



**National Guard Bureau
Technician and Civilian
Personnel Policy Division
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PAID PARENTAL LEAVE FACT SHEET

This fact sheet provides information for Title 32 and Title 5 civilian employees, and their supervisors and managers, concerning the application of Paid Parental Leave (PPL) in the National Guard, effective 1 Oct 2020. This Fact Sheet applies to personnel who meet FMLA requirements.

References:

- Federal Employee Paid Leave Act (FEPLA) - subtitle A of title LXXVI of division F of the National Defense Authorization Act for Fiscal Year 2020, Pub. L. 116-92, December 20, 2019
- Family and Medical Leave Act (FMLA) - subchapter V of chapter 63 of title 5, United States Code, originally enacted through title II of the Family and Medical Leave Act of 1993
- Department of Labor FMLA guidance at https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/2005_08_26_1A_FMLA.pdf
- Office of Personnel Management, 5 CFR Part 630, Interim Final Rule, Paid Parental Leave, Federal Register Volume 85 No. 154, August 10, 2020.
- CNGBI 1400.25V630, National Guard Technician Absence and Leave Program, August 06, 2018.

DEFINITIONS

- **Continuing Work Agreement** – written and signed (hard or electronic signature) agreement from employee to the employer stating the employee will return to work for at least 12 weeks in his/her standard work schedule after using PPL.
- **Federal Employee Paid Leave Act (FEPLA)** - amendment to the FY2020 National Defense Authorization Act (NDAA), which provides 12 weeks of paid parental leave to certain federal employees who are covered by the Family and Medical Leave Act (FMLA). The Act covers parents with a newborn or a child newly placed in the home for adoption or foster care.
- **Family and Medical Leave Act (FMLA)** eligibility requirement – 12 months or more of federal service of a type covered under title 5 FMLA provisions, by a part-time or full-time employee, in a permanent appointment of at least one year in duration.
- **Paid Parental Leave (PPL)** – 12 weeks of paid leave for the employee-parent with a qualifying birth or placement event, to care for and bond with the child, authorized by FEPLA.

- **Qualifying birth or placement event** – birth of a son or daughter, or placement of a son or daughter for adoption or foster care with the employee, occurring on or after October 1, 2020.
- **Standard Work Schedule** – The number of hours an employee normally works per week. Example: A part-time employee works 20 hours per week. The standard work schedule is 20 hours; the 12-week obligated work agreement is 12 weeks x 20 hours = 240 hours. A full-time employee works 40 hours per week; the 12-week obligated work agreement is 12 weeks x 40 hours = 480 hours.
- **Work** - a period during which the employee is in duty status (i.e., actually working), excluding any periods (paid or unpaid) of leave, time off, holiday, or other nonduty status. Any periods of leave, time off, or other periods of nonduty status will extend how long it will take the employee to fulfill the 12-week work obligation.

LEAVE ENTITLEMENT AND USAGE

- Each Federal employee has a separate entitlement to FMLA unpaid leave. If two covered Federal employees are parents of the same newly born or placed child, each employee would have a separate PPL leave entitlement based on the birth/placement event.
- A multiple birth or placement of more than one child at the same time (e.g. twins in the case of birth, or a sibling group in the case of foster/adoption placement), will be considered a single qualifying event.
- PPL is authorized for up to 12 weeks for one qualifying event and must be used within the 12 months following the qualifying event date. PPL may never be carried over beyond 12 months.
- FMLA Paid Parental Leave is a substitution for unpaid leave under FMLA and cannot be extended beyond 12 weeks for a qualifying event. PPL may be used intermittently only with Agency approval; it cannot be “carried over” beyond one year after the qualifying event; nor can unused entitlement be paid out as a lump sum upon separation.
- Leave under the FMLA is authorized for no more than 12 weeks in a 12-month period. If leave under the FMLA is used for other than PPL, the number of weeks used could reduce the number of weeks remaining to convert to PPL. Example: An employee uses two weeks unpaid leave under FMLA to care for a seriously ill family member. The 12-month period started the first day of FMLA leave use. Two months later the employee has a child. There are now only 10 weeks remaining FMLA leave entitlement to be substituted with PPL. At no time may an employee use more than 12 weeks of PPL for a single qualifying event.
- PPL can only be used after a qualifying event occurs. An employee may not use PPL for pre-birth medical appointments, etc. If an employee needs to be absent prior to the qualifying event, they may invoke FMLA and use unpaid leave, or substitute annual or sick leave in accordance with FMLA policies and procedures. For example, an employee needing time off for certain activities (e.g., sick leave for prenatal care up to the point of birth or in connection with pre-placement activities necessary to allow an adoption to proceed), may take leave without pay, annual leave, or sick leave under the FMLA, but cannot substitute PPL for that time.

