

Frequently Asked Questions

Paid Parental Leave (PPL) under Family and Medical Leave Act (FMLA)

1. When can I use PPL?

On or after October 1, 2020. The amendments to 5 U.S.C. 6382 regarding PPL are not effective before October 1, 2020. Thus, by law, paid parental leave is available to covered employees only in connection with the birth or placement of a child that occurs on or after October 1, 2020.

2. Who is eligible to use PPL?

An employee is eligible for PPL only if he or she is a covered “employee” under the definition in 5 U.S.C. 6381(1)(A) and has completed at least 12 months of service. The definition of “employee” excludes individuals employed on a temporary or intermittent basis.

3. Is PPL different from or in addition to FMLA?

FMLA was amended to include PPL which allows the substitution of up to 12 weeks of PPL for FMLA unpaid leave granted in connection with the birth of an employee’s child or the placement of a child with an employee for adoption or foster care.

4. If both parents are CBP federal employees, are both parents entitled to PPL?

Yes, two parents of the same child who are spouses and who are employed by the same employer are entitled to a separate 12-workweek entitlement.

5. May I take PPL intermittently, for example, take two weeks of PPL then come back to work for 4 weeks, then take the remaining 10 weeks?

PPL may not be taken intermittently unless the employee and supervisor otherwise agree. The purpose of PPL is for the care and bonding of a parent and child with the intent to have the time be continuous. If there is a need to take PPL intermittently, the reasons should be documented with a description for how it is to be used on an intermittent basis (see sample leave request form for more information).

6. Is there a time limit to use this entitlement to 12 weeks of PPL?

Yes, an employee has to use it within 12 months of the birth or placement or it expires and conveys no benefit (that is, employees do not get paid for unused PPL). PPL may be used no later than the end of the 12-month period beginning on the date of the birth or placement involved. At the end of that 12-month period, any unused balance of PPL granted in connection with the given birth or placement permanently expires and is not available for future use. No payment may be made for unused PPL or PPL that has expired. PPL is not considered to be annual leave and thus may not be included in a lump-sum payment for annual leave following separation.

7. Is there an obligation to return to work after receiving 12 weeks of PPL?

Yes, there is a service commitment of 12 weeks after the employee returns to work. Under the law, an employee may not use any PPL unless the employee agrees in writing, before commencement of the leave, to subsequently work for the applicable employing agency for at least 12 weeks. This 12-week work obligation is triggered once the employee’s PPL concludes.

The work obligation is statutorily fixed at 12 weeks regardless of the amount of leave used by an employee.

8. What if the employee is unable to return to work after the 12 weeks of PPL concludes?

CBP must waive the work obligation if an employee is unable to return to work because of the continuation, recurrence, or onset of a serious health condition (including mental health) of the employee or the newly born or placed child—but only if the condition is related to the applicable birth or placement.

9. What if the employee chooses not to return to work after the 12 weeks of PPL?

If an employee fails to return to work for the required 12 weeks, CBP may recover from the employee the total amount of Government contributions paid by CBP on behalf of the employee to maintain the employee's health insurance coverage during the period of PPL. This reimbursement provision may not be applied if the employee is unable to return to work based on the onset of a serious health condition. Also, this provision may not be applied if the employee fails to meet the 12-week work obligation for any other circumstance beyond the employee's control.

10. What if the employee doesn't complete the work obligation because he/she must move due to his/her spouse unexpectedly being transferred to a job location on the other side of the country?

If CBP determines the employee is unable to return to work for the required 12 weeks because of circumstances beyond his/her control, it may not impose the reimbursement requirement. For example, the regulations state that an employee needing to move because his or her spouse is unexpectedly transferred to a job location more than 75 miles from the employee's worksite would be considered circumstances beyond the employee's control.

11. Can an employee still use FMLA for other issues such as a serious health condition?

Yes, employees will still be able to use FMLA unpaid leave for certain purposes related to an anticipated future birth or placement, a serious health condition for themselves or a family member (as defined by FMLA regulations) and still be able to substitute annual or sick leave (as appropriate) for such unpaid FMLA leave. The total amount of FMLA that can be used in a 12-month period is 12 weeks including PPL.

12. Can temporary or intermittent employees use PPL?

No. Only permanent employees (full time and part time) are eligible for FMLA.

13. Can I use PPL for adopting a stepchild or a child that has already been living with the foster parent?

No. The new definition of *placement* refers to a *new* placement. Thus, the term excludes the 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 an adopting parent. If a foster child is later adopted, the placement has already occurred; there is no new placement with a family that would warrant the use of PPL leave for the same child.

14. How much PPL would an employee be able to use if they used five weeks of FMLA for a serious health condition prior to giving birth?

It can be complicated! Your Mission Support Specialist or LER Specialist can help you with your particular situation. As an example, since the employee used five weeks of FMLA, they can use seven weeks of paid leave during the 12-month timeframe from when they first started to use FMLA for the serious health condition. Once that 12-month period concludes, they can use their additional five weeks of PPL for the birth or placement of a child.

