

DELRS | 2024
Forging the DoD Workforce of the Future

Leave and Attendance Programs
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AGENDA

- Policy(ies) and administrative guidance covering, as well as operational considerations, regarding:
 - Update to Family Medical Leave Act (NDAA FY24, section 1114)
 - Expansion of FMLA eligibility, impact on paid parental leave and parental bereavement leave eligibility
 - Leave Without Pay
 - DoD Instruction 1400.25, vol 630 update
 - Administrative Leave for Voting
 - Parental Bereavement Leave
 - Disabled Veteran Leave
 - Best practices to ensure success in administering the DVL program

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FAMILY AND MEDICAL LEAVE ACT UPDATE

- Fiscal Year 2024 National Defense Authorization Act (NDAA), section 1114
 - Amended Section 6381(1)(B) of title 5, United States Code to include certain "honorable active service" as creditable towards the 12-month service requirement
 - Effective as of date of the signed NDAA (December 22, 2023)
 - Amends eligibility for Family and Medical Leave Act (FMLA) leave, paid parental leave (PPL), and parental bereavement leave (PBL)
 - Certain employees may become immediately eligible for FMLA or PPL based on the statutory change
 - Prospective basis only, not retroactive
 - Does not modify the 12-month PPL use window so employee notification is critical
 - Office of Personnel Management (OPM) memorandum, CPM 2024-05, issued February 13, 2024, "Amendment Related to Inclusion of Certain Military Active Service for Family and Medical Leave and Paid Parental Leave Eligibility for Purposes under Section 1114 of the National Defense Authorization Act for Fiscal Year 2024"
 - Summarizes the changes and provides examples

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FAMILY AND MEDICAL LEAVE ACT UPDATE


- OPM memo CPM 2024-05 highlights:
 - Notify employees with prior certain military active service about their potential eligibility as of December 22, 2023
 - OPM is defining "active service" as according to 10 United States Code (U.S.C.) 101(d)(3)
 - Includes service on active duty or full-time certain National Guard duty
 - Service on active duty includes full-time duty in the active military service, including full-time training duty, annual training duty, and attendance (while active in the military service) at a school designated as a service school; excludes any type of inactive duty (10 U.S.C. 101(d)(1))
 - Full-time National Guard duty is training or other duty (other than inactive) for which a member [of the National Guard] is entitled to pay from the United States (U.S.) or which the member waived pay from the U.S. (10 U.S.C. 101(c)(5))
 - Although the definition of "active duty" in 10 U.S.C. 101(d)(1) excludes full-time National Guard, the definition of "active service" in 10 U.S.C. 101(d)(3) includes it
 - Statutory change covers only certain honorable active service
 - Does not cover active service in the Coast Guard or in the commissioned corps of the Public Health Service

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FAMILY AND MEDICAL LEAVE ACT UPDATE


- Eligibility for FMLA and PPL under title 5, U.S.C., requires:
 - Completed at least 12 months of qualifying Federal service in 5 U.S.C. 6381(1)(B) or 5 CFR 630.1201(b)(1)(ii)(F);
 - Has a part-time or full-time work schedule (intermittent employees ineligible); and
 - Has an appointment of more than 1 year in duration (employees on temporary appointments NTE 1 year are ineligible).
- Impacts eligibility for PBL as eligibility is tied to the definition of "employee" in 5 U.S.C. 6381
 - PBL is NOT part of the FMLA program and is administered separately
- **Before December 22, 2023**, qualifying service is limited to certain civilian service; did not include any military active service
- **On and after December 22, 2023**, qualifying service may be either certain civilian service or certain honorable active-duty service, or a combination thereof
- The statutory change supersedes OPM's FLMA leave regulation at 5 CFR 630.1201(b)(1)(ii) to the extent the regulation does not include military service now qualifying under 5 U.S.C. 6381(1)(B)(ii)

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FAMILY AND MEDICAL LEAVE ACT UPDATE


- **Examples:** (Assumes honorable active service was in the Army, Navy, Air Force, Space Force, or Marine Corps and employee occupies a FMLA leave eligible position as of 12/22/23)
 - Employee A is hired into a federal position on 1/29/24, with no prior federal service but served 8 years in the Marine Corps. At time of hire, Employee A immediately meets the 12-month service requirement for FLMA leave due to previous 8 years of qualifying honorable active service in the Marine Corps.
 - Employee B has 3 months of qualifying federal service as of 10/22/23 (hired 7/22/23) when a family member is diagnosed with a serious health condition. At the time of diagnosis, Employee B did not have enough qualifying service to meet FMLA eligibility but did serve in the Air Force for 4 years prior to the civilian position. As of 12/22/23, they are immediately eligible for FLMA leave to care for the sick family member due to 5 months of qualifying federal service and 4 years of qualifying active service.
 - Employee C served in the Army for 10 months and was medically retired due to a serious medical condition. Employee C is hired 5/22/23 while still undergoing treatment for their serious medical condition. At the time of hire, Employee C is not eligible for FMLA due to not meeting the 12-month qualifying service requirement. As of 12/22/23, Employee C has 7 months of qualifying civilian service and 10 months of Army service to immediately meet the 12-month service requirement for FMLA eligibility.

