

Breadcrumb

1. [Home](#)
2. Print
3. Pdf
4. Node
5. Entity Print

HRDG 4630 - Absence and Leave - Section F - Subsection d

Last Modified:

Subchapter 4630 - Absence and Leave

Section F - Family and Medical Leave

Subsection d - - Federal Employee Paid Leave Act (FEPLA)

[Return to 4630 Table of Contents](#)

On December 20, 2019, President Trump signed into law a major improvement to the compensation and benefits package for Federal civilian employees as part of the National Defense Authorization Act for Fiscal Year 2020 (Public Law 116-92, December 20, 2019).

Background

The new law amended the Family and Medical Leave Act (FMLA) provisions in Title 5, United States Code, to provide up to 12 weeks of paid parental leave to covered Federal employees in connection with the birth or placement (for adoption or foster care) of a child occurring on or after October 1, 2020. This entitlement is now referred to as the Federal Employee Paid Leave Act (FEPLA).

Beginning on October 1, 2020, FEPLA entitles employees to paid time off due to the birth or placement of a child for adoption or foster care.

The birth or placement of a child with the employee is the event that creates the “parental” role and the ensuing entitlement. FEPLA is substituted for unpaid FMLA leave and is available during the 12-month period following the birth or placement.

Description

For example: An employee is due to give birth on October 1, 2020. Due to prenatal medical concerns, she invokes unpaid FMLA 1 week prior to birth. She substitutes sick leave for 1 week of unpaid FMLA. On October 1, 2020, she gives birth. This event results in her assuming a parental role. She may substitute FEPLA for 11 weeks of paid time off. Once the 12 weeks is used, then the employee has exhausted her FEPLA and FMLA entitlement for this child’s birth. She may not substitute FEPLA for the pre-birth unpaid FMLA leave period.

The use of FEPLA 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 FEPLA for these purposes supports the objective of increased parent-child bonding.

To use FEPLA, employees must:

- Be eligible for FMLA under Title 5,
- Be full-time or part-time,
- Invoke LWOP under FMLA,
- Have a qualifying birth or placement (adoption or foster care) occurring on or after October 1, 2020,
- Have completed at least 12 months of Federal service that is covered under FMLA, and
- Be under an appointment that is more than 1 year in duration.

Eligibility

FEPLA applies to both the mother and the father. Each employee has a separate entitlement to FMLA unpaid leave. If two eligible employees are parents of the same newly born or placed child, then 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 FEPLA for his or her FMLA unpaid leave.)

FEPLA 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.

If an employee is ineligible for FMLA at the time of a qualifying birth or placement, then s/he may establish FMLA leave eligibility during the 12-month period following the qualifying birth or placement and use FEPLA during that period.

Establishing Eligibility

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 FEPLA in connection with a qualifying birth or placement.

This subsection does not apply to:

- Intermittent employees.
- Employees with temporary appointments that are 1 year or less.
- Births, adoption or foster placements occurring prior to October 1, 2020, even if the employee is already on FMLA leave.
- Off-season periods for seasonal employees. (Unpaid FMLA also does not apply during off-season periods for seasonal employees.)
- Adoption of a stepchild or a foster child who has already been a member of the employee's household and has an existing parent-child relationship with the adopting parent(s).

Exclusions

Note: If the employee is not eligible under FMLA at the time of the qualifying event, the employee may establish eligibility during the 12 months following the qualifying event.

FEPLA excludes Sunday premium pay (consistent with the statutory bar in section 624 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105-277, div. A, § 101(h), October 21, 1998).

The Administrator (or his/her designee) has the delegated authority to decide when reimbursement for failure to complete a service agreement (SA) will be required.

Delegations of Authority

This authority is re-delegated to the Human Resources Director. All waiver requests must be submitted to the HR Policy Branch for review prior to submission to the HR Director.

The authority may not be re-delegated any lower.

Note: See section "Mandatory Reimbursement Waiver" for exceptions.

Employees are not required to use annual or sick leave before FEPLA.

**Annual or Sick
Leave Use**

Employees may use annual or sick leave without invoking FMLA in order to preserve their FEPLA entitlement. Such requests for annual or sick leave are treated as any other such leave request.

