

Approved for Release

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DEPARTMENT OF COMMERCE
OFFICE OF HUMAN RESOURCES MANAGEMENT

HUMAN RESOURCES (HR) BULLETIN #249, FY20

SUBJECT: Paid Parental Leave for Federal Employees

EFFECTIVE DATE: October 1, 2020

EXPIRATION DATE: Effective until canceled or superseded

SUPERSEDES: None

BACKGROUND: On December 20, 2019, the President signed the National Defense Authorization Act (NDAA) for Fiscal Year 2020, which includes the Federal Employee Paid Leave Act (FEPLA), in Division F, Subtitle A, title LXXVI, which makes paid parental leave available to certain categories of Federal civilian employees. The new law (Public Law (Pub. L.) 116-92) amends the Family and Medical Leave Act (FMLA) provisions in Title 5, United States Code (U.S.C.) to provide up to 12 weeks of paid parental leave to covered Federal employees in connection with the birth or placement (for adoption or foster care) of a child occurring **on or after October 1, 2020**. Paid parental leave granted in connection with a qualifying birth or placement under FEPLA is substituted for unpaid FMLA leave and is available during the 12-month period following the birth or placement.

PURPOSE: This bulletin sets forth policy and guidance for employees to request and use up to 12 weeks of paid parental leave in connection with the birth or placement of a child (resulting in the employee assuming a “parental” role with respect to the newly born or placed child) in substitution of unpaid leave under the FMLA.

DELEGATION OF AUTHORITY: The Principal Human Resources Managers (PHRMs), or their designees, are delegated the authority to make determinations on eligibility for paid parental leave; to collect the supporting documentation required; to waive the work obligation, if applicable, and to waive the agency’s cost of health insurance if the employee fails to fulfill the requirement to work for 12 weeks following parental leave as described herein.

PROCEDURES: An employee who invokes entitlement to paid parental leave, in substitution of unpaid FMLA leave, must provide 30 days' notice of intent, or as soon as practicable given the circumstances, to their supervisor. Employees must also work with their supervisor, PHRM, or designee, to confirm FMLA eligibility. An employee who wishes to invoke entitlement to paid parental leave by invoking FMLA (and therefore using paid parental leave under FEPLA instead of unpaid leave under FMLA), must: (1) complete a Paid Parental Leave Request Form; (2) sign the Agreement to Complete 12-Week Work Obligation; (3) include any appropriate supporting documentation for the use of paid parental leave; and (4) provide the documents to their supervisor, PHRM or their PHRM's designee. In addition, the employee will need to complete a leave request via the Leave Requests function in the Time & Attendance system (e.g., webTA).

ELIGIBILITY: To be eligible for paid parental leave, an employee must have a qualifying birth or placement (for adoption or foster care) event that occurs on or after October 1, 2020.¹ The employee must also have a "parental role" with respect to the child whose birth or placement triggered the leave entitlement. A "parental role" includes a parent or legal guardian in the case of birth or placement; it does not cover other family members or caregivers. Therefore, 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.

In order to be eligible for paid parental leave under FEPLA, a Federal employee must be eligible for FMLA leave under 5 U.S.C. 6382(a)(1)(A) or (B), and must meet FMLA eligibility requirements, including:

- Complete at least 12 months of Federal service of a type covered under the Title 5 FMLA provisions;
 - Employees under the Title 5 FMLA provisions are *not* required to be employed by a specific employer for at least 12 months; instead, they need only 12 months of covered service performed at any time in the past.
- Has a part-time or full-time work schedule (i.e., individuals on a temporary or intermittent basis are ineligible); and
- Has an appointment of more than 1 year in duration (i.e., employees with temporary appointments not to exceed 1 year are ineligible).

An employee who is ineligible for FMLA leave at the time of a qualifying birth or placement may establish FMLA leave eligibility during the 12-month period following the qualifying birth or placement and may use paid parental leave under FEPLA during that period. For example, an employee may become eligible for entitlement to FMLA by completing the required 12 months of service or by changing to a qualifying work schedule or appointment. Once FMLA eligibility is established and FMLA entitlement leave is invoked, an employee may be able to substitute paid parental leave in connection with a qualifying birth or placement.

¹ This is a statutory requirement established by section 7602(c) of Pub. L. 116-92.

ENTITLEMENT: To receive paid parental leave, an employee must invoke FMLA leave in connection with the birth or placement (for adoption or foster care) of a child. If this FMLA leave is granted, then an employee may substitute up to 12 weeks of paid parental leave under FEPLA. Paid parental leave under FEPLA is limited to 12 work weeks and may be used only during the 12-month period beginning on the date of the birth or placement involved. Within these 12 work weeks, paid parental leave is available as long as an employee has a continuing parental role with the child whose birth or placement was the basis for the leave entitlement. It is reserved for periods when an employee is acting in a parental role and engaged in activities directly related to the care of the child whose birth or placement triggered the leave entitlement. Using paid parental leave for these purposes supports the goal of increased parent-child bonding. If requested, an employee must provide their PHRM, or designee, with documentation showing that the employee's use of paid parental leave is directly connected to the occurrence of a birth or placement.

