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## The Federal Employee Paid Parental Leave Benefit

This In Focus provides an overview of the federal employee paid parental leave benefit created by the Federal Employee Paid Leave Act (FEPLA), Title LXXVI, Subtitle A of the National Defense Authorization Act for Fiscal Year 2020 (P.L. 116-92) and amended by the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (FY2021 NDAA; P.L. 116-283). The benefit is available to most civilian federal employees and allows for the substitution of up to 12 weeks of paid parental leave (PPL) for unpaid leave guaranteed by the Family and Medical Leave Act (FMLA), which can be used for the arrival of the employee's new child by birth, adoption, or foster care placement and for bonding with that child.

### PPL Benefit

FEPLA amended the family and medical leave provisions of Title 5, U.S. Code, to establish a new category of paid leave that may be used by a federal employee claiming FMLA-protected leave for the arrival and care of the employee's child. In general, to claim the PPL benefit, the employee must

- be eligible for leave under the FMLA;
- not have exhausted the leave available under the FMLA;
- follow FMLA notification and documentation requirements; and
- agree in writing to return to work for at least 12 weeks after the PPL concludes.

The PPL benefit must be used within 12 months of the child's arrival. Unlike FMLA, this benefit is provided at full pay and is in addition to the employee's annual and sick leave benefits. FEPLA does not require an employee to use any accrued annual or sick leave before using PPL.

The Office of Personnel Management (OPM) issued an Interim Final Rule to implement FEPLA on August 10, 2020. OPM indicated that it would promulgate a final rule "as soon as practical" after receiving comments on the interim final rule, but a final rule has yet to be issued.

### Eligibility

To be eligible for family and medical leave under the FMLA, federal employees are generally required to have completed at least 12 months of service with the federal government. Specified active duty service performed by employees who are members of the National Guard or Reserves is counted toward the 12-month service requirement; however, past military service is not counted.

OPM regulations provide that the PPL benefit is available only to employees with "a continuing parental role with respect to the child whose birth or placement triggered the leave entitlement." Employees who claim the PPL benefit must, in general, be at home with the child or otherwise spend time bonding with the child. Based on OPM regulations, the PPL benefit is not available to an employee who is "not engaged in activities directly connected to care of the child—for example, if the employee is physically located outside the local geographic area where the child is located."

### The Remaining FMLA Entitlement

Under the FMLA, eligible employees are entitled to 12 workweeks of job-protected, unpaid leave in a 12-month period, with the continuation of their health insurance benefits. The PPL benefit can only be claimed *after a child's arrival* and must be claimed together with FMLA-protected leave within the same 12-month period. If in the 12-month period the employee has used part of that entitlement before the arrival of a new child, the employee can only claim the PPL benefit for the *remainder* of the entitlement. For example, if the employee used two weeks of FMLA-protected unpaid leave for a serious health condition, she would have 10 weeks remaining on her FMLA entitlement when the child arrived and could then use up to 10 weeks of the PPL benefit in the remaining period.

### FMLA Notification and Documentation Requirements

In general, an employee must notify his or her employing agency of her or his intent to use FMLA leave at least 30 days before the expected leave date. OPM regulations provide that an employee's agency may request that the employee provide documentation demonstrating that the use of PPL is in connection with a child's arrival (e.g., a birth certificate, adoption or foster care documents) and may require an employee to attest, in writing, that PPL is being used in connection with a child's arrival. In general, an employee must notify an employing agency of the employee's election to substitute PPL for unpaid leave prior to the date paid leave commences.

### Return-to-Work Agreement

With some exceptions described below, employees may not use the PPL benefit provided by FEPLA unless they agree in writing to return to work for their employing agency for 12 workweeks following the conclusion of that leave. Should an employee fail to do so, and if certain conditions enumerated in the act do not apply, the employing agency may recoup its contributions to the employee's health care premiums made during the period of leave.

