



# *Office of Congressional Workplace Rights*

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September 21, 2020

## **Key Features of the Paid Parental Leave Provisions of the Federal Employee Paid Leave Act for Employing Offices and Employees in the Legislative Branch (2 U.S.C. § 1312)**

The Office of Congressional Workplace Rights (OCWR) is providing the following information as additional interim guidance to assist employees and employing offices on how the Federal Employee Paid Leave Act (FEPLA) is being interpreted by the OCWR and on the appropriate methods of seeking redress for violations of FEPLA under the Congressional Accountability Act (CAA). As described in the OCWR's "Notice on Implementing the Paid Parental Leave Provisions of the Federal Employee Paid Leave Act in the Legislative Branch," the Board of Directors of the OCWR will be proposing to amend its substantive FMLA regulations pursuant to the CAA rulemaking procedures set forth at 2 U.S.C. § 1384.

### **Employee Eligibility**

- All covered employees in the legislative branch will be immediately eligible upon commencement of employment for job-protected leave under the Family and Medical Leave Act (FMLA) because of (a) the birth of a son or daughter; or (b) the placement of a son or daughter with the covered employee for adoption or foster care. Further, all covered employees will be immediately eligible upon hire for paid parental leave (PPL) when FMLA leave is because of a birth or placement. "Covered employee" means any employee of: (1) the House of Representatives; (2) the Senate; (3) the Office of Congressional Accessibility Services; (4) the Capitol Police; (5) the Congressional Budget Office; (6) the Office of the Architect of the Capitol; (7) the Office of the Attending Physician; (8) the Office of Congressional Workplace Rights; (9) the Office of Technology Assessment; (10) the Library of Congress; (11) the Stennis Center for Public Service; (12) the China Review Commission; (13) the Congressional Executive China Commission; or (14) the Helsinki Commission.
- The requirements in the FMLA provisions of the CAA that covered employees must have been employed in any employing office for 12 months and for at least 1,250 hours of employment during the previous 12 months *do not* apply to FMLA leave for births or placements. Those eligibility requirements will continue to apply to leave taken for other purposes authorized by the FMLA.

- The employee must have a *qualifying* birth or placement event—that is, the birth or placement (for adoption or foster care) must occur on or after October 1, 2020. (This is a statutory requirement established by section 7603(c) of Public Law 116-92.)

### **Leave Entitlement and Usage**

- PPL is limited to 12 weeks during any FMLA leave year in connection with a birth or placement of a covered employee’s son or daughter.
- PPL is provided as a substitute for the unpaid leave that is normally provided under the FMLA provisions of the CAA and the substantive regulations of the Board of Directors of the OCWR (except the OCWR’s substantive regulations at Sec. 825.110 concerning eligibility requirements, which are superseded by FEPLA with respect to FMLA leave in connection with a birth or placement).
  - FMLA leave, including PPL, is limited to a total of 12 weeks during the 12-month period constituting the FMLA leave year.\* Thus, if an employee has used 3 weeks of unpaid FMLA leave before the birth or placement, that employee would be entitled to substitute only 9 weeks of PPL during that FMLA leave year.
  - In the legislative branch, many employing offices use an FMLA leave year roughly equal to the calendar year. If the 1-year period following the date of birth/placement starts in one FMLA leave year and ends in the next FMLA leave year, the employee may be entitled to up to 12 weeks of unpaid FMLA leave in both FMLA leave years.
  - In addition to the 12 workweeks of PPL, an employee may elect (but cannot be required) to use any additional paid annual, vacation, personal, family, medical, or sick leave provided by the employing office as a substitute for otherwise available unpaid FMLA leave in connection with a birth or placement. For example, if the 1-year period following the date of birth/placement starts in one FMLA leave year and ends in the next FMLA leave year, the employee may elect to use 3 workweeks of FMLA and PPL at the end of one FMLA leave year, and use the remaining 9 workweeks of PPL and up to 3 weeks of accrued paid leave as a substitute for the 12 weeks of FMLA leave she is entitled to at the beginning of the next FMLA leave year.
  - An employee may not use FMLA leave in connection with a birth or placement intermittently or on a reduced schedule unless the employing office agrees.
  - Spouses who are employed by the same employing office in the legislative branch may be limited to a combined total of 12 weeks of FMLA leave for a birth/placement during the applicable 12-month FMLA leave year. Accordingly,

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\* However, an employee may have up to 26 weeks of FMLA unpaid leave during a single 12-month period in order to care for a covered servicemember.

the two employees-spouses would share the entitlement to substitute up to 12 total weeks of PPL for their unpaid FMLA leave if the leave is taken for a birth or placement.

- Spouses who are employed by *different* employing offices in the legislative branch each have a *separate* FMLA leave entitlement in connection with a birth/placement event. Accordingly, each employee-spouse has a separate entitlement to substitute up to 12 weeks of PPL for his or her unpaid FMLA leave.
- There are no carryover provisions for any of the 12 workweeks of unused PPL. An employee may not be paid for any of the 12 workweeks of unused or expired paid parental leave.
- For employees who use leave on an hourly basis (including fractions of an hour), the 12-week PPL entitlement will be converted to hours based on the employee's scheduled tour of duty. For example, for a regular full-time employee, the entitlement will be 480 hours (12 weeks x 40 hours), and, for a half-time employee, the entitlement will be 240 hours (12 weeks x 20 hours).
- PPL is only available to employees who have a continuing parental role in connection with the child whose birth or placement was the basis for the leave entitlement.
- An employing office may not require employees to use annual leave or sick leave before requesting PPL.

### **Key Differences Regarding Work Obligations**

- Legislative branch employees using parental leave under the FMLA are not subject to the following limitations that may apply to employees in the executive branch, state and local governments, and the private sector:
  - Executive branch employees must have 12 months of service before being eligible for FMLA leave, and certain federal civilian employees may be required to agree in writing to work for the agency for at least 12 weeks after returning from leave. Legislative branch employees are not subject to these requirements.
  - Executive branch agencies, state and local governments, and private sector employers covered by the FMLA may recover premiums they paid for maintaining the employee's coverage under a group health plan if the employee fails to return from leave. Legislative branch employing offices are not permitted to recover health plan contributions if the employee fails to return to work.

*See* 5 U.S.C. § 6382(d)(2)(E)-(G); 29 U.S.C. § 2614(c)(2).

## Multiple Birth/Placement Events

- If an employee has multiple births or placements 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 births or placements during the 12-month period following the date of an earlier birth or placement, each subsequent birth or placement event will result in a 12-month period commencing on the date of birth or placement with its own 12-week limit. Any use of PPL during a given 12-month period will count toward that period's 12-week limit. Thus, when such 12-month periods overlap, any use of PPL during the overlap will count toward each affected 12-month period's 12-week limit.
- For example, if an employee has a birth on June 1 and a placement for adoption on October 1 of the same year, each event would generate entitlement to substitute up to 12 weeks of PPL during the separate 12-month periods beginning on the date of the birth and on the date of the placement. 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 PPL during that overlap period, that amount of PPL would count towards both the 12-week limit associated with the birth event and the 12-week limit associated with the placement event.