



Paid Parental Leave

OCWR Brown Bag Lunch Series

September 23, 2020

Overview

- Background
- Status & Process
- Key Features of Paid Parental Leave
- Special Circumstances
- Differences from Executive Branch
- Q&A

Background

Family and Medical Leave Act (FMLA)

- FMLA Title I is applied by section 202 of the CAA, 2 U.S.C. § 1312
- Provides eligible employees up to 12 weeks of protected, unpaid leave for certain specified reasons, including:
 - Birth of a child, or placement of a child for adoption or foster care
 - Caring for a spouse, child, or parent with a serious medical condition
 - The employee's own serious medical condition
 - Situations involving family members who are servicemembers

Federal Employee Paid Leave Act (FEPLA)

- December 2019 – part of the National Defense Authorization Act (NDAA)
- Provides federal employees with up to 12 weeks of paid parental leave (PPL) that may be substituted for unpaid FMLA leave, in connection with:
 - The birth of a child, or
 - The placement of a child for adoption or foster care
- Includes covered employees under the CAA
- Applies to births or placements occurring on or after October 1, 2020

FEPLA Regulations

- The Office of Personnel Management (OPM) issued interim final regulations implementing FEPLA in the Executive Branch on August 10, 2020
- The OCWR Board does not have authority to issue interim final regulations
- We are patterning our proposed regulations after OPM's interim final regulations, for the most part
- Maintaining similar federal employee benefits and entitlements across branches promotes consistency and mobility within the federal workforce

Status & Process

Status of OCWR Regulations

- We are in the process of amending our existing FMLA regulations to:
 - Address the new provisions added by FEPLA, and
 - Make updates in accordance with the CAA Reform Act
- We have issued interim guidance, which:
 - Do not have the same force of law as regulations, but
 - Are substantially the same as the forthcoming proposed regulations
- <https://www.ocwr.gov/paid-parental-leave>

OCWR Regulatory Process

- CAA section 304, 2 U.S.C. § 1384
- Steps of the regulatory process:
 - OCWR Board of Directors proposes substantive regulations and publishes a general notice of proposed rulemaking in the *Congressional Record*
 - Stakeholders have at least 30 days to submit comments
 - After consideration of comments, OCWR Board adopts regulations

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OCWR Regulatory Process

- Steps of the regulatory process (cont'd):
 - OCWR Board transmits to the Speaker of the House and President Pro Tempore of the Senate, for publication in the *Congressional Record*:
 - Notice of adopted regulations
 - Text of the adopted regulations
 - Recommendation regarding the method for congressional approval of the regulations
 - Committee referral and action on the proposed regulations by resolution in each House, concurrent resolution, or joint resolution
 - Final publication of the approved regulations in *Congressional Record*, including effective date

Key Features

Eligibility for FMLA Parental Leave

- All covered employees under the CAA – 2 U.S.C. § 1301(a)(3)
- Eligible immediately upon commencement of employment
 - Immediate eligibility applies only to births or placements of children
 - Other FMLA qualifying reasons require that an employee be employed in any employing office for at least 12 months and for at least 1,250 hours during the previous 12 months
- Only available to employees with continuing parental role
- Eligibility for substituting paid leave for unpaid FMLA applies to births or placements occurring on or after October 1, 2020

Paid Parental Leave Entitlement

- Paid leave substituted for unpaid FMLA leave in connection with birth or placement includes:
 - Up to 12 workweeks of PPL provided by FEPLA, and
 - Any additional paid annual, vacation, personal, family, medical, or sick leave provided by employing office to employee
- Paid time off from scheduled tour of duty that is substituted for unpaid FMLA leave
- Paid leave entitlement expires 12 months after date of birth or placement
- No carryover or lump sum payout
- Same pay as employee receives if using annual leave; for hourly employees, the entitlement is converted from weeks into hours based on employee's scheduled tour of duty

Availability of FMLA Leave

- Paid leave runs concurrently with unpaid FMLA leave and reduces available FMLA entitlement
- Use of FMLA leave for other reasons reduces available leave for birth or placement
- Example:
 - Employee has already used 3 weeks of unpaid FMLA leave during the FMLA leave year to recuperate from knee surgery
 - Employee has 9 weeks of remaining FMLA leave, and can therefore substitute up to 9 weeks of paid leave for FMLA leave for birth or placement of a child
- If employee uses up available FMLA leave, unused PPL cannot be used until the new FMLA leave year begins (if still within the 12-month period after birth or placement)

Substitution of Accrued Leave

- FEPLA defines the leave available for substitution as:
 - 12 administrative workweeks of paid parental leave, *and*
 - During the 12-month period after the birth or placement, and “in addition to” the 12 workweeks of PPL, “any additional paid vacation, personal, family, medical, or sick leave provided by the employing office”
- FEPLA also provides that employers may not require employees to use their accrued annual or sick leave before allowing them to use PPL