- PPL is gender-neutral, meaning both parents are eligible for PPL.
- An employee with a seasonal work schedule may not use paid parental leave during the off-season period designated by the agency—the period during which the employee is scheduled to be released from work and placed in non-pay status. In other words, paid parental leave cannot be used as a basis for extending a seasonal employee's workseason.

PROCEDURES TO USE PAID PARENTAL LEAVE

- Employees must, with few and very specific exceptions, invoke their entitlement to PPL under the FMLA in advance of the qualifying event. Paid parental leave is provided via substitution for unpaid leave under the FMLA.
- Employee must complete the Paid Parental Leave Request Form (see attached form) and submit it to the supervisor. If requested by the supervisor, the employee must provide supporting documentation.
- An exception to the requirement to request PPL prior to the qualifying event may be made if the employee is physically or mentally incapacitated at the time of the qualifying event. In that situation, the request should be made as soon as the employee is able, but no later than five days after returning to work. A designated representative of the employee may also make the request when the employee is incapacitated.
- Employee must sign the Agreement for Work Obligation (see attached form) and submit it to the supervisor. This form must be submitted prior to using PPL. The form may be submitted electronically.
- Supervisor will determine approval of the Paid Parental Leave Request. If the supervisor requests and/or is awaiting submission of supporting documentation, PPL should be provisionally approved pending submission of the requested documentation.
- Until DFAS implements a specific timecard code for PPL, supervisors are to use code "LV" on appropriated funds employees' payroll timecards for time the employee is on Paid Parental Leave. Supervisors in both systems must also manually keep track of how much PPL is used to ensure the employee is afforded all of, but no more than, their 12-week entitlement.

DOCUMENTATION

- The supervisor will determine if supporting documentation will be required. If requested, the employee must provide administratively acceptable documentation, usually within 15 days but no later than 30 days.
- The supervisor will determine, in consultation with their servicing Human Resources and/or Legal offices, what documentation is considered administratively acceptable. Examples include, but are not limited to: birth certificates (when readily available); a note or letter from a medical provider confirming a birth; a letter from a foster or adoption agency; a court document indicating a placement or establishment of other caregiver/parental role, etc.
- Paid parental leave may not be delayed because documentation has not been submitted. However, the PPL approval will be considered conditional or provisional in nature until documentation is received. If certain documentation requested by the supervisor is not

readily available, the supervisor could require an employee to self-certify that the leave is being taken for a valid reason and to commit to providing the documentation as soon as practicable.

- Supervisors are encouraged to consult with their servicing Human Resources Office Employee Management Relations specialist for assistance if they have questions regarding determining when/if documentation should be required and whether submitted documentation is administratively acceptable.
- Sample Template for Paid Parental Leave Request Form (<https://www.chcoc.gov/sites/default/files/Attachment%20-%20Template%20Request%20to%20use%20Paid%20Parental%20Leave.pdf>)
- Sample Template: Agreement to Complete 12-Week Work Obligation (<https://www.chcoc.gov/sites/default/files/Attachment%203%20-%20Template%20Paid%20Parental%20Leave%20Work%20Obligation%20Agreement.pdf>)

