



# Office of Congressional Workplace Rights

September 10, 2020

## **NOTICE ON IMPLEMENTING THE PAID PARENTAL LEAVE PROVISIONS OF THE FEDERAL EMPLOYEE PAID LEAVE ACT IN THE LEGISLATIVE BRANCH**

### **Introduction**

The Congressional Accountability Act (CAA) applies the rights and protections established by Title I of the Family and Medical Leave Act of 1993 (FMLA) (29 U.S.C. §§ 2611-15) to covered employees in the legislative branch who satisfy specified eligibility requirements. 2 U.S.C. § 1312. In general, the FMLA provides eligible employees the right to take a total of 12 workweeks of unpaid leave during any 12-month period for specified family and medical reasons and for specified circumstances relating to a family member's military service. Employing offices in the legislative branch covered by FMLA provisions of the CAA must provide unpaid leave to eligible employees: (1) for the birth of a son or daughter and to care for the newborn son or daughter; or (2) for placement with the employee of a son or daughter for adoption or foster care; (3) to care for the employee's spouse, son, daughter, or parent with a serious health condition; (4) because of a serious health condition that makes the employee unable to perform the functions of the employee's job; (5) because of any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a military member on covered active duty status; and (6) to care for a covered servicemember with a serious injury or illness if the employee is the spouse, son, daughter, parent, or next of kin of the covered servicemember.

On December 20, 2019, Congress enacted the Federal Employee Paid Leave Act (subtitle A of title LXXVI of division F of the National Defense Authorization Act for Fiscal Year 2020, Public Law 116-92, December 20, 2019) (FEPLA). FEPLA amended the FMLA to allow most civilian Federal employees, including eligible employees in the legislative branch, to substitute up to 12 weeks of paid parental leave (PPL) for unpaid FMLA leave granted in connection with the birth of an employee's son or daughter or for the placement of a son or daughter with an employee for adoption or foster care.

### **Implementing Regulations**

In order to implement FEPLA in the legislative branch, the Board of Directors of the Office of Congressional Workplace Rights (OCWR) will be proposing to amend its substantive FMLA regulations pursuant to the CAA rulemaking procedures set forth at 2 U.S.C. § 1384. These procedures provide that: (1) the Board proposes substantive regulations and publishes a general notice of proposed rulemaking in the *Congressional Record*; (2) there be a comment

period of at least 30 days after the date of publication of the general notice of proposed rulemaking; (3) after consideration of comments by the Board, the Board adopts regulations and transmits notice of such action (together with the regulations and a recommendation regarding the method for congressional approval of the regulations) to the Speaker of the House and President Pro Tempore of the Senate for publication in the *Congressional Record*; (4) there be committee referral and action on the proposed regulations by resolution in each House, concurrent resolution, or by joint resolution; and (5) there be final publication of the approved regulations in the *Congressional Record*, with an effective date prescribed in the final publication.<sup>1</sup>

The CAA requires that the FMLA regulations applicable to the legislative branch and promulgated by the OCWR be the same as substantive regulations promulgated by the Secretary of Labor to implement FMLA Title I, except insofar as the Board may determine, for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under the CAA. 2 U.S.C. § 1312(e).<sup>2</sup> The Secretary of Labor will not be promulgating FEPLA regulations, however, because FEPLA does not extend PPL to private sector employees or other employees directly covered by FMLA Title I. The Board has determined that these circumstances constitute good cause for modification of its substantive FMLA regulations in order to effectively implement FEPLA's rights and protections to Federal civilian employees in the legislative branch.

Because the Office of Personnel Management (OPM) is responsible for implementing the FEPLA provisions that govern most civilian Federal employees outside of the legislative branch, it has recently issued interim final regulations implementing FEPLA covered by the FMLA title II (<https://www.federalregister.gov/documents/2020/08/10/2020-14832/paid-parental-leave>).<sup>3</sup> Because PPL is a new benefit for Federal civilian employees in both the executive and legislative branches, the Board has determined that it will pattern its proposed FEPLA rules for the legislative branch on OPM's interim final FEPLA regulations, to the extent that those regulations are applicable to the legislative branch and are consistent with the FMLA/FEPLA provisions of the CAA. The Board believes that this approach is in keeping with past practice in the legislative

---

<sup>1</sup>On June 22, 2016, the Board issued a notice of adoption of amended substantive regulations regarding the FMLA, as applied in the CAA, for congressional approval, which appeared in the *Congressional Record*. Because Congress has not acted on the Board's request for congressional approval of these amendments, the Board will resubmit them for congressional approval when it submits its request for approval of its FEPLA amendments to its substantive FMLA regulations.

<sup>2</sup> FMLA Title I covers employees of most private sector employers and quasi-governmental entities, such as the Postal Service. These employees are governed by Department of Labor regulations at 29 C.F.R. § 601 and part 825. FMLA Title II covers the employees of most executive branch federal agencies. These employees are governed by Office of Personnel Management regulations at 5 C.F.R. § 630.1201.

<sup>3</sup>The CAA does not provide the Board with the authority to promulgate interim final regulations.

branch on matters concerning Federal employee benefits and entitlements, and that this approach will promote consistency and mobility in the Federal workforce.

### **Interim FEPLA guidance**

The CAA also provides that if the OCWR Board has not issued a regulation on a matter for which a regulation is required to be issued, the hearing officer, Board, or court, as the case may be, shall apply, to the extent necessary and appropriate, the most relevant substantive executive agency regulation promulgated to implement the statutory provision at issue in the proceeding. 2 U.S.C. § 1411. For most FEPLA matters arising under the CAA during the OCWR rulemaking process, OPM's interim final FEPLA regulations will be the most relevant substantive executive agency regulations to be applied.

Although the FEPLA amendments to the FMLA provisions of the CAA for the legislative branch are similar in most respects to the FEPLA amendments to FMLA Title II for other Federal civilian employees, there are several important differences in the statutory provisions. To assist employees and employing offices in the legislative branch in applying FEPLA, please refer to the OCWR's [Key Features of the Paid Parental Leave Provisions of the Federal Employee Paid Leave Act for Employing Offices and Employees in the Legislative Branch](#). The OCWR will be issuing additional interim guidance to assist employees and employing offices in determining whether and to what extent application of OPM's interim final regulations is necessary and appropriate under 2 U.S.C. § 1411. This guidance will also provide additional information on how FEPLA is being interpreted by the OCWR and on the appropriate methods of seeking redress for violations of FEPLA under the CAA. However, the final interpretation of FEPLA as applied to the legislative branch is reserved to the Board in the issuance of its substantive FEPLA regulations, as adopted by Congress.