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Family and Medical Leave Act/ Federal Employees Family Friendly Leave Act

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Family and Medical Leave Act Federal Employees Family Friendly Leave Act Table of Contents

Section	Page
1 History of Legislation	1
2 Family and Medical Leave Act.....	1
Who is Covered by FMLA?	1
What is Covered by FMLA?	2
How to Apply FMLA	2
3 Other Leave Provisions (Family and Medical Leave Act Expanded)	3
Bone Marrow or Organ Donor Leave.....	3
4 Paid Paternal Leave (Federal Employee Paid Leave Act)	4
Eligibility	4
Leave Entitlement and Usage	4
Multiple Births/Placement Events	5
Documentation	5
Service Commitment	6
5 Leave to Care for a Sick Family Member (Federal Employees Family Friendly Leave Act).....	6
6 Military Family Medical Leave	7
Leave While Family Member Called to Active Duty	7
Caring for a Seriously Injured or Ill Service Member	7
7 Medical Certification	8
8 Return to Work.....	9
9 Record Keeping	10
Appendix	
1 Definitions	11
2 FMLA/FEFFLA Questions and Answers/Examples.....	15
3 PPL Questions and Answers/Examples.....	17

Family and Medical Leave Act Federal Employees Family Friendly Leave Act

Section 1 – History of Legislation

1-1. Over the years, several legislative initiatives have been implemented with the aim of helping Federal associates meet their family and medical leave needs. These initiatives include the following:

a. **Family and Medical Leave Act (FMLA)** – FMLA was established in 1993 to help support families with serious health conditions or special care-giving needs, such as birth or adoption.

b. **Federal Employees Family Friendly Leave Act (FEFFLA)** – FEFFLA was established in 1994 and helps support associates who are caring for family members who are sick, need medical care or supervision or have routine medical appointments. The act also covers leave for adoption and leave to serve as a bone-marrow or organ donor.

c. **Family and Medical Leave Act Expanded** – In 1997, FMLA was expanded to allow Federal workers 24 hours of unpaid leave during any 12-month period to fulfill certain, specified family obligations. In 2000, FMLA was expanded again to allow federal workers to use a total of up to 12 weeks of sick leave each year to care for a family member with a serious health condition.

d. **National Defense Authorization Act (NDAA)** – The 2008 NDAA amended certain provisions of FMLA to allow for military family leave entitlements for specified Federal associates. The 2010 NDAA further amended FMLA by expanding the military caregiver leave provisions of the FMLA, which allows eligible associates to take up to 26 workweeks of FMLA leave in a single 12-month period to care for a “covered service member” with a “serious injury or illness.”

e. **Federal Employee Paid Leave Act (FEPLA)** – In 2020 under the NDAA, FEPLA amended FMLA to allow the substitution of up to 12 weeks of paid parental leave for FMLA unpaid leave granted in connection with the birth of an associate’s son or daughter or the placement of a son or daughter with an associate for adoption or foster care that occurs on or after October 1, 2020.

Section 2 – Family and Medical Leave Act

Who is Covered by FMLA

2-1. FMLA covers regular full-time (RFT), regular part-time (RPT) and intermittent (INT) associates who have completed at least 12 months of service, and worked at least 1,250 hours in the 12 months preceding the leave. The 12 months of service will be calculated on the associate’s service award base date (does not have to be current service nor do the months have to be continuous). Temporary associates are covered if they have accrued a total of 12 months of service (calculated on the service award base date) and have worked at least 1,250 hours during the 12-month period preceding commencement of leave.

What is Covered by FMLA

2-2. Under the 1993 provisions of FMLA, eligible associates are entitled to a total of up to 12 workweeks of **unpaid leave** during any 12-month period for the following purposes:

- a. The birth of a son or daughter of the associate and the care of such son or daughter;
- b. The placement of a son or daughter with the associate for adoption or foster care;
- c. The care of spouse, son, daughter or parent of the associate who has a serious health condition; or,
- d. A serious health condition of the associate that makes him/her unable to perform the essential functions of his/her position.

Note: Associates may choose to “substitute” (run concurrently) accrued paid leave (such as sick or vacation leave) to cover some or all of the FMLA leave. An associate’s ability to substitute accrued paid leave is determined by the terms and conditions of our normal leave policy.

2-3. An associate may use the 12 weeks of FMLA leave intermittently; i.e., the leave may be taken in separate blocks of time, rather than for one continuous period of time, and may include leave periods of one hour to several weeks. Leave may also be taken for periods of less than one hour. Such intermittent leave will not be taken unless the associate and the Exchange agree to the arrangement.

How to Apply FMLA

2-4. According to the regulations that govern FMLA, it is the associate’s responsibility to invoke his/her entitlement to FMLA leave. The associate may choose whether to substitute paid leave, as appropriate, for the leave without pay provision. Under 5 CFR 630.1203(h), the Army and Air Force Exchange Service (Exchange) may not subtract leave from the 12-week FMLA leave entitlement unless confirmation from the associate has been received stating his/her intent to use FMLA.

2-5. Under 5 CFR 630.126, associates are required to provide 30 calendar days notice when the need for leave is foreseeable (e.g., an expected birth or planned medical treatment). If the need for leave is not foreseeable (e.g., a medical emergency or the unexpected availability of a child for adoption or foster care), the associate must provide notice within a reasonable period. If the need for leave is not foreseeable and the associate is unable (due to circumstances beyond his/her control) to provide notice, then FMLA leave cannot be denied or delayed. However, an associate may not invoke entitlement to FMLA leave retroactively for any previous absence from work.