Substitution of Accrued Leave

- Example #1
 - Baby is born in mid-November, and employee has 6 weeks of available FMLA leave for the remainder of the FMLA leave year
 - Employee has 2 weeks of “use-or-lose” annual leave, and chooses to substitute those 2 weeks of annual leave and 4 weeks of PPL entitlement for the remaining 6 weeks of FMLA
 - In early January, the FMLA leave year resets, and the employee now has 12 available weeks of FMLA leave
 - The employee still has 8 weeks of PPL entitlement to use before mid-November, and chooses to substitute that paid leave for 8 weeks of her available FMLA
 - Total paid leave in connection with the birth: 14 weeks

Substitution of Accrued Leave

- Example #2
 - Baby is born in mid-November, and employee has 6 weeks of available FMLA leave for the remainder of the FMLA leave year
 - Employee substitutes PPL for all 6 of those weeks
 - In early January, the FMLA leave year resets, and the employee now has 12 available weeks of FMLA leave
 - The employee has 6 remaining weeks of PPL entitlement to use before mid-November, and chooses to substitute that PPL for 6 weeks of FMLA leave
 - The employee has no PPL left, but still has 6 weeks of FMLA leave available, and uses 6 weeks of accrued annual and sick leave to substitute for all of those remaining FMLA weeks
 - Total paid leave in connection with the birth: 18 weeks

Documentation

- Under the FMLA, employing office may not require an employee to provide a medical certification for leave to bond with a newborn child or a child placed for adoption or in foster care
- Employing office may request documentation to establish parental relationship, date of birth or placement, or need for absences prior to placement for adoption or foster care (counseling sessions, court appearances, travel to another country, etc.)
- Employing office may not request documentation in a way that interferes with an employee's attempt to exercise FMLA rights

Election to Substitute Paid Leave

- Employees must request FMLA leave in advance using the employing office's usual procedures, and also inform the office that they would like to substitute PPL and/or accrued paid leave
- Election to substitute paid leave for unpaid FMLA leave may be made retroactively if employing office determines that otherwise eligible employee was physically or mentally incapable of doing so during the appropriate period
- If employing office determines that otherwise eligible employee is physically or mentally incapable of making election, and is asked to do so by personal representative of employee, paid leave substitution may be conditionally approved
- Employing offices may not require employees to use annual or sick leave before using PPL

Special Circumstances

Multiple Births or Placements

- If employee has multiple births or placements on the same day, this is considered to be a single event, initiating a single PPL entitlement of up to 12 weeks
- If employee has one or more births or placements within 12-month period following an earlier birth or placement, each subsequent birth or placement is a separate event, which commences its own 12-month period and carries its own 12-week PPL limit
- Any use of PPL during a given 12-month period counts toward that period's 12-week limit, so if multiple 12-month periods overlap, use of PPL during the overlap will count toward each period's 12-week limit

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Multiple Births or Placements

- Example: Baby is born June 1, and Toddler is placed for adoption October 1
 - Baby's birth and Toddler's placement each starts a separate 12-month period
 - Baby's birth and Toddler's placement each creates an entitlement to substitute up to 12 weeks of PPL during its own 12-month period
 - Overlap period is October 1 to May 31 of following year
 - If any PPL is used during that overlap period, it counts toward both Baby's 12-week limit *and* Toddler's 12-week limit
- Multiple birth or placement events do not expand available FMLA leave

Legislative Branch Spouses

- Spouses employed by the same Legislative Branch employing office share the same 12-week leave entitlement for a birth or placement, so they may be limited to a combined total of 12 weeks of FMLA leave (including PPL substituted for FMLA leave) for the same birth or placement
- Spouses employed by different Legislative Branch employing offices each get a separate 12-week FMLA leave entitlement for a birth or placement

Differences From Executive Branch

Eligibility

- Executive Branch employees are subject to the FMLA employment requirements in order to qualify for FMLA leave for birth or placement of a child, including unpaid leave and paid leave under FEPLA
- The Legislative Branch is expressly exempt from this requirement, so covered employees are eligible immediately upon commencement of employment

Return to Work

- Executive Branch employers may require employees using parental leave under FEPLA to agree in writing to return to work for the agency for at least 12 weeks after returning from leave
- The Legislative Branch is expressly exempt from this limitation, so employing offices may not require employees to agree to return to work in order to use paid leave
- Unlike Executive Branch agencies, Legislative Branch employing offices may not recover government contributions for maintaining an employee's health coverage while on paid parental leave if the employee fails to return after using the leave

Miscellaneous

WWW.OCWR.GOV

- Information about all laws applied by the CAA
- Information about the OCWR Administrative Dispute Resolution process
- All final and pending regulations adopted by the OCWR Board of Directors
- Up-to-date information regarding COVID-19 and the FFCRA
- Collection of all Brown Bag Lunch outlines
- ... and much, much more

E-mail us!

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- Please email hillary.benson@ocwr.gov to let us know you joined us for this Brown Bag. Thanks!

Questions?