## Federal Employee Coverage

FEPLA amended the family and medical leave provisions of Title 5, U.S. Code, to make PPL available to most civilian federal employees. The act also amended the Congressional Accountability Act (CAA) to provide the benefit to legislative branch employees who are not covered by Title 5. Employees covered by the CAA include employees of the U.S. House of Representatives and the Senate, among others (see the definition of *covered employee* at 2 U.S.C. § 1301(a)(3)). The act made other amendments classified in Title 29, U.S. Code, to make PPL available to Government Accountability Office (GAO) and Library of Congress employees. In general, these employees are eligible for PPL under the same terms as employees covered by the family and medical leave provisions of Title 5, except they are not required to complete at least 12 months of service to be eligible and do not have to complete a return-to-work agreement after PPL concludes.

### FY2021 NDAA, Technical Corrections

The FY2021 NDAA further extended the PPL benefit to other groups of federal employees not covered by FEPLA. For example, Section 1103(c) of the FY2021 NDAA extended the PPL benefit to Federal Aviation Administration and Transportation Security Administration employees, and Section 1103(d) extended the benefit to certain Veterans Health Administration employees (health care professionals) described at 38 U.S.C. §7425.

### U.S. Postal Service and Postal Regulatory Commission Employees

Employees of the U.S. Postal Service and the Postal Regulatory Commission remain ineligible for the PPL benefit after the enactment of the FY2021 NDAA. These employees are not entitled to the benefit because they are not considered *employees* for purposes of the family and medical leave provisions in Title 5, U.S. Code, and the benefit has not been made available in other laws specific to the postal service.

## Federal Employee Take Up of PPL

Responses to the OPM 2022 Federal Employee Viewpoint Survey indicate that an estimated 4% of federal employees from surveyed agencies used PPL between October 1, 2020, and the date they responded to the survey. Among the estimated 4% who used PPL, 81% used the full 12 weeks of paid leave. Those who used less were able to select from multiple reasons, and the top three reported reasons were employee concerns about being away from their job responsibilities for 12 weeks (57%), employee concerns about the impact using the leave would have on career advancement (29%), and the employee did not need the full 12 weeks (29%). (Employees were able to select more than one reason.)

## Other Available Leave

Some federal employees may lack access to PPL if they are not covered by the statute, do not meet the eligibility requirements for PPL, or they have exhausted their FMLA entitlement before their child's arrival. Such employees may be able to use other paid leave available for parental needs. Federal civil service employees are entitled to paid

sick leave and paid annual leave as workplace benefits, and both may be used for certain family and medical leave needs. Full-time federal employees can earn up to 13 days of sick leave per year and are entitled to use such leave for personal medical needs, the adoption of a child, and certain other reasons. Sick leave may not be used to bond with a healthy child. Federal employees can earn between 13 and 26 days of annual leave, which may be used for any purpose, subject to a supervisor's approval of the timing of leave.

## Recent Legislative Proposals

Legislation that further addresses the availability of paid family and medical leave has been introduced in the 118<sup>th</sup> Congress. The Comprehensive Paid Leave for Federal Employees Act (CPLFFEA; H.R. 856/S. 274) would amend the FMLA; the family and medical leave provisions of Title 5, U.S. Code; and other sections of the U.S. Code to allow up to 12 weeks of paid leave for the following family and medical needs:

- the birth and care of the employee's child;
- the placement of the employee's child for adoption or foster care;
- the care of the employee's spouse, child, or parent because that individual has a serious health condition;
- the employee is unable to perform the functions of her or his position because of a serious health condition; and
- a qualifying exigency resulting from the employee's spouse, child, or parent serving on covered active duty or being notified of an impending call or order to covered active duty.

Under the FMLA, a *serious health condition* is one that requires inpatient care or continuing treatment by a health care provider. FMLA-protected leave for the care of a child with a serious health condition generally refers to such care of a child who is under age 18. *Covered active duty* refers generally to the duty of an Armed Forces member during deployment to a foreign country. OPM has recognized a *qualifying exigency* related to covered active duty service to include a variety of activities, including the need to make financial or legal arrangements to address the military member's absence.

Additionally, the CPLFFEA would amend the FMLA to make 12 weeks of paid family and medical leave available to U.S. Postal Service and Postal Regulatory Commission employees under the same conditions as would be available to GAO and Library of Congress employees. The CPLFFEA would also generally allow paid leave in connection with adoption to begin before a child's placement for "activities necessary to allow the adoption to proceed," and would expand FMLA protections to allow annual or sick leave to be used for the family and medical needs listed above.

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