Note: Sometimes a unique situation may require some flexibility in regards to FMLA. If an associate or a personal representative is physically or mentally incapable of invoking the associate's entitlement to FMLA leave during the entire period in which the associate is absent from work with a qualifying situation, associates may retroactively invoke the entitlement of FMLA within two workdays after returning to work. In this situation, the incapacity of the associate must be documented by a written medical certificate from a health care provider. In addition, the associate must provide acceptable documentation explaining the inability of the personal representative to contact the Exchange to invoke the associate's entitlement to FMLA leave.

Section 3 – Other Leave Provisions (Family and Medical Leave Act Expanded)

3-1. The expansion of the FMLA allows associates to schedule and be granted up to 24 hours of **Leave Without Pay** (LWOP) each year for the following activities:

a. To allow associates to participate in school activities directly related to educational advancement of a child. This includes parent-teacher conferences or meetings with child-care providers, interviewing for a new school or child-care facility or participating in volunteer activities supporting the child's educational advancement.

b. To allow parents to accompany children to routine medical or dental appointments, such as annual checkups or vaccinations.

Note: These activities are not currently covered by the FMLA; however, the FEFFLA permits associates to use up to 13 days of sick leave each year for such purposes. The 24 hours of LWOP each year is to be used in cases when no additional sick leave is available to the associate.

c. To allow associates to accompany an elderly relative to routine medical or dental appointments or other professional services related to the care of the elderly relative, such as making arrangements for housing, meals, phones, banking services and other similar activities.

Note: Associates can use either unpaid leave or sick leave for these activities under FMLA or FEFFLA; e.g., caring for a parent with a serious health condition.

Bone Marrow or Organ Donor Leave

3-2. An associate may use up to seven days of paid leave each calendar year to serve as a bone-marrow donor. An associate may also use up to 30 days of paid leave each calendar year to serve as an organ donor.

Section 4

Paid Parental Leave

(Federal Employee Paid Leave Act)

4-1 The Federal Employee Paid Leave Act (FEPLA) was included in the National Defense Authorization Act of 2020 providing paid parental leave (PPL) to eligible Federal employees in connection with the birth, adoption, or foster care placement of a child that occurs on or after October 1, 2020. The regulations for the new paid leave entitlement are located in part [630, Subpart Q of Title 5, Code of Federal Regulations](#).

Eligibility

4-2. To be eligible for PPL, an associate must be eligible for the Family and Medical Leave Act (FMLA). The associate must have a qualifying birth or placement event – the birth of an associate's son or daughter or the placement of a son or daughter with an associate for adoption or foster care on or after October 1, 2020.

4-3. An associate who is ineligible for FMLA leave at the time of qualifying birth or placement event may establish FMLA leave eligibility during the 12-month period following the qualifying birth or placement and use PPL during that period.

Leave Entitlement and Usage

4-4. PPL is defined as paid time off that is granted to cover periods of time within the 12-month period commencing on the date of birth or placement (first time placement only) to an associate who has a current parental role in connection with the child whose birth or placement was the basis for granting FMLA unpaid leave under 5 CFR 630.1203(a)(1) or (2).

4-5. PPL is limited to 12 administrative workweeks in connection with a birth or placement of an associate's child. An associate must first invoke FMLA unpaid leave for the birth of a child or placement of a child with the associate for adoption or foster care in order to receive PPL. PPL is provided via substitution for FMLA unpaid leave.

4-6. If two covered associates are parents of the same newly born or placed child, each associate would have their own separate FMLA leave entitlement base on the birth/placement event. Additionally, each associate-parent would have a separate entitlement to substitute PPL.

4-7. Any FMLA leave for purposes other than the birth or placement of the child during a 12-month period may reduce the FMLA available. In this case, it would also reduce the amount of available PPL, since the substitution of PPL requires the use of FMLA leave.

4-8. FMLA leave for the purposes of the birth or placement of a child and PPL may only be used during the 12-month period following the birth or placement event. It is important for associates to calculate any applicable FMLA periods and the period based on the birth/placement event, separately, to ensure they understand their entitlements.

4-9. At the end of the 12-month period following the birth or placement event, any unused balance of PPL expires and is not available for future use.

Multiple Birth/Placement Events

4-10. If an associate 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.

4-11. If an associate 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 associate, each event will generate a 12-week leave entitlement to be used during the 12-month period following birth/placement. Any use of PPL during an overlap period (period containing more than one 12-month period following birth/placement) will count toward the 12-week limit for each birth/placement involved.

Documentation

4-12. Prior to substituting PPL, an associate must complete a PPL request form ([Exchange Form 1400-002](#)) and sign a Service Agreement ([Form 1400-002](#)). Text messages and/or emails are not acceptable to replace the associate's signature on the form. If an associate is physically or mentally incapable of signing the Service Agreement form, the associate may, within five (5) workdays of the associate's return to duty status, sign a service agreement and make an election to substitute PPL for FMLA unpaid leave on a retroactive basis.