AGREEMENT TO COMPLETE 12-WEEK WORK OBLIGATION

- Prior to using PPL, the employee must sign and submit to the supervisor the Agreement Form, in which they agree to complete the 12-week work obligation.
- At end of 12 weeks of Paid Parental Leave, or sooner if the employee chooses to end the paid leave in less than 12 weeks, when the employee returns to work, the 12-week obligatory work period is started and must be completed in accordance with the Agreement.
- The work obligation is statutorily fixed at 12 weeks regardless of the amount of paid parental leave used by an employee.
- The National Guard must 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.
- An employee must agree that, if the employee does not complete the 12-week work obligation, the employee will pay the reimbursement amount specified, unless the National Guard determines the reimbursement requirement will not be applied. The reimbursement amount will be the total amount of any Government contributions paid by the agency on behalf of the employee to maintain the employee's health insurance under the Federal Employees Health Benefits Program during the period(s) when PPL was used.
- No reimbursement will be required if the agency determines that the employee is unable to return to work for the required 12 weeks because of (1) the continuation, recurrence, or onset of serious health condition (including mental health) of the employee or the newly born or placed child that is related to birth or placement, or (2) any other circumstance beyond the employee's control. In the case of a newly born or placed child, any serious health condition of the child will be deemed to be related to the applicable birth or placement.
- If an employee does not sign the Agreement, any PPL already taken will be converted to LWOP. An employee can request to use other types of qualifying paid leave or other paid time off to the employee's credit to cover the LWOP period. If the employee does not elect to use other qualifying periods of paid time off for the LWOP period, the LWOP period represents a debt owed by the employee to which debt collection procedures apply.

- Any employee who transfers to another organization in the agency while on PPL, or during the obligatory work time, continues on PPL or working off the obligatory period, at the new organization. The new organization will take over tracking responsibility.

QUESTIONS AND ANSWERS

Q1. I gave birth in September, but am still on maternity leave, taking unpaid leave under FMLA. Can I now substitute PPL for my remaining maternity leave?

A1. No. PPL may only be used for a birth or placement occurring on or after 1 October 2020.

Q2. An employee's foster daughter has lived with the family for two years and will be officially adopted next week. Does this event qualify for PPL?

A2. No. In the case of adoption, the placement of the child to be later adopted is considered the qualifying event and the date of placement is the date of the qualifying event. PPL only applies to qualifying events that occur on or after October 1, 2020. The daughter's placement with the family two years ago is not considered a qualifying event.

Q3. An employee is scheduled to give birth in the next few weeks, and is making an adoption plan for the child. Will PPL apply to the employee's time off for the birth and recovery?

A3. No. Paid parental leave is to be used 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.

Q4. A 5-year National Guard civilian employee has only worked in the office for ten months. Is he eligible for PPL when his child is born?

A4. Yes, as long as his current service is part-time or full-time, he is in a permanent appointment of at least 12 months' duration, and he has a total of 12 months FMLA-qualified time with the federal service.

Q5. A supervisor prefers that employees take annual leave instead of PPL, in order to use up the annual leave and avoid future time off. May the supervisor refuse to approve PPL under FMLA?

A5. No. If an employee has an authorized reason to invoke their entitlement to leave under the FMLA, a supervisor may not disapprove an administratively acceptable request for leave under the FMLA, nor the substitution of PPL for unpaid leave under FMLA. Nor may the supervisor make the employee use annual or sick leave.

Q6. An employee wants to save her entire FMLA entitlement in case she has to care for an ailing spouse. Can she just take PPL and not invoke her entitlement to other leave under the FMLA?

A6. No. PPL is a substitution for unpaid leave under the FMLA; an employee must invoke her entitlement under FMLA in order to make that substitution. Therefore, use of PPL will "count against" the 12-week limit of FMLA entitlement in the 12-month period. However, the employee may request annual or sick leave for the birth and recovery, without invoking FMLA, subject to normal leave requesting and approval guidelines. Alternatively, the employee could take PPL under the FMLA now and request annual leave, or sick leave for care of a family member, later to care for her spouse. However, note that FMLA is an entitlement which may not be disapproved for an authorized purpose, while annual leave is at the supervisor's discretion based on mission requirements.

Q7. My employee is having a sibling set (2 children) placed with him in foster care. He is requesting 12 weeks of PPL for each child. Can he do that? What if he is placed with 2 children at different times?

