



Federal Employee Paid Leave Act (FEPLA)

Women's and Fair Practices Departments





The Federal Employee Paid Leave Act- a brief guide.
Brought to you by the Women's and Fair Practices Department at AFGE.

This brief guide to the Federal Employee Paid Leave Act is intended as an introduction and overview. It is not intended as an exhaustive treatment, does not purport to provide legal advice, and won't answer every question. At the end of the guide, there are additional resources for more information. Please contact your agency with questions beyond the scope of this guide.

1 The Federal Employee Paid Leave Act

The Federal Employee Paid Leave Act (FEPLA) provides for up to 12 weeks of paid time off for the birth of an employee's child, or the placement of a child with an employee for adoption or foster care. The law allows eligible employees to substitute up to 12 weeks of paid parental leave for unpaid leave under the Family Medical Leave Act (FMLA) in connection with a qualifying birth or placement.

2 Eligibility for paid parental leave

To be eligible for paid parental leave under FEPLA, employees must also be eligible under FMLA. Employees are eligible under FMLA if they've completed at least 12 months, or 1,250 hours of federal service, have a full or part-time work schedule, and have an appointment of a year or longer.

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.

3 Leave must be taken to care for a child within the first year of birth, or placement.

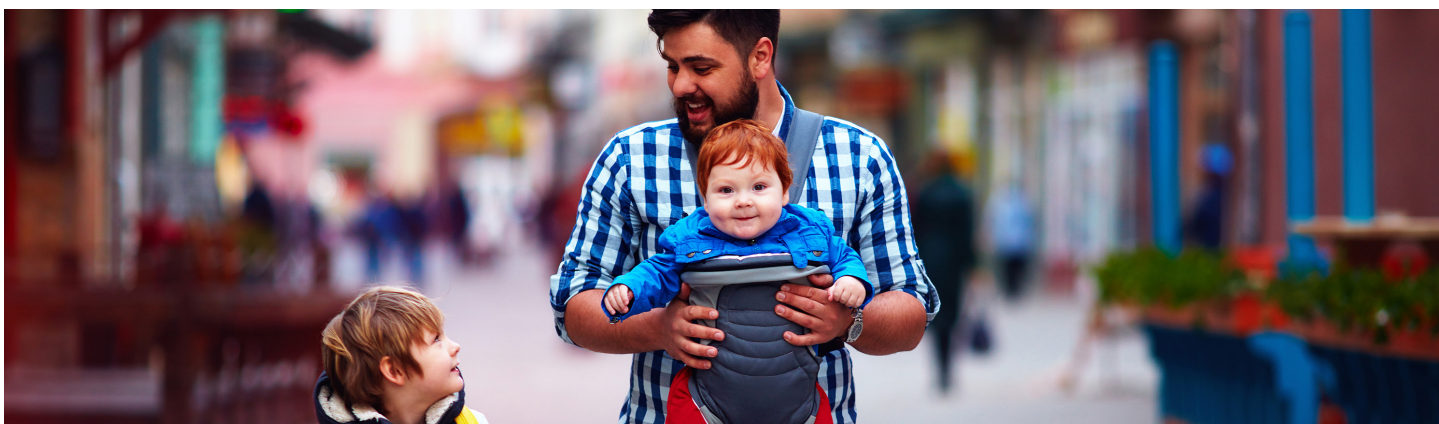
Use of paid parental leave is reserved for periods when an employee is acting in a parental role and engaged in activities directly related to the care of the child whose birth or placement triggered the leave entitlement.

So, if the child is already in daycare, then the employee is not eligible for leave.

Additionally, employees can only use paid parental leave during the 12-month period following the birth or placement of a child. They can't carry over unused parental leave, and they won't be paid out for unused or expired leave. In addition, agencies can't require employees to use sick or annual leave before taking paid parental leave.

4 FEPLA doesn't provide leave to care for oneself or a sick family member

Paid leave under FEPLA does not apply to employees who want paid time off to care for a sick family member or recover from their own serious medical



condition. Leave for those circumstances remains available under FMLA.

5 Leave entitlement and usage

Paid parental leave is provided via substitution for FMLA unpaid leave. 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 service member.

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. 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.

6 Documentation required

Each agency may determine which documents it will accept to document this leave. Birth certificates, documents naming a federal employee as the second parent, or hospital documentation are all options to prove childbirth.

Documents from the adoption or foster agency, letters from the parent's attorney confirming the placement of the child, adoptive placement records,

immigration visas for the child from U.S. Citizenship and Immigration Services and foster care placement letters from a local social services agency are also options to prove adoption or foster care. Check with your agency to obtain list of required documentation. **See Attachment 1, Examples of Supporting documentation.**

7 Employee must return to work

The law requires federal employees to guarantee, in writing, they'll continue working for their agencies for at least 12 weeks following the last day of paid parental leave. The 12-week work obligation 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 after concluding the paid leave). To fulfill this requirement, employees must be working and in "on-duty" status. Any periods of work between intermittent uses of paid parental leave do not count toward completion of the 12-week work obligation.