4-13. The associate must provide acceptable documentation to verify the date of the birth or placement event. Below are examples of acceptable documentation that can be used for proof of entitlement:

Childbirth

- Birth certificate
- Document naming employee as second parent, such as declaration of paternity or court order of filiation
- Appropriate court documents
- Consular report of birth abroad
- Documentation provided by the child's healthcare provider
- Other documentation approved by the Exchange

Adoption

- Documentation provided by the adoption agency confirming the placement and date of placement
- Letter signed by the parent's/parents' attorney confirming the placement and date of placement
- Adoption placement agreement
- Other documentation approved by the Exchange

Foster Care

- Foster care placement record
- Other documentation from the foster agency confirming the placement and date of placement
- Foster care placement letter issued by the relevant local department of social services or authorized voluntary foster care agency
- Other documentation approved by the Exchange

Service Commitment

4-14. Associates utilizing PPL are required to work for the Exchange for 12 weeks after the day on which the PPL concludes. If the associate fails to complete the 12 week service commitment following the use of PPL, the associate will be required to make a reimbursement equal to the total amount of the Exchange's contributions on behalf of the associate to maintain the associates' health insurance coverage.

4-15. The service agreement is statutorily fixed at 12 weeks regardless of the amount of PPL used by an associate.

4-16. An associate is not considered to have failed to complete the 12 week service agreement if the associate moves with the DoD to another DoD Component, without a break in service.

4-17. An associate may request an exception to the service agreement if the associate 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 associate or the newly born/placed child if the condition is related to the applicable birth or placement. An associate may also request an exception due to circumstances beyond his or her control. Matters of personal preference or convenience will not suffice. For example, a situation where an associate chooses not to return to work to stay home with a well, newborn/placed child would not constitute a circumstance beyond the associate's control for purposes of this exception. HR professionals should contact HR policy for additional guidance.

4-18. The approval authority for an exception request to the service agreement is the Chief Human Resource Officer.

Section 5

Leave to Care for a Sick Family Member (Federal Employees Family Friendly Leave Act)

5-1. Under FEFFLA, RFT associates are entitled to 12 weeks of leave each year to care for a family member with a serious health condition, which includes 13 workdays (104 hours) of **sick leave** each year for general family care or bereavement purposes. RPT associates and associates with uncommon tours of duty are also covered, and the amount of sick leave permitted for family care and bereavement purposes is pro-rated to the average number of hours worked each week. The leave may be used to:

- a. Provide care for a family member who is incapacitated as a result of physical or mental illness, injury, pregnancy or childbirth.
- b. Provide care for a family member as a result of medical, dental or optical examination or treatment.
- c. Make arrangements necessitated by the death of a family member or attend the funeral of a family member.

Note: If the associate has already used 12 weeks of sick leave to care for a family member with a serious health condition, then the associate cannot use an additional 13 days in the same leave year for general family care purposes.

Section 6 – Military Family Medical Leave

Leave While Family Member Called to Active Duty

6-1. Eligible associates may take up to 12 weeks of FMLA leave while the associate's spouse, son, daughter or parent is on active duty or called to active duty for one or more of the following reasons:

- a. **Short-notice deployment** – Addresses any issues that arise from the fact that a covered military member is notified of an impending call or order to active duty in support of a contingency operation seven or less calendar days prior to deploying. Seven calendar days of leave is authorized beginning on the date the military member is notified of the call to support contingency operations.
- b. **Military Events and Related Activities** – Leave is granted to attend official ceremonies, programs or events sponsored by the military related to the active duty or call to active duty of a covered military member. Leave is also granted to attend family support or assistance programs and informational briefings sponsored or promoted by the military service organizations or the American Red Cross that are related to the deployment.
- c. **Childcare and School Activities** – Arranging for alternative childcare, providing childcare on a non-routine, urgent, immediate-need basis; enrolling or transferring a child to a new school or day care facility, and attending certain meetings at a school or a day care facility if they are necessary due to the deployment of a covered military member.
- d. **Financial and Legal Matters** – Making or updating financial and legal arrangements to address a covered military member's absence. This could include healthcare powers of attorney, transferring bank account signature authority, enrolling in the Defense Enrollment Eligibility Reporting System (DEERS) and the updating of wills or living trust and identification cards.
- e. **Counseling** – Attending counseling provided by someone other than a health care provider for oneself, the covered military member or the child, who is either under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability of the covered military member.
- f. **Rest and Recuperation** – Eligible associates may take up to five days of leave for each instance to spend time with a covered military member who is on short-term, temporary rest and recuperation leave during deployment.
- g. **Post Deployment** – Attending certain post-deployment activities, including arrival ceremonies, reintegration briefings and events, other official ceremonies or programs sponsored by the military for a period of 90 days following the termination of the covered military member's active duty status, and addressing issues from the death of a covered military member. Any other event that the associate and employer agree is a qualifying exigency.

Caring for a Seriously Injured or Ill Service Member

6-2. Eligible associates who are family members of covered service members will be entitled to up to 26 weeks of FMLA in a “single 12-month period” to care for current members of the Armed Forces. This also includes members of the National Guard or Reserves or a member of the Armed Forces, National Guard or Reserves who is on the temporary disability retired list, who has a serious injury or illness incurred in the line of duty while on active duty for which he/she is undergoing medical treatment, recuperation or therapy; or otherwise in outpatient status, or on the temporary disability retired list. Associates are also entitled to FMLA leave to care for a veteran who is undergoing medical treatment, recuperation or therapy for a serious injury or illness, if the veteran was a member of the Armed Forces at any time during the period of five years preceding the date on which the veteran undergoes medical treatment, recuperation or therapy.