A7. A multiple placement or birth is considered one qualifying event and the date of placement is the date of the qualifying event. So if he is placed with a sibling set, he would be entitled to 12 weeks of PPL for the single qualifying event, assuming he has had no other leave usage under FMLA in the last 12 months. If he is placed with 2 children in 2 separate qualifying events (e.g. two children in two separate placements on different placement dates), he would be entitled to 12 weeks for each qualifying event; however, that entitlement is reduced by the amount of leave taken under FMLA during the last 12 months.

Q8. I'm giving birth in mid-October. My spouse is also a federal employee and will also be invoking his FMLA PPL entitlement. Rather than using my full entitlement of 12 weeks right away, I'd like to spread them out; use 6 weeks after the birth, then the rest intermittently later. Is that allowed?

A8. Yes, with the agreement of the employing agency. Such agreement must be in writing.

Q9. I have an employee who I know has been pregnant and just notified me that she is scheduled to give birth in mid-October. Do I have to ask the employee to bring in documentation showing a qualifying event for PPL is in fact upcoming?

A9. No. Supervisors may, at their discretion, require administratively acceptable documentation that shows an employee's paid parental leave is appropriately requested and directly connected to a qualifying event. If you do not feel the need to "validate" the qualifying event, you are not mandated to require supporting documentation. Supervisors are encouraged to consult with their servicing Human Resources and/or Legal offices when they have questions regarding whether to require documentation and/or what documentation is administratively acceptable.

Q10. If an employee has already used unpaid leave under the FMLA in the last 12 months, is the employee still entitled to PPL?

A10. That depends on when the unpaid leave under the FMLA started and how much was taken, because all leave under FMLA is limited to 12 weeks in a 12 month period.

Scenario 1: In January, an employee uses two weeks unpaid leave under FMLA to care for a seriously ill family member. The 12-month FMLA leave period started the first day of that unpaid leave. Two months later, in March, the employee has a child, which then starts the 12-month leave period for PPL. However, because of the previous unpaid leave taken to care for the family member, there are now only 10 weeks unpaid leave under FMLA remaining to be substituted with PPL. The employee may take those 10 weeks. When the 12-month period that started with care for the family member ends in December, the employee may request new unpaid leave under FMLA and take the remaining two weeks of PPL entitlement. (It should be noted, however, that this would result in an intermittent use of PPL, which would also require agreement from the supervisor, in writing.) Paid parental leave may be substituted for FMLA unpaid leave used after birth or placement even if there are two 12-month periods involved; however, the total amount of paid parental leave in connection with any given birth or placement is limited to 12 weeks and must be used within 12 months of the qualifying event.

Scenario 2: Same as above, but the birth occurs in November, eleven months following the unpaid leave to care for the family member. That first 12-month FMLA unpaid period still has ten weeks untaken leave but there are only four calendar weeks left in the 12-month period. The employee may request those four weeks for substitution with PPL. Again, in January, the employee may invoke FMLA again and request unpaid leave for the remaining eight weeks in the 12-week PPL period (as long as the supervisor agrees to the intermittent use). Paid parental leave may be substituted for FMLA unpaid leave used after birth or placement even if there are two 12-month periods involved; however, the total amount of paid parental leave in connection with any given birth or placement is limited to 12 weeks, and must be taken within 12 months of the qualifying event.

Q11. An employee's wife is having a baby next month and he wants to invoke unpaid leave under the FMLA and substitute PPL. What kind of documentation should I request from him?

A11. The request and acceptance of any form of documentation is always at the supervisor's discretion. Supervisors are encouraged to consult with their servicing Human Resources and/or Legal offices, regarding whether to require documentation, and what documentation is considered administratively acceptable. Examples include, but are not limited to: birth certificates (when readily available); a note or letter from a medical provider confirming a birth; a letter from a foster or adoption agency; a court document indicating a placement or establishment of other caregiver/parental role, etc.

Q12. Are same-sex parent-employees both eligible for PPL?