FMLA unpaid leave is provided under the normal rules in Title 5 law and regulations. For example:

- In the case of FMLA unpaid leave based on the birth or placement of a child, an employee may not use FMLA leave intermittently, unless the Agency agrees.
- Use of FMLA unpaid leave for purposes other than birth or placement of a child (e.g., leave based on a serious health condition) during a 12-month FMLA period may reduce the leave available for birth or placement purposes, and therefore, limit the amount of paid parental leave that can be substituted for it. (**Note: To the extent that the amount of FMLA leave available for birth or placement is reduced, the amount of available paid parental leave will also be reduced.**)
- Each Federal employee has a separate entitlement to FMLA unpaid leave (and, therefore, may substitute paid parental leave under FEPLA). If two covered Federal employees are parents of the same newly born or placed child, then each employee has a separate FMLA leave entitlement based on the birth/placement event.

Multiple Birth/Placement Events: If an employee has multiple children born or placed on the same day, the multiple-childbirth/placement event is considered to be a single event that initiates a single entitlement of up to 12 weeks of paid parental leave. 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. However, any use of paid parental leave during an overlap period (i.e., period containing more than one 12-month period following birth/placement) will count toward the 12-week limit for each birth/placement involved.

Example: If an employee has a child born on June 1 and another child placed for adoption on October 1 of the same year, each event would generate entitlement to substitute up to 12 weeks of paid parental leave during the separate 12-month periods beginning on the date of the birth and on the date of the placement, respectively. Those two 12-month periods would be June 1-May 31 and October 1-September 30. The overlap period for these two 12-month periods would be October 1-May 31. If the employee substitutes paid parental leave during that overlap period,

that amount of paid parental leave would count towards both the 12-week limit associated with the birth event and the 12-week limit associated with the placement event.

LEAVE USAGE: Paid parental leave under FEPLA may only be used no later than the end of the 12-month period beginning on the date of the birth or placement. At the end of the 12-month period, any unused balance of paid parental leave granted in connection with the given birth or placement expires and is not available for future use (i.e. there are no carryover provisions for unused paid parental leave). No payment may be made for unused paid parental leave or paid parental leave that has expired.

CONVERSION OF WEEKS TO HOURS: For employees who use leave on an hourly basis (including fractions of an hour), the 12-week paid parental leave entitlement will be converted to hours proportionately based on the employee's scheduled tour of duty. For a regular full-time employee, 80 hours per pay period, the entitlement will be 480 hours (12 weeks x 40 hours), and for a part-time employee working 40 hours per pay period, the entitlement will be 240 hours (12 weeks x 20 hours), etc.

WORK OBLIGATION: Under FEPLA, an employee may not use any paid parental leave unless the employee agrees in writing, before commencement of the leave, to subsequently work for the applicable employing agency for at least 12 weeks. This 12-week work obligation begins on the employee's first scheduled workday after such paid parental leave concludes.

Therefore, prior to using paid parental leave, an employee is required to enter into a written service agreement to work for the Department of Commerce (or other agency if transferred outside of the Department, or other position within the Department) for 12 weeks after the day on which paid parental leave concludes, specifically:

- The workday on which an employee finishes using the 12 workweeks of paid parental leave; or
- If the employee uses less than 12 workweeks of paid parental leave during the 12-month period following the birth or placement, the last workday on which the employee used paid parental leave in connection with the given child.

The work obligation is statutorily fixed at 12 weeks, regardless of the amount of leave used by an employee.

Example: An employee might use only 6 weeks of paid parental leave during the 12-month period following birth or placement, but would still be required to complete a 12-week work obligation.

Any periods of work between intermittent uses of paid parental leave do not count toward completion of the 12-week work obligation, which is met by performing work after use of paid parental leave concludes. The work obligation refers to a period during which the employee is in a duty status. Any periods of paid (i.e., annual, sick, compensatory, credit, holiday,

administrative, etc.) or unpaid leave or time off, or other periods of nonduty status (e.g., furlough or absent without leave (AWOL)) will not count toward the 12-week work obligation.

Waiver of Work Obligation. The work obligation may be waived based on a serious health condition of the employee, or the newly born/placed child, but, in the case of the employee's serious health condition, only if the condition is related to the applicable birth or placement. It may also be waived for circumstance beyond the employee's control. The PHRM will waive the work obligation if an employee is unable to return to work because of the continuation, recurrence, or onset of a serious health condition (including mental health) of the employee or the newly born/placed child, but only if the condition is related to the applicable birth or placement. In order to waive the work obligation, the employee must provide supporting documentation.

Reimbursement of Agency Costs for Health Insurance: The service agreement will note the possible need to provide reimbursement to the Department if an employee fails to meet the required work obligation; however, that reimbursement requirement cannot be applied in certain circumstances, and the PHRM may choose to not apply it in other circumstances.

The reimbursement is equal to the total amount of any Government contribution the Department paid to maintain the employee's health insurance coverage under the Federal Employees Health Benefits Program during the period that paid parental leave was used. If the PHRM determines that reimbursement must be made, it must seek collection of the full amount. There is no authority for a partial waiver of the amount owed.