6-3. In the case of a veteran who was a member of the Armed Forces at any time during a period of five years preceding the date on which the veteran undergoes medical treatment, recuperation or therapy, that was incurred by the member in line of duty while on active duty in the Armed Forces and was aggravated by that service which manifested itself before or after the member became a veteran.

Section 7 – Medical Certification

7-1. For the purpose of leave taken for any FMLA occurrence, a written medical certification should include the following information:

- a. Date serious health condition began.
- b. Probable duration of the condition (indicate if the condition is chronic or continuing with an unknown duration).

Note: If an Exchange associate is going to be out longer than five consecutive days, instruct associate to contact Managed Disability if the leave is for that associate (not a family member).

7-2. Information on the medical certificate should only relate to the serious health condition for which the family and medical leave is needed. Personal or confidential information cannot be required. New information may not be requested from the health care provider. If the leave taken is for a family member, the medical certificate should state that the associate is needed to provide psychological comfort and/or physical care (the family member needs assistance for basic medical, hygienic, nutritional, safety or transportation).

7-3. In cases of certification for intermittent leave or leave on a reduced leave schedule for planned medical treatment, the certification should include the following information:

- a. Dates (actual or estimates) on which treatment is expected to take place.
- b. Duration of treatment.

c. Period of recovery (indicate if the condition is chronic or continuing with an unknown duration, and whether the patient is presently incapacitated and the likely duration and frequency of incapacity).

7-4. If the associate is unable to provide the medical certification before the leave begins or if the validity of the certification provided by the associate is questioned and the medical treatment is to begin, leave will be granted on a provisional basis pending the final written medical certification. An associate must provide the written medical certification, signed by the health care provider, no later than 15 calendar days after the date of the request. If the associate fails to provide the required information after the leave has commenced, he/she may be charged as absent without leave (AWOL); or management may allow the associate to have the leave charged to LWOP, annual leave and/or sick leave, as appropriate. Disciplinary action may be taken against an associate who knowingly provides false medical certification or if medical certification is not received.

7-5. If there is reason to doubt the validity of the original medical certification, the Principal Management Official (PMO) may require, at Exchange expense, a second opinion from a health care provider designated by the Exchange. This provider cannot be employed by the Department of Defense (DoD) or under its administrative oversight on a regular basis unless access to health care is extremely limited (e.g., a rural area or overseas location where only one or two health providers practice, or the only provider available is employed by the DoD).

7-6. Recertification may be requested on a periodic basis for leave taken relating to pregnancy, chronic conditions or long-term conditions, but not more than once every 30 calendar days. For leave taken for all other serious health conditions, and leave on an intermittent or reduced leave schedule, if the health care provider has specified on the certificate how long the period of incapacity will be, recertification may not be requested until the original time period has passed. If the associate requests that the original leave be extended, the circumstances described in the original medical certificate have changed significantly, or if information received casts doubt upon the continuing validity of the medical certification, recertification can be requested.

Section 8 – Return to Work

8-1. An associate who takes family or medical leave is entitled to be returned to the same position held when the leave started. On rare occasions, when returning an associate to the same position may impose extreme hardship, the PMO may place the associate in an equivalent position with equivalent benefits, grade, pay, status and conditions of employment. The position must be within the same commuting area and carry or provide:

a. The same or substantially similar duties and responsibilities, which must entail substantially equivalent skill, effort, responsibility and authority.

b. The same type of appointment, work schedule, status and tenure.

c. The same employment benefits.

d. The same opportunity for within-grade or performance increases.

e. The same or equivalent opportunity for training or education benefits, including any training that an associate may be required to complete to qualify for his/her previous position.

8-2. As a condition of returning to work, the PMO may require the associate to obtain written medical certification from the health care provider that the associate is able to perform the essential functions of his/her position.

8-3. The associate's return to work may be delayed until the medical certification is provided. The same conditions for verifying the adequacy of a medical certification previously stated shall apply to return-to-work certifications.

8-4. No second- or third-opinion certifications may be required. If this requirement is imposed, management must notify the associate **before** the leave commences and pay the expense for obtaining the written medical certification.

Section 9 – Record Keeping

It is essential that the Human Resources Office (HRO), with the assistance of the facility manager, document and maintain all FMLA and FEFFLA leave. If leave is not diligently tracked, these programs will not be appropriately maintained or administered. For example, if an associate has used all 13 days of leave to care for a family member under FEFFLA, and requests leave under either the 12-week program or the 26-week program, the 13 days taken must be deducted from that amount. It is the responsibility of the HRO to ensure this occurs.

Appendix 1

Definitions

Active Duty

Duty under a call or order to active duty in support of a contingency operation.

Adoption

Legal process in which an individual becomes the legal parent of another's child. The source of an adopted child (e.g., whether from a licensed placement agency or otherwise) is not a factor in determining eligibility for leave.

Associate

Individual to whom this guide applies. Also referred to as an “employee”.

Contingency Operation

Military operation designated by the Secretary of Defense as an operation in which members of the Armed Forces are or may become involved in military action, operations or hostilities against an enemy of the United States or an opposing military force.

Covered Service Member

Current member of the Armed Forces, including a member of the National Guard or Reserves.

Employee

Individual to whom this guide applies. Also referred to as an “associate”.

Essential Functions

Fundamental job duties of the associate's position. An associate who must be absent from work to receive medical treatment for a serious health condition is considered to be unable to perform the essential functions of the position during the absence for treatment.

