

DOJ GEN ANALYSIS OF PROPOSED PAID PARENTAL LEAVE REGULATIONS

We have some good news to report about the paid parental leave law, which will go into effect on Oct. 1. In March, we alerted you to two limitations that OPM, which is tasked with implementing the law, had floated—capping the amount of paid leave at 12 weeks per “given child,” meaning a set of parents who are both federal employees could only take a combined 12 weeks after they have or adopt a child; and imposing limitations on foster parents’ use of paid leave. We’re happy to report that neither limitation is in the interim final rule that OPM is publishing in the Federal Register today. You can read it here: <https://s3.amazonaws.com/public-inspection.federalregister.gov/2020-14832.pdf>.

The public will now have 30 days to offer comments on the regulation. Here are some key points the rule includes.

- Federal employees are only eligible for the 12 weeks of paid parental leave if they have:
 - Completed at least 12 months of service anywhere in the federal government at any time, and
 - Agreed *in writing* before starting the leave to return to work for at least 12 weeks after the leave ends, even if they didn’t take the full 12 weeks of leave.
- Paid parental leave may be used at any time during the 12 months *after* the birth or placement of a child; i.e., an employee can’t use it for medical or other reasons before a birth or to handle the logistics of a placement.
- Paid parental leave substitutes the 12 weeks of unpaid FMLA leave to which federal employees are already entitled. That means that if an employee uses six weeks of paid parental leave beginning on the day a child is born, the employee would only have six weeks (or less, under certain circumstances) of unpaid leave left under FMLA for the remainder of the 12-month period (for example, for use due to the employee’s cancer treatment), and vice-versa.
- An employee doesn’t need to exhaust sick or annual leave before using paid parental leave.
- Unlike sick leave, paid parental leave may be used to bond with a child.
- The placement of a child must be new—i.e., the adoption of a stepchild or foster child isn’t covered.
- An agency may recoup the value of health insurance contributions by the agency for the paid parental period (important exceptions apply).
- If an employee has multiple children born or placed at the same time, that’s considered to be a single event that triggers only 12 weeks of paid parental leave.
- OPM is taking this opportunity to create regulations for FMLA leave used to care for servicemembers following a law passed in 2008 that intersects with the paid parental leave law. Note that those caring for servicemembers are capped at 26 weeks of leave, so a person who cared for a servicemember and then welcomed a new child may not be able to take the full amount of paid parental leave.

- Some interesting language:
 - The regulation will “serv[e] as a model for the rest of the country.”
 - “In general, in our society, women have traditionally borne greater responsibility for caring for children and sacrificing work careers.”
 - The regulation “may help change expectations that parents have regarding the role each will play in raising children. It is expected to result in fathers having more involvement in child care, which could provide significant societal benefits, such as stronger marriage and family relationships.” OPM believes that “this benefit may support greater income equality between men and women by reducing the length of interruptions in the woman’s career—by making it easier to have a child and then return to work.” It “may also address women’s declining labor force participation that has been dropping since 2000, which has potential to positively impact the U.S. economy.”
 - “[T]here are surveys and other indications that a family-friendly paid parental leave policy can help make an employer more attractive to job seekers, increase job satisfaction, increase employee morale and engagement, increase the likelihood of a birth mother returning to work, and reduce turnover (i.e., increase retention).”

Please let me know if you have any questions. We’ll be in touch soon with updates about other issues.

Best,
Stacey

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