For example, after not using FMLA leave for at least 12 months, an employee uses a type of FMLA leave for a serious health condition on June 1, 2021, triggering the commencement of a 12-month FMLA period. The total amount of FMLA unpaid leave used during the period from June 1, 2021 through May 31, 2022 may not exceed 12 weeks. The employee uses five weeks of FMLA unpaid leave in June and July of 2021. Then the employee has a child born on October 15, 2021. Because of the 12-week limit, the employee would be able to use no more than seven additional weeks of FMLA unpaid leave before the end of the 12-month FMLA period expiring on May 31, 2022. On October 15, 2021, the employee invokes FMLA leave based on the birth of, and need to care for, the new child, and uses seven weeks of FMLA unpaid leave during the October-December 2021 period. However, when the 12-month FMLA period ends on May 31, 2022, the employee may start a new 12-month entitlement to FMLA unpaid leave to care for the child. If the employee invokes FMLA leave in order to care for the child starting on June 1, 2022, a new 12-month FMLA period would begin at that time. However, the entitlement to FMLA unpaid leave based on the birth of a child ends 12 months after the date of birth; therefore, the employee would have the period from June 1, 2022, through October 14, 2022, to use up to 12 weeks of additional FMLA leave. Since the 12-month period after birth or placement includes parts of two 12-month FMLA periods, the employee could have more than 12 weeks of FMLA unpaid leave. However, only 12 weeks of PPL could be substituted in connection with this particular birth or placement during the 12-month period that begins on the date of the child's birth or placement.

15. How would an employee invoke their right to PPL at the right time since the law is based upon the actual birth or placement date which in many cases, is not known at the time they invoke their right to use PPL?

The law anticipates that PPL would be provided on a *prospective* basis after an employee requests to use the leave and enters into a work obligation agreement. All information can be updated once it is known, and the PPL can be given conditionally until the documentation and information is provided.

16. Can PPL be used prior to the birth or placement?

No. PPL can only be used after the birth or placement. This restriction applies even if an employee used FMLA unpaid leave for birth or placement purposes prior to the birth or placement event.

17. Does the employee have to provide any documentation in order to be approved to use PPL?

Yes. An employee must provide CBP with appropriate documentation it deems necessary to establish that the employee's use of PPL is directly connected to a birth or placement.

Appropriate documentation could include, but is not limited to, a birth certificate or a document from an adoption or foster care agency regarding the placement. Also, an agency may require that an employee sign a certification attesting that the PPL is being taken in connection with a birth or placement that has occurred. The employee may also be required to attest that the PPL is being used for appropriate purposes, such as the birth mother's recovery from giving birth or to care for the child. This employee certification may contain a statement in which the employee acknowledges an understanding of the consequences of engaging in fraud by providing a false certification.

18. What if the employee is having trouble getting documentation? How long does an employee have to provide the documentation?

Usually, about 15 days. The effective date of an employee's election of PPL may not be delayed because an employee has not provided requested certifications. However, the granting of PPL will be considered conditional, subject to the employee providing documentation or certification within required time frames. The required time frame is usually 15 calendar days from the date the supervisor requests documentation. 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. If the requested documentation or certification is not submitted in a timely manner, the agency may invalidate the PPL and convert the employee to an appropriate non-pay status, which would result in a salary overpayment debt owed to CBP. 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.

19. Is my pay affected while on PPL?

The pay an employee receives when using PPL shall be the same pay the employee would receive if the employee were using annual leave. In other words, payroll systems will apply the same rules they apply in determining what pay continues during annual leave. PPL is a type of leave that is counted in applying the 8-hour rule in 5 U.S.C. § 5545(a) and 5 C.F.R. § 550.122(b) that determines whether night pay is payable during periods of leave. This is consistent with the treatment of annual leave.

20. Will an employee receive Sunday premium pay while on PPL?

No. Pay received during PPL may not include Sunday premium pay, consistent with the statutory bar in section 624 of the Treasury and General Government Appropriations Act, 1999.

21. Is there a return to work obligation after PPL concludes?

Yes, there is a 12-week service commitment. An employee may not use PPL unless the employee agrees (in writing), before the start of PPL, to work for CBP for 12 weeks beginning on the first scheduled workday after such leave concludes. This means that PPL may not be provided to an employee unless the employee enters into such an agreement. To satisfy the work obligation, the employee must complete 12 weeks of work regardless of how much leave he or she takes before satisfying the obligation. CBP has created an agreement to complete the 12-week work obligation template that can be used by employees when requesting PPL.

22. What if an employee has multiple children at the same time?

If an employee has multiple children born or placed on the same day, that event will be treated as a single event triggering a single entitlement of up to 12 weeks of PPL during the 12-month period following the event. 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, each subsequent birth or placement event will result in a 12-month period commencing on the date of birth or placement with its own 12-week limit. Any use of PPL during a given 12-month period will count toward that period's 12-week limit. Thus, when such 12-month periods overlap, any use of PPL during the overlap will count toward each affected 12-month period's 12-week limit.

23. What happens if an employee transfers to another agency while using PPL?

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