



DEPARTMENTS OF THE ARMY AND THE AIR FORCE

Joint Force Headquarters-Arizona

HUMAN RESOURCES OFFICE

5636 EAST MCDOWELL RD.

PHOENIX, ARIZONA 85008-3495



NGAZ-HRO

15 October 2020

MEMORANDUM FOR Arizona National Guard Title 5 and Title 32 Employees

SUBJECT: Interim Guidance on the use of Paid Parental Leave

References:

- a. 5 U.S.C. 6382
- b. 5 CFR part 630, subparts L and Q
- c. Public Law 116-92, section 7602 (c)
- d. Family Medical Leave Act

1. The President has issued an Executive Order that expanded the use of the Family Medical Leave Act (FMLA) to include up to 12 weeks of Paid Parental Leave (PPL). In order to be eligible for PPL, the employee must have more than 12 months of Federal service. For temporary employees, their “Not to Exceed” date must be greater than one (1) year.

2. The employee must have a qualifying birth or placement event - that is, the birth or placement (for adoption or foster care) of the employee’s child must occur on or after 1 October 2020. 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 in order to receive PPL. PPL is limited to 12 weeks in connection with a birth or placement of an employee’s child. PPL may be used only during the 12-month period following the birth or placement. There are no carryover provisions for any unused PPL. An employee may not be paid for unused or expired PPL. Use of PPL is reserved for periods when an employee is acting in a parental role and engaged in activities directly related to the care of the child whose birth or placement triggered the leave entitlement. At the request of management, an employee must provide to them the appropriate documentation showing that the employee’s use of PPL is directly connected to a birth or placement that has occurred.

3. Prior to using PPL, an employee is required to enter into a written service agreement to work for this agency for 12 weeks after the day on which PPL concludes. The 12-week work obligation is statutorily fixed and applies regardless of the actual amount of leave used (i.e., an employee who uses less than 12 weeks of PPL would still be obligated to work 12 weeks). The work obligation refers to a period during which the employee is in a duty status. Any periods of paid or unpaid leave or time off, or other periods of nonduty status (e.g., furlough or AWOL) will not count toward the 12-week work obligation. The service agreement will note the possible need to provide a reimbursement to this agency if an employee fails to meet the required work obligation.

4. Failure to complete the 12-week work obligation may result in an employee being required to make a reimbursement to this agency (or other agencies) that employed the employee during use of PPL. The determination to impose the reimbursement is at the agency's sole and exclusive discretion, unless a waiver is required by statute and regulation. 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 PPL was used.

5. If an employee has multiple children born or placed 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 children born or placed during the 12-month period following the date of an earlier birth or placement of a child of the employee, each event will generate a 12-week leave entitlement to be used during the 12-month period following birth/placement; however, any use of PPL during an overlap period (i.e., period contained within more than one 12-month period following birth/placement) will count toward the 12-week limit for each birth/placement involved.

6. A "Paid Parental Leave Request Form", "12-Week Agreement to Complete Work Obligation" and "Types of Supporting Documentation for the Use of Paid Parental Leave" are attached. The anticipated date for Defense Finance and Accounting Service (DFAS) to be able to have the functionality for PPL is April 2021. Agencies should approve the use of 12 weeks paid leave as substitution for non-paid FMLA leave. Timecards should be coded "LV" and usage should be tracked manually.

7. Questions may be directed to HRO Benefits at 623-629-4800.

PATRICK J. MCDONNELL
Colonel, AZNG
Human Resources Officer

Attachments:

1. Summary of Key Features
2. Paid Parental Leave Work Obligation Agreement
3. Request to use Paid Parental Leave
4. Types of Supporting Documentation

Attachment 1

Key Features of the Paid Parental Leave Law and Interim Regulations (5 U.S.C. 6382 and 5 CFR part 630, subparts L and Q)

Employee Eligibility

- To be eligible for paid parental leave under the authority in title 5, United States Code, a Federal employee must be eligible for Family and Medical Leave Act (FMLA) leave under that title.
- An employee must meet FMLA eligibility requirements, including the following:
 - Has completed at least 12 months of Federal service of a type that is covered under the title 5 FMLA provisions;
 - Has a part-time or full-time work schedule (i.e., employees with an intermittent work schedule are ineligible); and
 - Has an appointment of more than 1 year in duration (i.e., employees with temporary appointments not to exceed 1 year are ineligible).
- The employee must have a *qualifying* birth or placement event—that is, the birth or placement (for adoption or foster care) of the employee’s child must occur on or after October 1, 2020. (This is a statutory requirement established by section 7602(c) of Public Law 116-92.)
- An employee who is ineligible for FMLA leave at the time of a *qualifying* birth or placement may establish FMLA leave eligibility during the 12-month period following the *qualifying* birth or placement and use paid parental leave during that period. For example, an employee may become eligible for FMLA leave by completing the required 12 months of service or by changing to a qualifying work schedule or appointment. Once FMLA leave eligibility is established and FMLA leave is invoked, an employee may be able to substitute paid parental leave in connection with a *qualifying* birth or placement.

Leave Entitlement and 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 in order to receive paid parental leave.
- Paid parental leave is limited to 12 weeks in connection with a birth or placement of an employee’s child.
- Paid parental leave is provided via substitution for FMLA unpaid leave. FMLA unpaid leave is provided under the normal rules in the title 5 law and regulations; for example:
 - FMLA unpaid leave is limited to 12 weeks in any 12-month FMLA period, except that 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.
 - In the case of FMLA unpaid leave based on the birth or placement of a child, an employee may not use FMLA leave intermittently unless the agency agrees.