Family and Medical Leave

An associate's entitlement to 12 administrative workweeks of unpaid leave for certain family and medical needs.

Family Member

1. Spouse, and parents thereof;
2. Sons and daughters, and spouses thereof;
3. Parents, and spouses thereof;
4. Brothers and sisters, and spouses thereof;
5. Grandparents and grandchildren, and spouses thereof;
6. Domestic partner (Opposite and Same Sex) and parents thereof, including domestic partners of any individual in paragraphs (2) through (5) of this definition; and
7. Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

Foster Care

Twenty-four (24)-hour care for children in substitution for, and away from, their parents or guardian. Such placement is made by or with the agreement of the State as a result of a voluntary agreement by the parent or guardian that the child be removed from the home, or

pursuant to a judicial determination of the necessity for foster care, and involves agreement between the State and foster family to take the child. Although foster care may be with relatives of the child, State action is involved in the removal of the child from parental custody.

Health Care Provider

1. A licensed Doctor of Medicine or Doctor of Osteopathy or a physician who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices;
2. Any health care provider recognized by the Non-Appropriated Fund (NAF) Employees Health Benefits Plan who is licensed or certified under Federal or State law to provide the service in question;
3. A health care provider who practices in a country other than the United States, who is authorized to practice in accordance with the laws of that country, and who is performing within the scope of his/her practice as defined under such law;
4. A Christian Science practitioner listed with the First Church of Christ, Scientist, in Boston, Massachusetts; or
5. A Native American, including an Eskimo, Aleut and Native Hawaiian, who is recognized as a traditional healing practitioner by native traditional religious leaders, who practices traditional healing methods as believed, expressed and exercised in Indian religions of the American Indian, Eskimo, Aleut and Native Hawaiians.

Incapacity

Inability to work, attend school or perform other regular daily activities because of a serious health condition or treatment for or recovery from a serious health condition.

In Loco Parentis

The situation of an individual who has day-to-day responsibility for the care or financial support of a child or, in the case of an associate, who had such responsibility for the associate when the associate was a child. A biological or legal relationship is not necessary.

Intermittent Leave or Leave Taken Intermittently

Leave taken in separate blocks of time, rather than for one continuous period of time, which may include leave periods of one hour to several weeks. Leave may be taken for a period of less than one hour if agency policy provides for a minimum charge for leave of less than one hour.

Leave Without Pay

Absence from duty in a non-pay status. Leave without pay may be taken only for those hours of duty comprising an associate's basic workweek.

Next of Kin of a Covered Service Member

Nearest blood relative other than the covered service member's spouse, parent, son or daughter.

Outpatient Status

A covered service member receiving medical care outside of the hospital.

Parent

Biological parent or an individual who stands or stood in loco parentis to an associate when the associate was a son or daughter. This term does not include "parent(s)-in-law."

Paid Parental Leave (PPL)

Provides up to 12 weeks of paid leave to eligible associates for the birth, adoption, or foster care replacement of a child that occurs on or after October 1, 2020. To qualify for PPL the associate must be eligible for leave under FMLA.

Reduced Leave Schedule

Work schedule under which the usual number of hours of regularly scheduled work per workday or workweek of an associate is reduced. The number of hours by which the daily or weekly tour of duty is reduced is counted as leave.

Serious Health Condition

1. **An illness, injury, impairment or physical or mental condition that involves:**
 - a. Inpatient care (i.e., an overnight stay) in a hospital, hospice or residential medical care facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care; or
 - b. Continuing treatment by a health care provider that includes, but is not limited to, examinations to determine if there is a serious health condition and evaluations of such conditions if the examinations or evaluations determine that a serious health condition exists. Continuing treatment by a health care provider may include one or more of the following:
 - (1) A period of incapacity of more than three consecutive calendar days, including any subsequent treatment or period of incapacity relating to the same condition that also involves:
 - (a) Treatment two or more times by a health care provider, by a health care provider under the direct supervision of the affected individual's health care provider, or by a provider of health care services under orders of, or on referral by, a health care provider; or
 - (b) Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider (e.g., a course of prescription medication or therapy requiring special equipment to resolve or alleviate the health condition).
 - (2) Any period of incapacity due to pregnancy or childbirth, or for prenatal care, even if the affected individual does not receive active treatment from a health care provider during the period of incapacity or the period of incapacity does not last more than three consecutive calendar days.
 - (3) Any period of incapacity or treatment for such incapacity due to a chronic serious health condition that:
 - (a) Requires periodic visits for treatment by a health care provider or by a health care provider under the direct supervision of the affected individual's health care provider;
 - (b) Continues over an extended period of time (including recurring episodes of a single underlying condition); and
 - (c) May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.). The condition is covered even if the affected individual does not receive active treatment from a health care provider during the period of incapacity or the period of incapacity does not last more than three consecutive calendar days.
 - (4) A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The affected individual must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider (e.g., Alzheimer's, severe stroke or terminal stages of a disease).

- (5) Any period of absence to receive multiple treatments (including any period of recovery) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment (e.g., chemotherapy/radiation for cancer, physical therapy for severe arthritis, dialysis for kidney disease).