A12. Yes, as long as the eligibility requirements for FMLA are met: 12 months or more of federal service of a type covered under title 5 FMLA provisions; part-time or full-time employee; in a permanent appointment of at least one year in duration. PPL is gender-neutral and applies to both qualified parent-employees.

Q13. An employee transferred to the National Guard eight months ago from a Library of Congress position, where she worked for ten years as a federal employee. She has invoked unpaid leave under FMLA and indicated she will substitute that leave with PPL. Is she eligible?

A13. It depends how long she has worked for the National Guard, or any other agency covered by the FMLA. The Library of Congress, as well as the Government Accountability Office and government of the District of Columbia, is not covered by the FMLA. The employee needs to have 12 months of work in a FMLA covered Agency, and may count any such work she did in the past. If she does not have the required cumulative 12 months, she may wait four more months, when she will accumulate 12 months of National Guard service time, and then apply for unpaid FMLA and PPL.

Q14. A seasonal employee has invoked his/her entitlement under FMLA and applied for PPL. Are seasonal employees eligible?

A14. It depends. A full-time or part-time seasonal employee with 12 total months of service, and in a permanent position with at least a 12-month duration, qualifies for leave under FMLA and PPL. However, PPL is based on the employee's standard schedule, and thus available only during the season the employee normally works. When the seasonal work is over, PPL is no longer available; PPL may not be used to extend seasonal work. PPL may be used within 12 months of the date of the qualifying event, so if the seasonal employee returns to work within those 12 months, the employee may again invoke their FMLA entitlement to PPL.

Q15. I'm due to give birth in mid-October and would like to use PPL. What paperwork am I required to complete and submit? Specifically, am I required to submit separate FMLA paperwork on top of the PPL Request Form and the Agreement For Work Obligation Form?

A15. You must first "invoke" your entitlement to FMLA. CNGBI 1400.25V630 requires that FMLA be invoked either through submission of OPM Form 71. Policy also requires that supporting documentation be provided that is acceptable to the National Guard and consistent with regulations. For the purposes of qualifying events for PPL, the PPL Request Form serves this purpose, along with other supporting documentation your supervisor may require to validate the qualifying event. Therefore, you must invoke FMLA by submitting an OPM Form 71 and you must complete and submit the PPL Request Form and the Agreement For Work Obligation.

Q16. I have not previously invoked FMLA. I am scheduled to give birth on October 12, 2020. I would like to take six weeks of sick leave for my recovery from childbirth, but do not plan to invoke FMLA for that purpose since I'm not required to do so. I would then like to take 12 weeks of PPL starting on November 23rd. Can I do that?

A16. Yes. Since you did not invoke FMLA for your recovery, and used your sick leave, you still have 12 weeks of FMLA entitlement for PPL. If you invoke FMLA after your 6 weeks of sick leave, on November 23rd, you may substitute 12 weeks of PPL for the FMLA unpaid leave starting on the same date. In this scenario, 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 PPL period must end 12 months after the birth event. You would be entitled to substitute 12 weeks of PPL between November 23, 2020-October 11, 2021.

Q17. I have an employee who was scheduled to give birth in November, however, she developed a medical complication and the baby was born prematurely on 4 Oct. Because of the emergency nature of the situation, she was unable to submit her request, or her work obligation form, prior to needing the PPL. What do I do?

A17. Although an employee should request, in advance, and in writing, their intention to use PPL, the supervisor may grant PPL prior to receiving an employee's written PPL request based on the 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, but no later than 5 workdays of the employee's return to duty status. Additionally, an employee can communicate the work agreement through email or text message, however, a written work obligation form, with signature, is required within 24 hours of making the request to substitute PPL. If an employee is physically or mentally incapable of invoking FMLA and requesting PPL, the employee's personal representative may also invoke the employee's FMLA entitlement and request to substitute PPL for the unpaid leave. In such cases, the employee must, within 5 workdays of the employee's return to duty status, sign a work agreement and make the written request to substitute PPL for FMLA unpaid leave on a retroactive basis.