- Use of FMLA leave for purposes other than birth or placement of a child (e.g., leave based on a serious health condition) during a 12-month FMLA period may reduce the FMLA leave available for birth or placement purposes. (Note: To the extent that the amount of FMLA leave available for birth or placement is reduced, the amount of available paid parental leave also may be reduced.)
- 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 FMLA leave entitlement based on the birth/placement event. (Likewise, each employee-parent would have a separate entitlement to substitute paid parental leave for his or her FMLA unpaid leave.)
- Paid parental leave may be used only during the 12-month period following the birth or placement. There are no carryover provisions for any unused paid parental leave. An employee may not be paid for unused or expired paid parental leave.
- For employees who use leave on an hourly basis (including fractions of an hour), the 12-week paid parental leave 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).
- Paid parental leave is available as long as an employee has a continuing parental role in connection with the child whose birth or placement was the basis for the leave entitlement.
- Use of paid parental leave is reserved for periods when an employee is acting in a parental role and engaged in activities directly related to the care of the child whose birth or placement triggered the leave entitlement. Using paid parental leave for these purposes supports the objective of increased parent-child bonding.
- An agency may not require employees to use annual leave or sick leave before requesting paid parental leave.
- At the request of the employee's agency, an employee must provide the agency with appropriate documentation showing that the employee's use of paid parental leave is directly connected to a birth or placement that has occurred.

Work Obligation

- Prior to using paid parental leave, an employee is required to enter into a written service agreement to work for the applicable employing agency (i.e., the agency employing the employee at the time paid parental leave concludes) for 12 weeks after the day on which paid parental leave concludes, which day is—
 - 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.

- Any periods of work between intermittent uses of paid parental leave do not count toward completion of the 12-week work obligation. The work obligation is met by performing work after use of paid parental leave concludes.
- The 12-week work obligation is statutorily fixed and applies regardless of the actual amount of leave used (i.e., an employee who uses less than 12 weeks of paid parental leave would still be obligated to work 12 weeks).
- The work obligation refers to a period during which the employee is in a duty status. Any periods of paid or unpaid leave or time off, or other periods of nonduty status (e.g., furlough or AWOL) will not count toward the 12-week work obligation.
- The service agreement will note the possible need to provide a reimbursement to the applicable employing agency if an employee fails to meet the required work obligation; however, that reimbursement requirement cannot be applied in certain circumstances and an agency may choose to not apply it in other circumstances. (See next section.)

Reimbursement of Agency Costs for Health Insurance

- Failure to complete the 12-week work obligation may result in an employee being required to make a reimbursement to the agency (or agencies) that employed the employee during use of paid parental leave.
- The determination to impose the reimbursement is at the agency's sole and exclusive discretion, unless a waiver is required by statute and regulation.
- 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.
- If the agency determines that reimbursement must be made, it must seek collection of the full amount. There is no authority for a partial waiver of the amount owed.
- An agency may not require the reimbursement (i.e., mandatory waiver) if the agency determines that the employee is unable to return to work for the required 12 weeks because of—
 - 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
 - any other circumstance beyond the employee's control.
- Before an agency makes a determination regarding whether to impose (or waive) the reimbursement, it may require supporting certification by a healthcare provider if—
 - the employee claims a serious health condition (of the employee or the child whose birth or placement entitled the employee to paid parental leave) makes him or her unable to fulfill the necessary work requirement; or
 - another individual's health condition prevents the employee's fulfillment of the work requirement.

Employee Transfer

- If an employee transfers between agencies while using paid parental leave in connection with a birth or placement, the work obligation will be owed to the agency employing the employee at the time use of paid parental leave concludes. That agency will be responsible for documenting whether the employee fulfills the work obligation.
- Each agency that incurred costs for the employee's health insurance during use of paid parental leave will make its own determination about whether to apply the reimbursement requirement.

Multiple Birth/Placement Events

- If an employee has multiple children born or placed 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 paid parental leave.
- 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 of a child of the employee, each event will generate a 12-week leave entitlement to be used during the 12-month period following birth/placement; however, any use of paid parental leave during an overlap period (i.e., period contained within more than one 12-month period following birth/placement) will count toward the 12-week limit for each birth/placement involved. In other words, usage of paid parental leave may count toward multiple 12-week limits to the extent that there are simultaneously in effect multiple ongoing 12-month periods beginning on the date of an applicable birth/placement.

Attachment #2

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.

Attachment 3

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:

Birth of a child

Placement for adoption

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:

Continuous use

Intermittent use*

*Reason(s) intermittent leave is being requested:

*Describe plans for using PPL on an intermittent basis:

Employee Certifications (initial each box)

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.

I will provide documentation to support this request, as directed by my agency.

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).

If I provided an anticipated date of birth or placement, I will notify my agency as soon as practicable of the actual date.

I attest that I am entering into the required work obligation agreement.

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

Attachment 4

Types of Supporting Documentation for the Use of Paid Parental Leave

As described in the Paid Parental Leave regulations (5 CFR 630.1703(h)), at the request of the employee's agency, an employee must provide the agency with appropriate documentation that shows that the employee's use of paid parental leave is directly connected to a birth or placement that has occurred.

The regulations do not provide an exhaustive list but rather provide that an agency is responsible for determining what documentation is sufficient proof of entitlement. Additional examples of documentation that an agency may consider requesting following the birth of an employee's child or the placement of a child with the employee for adoption or foster care are provided below.

This list is not exhaustive and is provided only to assist agencies in determining which documentation they may ultimately request. Agencies that decide to request documentation may consult with their General Counsel's office to determine the documentation they will require.

Childbirth

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
7. Other documentation approved by the agency

Adoption

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
6. Other documentation approved by the agency

Foster Care

1. Foster care placement record
2. Other documentation from the foster 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
4. Other documentation approved by the agency