2. **Serious health condition does not include** routine physical, eye or dental examinations; a regimen of continuing treatment that includes the taking of over-the-counter medications, bed-rest, exercise and other similar activities that can be initiated without a visit to the health care provider; a condition for which cosmetic treatments are administered, unless inpatient hospital care is required or complications develop; or an absence because of an associate's use of an illegal substance, unless the associate is receiving treatment for substance abuse by a health care provider or by a provider of health care services on referral by a health care provider. Ordinarily, unless complications arise, the common cold, flu, earaches, upset stomach, minor ulcers, headaches (other than migraines), routine dental or orthodontia problems and periodontal disease are not serious health conditions. Allergies, restorative dental or plastic surgery after an injury, removal of cancerous growth or mental illness resulting from stress may be serious health conditions only if such conditions require inpatient care or continuing treatment by a health care provider.

Son or Daughter

Biological, adopted or foster child; step child; legal ward; or child of a person standing in loco parentis who is:

1. Under 18 years of age; or
2. Eighteen (18) years of age or older and incapable of self-care because of a mental or physical disability. A son or daughter incapable of self-care requires active assistance or supervision to provide daily self-care in three or more of the "activities of daily living" (ADL's) or "instrumental activities of daily living" (IADL's). Activities of daily living include adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using the telephone and directories, using a post office, etc. A "physical or mental disability" refers to a physical or mental impairment that substantially limits one or more of the major life activities of an individual.

Spouse

Individual who is a husband or wife pursuant to a marriage that is a legal union between one man and one woman, including common law marriage between one man and one woman in States where it is recognized.

Veteran

Person who served in the active military, naval or air service, who was discharged or released from the service under conditions "other than dishonorable."

Appendix 2

FMLA/FEFFLA Questions and Answers/Examples

Q. Who is an "elderly relative?"

A. We encourage agencies to permit associates to use leave to care for an elderly relative who is related by blood or marriage to the associate, who may require daily care or assistance in making arrangements for housing, meals, telephones, banking services and other similar activities.

Q. The President's memorandum states that associates may take leave to "participate in school activities directly related to the educational advancement of a child." What "activities" are included? Are child care facilities included?

A. We encourage agencies to permit associates to participate in activities, such as parent-teacher conferences (including meetings with principals, counselors, teaching staff or child care providers), school board meetings, tutoring, interviewing for a new school or child-care facility and school-sponsored activities, such as sports and recreation programs, field trips, class plays, "career day" or other volunteer activities supporting a child's educational advancement. "School" refers to an elementary school, secondary school, Head Start program or a child care facility.

Q. Under the expanded family friendly leave policies, will an associate be required to use LWOP?

A. No. A supervisor or manager may not require an associate to use LWOP for these purposes.

Q. Do the expanded family friendly leave policies entitle associates to an additional 24 hours of unpaid leave?

Q. Can an agency require medical certification of an associate who requests time off from work under the expanded family friendly leave policies to accompany his/her child or an elderly relative to routine medical or dental appointments? Can an agency require evidence if an associate requests leave to participate in school activities or to make arrangements for housing, meals, telephones, banking services and other similar activities for an elderly relative?

A. Yes to both questions. Agencies have discretionary authority to require evidence that is administratively acceptable, including medical certification, as appropriate, from an associate who requests LWOP under the new expanded family friendly leave policies.

A. The purpose of the expanded family friendly leave policies is to provide associates with flexibility to use an additional 24 hours of LWOP.

Example: An associate provides day-to-day care for his/her domestic partner's child (with whom there is no legal or biological relationship), but does not financially support the child. The associate would be considered to stand in loco parentis to the child and, therefore, would be entitled to FMLA leave to care for the child if the child has a serious health condition.

Example: An associate who will share in the raising of a child with the child's biological parent would be entitled to leave for the child's birth to bond with the child within the first 12 months following birth because he/she will stand in loco parentis to the child.

Example: Similarly, an associate who will share in the raising of an adopted child with a same-sex partner, but who does not have a legal relationship with the child, would be entitled to leave to bond with the child following placement or to care for the child if the child has a serious health condition, because the associate will stand in loco parentis to the child.

Multiple Parents and Other Relationships – The Office of Personnel Management (OPM) agrees with the Department of Labor (DOL) that the fact that a child has a biological parent in the home, or has both a mother and a father, does not prevent a finding that the child is the “son or daughter” of an associate who lacks a biological or legal relationship with the child for purposes of taking FMLA leave. Neither the law nor OPM regulations restrict the number of parents a child may have under the FMLA.

Example: If a child's parents divorce and both parents remarry, the child could be the “son or daughter” of both the biological parents, and the stepparents and all four adults could have equal rights to take FMLA leave to care for the child, provided they meet the above conditions of providing day-to-day care or financially supporting the child.

Example: Other associates eligible for FMLA leave would include grandparents who take in a grandchild and assume ongoing responsibility for raising the child because the parents are incapable of providing care, or an aunt who assumes responsibility for raising a child after the death of the child's parents. These associates may or may not have a legal relationship with the child (adoption or legal ward), but no such relationship is required to find in loco parentis status. In contrast, an associate who cares for a child for a short period of time while the child's parents are on vacation would generally not be considered to stand in loco parentis to the child.

Documentation – Where an agency has questions about whether an associate's relationship to a child is covered under FMLA, the agency may require the associate to provide reasonable documentation or a statement of the family relationship. A simple statement asserting that the requisite family relationship exists is all that is needed in situations such as in loco parentis.

