



HAWAII NATIONAL GUARD
HUMAN RESOURCES OFFICE

BULLETIN



NUMBER 20-13

22 September 2020

Federal Employee Paid Leave Act

1. Reference.

- A. Title 5 of the United States Code (U.S.C), Chapter 63, Subchapter V
- B. Subtitle A of Title LXXVI of the National Defense Authorization Act for Fiscal Year 2020, Pub. L 116-92, December 20, 2019 (“Federal Employee Paid Leave Act”)
- C. Part 630 of Title 5 Code of Federal Regulations (CFR)
- D. Chief National Guard Bureau Instructions (CNGBI) Volume 1400.25 Volume 630, National Guard Technician Absence and Leave Program, 6 August 2018

2. Purpose. This bulletin establishes the policy guidelines and requirements for implementing paid parental leave within the Hawaii National Guard. This policy is effective on 1 October 2020. Paid parental leave is available to covered employees only in connection with the birth or placement (for adoption or foster care) of a child that occurs on or after 1 October 2020.

3. Background. The Federal Employee Paid Leave Act, which was signed into law in December 2019, amended the Family and Medical Leave Act (FMLA) provision in Title 5 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. The U.S. Office of Personnel Management (OPM) issued interim regulations (5 CFR 630 Subpart Q) to implement the new paid parental leave provisions, which are effective on 1 October 2020. Paid parental leave granted in connection with a qualifying birth or placement is substituted for unpaid FMLA leave and is available during the 12-month period following the birth or placement.

4. Eligibility.

A. Who: Employees must have completed at least 12 months of Federal service as set forth in 5 CFR 630.1201(b)(1); does not extend to employees serving under temporary appointment with time limitation of 1 year or less or an intermittent employee as defined in 5 CFR 340.401(c).

B. When: Paid parental leave is only offered after the occurrence of birth or placement event and may be used no later than the end of the 12-month period beginning on the date of birth or placement. Each parent-employee, if employed by the same employer, has a separated 12-workweek entitlement.

5. Definitions.

A. Adoption. A legal process in which an individual becomes the legal parent of another's child. The source of an adopted child—e.g., whether from a licensed placement agency or otherwise—is not a factor in determining eligibility for paid parental leave.

B. Birth. Delivery of a living child. ***Paid parental leave may not be granted for time off needed prior to the birth of the child.***

C. FMLA Unpaid Leave. An employee's entitlement to 12 administrative workweeks (or 26 administrative workweeks in the case of leave under 5 CFR §630.1203(j)) of unpaid leave for certain family and medical needs, as prescribed under sections 6381 through 6387 of Title 5 U.S.C.

D. Foster Care. 24-hour care for children in substitution for, and away from, their parents or guardian. Such placement is made by or with the agreement of the State as a result of a voluntary agreement by the parent or guardian that the child be removed from the home, or pursuant to a judicial determination of the necessity for foster care, and involves agreement between the State and foster family to take the child. Although foster care may be with relatives of the child, State action is involved in the removal of the child from parental custody.

E. Paid Parental Leave. Paid time off from an employee's scheduled tour of duty that is authorized under 5 U.S.C. § 6382(d)(2)(B)(i) and subpart Q of 5 CFR Part 630 and 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). ***This leave is not available to an employee who does not have a current parental role.***

F. Placement. A new placement of a child with an employee for adoption or foster care. For example, this excludes the adoption of a stepchild or a foster child who has already been a member of the employee's household and has an existing parent-child relationship with an adopting parent. ***Paid parental leave may not be granted for time off needed prior to the placement of the child.***

6. Responsibilities.

A. The Human Resources Officer is responsible for overseeing the administration of the paid parental leave program

B. Benefits Section- Human Resources Office (HRO) is responsible for:

(1) Provide assistance and guidance to the supervisors on administering and managing paid parental leave

(2) Maintain any written service agreements completed by employees

C. Supervisors are responsible for:

(1) Ensure employees follow procedures for requesting paid parental leave and provide documentation to the HRO

(2) Maintain an accurate record of an employee's use of paid parental leave, including all requests, service agreements and documentation

(3) Consult with HRO if employees fail to complete his or her work obligation.

D. Employees are responsible for:

(1) Invoking FMLA and indicating their election to substitute paid parental leave for FMLA unpaid leave

(2) Accurately coding any paid parental leave used in the applicable timekeeping system

(3) Providing proper documentation in support of a request for paid parental leave in a timely manner

(4) Fulfilling the statutory work obligation

7. Paid Parental Leave Entitlement. The entitlement to 12 administrative workweeks of paid parental leave is triggered by the occurrence of a birth or placement of a child. The paid parental leave is available only if the employee has a continuing parental role with respect to the child whose birth or placement triggered the leave entitlement. In addition, the use of paid parental leave is reserved for periods when the employee is engaged in activities directly related to the care of the child whose birth or placement triggered the leave entitlement.

