

Human Resource Policy Manual (HRPM)

Volume 8: Leave and Work Schedules

LWS-8.20

Family and Medical Leave Act (FMLA)

This Chapter applies to: (1) non-bargaining unit employees/positions, and (2) bargaining unit employees/positions, except where the applicable collective bargaining agreement contains conflicting provisions or the subject has not been negotiated.

Chapter established on: 04/29/2009

This version effective: 10/01/2020

Background information: This policy chapter replaces LWS-8.20 dated August 15, 2016. Revisions made were to implement a new paid leave category, paid parental leave (PPL). This leave provision allows eligible employees to use up to 12 workweeks of PPL for substitution of unpaid leave in connection with FMLA. This benefit would commence on the date of birth of an employee's son or daughter that occurs on or after October 1, 2020, or the date of placement of a son or daughter with the employee for adoption or foster care that occurs on or after October 1, 2020.

In addition, minor editorial and formatting changes were made throughout the policy chapter.

3. Definitions.

- a. Birth** is the delivery of a living child or the delivery of a stillborn child (after 20 weeks of pregnancy).
- b. Paid Parental Leave** is paid time off from an employee's scheduled tour of duty that is granted to cover periods of time within the 12-month period commencing on the date of birth or placement. This leave can be used for care of a son or daughter, the placement of a son or daughter for adoption or foster care with the employee, or the recovery period after birth and/or bonding. Employees may only use this leave as a substitute for FMLA unpaid leave.
- c. Placement** is a new placement of a son or daughter with an employee for adoption or foster care. This excludes the adoption of a stepchild or foster child who has already been a member of the employee's household and has an existing parent-child relationship with the adopting parent.

9. Paid Parental Leave (PPL). Effective on October 1, 2020, FMLA-qualifying employees may substitute up to 12 workweeks of PPL for FMLA unpaid leave granted in connection with the birth of an employee's son or daughter or placement of a son or daughter with an employee for adoption or foster care, thus allowing time for bonding between parent and child. Compensation for PPL will be commensurate with annual leave payment.

Employees must assume the "parental" role to qualify for this benefit (see paragraph 9d for exception). For example, a birth mother who surrenders custody of a child under surrogacy agreement or adoption arrangement or whose custodial rights are denied (e.g. based on a court order due to unfitness) would not be eligible for PPL once the parental role has ended.

Note: PPL is a leave category that **must be used exclusively** for substitution of unpaid leave under FMLA, unlike other forms of leave such as annual and sick leave that can be used separately or as a substitute for unpaid leave.

a. Time Period: The 12-month eligibility period for PPL is calculated based on a separate 12-month period from other FMLA-qualifying leave. The 12-month period for PPL begins on the first instance of leave use for the purpose of birth or placement. PPL can be used no later than the end of the 12-month period beginning on the date of the birth or placement involved.

The effective date of an employee's election of PPL may not be delayed because the employee has not provided the required certifications. Leave may be granted on a provisional basis for 15 calendar days; if the employee has not met the certification requirements after the provisional period, PPL may be converted to LWOP. Refer to paragraph 6d above for certification requirements for adoption or placement of a child. For the birth and care of a child, employees may self-certify their eligibility for PPL.

b. Paid Parental Leave Usage: A manager may not require an employee to use annual leave, sick leave or any other form of paid leave, or unpaid leave prior to allowing use of PPL (this rule does not apply to any other form of FMLA leave).

Use of FMLA leave for other purposes (e.g., the employee's serious health condition or to care for a family member with a serious health condition) can limit the amount of PPL that may be substituted for FMLA unpaid leave based on a birth or placement event.

For example, after not using FMLA leave for at least 12 months, a qualifying employee uses five (5) workweeks of FMLA leave to care for a family member with a serious health condition beginning on June 1, 2021, triggering the commencement of a 12-month FMLA period that ends on May 31, 2022. Then the employee has a child born on October 15, 2021. Because of the 12-workweek limit for all FMLA leave purposes, the employee is only able to use seven (7) workweeks of PPL before the end of the 12-month FMLA period expiring on May 31, 2021. However, if the employee has worked 1250 hours in the initial FMLA cycle, the employee is entitled to the remaining five (5) workweeks of PPL that can be used in a new 12-month FMLA period starting after June 1, 2022. The employee has until October 14, 2022, which is 12 months after the child's date of birth, to use the remaining PPL.

(1) Multiple births/placements: If an employee has multiple children born or placed on the same day (or 24-hour period), the multiple-child birth/placement event is considered a single event that triggers a single entitlement of up to 12 workweeks of PPL in a 12-month period.

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, the PPL provisions will be administered separately for each birth or placement event. However, when PPL is substituted during periods of time when separate 12-month periods overlap, the PPL will count toward the 12-workweek limit of each affected 12-month period.

For example, if an employee has a child born on June 1 and another child placed for adoption on October 1 of the same year, each event would generate an entitlement to substitute up to 12 workweeks of PPL during the separate 12-month periods beginning on the date of the birth and on the date of the placement, respectively. 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 the overlap period, that amount of PPL would count towards both the 12-workweek limit associated with the birth event and the 12-workweek limit associated with the placement event.

(2) Lactation: Though some collective bargaining agreements (CBA) may provide 15-minute paid breaks for nursing mothers to express breast milk, time-off duty for this purpose is generally unpaid. Therefore, eligible employees may use PPL for breaks needed to express. PPL may be used for such breaks within the designated 12-month period beginning on the date of childbirth. Refer to [WLB-12.8, FAA Nursing Mothers Program](#) for more information.

(3) Forfeiture: At the end of the 12-month period after the date of birth or placement of a child, any unused PPL may not be carried over for use in a future period, nor may a payment be made to the employee for unused PPL that has expired.

c. Limitations When Both Spouses Work for FAA: The limitation that applies to other FMLA purposes when both spouses are employed by the FAA and are eligible for FMLA, a combined total of 12 workweeks of FMLA leave in a 12-month period, does not apply to PPL. When both spouses employed by the FAA are eligible for FMLA, each spouse may receive up to 12 workweeks of PPL in a 12-month period.

d. Birth Recovery Period: If the birth mother (employee) or the other parent caring for the birth mother (employee) during the recovery period does not assume the parental role after childbirth due to a stillborn child or the death of a newly born child, the employee may use PPL for the birth recovery period (usually six (6) to eight (8) workweeks).