**Covered Service
Members**

Typically, employees are limited to 12 weeks of FEPLA in any 12-month period for FMLA except that an employee may have up to 26 weeks of FMLA unpaid leave during a single 12-month period to care for a covered service member.

**Intermittent Use
of FEPLA**

FEPLA may be used intermittently. Employees are responsible for clearly indicating the days and hours when FEPLA will be used on an intermittent basis.

**Same Day
Multiple Births
or Placements**

Multiple children born or placed on the same day with the employee is considered a single event that triggers a single entitlement of up to 12 weeks of FEPLA.

**Separate Births
or Placements**

A separate placement or birth occurring during the same 12-month period, entitles an employee to a second 12-month period of FEPLA. The second 12-month period of eligibility starts with the date of the second birth or placement. Each event creates a new 12-week entitlement.

However, when 12-month periods overlap, any use of FEPLA during the overlap will count against each affected 12-month period's 12-week limit.

**FMLA Used for
Other Reasons**

If an employee uses FMLA for other purposes (e.g., serious illness of the employee and/or qualifying family member) during the same twelve-month period then this may reduce the FMLA leave available for birth or placement purposes. This means that the amount of available FEPLA for birth or placement may also be reduced.

Carryover Provisions

There are no carryover provisions for any unused FEPLA. FEPLA may only be used during the 12-month period following the birth or placement.

An employee may not be paid for unused or expired FEPLA.

A regular full-time employee is entitled to 480 hours (12 weeks x 40 hours).

Calculation

A part-time employee who works 20 hours per week is entitled to 240 hours (12 weeks x 20 hours).

FEPLA is not counted against holidays or other non-workdays that an employee would be excused from duty.

The supervisor may request supporting documentation that shows that the employee's use of FEPLA is directly connected to a birth or placement that has occurred on or after October 1, 2020. Requested documentation must be provided within 15 calendar days of the request. If it is not practicable for an employee to respond within the 15-day time frame, despite the employee's diligent, good faith efforts, the employee must provide the documentation or certification within a reasonable period of time, but no later than 30 calendar days after the date of the supervisor's original request.

At this time, DOL Form WH-380 is not used for this purpose. Employees are to provide the requested documentation, including completing the FEPLA Request Template and the SA Template, to the supervisor.

If supervisory requested documentation or certification is not timely submitted, the supervisor may invalidate the FEPLA and convert the employee to an appropriate non-pay status, which would result in a salary overpayment debt owed to the agency. An employee may request that the debt be eliminated by applying annual leave or other appropriate types of paid time off to the employee's credit to the affected periods of time. If the supervisor determines that an employee fraudulently claimed an entitlement to FEPLA, the supervisor may contact the servicing Labor and Employee Relations staff and pursue an appropriate disciplinary action, up to and including removal from the Federal service.

The regulations (5CFR 630.1703[h]) do not provide an exhaustive list but rather provide that a supervisor is responsible for determining what documentation is sufficient proof of entitlement. Additional examples of documentation that a supervisor 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.

Required Documentation

This list is not exhaustive and is provided only to assist supervisors in determining which documentation they may ultimately request.

Childbirth

FEPLA Request Template

The following template may be used when requesting FEPLA. If an employee chooses not to use the template, then all of the requested information must be included in any written or electronic request.

Federal Employee Paid Leave Act (FEPLA) Request Template (140.63 KB)

If during a FEPLA eligibility period an employee is physically or mentally incapable of making a FEPLA election, then s/he may do so retroactively and apply FEPLA to any eligible period of unpaid FMLA. The supervisor must determine that the employee was eligible and could have entered into a service agreement but was unable to do so because s/he was physically or mentally incapable of doing so.

Employee Incapacitation

An employee's personal representative may, on the employee's behalf, request FEPLA for unpaid FMLA due to approved FMLA leave for birth or the placement of a child (adoption/foster care). If the supervisor finds it acceptable, then s/he may provide conditional approval of FEPLA on a prospective basis. Within 5 workdays after returning to work, the employee would be required to enter into a written agreement to either fulfill a service agreement or pay the reimbursement, if applicable. If an employee does not agree to enter into a written service agreement, then any used FEPLA will be cancelled and designated as invalid. The employee's absence must then be converted into an unpaid absence, e.g., leave without pay (LWOP). The employee may request to substitute appropriate paid leave or other earned time off for the LWOP. If the employee elects not to use paid time off for the LWOP period, then the LWOP period represents a debt owed to which debt collection procedures apply.

