee should request, in writing, their intention to use PPL. The DoD Component may grant PPL prior to receiving an employee's written PPL request based on an employee's communications with a supervisor or management. Under these circumstances, the granting of PPL is considered to be provisional and the employee's written request should be provided as soon as possible.

Prior to substituting PPL, an employee must sign a work obligation, agreeing to work for DoD for not less than 12 weeks. A sample template is attached. An employee can communicate this work agreement through email or text message, however, a written work obligation, with signature, is required within 24 hours.

If an employee is physically or mentally incapable of signing a work obligation agreement, the employee may, within 5 workdays of the employee's return to duty status, sign a work agreement and make an election to substitute PPL for FMLA unpaid leave on a retroactive basis.

WORK OBLIGATION

Employees utilizing PPL are required to work for the employing agency for 12 weeks after the day on which the PPL concludes. If the employee fails to complete the 12-week work obligation following use of

PPL, the employee will be required to make a reimbursement equal to the total amount of any Government contributions paid by the agency on behalf of the employee to maintain the employee's health insurance coverage under the Federal Employees Health Benefits Program, established under 5 U.S.C. chapter 89, during the period(s) when PPL was used. The DoD Component may waive the reimbursement requirement due to unusual circumstances.

The employee is not considered to have failed to complete the 12-week work obligation if the employee moves within DoD to another DoD Component, without a break in service. Additionally, the employee is not required to make a reimbursement if the employee is unable to return to work for the required 12 weeks because of the continuation, recurrence, or onset of a serious health condition (including mental health) of the employee or the child whose birth or placement was the basis for the PPL; or any other circumstances beyond the employee's control.

FREQUENTLY ASKED QUESTIONS

1. If an employee gives birth before October 1, 2020, may they use PPL?

No, PPL may only be granted in connection with birth or placement events on or after October 1, 2020.

2. Who may be granted PPL?

Employees who meet eligibility requirements to invoke FMLA based on 5 CFR 630.1203(a)(1) or (2) may substitute their FMLA leave with PPL, in accordance with the title 5 rules and regulations. Both mothers and fathers may use PPL.

3. If both parents are federal employees, are they both entitled to PPL?

Yes, each employee would have their own separate FMLA/PPL entitlement based on the birth/placement event. The parents can choose to use their leave entitlements to cover the same period of time or different periods of time.

3. When can PPL be granted?

PPL can be granted to employees following FMLA invocation based on a qualifying birth, adoption, or placement event. It may only be granted for time when an employee has a "parental" role. A parent who does not maintain a continuing parental role with respect to a newly born or placed child would not be eligible for paid parental leave once the parental role has ended.

4. Can I use PPL before the birth or placement of my child occurs?

No, PPL can only be substituted after the birth or placement event. An employee may use FMLA unpaid leave prior to the birth or adoption. However, use of FMLA unpaid leave in these cases will affect how much PPL an employee can receive after the birth event. An employee may request to use annual leave or sick leave without invoking FMLA and the agency exercise its normal authority with respect to approving or disapproving the timing of when the leave may be used.

5. Can PPL be used for recovery following childbirth?

PPL may be used during periods of recovery from childbirth as long as the employee maintains a continuing parental role with respect to a newly born child. The interim regulations state that PPL continues to be available only as long as the employee has a continuing parental role with respect to the newly born or placed child. Therefore, PPL may not be used exclusively for the purposes of recovery

from childbirth. For example, in cases where an employee serves as a surrogate, the employee would not be eligible for PPL.

6. Are employees required to use all available sick and annual leave before using PPL?

No, employees are not required to use their sick or annual leave, prior to using PPL.

7. Are employees required to use PPL immediately following the birth or placement event?

No, employees may invoke their FMLA leave, with the substitution of PPL, at any time during the 12 month period following the birth/placement event, in accordance with applicable rules and regulations. For example, an employee may use their sick leave for their recovery from childbirth prior to invoking FMLA and substituting PPL.

8. Can employees use PPL intermittently?

The regulations allow for the use of PPL intermittently when both the Agency and the employee agree to intermittent use.

9. Can a request for PPL be denied?

No, PPL is an entitlement. As long as all of the requirements contained in 5 CFR, part 630, are met, an employee's invocation of FMLA and substitution of PPL cannot be denied.

10. What are employees required to provide before using PPL?

Employees must sign a written work obligation agreement stating that they will work for DoD for not less than 12 weeks, prior to the use of PPL. Additionally, employees should submit a written request detailing their anticipated use of PPL.

REFERENCES

- 5 U.S.C. Chapter 63, Subchapter V
- 5 CFR part 630, Subpart L – Family and Medical Leave
- 5 CFR part 630, Subpart Q – Paid Parental Leave

CONTACT

For additional information, please contact your servicing LER specialist or AskHR:
<https://ask.dfas.mil/askDFAS/custMain.action?mid=1>