

**STATE OF OHIO
ADJUTANT GENERAL'S DEPARTMENT
2825 West Dublin Granville Road
Columbus, Ohio 43235-2789**

NGOH-HRZ

1 October 2020

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: HRO Policy # 20-030, Interim Federal Employee Paid Leave Act (FEPLA) Policy

1. References:

- a. 5 USC 6382, Leave Requirement.
- b. 5 CFR part 630, subparts L (Family and Medical Leave) and Q (Paid Parental Leave).
- c. 5 CFR 630.1705, Work Obligation.
- d. 5 CFR 630.1703, Leave Entitlement.
- e. 5 USC Chapter 89, Health Insurance.
- f. 5 CFR 353.208, Use of paid time off during military service.

2. Background. The Office of Personal Management (OPM) issued interim guidance to inform Federal Departments and The Adjutant General's Department of Ohio of the forthcoming guidance on the Federal Employee Paid Leave Act (FEPLA) signed into law in the National Defense Authorization Act of 2020. The law applies to leave taken in connection with the birth, adoption, or foster care placement of a child, occurring on or after **October 1, 2020**, for employees covered by the Family and Medical Leave Act provision applicable to Federal civilian employees.

3. Applicability. This policy applies to all Ohio Army and Air National Guard Title 32 Technicians and Title 5 National Guard (NG) Employees, hereafter referred to as employees.

4. Policy. All Ohio National Guard (OHNG) commanders and supervisors shall comply with and ensure adherence to the requirements and procedures set forth in this policy. Supervisors and commanders must consult the Human Resources Office (HRO) on FEPLA requests in order to receive approval.

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5. Employee Eligibility. The employee must meet all of the following FMLA eligibility requirements in order to use the FEPLA:

a. The employee completed at least 12 months of Federal service that is covered under the Title 5 FMLA provisions.

b. The employee has a part-time or full-time work schedule (employees with intermittent work schedules are ineligible); and

c. The employee has an appointment of more than 1 year in duration (employees with temporary appointments NTE 1 Year are ineligible).

d. The employee must have a qualifying birth or placement event. The birth or placement (for adoption or foster care) of the employee's child must occur on or after October 1, 2020. (This is a statutory requirement established by section 7602(c) of Public Law 116-92).

e. An employee who is ineligible for the FMLA leave at the time of a qualifying birth or placement may establish FMLA leave eligibility during the 12-month period following the qualifying birth or placement and use paid parental leave during that period. For example, an employee may become eligible for FMLA leave by completing the required 12 months of service or by changing to a qualifying work schedule or appointment. Once the employee establishes FMLA leave eligibility, and invokes FMLA leave, then an employee may be able to substitute paid parental leave in connection with a qualifying birth or placement

6. Leave Entitlement and Usage. An employee must invoke FMLA unpaid leave using Enclosure 4 for the birth of a child or placement of a child with the employee for adoption or foster care in order to receive the paid parental leave. The agency is not responsible for costs incurred in the completion of FMLA requests. The employee must also complete the FEPLA request form (Enclosure 1).

a. Paid parental leave is limited to 12 weeks in connection with the birth or placement of an employee's child.

b. Paid parental leave is provided via substitution for FMLA unpaid leave. The FMLA unpaid leave is provided under the normal FMLA rules. For example:

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(1) The FMLA unpaid leave is limited to 12 weeks in any 12 month FMLA period, except that an employee may have up to 26 weeks of FMLA unpaid leave during a single 12 month period in order to provide care for a covered service member.

(2) In the case of FMLA unpaid leave based on the birth or placement of a child, an employee may not use the FMLA leave intermittently unless the employee receives prior approval from HRO.

(3) Use of FMLA leave for purposes other than birth or placement of a child (e.g., leave based on a serious health condition) during a 12-month FMLA period may reduce the FMLA leave available for birth or placement purposes. (Note: To the extent that the amount of FMLA leave available for birth or placement is reduced, the amount of available paid parental leave also may be reduced.)

(4) Each Federal employee has a separate entitlement to FMLA unpaid leave. If two covered Federal employees are parents of the same newly born or placed child, each employee would have a separate FMLA leave entitlement based on the birth/placement event. (Likewise, each employee-parent would have a separate entitlement to substitute paid parental leave for his or her FMLA unpaid leave).

c. Paid Parental leave may only be used during the 12 month period following the birth or placement. There is not a carryover provision of any unused paid parental leave. An employee may also not be paid for any unused or expired FEPLA paid parental leave.

d. The 12 week paid parental leave entitlement will be converted to hours (including fractions of hours) based on the employee's scheduled tour of duty. For example, for a permanent full-time employee, the entitlement is 480 hours (12 weeks x 40 hours) and for a permanent part-time employee, the entitlement will be 240 hours (12 weeks x 20 hours).

e. Paid Parental leave 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. The use of paid parental leave is reserved for periods when an employee is acting in a parental role and engaged in activities directly related to the care of the child whose birth or placement triggered the leave entitlement. Using paid parental leave for these purposes supports the objective of increased parent-child bonding.

f. Employees are not required to use annual leave or sick leave before requesting paid parental leave.