The PHRM may not require the reimbursement (i.e. may issue a mandatory waiver of the reimbursement) if the PHRM determines that 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 paid parental leave, but, in the case of the employee's serious health condition, only if the condition is related to the applicable birth or placement; or
- Any other circumstance beyond the employee's control.

Before the PHRM can make a determination on whether to impose (or to waive) the reimbursement, the employee must submit supporting certification by a healthcare provider if the employee claims that (i) a serious health condition (of the employee or the child whose birth or placement entitled the employee to paid parental leave) makes him or her unable to fulfill the necessary work requirement; or (ii) another individual's health condition prevents the employee's fulfillment of the work requirement.

Employee Transfer: If an employee transfers to a position in the Federal government outside of the Department, or within the Department, while using paid parental leave, the 12-week work obligation will be owed to the employing organization at the time the use of paid parental leave concludes. The gaining organization will be responsible for documenting whether the employee

fulfills the 12-week work obligation. If an employee transfers between organizations within the Department, the PHRM, or designee, of the gaining organization (which is owed the 12-week work obligation) should notify the PHRM, or designee, of the losing organization if the 12-week work obligation has been satisfied so that appropriate billing by losing organization can occur.

Each agency (i.e., Department of Commerce or other agency) that incurred costs for the employee's health insurance during use of paid parental leave will make its own determination about whether to apply the reimbursement requirement. The PHRM is responsible for making this determination for Department organizations.

RELATION TO OTHER LEAVE: An employee may take unpaid FMLA leave under Title 5, U.S.C. 6382(a)(1)(A) or (B) before the birth or placement to cover certain activities related to the birth or placement, but cannot substitute paid parental leave for those pre-birth/placement FMLA unpaid leave periods. If an employee invokes FMLA to receive unpaid leave prior to the birth or placement of a child, **this time also will count towards the 12 weeks allowable per 12-month period** of paid parental leave.

Example: An employee uses 2 weeks of FMLA unpaid leave prior to the birth or placement of a child, they will then have a balance of 10 weeks of FMLA unpaid leave, or 10 weeks of paid parental leave, available for the 12-month period beginning at the invocation of the leave.

Paid parental leave and/or FMLA leave is in addition to accrued annual and sick leave, advanced annual and sick leave, regular leave without pay, donated leave, credit hours, and compensatory time off available to the employee. Paid parental leave is not annual leave and thus may not be included in a lump-sum payment for annual leave following separation (5 U.S.C. 6382(d)(2)(D)).

The Department cannot require an employee to use annual leave, sick leave, or other forms of paid personal leave (i.e., credit hours and compensatory time) already accrued by the employee before allowing the employee to use paid parental leave. An employee may request to use annual or sick leave, etc., without invoking the FMLA. By requesting to use a form of paid personal leave without invoking FMLA leave, an employee can preserve entitlement to use FMLA unpaid leave at another time and to substitute paid parental leave for that FMLA unpaid leave. An employee who invokes FMLA leave (either unpaid or paid parental leave) after using other forms of leave has the potential for the entire 12-weeks of available FMLA leave (either unpaid or paid) after using other leave.

Example: An employee who is a birth mother has an entitlement to use sick leave for the post-birth recovery period. By using sick leave to cover the post-birth recovery period, the employee would preserve the ability to invoke FMLA leave and take an additional 12 weeks of paid parental leave at a later time (up to 1 year following birth).

It is important that supervisors remember they have discretion in approving or disapproving most other forms of leave. FMLA leave, on the other hand, is an employee entitlement when the employee and the circumstance meet the eligibility requirements.

Note: An employee may also substitute annual and sick leave for FMLA unpaid leave based on birth or placement.

TIME AND ATTENDANCE AND NFC CODES: The Time & Attendance system (webTA, e.g.) and the National Finance Center (NFC) coding will be updated with the prefixes 70, 71, and 72 in conjunction with transaction code 62 (see below).

Transaction Code	Prefix	Description
62	70	Biological birth
62	71	Placement for adoption
62	72	Placement for foster care

CHANGES TO THE CODE OF FEDERAL REGULATIONS: In order to implement the Federal Employee Paid Leave Act, the Office of Personnel Management (OPM) is amending part 630 (Absence and Leave) of Title 5, Code of Federal Regulations (CFR), by amending subpart L (Family and Medical Leave) and adding a new subpart Q (Paid Parental Leave).

REFERENCES: National Defense Authorization Act for Fiscal Year 2020, Division F, Subtitle A, title LXXVI; OPM, Memorandum for Heads of Executive Departments and Agencies, *Paid Parental Leave for Federal Employees Interim Regulations*; Rule by OPM, *Paid Parental Leave*; 5 CFR 630, Subpart L (Amendment(s) published August 10, 2020, in 85 FR 48090); 5 CFR 630, Subpart Q (Amendment(s) published August 10, 2020, in 85 FR 48092)

OFFICE OF POLICY AND BENEFITS: OPBservices@doc.gov