To use FEPLA, employees must sign (in writing/electronically) a 12-week service agreement (SA) **PRIOR** to the start of the leave.

The SA is fulfilled by working for 12 weeks **once the use of FEPLA time off ends**. The first day after FEPLA ends, is either:

- The workday on which an employee finishes using the 12 workweeks of FEPLA; or
- If the employee uses less than 12 workweeks of FEPLA during the 12-month period following the birth or placement, the last workday on which the employee used FEPLA in connection with the given child.

Service Agreement (SA)

To fulfill the SA an employee must be in a duty status. Any periods of paid or unpaid leave, time off, or other periods of nonduty status (e.g., furlough, AWOL) do not count towards the completion of the 12-week SA obligation.

The 12-week work obligation is in law and applies regardless of the actual amount of FEPLA used (i.e., an employee who uses less than 12 weeks of FEPLA is still obligated to work 12 weeks).

Any periods of work between intermittent uses of FEPLA do not count toward completion of the 12-week work obligation. The SA is fulfilled by performing work after the use of FEPLA concludes.

SAs must indicate that a failure to complete the work obligation may result in the employee being required to reimburse MRP for the cost of health insurance.

NOTE: The signed SA must be sent to HRO to be placed on the left side of the employee's eOPF.

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SA Template

The template below may be used for FEPLA.

[FEPLA 12 Week Service Agreement](#) (100.72 KB)

Note: Employee's FEPLA request must be attached to this work obligation agreement.

Reimbursement may be required if an employee fails to complete the FEPLA 12-week SA work obligation. Reimbursement is equal to the total amount of Government contribution paid to maintain the employee's health insurance coverage under the Federal Employees Health Benefits Program during the period of time that FEPLA was used.

Health Insurance Reimbursement & Documentation

If a Program determines that a reimbursement is required, it must be for the full amount. There is no authority for a partial waiver of the amount owed.

Prior to deciding whether to require payment OR waive it, Programs may require supporting documentation from a health care 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.

Mandatory Reimbursement Waiver	<p>Programs may not require reimbursement for health insurance costs if they determine 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 FEPLA. In the case of the employee's serious health condition or the newly born/placed child, the waiver only applies if the condition is related to the applicable birth or placement; or any other circumstance beyond the employee's control.</p>
Unused FELPA	<p>Unused FEPLA may not be carried over or paid out even if the employee leaves Federal service.</p>
Leaving MRP	<p>An employee who leaves MRP to work in another USDA mission area/ agency or leaves the Department takes his/her FELPA 12-week entitlement with them including any partial amounts. FEPLA applies on a per employee basis regardless of employee movement between agencies or departments.</p>

Beginning pay period 20, 2020, WebTA codes will be available for use.

In addition to providing the required documentation an employee must invoke their FEPLA entitlement in WebTA using the following steps:

Step Do What?

- 1 Click Leave Requests on the Employee main menu.
- 2 Click Add Leave Request.
- 3 Select the leave type from the Leave Type drop-down list located at the top of the page.
- 4 Click the Start Date and then click the End Date.
- 5 Enter in your Start Time, Stop Time and Daily Hours.
Click to specify a reason listed under the Sick Leave Purpose section of the form. If you click Other, type the
- 6 accompanying reason in the Submitter Remarks text box.
- 7 To invoke FMLA, click the check box next to “I hereby invoke my entitlement to Family and Medical Leave Act for” and then select one of the options below the check box: Birth/Adoption/Foster Case.

WebTA Coding

Note: When you add FEPLA, you must click the check box next to “I hereby invoke my entitlement to Family and Medical leave for ...” Do this only for the initial request, do not click the check box for subsequent requests.

Note: FEPLA is not counted against holidays or other non-workdays that an employee would be excused from duty.

Beginning pay period 20, 2020, WebTA codes are available for use.

TRANSACTION CODE PREFIX DESCRIPTION

62	70	Biological birth
62	71	Placement for adoption
62	72	Placement for foster care

FEPLA Examples These [examples](#) (92 KB) are provided to illustrate how FEPLA applies in various scenarios.

Records Coming Soon

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