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g. Paid parental leave cannot be used prior to the birth or placement of the child. The employee may use FMLA unpaid leave for medical-related issues prior to the birth or placement but may not use the FEPLA prior to the birth or placement.

h. HRO will require employees to provide documentation showing the employee's use of the paid parental leave is directly connected to a birth or placement of a child. See Enclosure 3 for examples of supporting documentation for the FEPLA.

i. Employees may not use FEPLA while absent from work to perform military service.

7. Work Obligation. Employees requesting FEPLA paid parental leave must enter into a written service agreement with The Adjutant General's Department – Ohio, and agree to work for 12 weeks **after** the day on which the paid parental leave concludes. The service agreement is in Enclosure 2. The day on which paid parental leave concludes is the workday on which the employee finishes using the 12 work weeks of paid parental leave; or, if the employee uses less than 12 work weeks of paid parental leave during the 12 month period following the birth or placement, the last work day on which the employee uses the paid parental leave in connection with the given child.

a. Any periods of work between intermittent use of the FEPLA do not count towards the completion of the 12 week work obligation. The work obligation is met by performing work after the use of the FEPLA concludes.

b. The 12 week work obligation is statutorily fixed and applies regardless of the actual amount of leave used. The employee is still obligated to work 12 weeks if the employee uses less than 12 weeks of the FEPLA.

c. The work obligation refers to a period during which the employee is in a duty status. Any periods of paid or unpaid leave or time off, or other periods of non-duty status will not count toward the 12 week work obligation.

d. The service agreement will note the possible need to provide reimbursement to the agency if an employee fails to meet the required work obligation; however, that reimbursement requirement cannot be applied in certain circumstances and HRO may choose to not apply it in other circumstances.

8. Reimbursement of Agency Costs for Health Insurance. Failure to complete the 12 week work obligation may result in a debt to the employee which requires reimbursement to The Adjutant General's Department of Ohio. This determination to impose the reimbursement is at the HRO's sole and exclusive discretion, unless a waiver is required by the statute and regulation.

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a. The reimbursement is equal to the total amount of any Government contribution the agency paid to maintain the employee's health insurance coverage under the Federal Employees Health Benefits Program during the period that paid parental leave was used. HRO will seek collection of the full amount if it is determined that reimbursement must be made. There is no authority for a partial waiver of the amount owed.

b. The HRO may not require the reimbursement (i.e., mandatory waiver) if it is determined that the employee is unable to return to work for the required 12 weeks because of the continuation, recurrence, or onset of a serious health condition (including mental health) of the employee or the child whose birth or placement was the basis for the paid parental leave; but, in the case of the employee's serious health condition, only if the condition is related to the applicable birth or placement; or any other circumstance beyond the employee's control.

c. HRO may require supporting certification by a healthcare provider before making a determination regarding whether to impose or waive the reimbursement 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.

9. Employee Transfer. If an employee transfers between agencies while using the paid parental leave in connection with a birth or placement then the work obligation will be owed to the agency employing the employee at the time the use of the paid parental leave concludes. The HRO will document whether the employee fulfills the work obligation. Each agency that incurs costs for the employee's health insurance during the use of paid parental leave will make its own determination about whether to apply the reimbursement requirement.

10. Multiple Birth/Placement Events. If an employee has multiple children born or placed on the same day, the multiple-child birth/placement event is considered a single event that initiates a single entitlement of up to 12 weeks of the FEPLA.

a. 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, each event will generate a 12 week leave entitlement to be used during the 12 month period following the birth/placement; however, any use of the paid parental leave during an overlap period will count towards the 12 week limit for each birth/placement involved.

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b. The use of the FEPLA 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.

11. Requirements and Procedures: Employees requesting the FEPLA will complete and submit FMLA paperwork along with the paid parental leave request, work obligation agreement, and correct supporting documentation. The employee will send these documents through the employee's supervisor to the HRO for processing. HRO will provide the employee and supervisor with an approval memorandum that describes the approved timeframes for FEPLA use and any additional administrative requirements.

12. Automated Time Attendance and Production System (ATAAPS). The Defense Finance and Accounting Service (DFAS) will produce specific leave codes for FEPLA. Employees will code their FEPLA time as "LV" in the ATAAPS system in the interim period when specific leave codes are unavailable. The employee and supervisor will complete timecards correctly and will submit the correct information to the USP&FO Technician Pay office for Army National Guard (ARNG) employees and the Customer Service Representatives of the servicing Air National Guard (ANG) wings for ANG employees.

a. Supervisors of ARNG employees will upload the HRO approval memorandum to the USP&FO Technician Pay document repository as a substantiating document for the use of FEPLA paid parental leave.

b. Supervisors of ANG employees will send the HRO approval memorandum to the applicable Wing CSR to retain as a substantiating document for the use of FEPLA paid parental leave.

13. The POC for this policy is Mrs. Brittany Melton, Benefits Branch Supervisor, at 614-336-7438, or brittany.c.melton2.civ@mail.mil.



JOSEPH F. LOGAN
Col, OHANG
Director of Human Resources

4 Encls:

1. Request for FEPLA Leave
2. Work Obligation Agreement
3. Examples of Supporting Documentation
4. FMLA Request Form

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