Paid Parental Leave (PPL) Request Form		
Identifying Information		
Employee name		
Phone numbers (personal and work)	Email addresses (personal and work)	
Name of organization (agency, office, division, branch, etc.)		
Plans for Substituting Paid Parental Leave (PPL) for FMLA Leave		
Reason FMLA leave is being requested:		
<input type="checkbox"/> Birth of a child <input type="checkbox"/> Placement for adoption <input type="checkbox"/> Foster care placement		
	Anticipated	Actual
Date of birth or placement		
Date use of PPL begins		
Date use of PPL concludes		
Date of planned return to duty (after use of other types of leave)		
Requested method of using PPL:	<input type="checkbox"/> Continuous use	<input type="checkbox"/> Intermittent use*
*Reason(s) intermittent leave is being requested:		
*Describe plans for using PPL on an intermittent basis:		
Employee Certifications (initial each box)		
<input type="checkbox"/> I attest that PPL is being taken because of the birth of my child or because of placement of a child with me for adoption or foster care and that the PPL will be used in connection with my fulfillment of my parental role to care for and bond with the child.		
<input type="checkbox"/> I will provide documentation to support this request, as directed by my agency.		
<input type="checkbox"/> I acknowledge and understand the consequences of providing a false certification (e.g., the possibility that my agency could pursue appropriate disciplinary action, up to and including removal from Federal Service, or make a referral to a Federal entity that investigates whether conduct constitutes a criminal violation).		
<input type="checkbox"/> If I provided an anticipated date of birth or placement, I will notify my agency as soon as practicable of the actual date.		
<input type="checkbox"/> I attest that I am entering into the required work obligation agreement.		
<input type="checkbox"/> I hereby certify that all statements made in this application are true and correct to the best of my knowledge and belief.		
Employee's signature	Date	

Template: Agreement to Complete 12-Week Work Obligation

I, *[insert employee's name]*, understand that the usage of paid parental leave requires that I complete a 12-week work obligation at the agency employing me at the time I conclude using paid parental leave granted in connection with the birth or placement (for adoption or foster care) of my child.

I agree to return to work and complete the required 12 weeks of work. I understand that 12 weeks of work will be converted to hours of work based on my work schedule, consistent with OPM regulations at 5 CFR 630.1705.

I understand that the required 12-week work obligation is fixed and not proportionally reduced if I use less than 12 weeks of paid parental leave. I understand that only actual work periods when I am on duty (during my scheduled tour of duty) will count toward the 12-week work obligation. I understand that periods (paid or unpaid) of leave and time off (including holiday time off) do not count towards the completion of the 12-week work obligation.

I understand that only work performed after use of paid parental leave concludes counts toward the 12-week work obligation. I understand that any period(s) of work during intermittent usage of paid parental leave (i.e., work performed prior to the conclusion of the use of paid parental leave) does not count toward the 12-week work obligation.

I understand that, if I fail to return to work and fully complete the required 12-week work obligation, any agency that employed me during a period of time in which I used paid parental leave may require a reimbursement equal in amount to the total amount of any Government contributions paid by the agency(ies) on my behalf to maintain my health insurance coverage under the Federal Employees Health Benefits (FEHB) Program established under 5 U.S.C. chapter 89 during that period of time, unless I meet statutory conditions that bar application of such a reimbursement requirement. If I do not meet those conditions and if my agency determines that reimbursement must be made, I understand that it must seek collection of the full amount and that there is no authority for a partial waiver of the amount owed.

I understand that, if I separate from the employing agency to which the 12-week work obligation is owed before completing that obligation, such separation is considered to be a failure to meet that obligation. I understand that, in that circumstance, I will not be allowed to complete the work obligation at a later time. (Note: An intra-agency reassignment without a break in service will not be considered a separation.)

If an affected agency determines that the reimbursement requirement applies, I agree to make the required reimbursement to that agency and to permit offset of Federal payments to recover the amount owed. However, I reserve the right to challenge the agency decision through any applicable administrative or judicial process and to seek return of any amounts erroneously collected from me.

Employee's Signature _____ Date: _____

Note: Employee's paid parental leave request must be attached to this work obligation agreement.