8 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 other circumstance beyond the employee's control. Check with your agency to obtain work obligation documentation. See Attachment 2, Example of sample template for PPL work obligation.

9 Transfer to a different agency while using paid parental leave

Employees may transfer to a new agency while using paid parental leave in connection with a birth or placement. In that case, the agency where the employee completes the paid parental leave period is owed the 12-week work obligation.

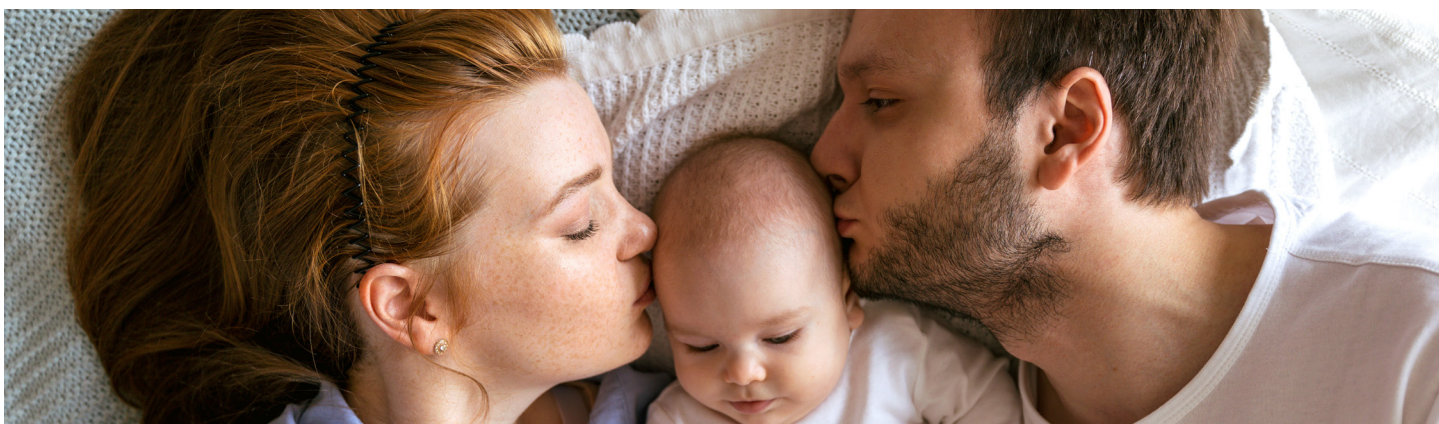
For example, if an employee worked at the Agriculture Department before having a child and then transferred to the Interior Department halfway through his or her paid time off, the employee must commit to working for Interior for at least 12 weeks after returning from parental leave.

10 Multiple birth/placement events

Federal employees who have multiple children born or placed on the same day are eligible for only one leave period of 12 weeks. So, if you have twins or triplets, you are still eligible for only one event, i.e. one period of 12 weeks of paid parental leave for all the children born or placed on the same date. However, employees who have multiple children born or placed on different days within the same year are entitled to 12 weeks of paid parental leave for each "event," which they must use within the 12-month period after the birth or placement.

There may, however, be periods where paid parental leave time limits may overlap. In those situations, leave from one birth or adoption may count toward an employee's paid time-off allowance for the second "event." In other words, usage of paid parental leave may count toward multiple 12-week limits.

For example, if Child One and Child Two are born or placed in the same household 1 month apart, they will have two months of overlapping coverage as follows. If Child One is born or placed on January 1, his 12-week period would run through March 31. If Child Two is born on February 1, his 12-week period would run through April 30. The parents in this household (assuming only one parent is a federal employee) would then get coverage for Child One alone in January and coverage for both Child One and Child Two during February and March (overlapping coverage period) and then coverage for Child Two alone in April. Thus, the total period of coverage would be January through March for Child One and February through April for Child Two with February



and March being a period of overlapping coverage for both children.

11 If both parents are federal employees

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.

12 FEPLA includes previously excluded employees

FEPLA now covers approximately 100,000 federal employees outside of Title 5 who were inadvertently excluded from the original legislation. Thanks to AFGE's lobbying efforts, the revised law covers a broader group of employees, including employees

at the FAA, TSA employees who are not screeners, all VA employees, including Title 38 employees, and employees at D.C.'s Courts and Public Defender Service. Contact your agency to find out if you are eligible for this benefit.

13 FEPLA not retroactive prior to October 1, 2020

Paid leave under FEPLA began on October 1, 2020 and is not retroactive for a birth or placement before that date.

14 Where to go for further information

OPM issued CPM 2020-10 to provide guidance on the paid leave benefit. This guidance can be found at <https://www.chcoc.gov/content/paid-parental-leave-federal-employees-interim-regulations>. See also federalregister.gov/d/2020-14382; 85 Federal Register 48,075 (August 10, 2020). For further questions, please contact your agency.

Attachment 1

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	Adoption	Foster Care
<ol style="list-style-type: none"> 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 	<ol style="list-style-type: none"> 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 	<ol style="list-style-type: none"> 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

Attachment 2

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.



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