Appendix 3

PPL Questions and Answers/Examples

1. What is Paid Parental Leave (PPL)?

Grants up to 12 weeks of paid leave to eligible associates in connection with the birth, adoption, or foster care placement of a child that occurs on or after 1 October 2020. Associate must meet the eligibility requirements defined under the Family and Medical Leave Act (FMLA). This policy will run concurrently with Family and Medical Leave Act (FMLA) leave.

2. If an associate gives birth before 1 October 2020, may they use PPL?

No, PPL may only be granted in connection with birth or placement events on or after 1 October 2020.

3. Who may be granted PPL?

Associates who meet eligibility requirements to invoke FMLA based on 5 CFR 630.1203(a)(1) or (2) may substitute their FMLA unpaid leave with PPL, in accordance with the title 5 rules and regulations. This applies to the mother and father.

4. When can PPL be granted?

PPL can be granted to associates following FMLA invocation based on a qualifying birth, adoption, or placement event. It may only be granted for time when an associate has a parental role. A parent who does not maintain a continuing parental role with respect to a newly born or placed child would not be eligible for paid parental leave once the parental role has ended. Placement for adoption of foster care must be a new placement.

5. Can I use PPL before the birth or placement of my child occurs?

No, PPL can only be substituted after the birth or placement event. An associate may use FMLA unpaid leave prior to the birth, if qualified under FMLA. However, use of FMLA unpaid leave in these cases will affect how much PPL an associate can receive after the birth event. An associate may request to use annual leave or sick leave through their supervisor without invoking FMLA.

6. Can PPL be used for recovery following childbirth?

PPL may be used during periods of recovery from childbirth as long as the associate maintains a continuing parental role with respect to a newly born child. The interim regulations state that PPL continues to be available only as long as the associate has a continuing parental role with respect to the newly born or placed child. Therefore, PPL may not be used exclusively for the purposes of recovery from childbirth. For example, in cases where an associate serves as a surrogate, the associate would not be eligible for PPL.

7. Are associates required to use all available sick and annual leave before using PPL?

No, associates are not required to use their sick or annual leave, prior to using PPL.

8. Are associates required to use PPL immediately following the birth or placement event?

No, associates may invoke their FMLA leave, with the substitution of PPL, at any time during the 12-month period following the birth/placement event, in accordance with applicable rules and regulations. For example, an associate may use their sick leave for their recovery from childbirth prior to invoking FMLA and substituting PPL.

9. Can associates use PPL intermittently?

The regulations allow for the use of PPL intermittently when both the supervisor and the associate agree to intermittent use.

10. Are the total number of weeks for PPL reduced for RPT and INT associates? Example: Are the 12 weeks reduced to 6 weeks or less for RPT and INT associates.

No, if a RPT or INT associate is eligible for FMLA and would like to use PPL they may use up to 12 weeks of PPL. The amount of PPL hours that can be used is equal to what the associate would normally be scheduled.

11. What if an associate has multiple birth and/or placement events?

If an associate 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 associate 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 associate, 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.

12. Can a request for PPL be denied?

No, PPL is an entitlement. As long as all of the requirements contained in 5 CFR, part 630, are met, an associate's invocation of FMLA and substitution of PPL cannot be denied.

13. What are associates required to provide before using PPL?

Associates must sign a written work obligation agreement (Exchange Form 1400-002) stating that they will work for the Exchange for not less than 12 weeks, prior to the use of PPL. An email, text or verbal agreement is not acceptable in place of the associate's signature; the work obligation agreement MUST be signed by the associate. Additionally, associates should submit a written request (Exchange Form 1400-002) detailing their anticipated use of PPL.

Associates must also provide legal documentation regarding the date of birth and/or placement events prior to the processing of the authorized PPL.

14. Are associates automatically authorized 12-weeks of paid leave under the Federal Paid Leave Act?

No, any FMLA leave for purposes other than the birth or placement of the child during a 12-month period may reduce the FMLA leave available. In this case, it would also reduce the amount of available PPL, since the substitution of PPL requires the use of FMLA leave.

15. When does PPL conclude?

The date PPL concludes is either:

- The workday on which the associate finishes using 12 administrative workweeks of PPL during the PPL eligibility period (the 12 months after the birth or placement).

- Or, if the associate does not use the entire 12 administrative workweeks of PPL during the PPL eligibility period, the day that is the last workday on which the associate used PPL.

16. What time counts toward the service obligation?

Only time that an associate is in duty status counts toward completion of the 12-week work obligation. That means that the following periods *do not* count toward completion of the work obligation:

- Paid or unpaid leave
- Time off (including holiday time off)
- Other non-duty status, such as furlough or absence without leave
- Any periods of work between intermittent uses of PPL (because work time does not count toward the work obligation until the use of PPL has concluded)

The PPL regulation does not prevent associates from using paid or unpaid leave during the period the associate is completing the service obligation, if it is requested and approved. That leave just will not count toward completion of the 12-week service obligation. This means that the associate may use annual leave after PPL concludes, but that use of leave will push the service obligation completion date out by the same amount of annual leave used.

17. What if the associate fails to complete the service obligation?

If the associate fails to return for the required 12 weeks of work after PPL concludes, the Exchange may recover from the associate the total amount of the Exchange contributions paid on the associate's behalf to maintain health insurance coverage during the period(s) when PPL was used. An associate who separates from the agency before completing the required 12 weeks of work is considered to have failed to complete the service obligation.

18. What if the associate is not enrolled in the Exchange's Group Health Insurance?

There is no authority to seek reimbursement if the associate is not enrolled in the Group Health Insurance. For example, if the associate is instead covered by their spouse's health insurance program, there would be nothing to recover from the associate if the service obligation is not completed.