A. Usage. An employee must invoke FMLA unpaid leave for the birth of a child or placement of a child with the employee for adoption or foster care and indicate their election to substitute paid parental leave for the unpaid leave. The form for indicating the election of paid parental leave is provided in Attachment 1. Paid parental leave may be used only during the 12-month period following the birth or placement of the child. For employees who experience multiple birth or placement events within the same 12-month period, see Section 7.C. There are no carryover provisions for any unused paid parental leave. An employee may not be paid for unused or expired paid parental leave. In addition, the employee may not use paid parental leave before the child is born or placed. If the supervisor agrees, an employee may elect to use paid parental leave on an intermittent basis.

B. Existing FMLA Leave. Since an employee may use only 12 weeks of FMLA unpaid leave in any 12-month period, use of FMLA unpaid leave for a purpose other than birth or placement may affect an employee's ability to use the full 12 weeks of paid parental leave during the 12-month period following the birth or placement. An employee will be able to use the full amount of paid parental leave for a birth or placement only to the extent that there are 12 weeks of available FMLA unpaid leave based on that specific birth or placement.

C. Multiple Births or Placement Events

(1) If an employee has multiple children born or placed on the same day, that event will be treated as a single event triggering a single entitlement of up to 12 weeks of paid parental leave during the 12-month period following the event.

(2) 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, each subsequent birth or placement event will generate a 12-week entitlement to be used during the 12-month period following the birth or placement; however, any use of paid parental leave during an overlap period (i.e., period contained within more than one 12-month period following a birth or placement) will count toward the 12-week limit for each birth or placement involved.

D. Leave administration. In ATAAPS, Employee must check "Family and Medical Leave Act" when submitting leave request. Leave request will be coded as "LV". "LN"

E. Work Obligation. Prior to using paid parental leave, an employee is required to enter into a written service agreement to work for the Hawaii National Guard for not less than 12 weeks after the day on which the paid parental leave concludes, which day is:

(1) 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.

(2) Failure to complete the 12-week work obligation will result in an employee being required to make a reimbursement to the Department unless one of the exceptions in Section 11.A. applies. The reimbursement is equal to the total amount of any Government contribution the agency 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. The reimbursement will be the full amount. There is no authority for a partial waiver of the amount owed.

(a) Exceptions may be made due to the following occurrences, each case will be determined by the HRO and may require supporting certification by a healthcare provider:

1. 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

2. Any other circumstance beyond the employee's control (e.g., situation where a parent chooses to stay home because a child has a serious health condition; an employee moves because the employee's spouse is unexpectedly transferred to a job location more than 75 miles from the employee's worksite).

8. Required Documentation. When requesting paid parental leave, employees must provide appropriate documentation that shows that the employee's use of paid parental leave is directly connected to a birth or placement that has occurred. Examples of appropriate documentation are listed below. Employees must provide this documentation no later than 15 calendar days after the request. If it is not practical for the employee to respond within the 15-day time frame, despite the employee's diligent, good faith efforts, the employee must provide the documentation no later than 30 calendar days after the original request.

A. Childbirth. Employees may provide one of the following documents to satisfy the documentation requirement:

- (1) Birth certificate
- (2) Document naming employee as second parent, such as declaration of paternity or court order of filiation
- (3) Appropriate court documents
- (4) Consular report of birth abroad
- (5) Documentation provided by the child's healthcare provider
- (6) Hospital admission form associated with the delivery

B. Adoption. Employees may provide one of the following documents to satisfy the

documentation requirement:

- (1) Documentation provided by the adoption agency confirming the placement and date of placement
- (2) Letter signed by the parent's/parents' attorney confirming the placement and date of placement
- (3) Immigrant visa for the child issued by U.S. Citizenship and Immigration Services
- (4) Adoptive placement agreement
- (5) Independent adoption placement agreement (i.e., an agreement between the birth parents and the adoptive parents that a private or open adoption should go forward—generally, there is no adoption agency involved.)

C. Foster Care. Employees may provide one of the following documents to satisfy the documentation requirement:

- (1) Foster care placement record
- (2) Other documentation from the foster care agency confirming the placement and date of placement
- (3) Foster care placement letter issued by the relevant local department of social services or authorized voluntary foster care agency

9. HRO Points of Contact. Any questions or concerns regarding this bulletin may be directed to Mr. John Yim, Assistant Human Resources Officer at 808-672-1555 or john.k.yim4.civ@mail.mil.