Examples:

Eligibility

Example 1. An associate gives birth to a baby on 3 October 2020 and is a full-time associate with two years of service. They are eligible for FMLA leave. They are immediately eligible for PPL and may substitute FMLA unpaid leave for PPL.

Example 2. An associate gives birth to a baby on 28 September 2020 and is a full-time associate with two years of service. They are eligible for FMLA leave. However, they are not eligible for PPL because the qualifying event (the birth) occurred prior to 1 October 2020. None of their FMLA unpaid leave based on the birth may be substituted with PPL.

Example 3. An associate gives birth to a baby on 3 October 2020 and is a full-time associate with 11 months of service. On 3 November 2020, the associate completes 12 months of federal service and becomes eligible for FMLA leave. When FMLA leave eligibility is established on 3

November 2020, the associate becomes eligible for PPL and may substitute PPL for unpaid leave used on or after 3 November 2020.

Leave Entitlement

Example 1. An associate has not previously invoked FMLA. On 12 October 2020, their qualifying birth event occurs. They invoke FMLA unpaid leave on 12 October 2020 and substitute PPL on the same date. In this example, the FMLA period is from 12 October 2020 – 11 October 2021. The one-year period based on the birth/placement event is also from 12 October 2020 – 11 October 2021. The associate would be entitled to substitute 12 weeks of PPL during this period.

Example 2. An associate has not previously invoked FMLA. On 12 October 2020, their qualifying birth event occurs. The associate takes six weeks of sick leave for their recovery from childbirth. They do not invoke FMLA during this time since it is not necessary to do so. The associate invokes FMLA leave on 23 November 2020 and substitutes PPL, starting on the same date. In this example, the FMLA period is from 23 November 2020 - 11 October 2021. Even though the associate did not invoke FMLA on the day of the birth event, the FMLA period must end 12 months after the birth event. The associate would be entitled to substitute 12 weeks of PPL between 23 November 2020 – 11 October 2021.

Example 3. An associate invoked FMLA to care for a sick family member on 20 April 2020 and used 2 weeks of FMLA leave. On 12 October 2020, their qualifying birth event occurs. On 12 October 2020, they invoke FMLA unpaid leave based on the birth of their child and substitute 10 weeks of PPL. In this example, FMLA leave and the substitution of PPL is limited to 10 weeks, since the associate already used 2 weeks of FMLA leave, and they may not exceed a total of 12 weeks of FMLA leave during the FMLA period. The FMLA period is from 20 April 2020 – 19 April 2021. The one-year period based on the birth/placement event is from 12 October 2020 – 11 October 2021. On 20 April 2021, a new FMLA period begins and the associate may invoke FMLA and substitute 2 weeks of PPL for FMLA leave at this point, since they have 2 additional weeks of PPL still available. The remaining PPL must be used from 20 April 2021 – 11 October 2021.

Example 4. An associate has not previously invoked FMLA. On 12 October 2020, their qualifying birth event occurs. The associate immediately invokes FMLA unpaid leave on 12 October 2020, and substitutes PPL on the same date. The associate substitutes 12 weeks of PPL for FMLA leave. The associate's FMLA period and the one-year period based on the birth/placement event is from 12 October 2020 – 11 October 2021. On 23 August 2021, the associate adopts a child. Since the date of the placement is within the one-year period based on the previous birth, and the associate has already utilized 12 weeks of PPL, the associate would not have any PPL or FMLA leave available for use. On 12 October 2021, the associate may invoke FMLA based on the placement event and the new FMLA period begins. The associate may then substitute 12 weeks of PPL for 12 weeks of FMLA leave. The PPL must be used during the new FMLA period from 12 October 2021 – 22 August 2022.

Example 5. An associate adopts an infant from China. She travels to China in mid-November 2020 for the pre-adoption process. The adoption paperwork is completed on 1 Dec 2020. The associate is eligible for FMLA and PPL beginning on 1 Dec 2020. FMLA/PPL does not cover pre-adoption activities.

Example 6. An associate began fostering a child on 1 Feb 2020. She later decides to adopt the child she has been fostering and the adoption takes place on 1 Nov 2020. The associate is not eligible for PPL because the adoption on 1 Nov 2020 is not a new placement.

Service Obligation

Example 1. An associate with a Monday - Friday tour of duty starts substituting PPL on the day of her child's birth, Nov. 2, 2020. She uses the 12 weeks all at once and returns to work on Jan. 26, 2021. The associate's PPL use will have concluded on Jan. 22, 2021. The associate will start completing her work obligation on Jan. 26, 2021, when she returns to duty.

Example 2. However, if the associate continues her absence by, say, using annual leave or leave without pay approved by the agency, she will not begin completing her work obligation until she actually returns to duty status.

Example 3. The associate uses one week of FMLA leave for bed rest just prior to the birth and then only has 11 weeks of FMLA leave available. She uses the 11 weeks immediately after the birth, substituting PPL for that time. One week before the end of the PPL-eligibility period, the associate will have one more week of FMLA available. She uses that time, substituting her remaining week of PPL. She would not start completing her work obligation until *after* she uses that final week of PPL. The fact that she has worked more than 12 weeks prior to using that final week of PPL is not relevant. She cannot complete - or even begin to complete - her work obligation *before* she finishes using PPL.