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FAMILY AND MEDICAL LEAVE ACT UPDATE


- Examples (continued):
 - Employee D served 20 years in the Navy, was hired in a civilian position on 3/20/23, and their baby is born on 9/9/23. At the date of birth, Employee C has < 6 months of civilian service and is not eligible to use FLMA, or substitute PPL, until 3/20/24 (meet 12-months of civilian service). As of 12/22/23, Employee C has 9 months of civilian service plus 20 years of service in the Navy and is immediately eligible to take FMLA leave and substitute PPL. However, the window to use PPL is between 12/22/23 and 9/8/24. There is no statutory provision to extend the 12-month PPL window that began on the date of the birth. Although the employee's eligibility did open up 3 months earlier due to the statutory FMLA change so they have more time to use the PPL (9 months vs. 6 months).
 - Employee E has 5 months of service with the Army National Guard, was hired into a federal position on 8/14/23, and adopted a baby on 11/10/23. At the time of adoption, the employee is not eligible for FMLA, nor to substitute PPL, as not having met the 12-month service requirement (< 3 months of civilian service). As of 12/22/23, the employee is still not eligible for FMLA (4 months of civilian service + 5 months National Guard service = 9 months creditable service). Employee E's eligibility for FMLA does not open until 3/14/24 (7 months of civilian service + 5 months of National Guard service = 12 months FMLA creditable service). The employees PPL window is between 3/14/24 and 11/9/24, the final day of the 12-month period that started with the date of placement.



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FAMILY AND MEDICAL LEAVE ACT REMINDER


- Operational Considerations:
 - FY21 NDAA, Sec 1103 (Public Law 116-283) "Paid Parental Leave Technical Corrections Act of 2020".
 - Effective 1 Jan 21 (does not apply retroactively)
 - Added virtually all types of civilian Federal service (including employment on a temporary or intermittent basis), Non-appropriated fund employment, US Postal Service and Postal Regulatory Commission
 - Employees currently employed on a temporary or intermittent basis remain ineligible
 - Other FMLA/Paid Parental Leave considerations
 - 12-month period begins upon first use of leave for FMLA (LWOP, PPL or substituted paid leave)
 - PPL - No waiver of the 12-week work obligation for employees without FEHB, just no penalty
 - PPL - Agency discretion to allow intermittent use of PPL
 - PPL - Agency must establish process for decision making on recoupment should work obligation not be met, as well as repayment process



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LEAVE WITHOUT PAY


- Temporary nonpaid status and absence from duty granted at employee's request
 - Approval subject to supervisory discretion, except when employee is entitled
- Situations where leave without pay (LWOP) is an entitlement:
 - FMLA
 - Uniformed Services Employment and Reemployment Rights Act of 1994
 - Executive Order (E.O.) 5396 (dated 7/17/30) provides disabled veterans with LWOP for necessary medical treatment
 - While receiving workers' compensation payments from Department of Labor
- DoD does not have a policy about granting of LWOP, except as contained in DoD Instruction 1400.25, volume 1232, Employment of Family Members in Foreign Areas
 - Provides that family members employed overseas and returning to the U.S., Guam, Puerto Rico, or the Virgin Islands are granted an "appropriate period" of LWOP to support continued Federal employment without a break in service.



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LEAVE WITHOUT PAY


- Federal employees are provided with multiple paid leave programs
- Employees in first year of federal service may not always have access or adequate leave balances
 - Not meet eligibility definitions to access or use paid leave
 - Low earning rates compared to high usage rates
- LWOP can support continued employment while allowing employee time to address family or medical needs
 - Mirror paid leave programs to provide a "bridge" until employee is eligible for paid leave
 - Advanced leave or leave donor programs may not include the employee's situation and/or employee may not meet program requirements
 - Mitigate employee's stress by not having to choose between work and family life in emergency or unexpected situations
 - Promote continuity of federal employment for those who may need to relocate



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LEAVE WITHOUT PAY


- Operational Considerations:
- Outside of the mandatory areas, LWOP is discretionary which means managers decisions vary
- Manager must balance needs of the mission against needs of the employee
 - Defined length and intent to return are critical factors
 - Some organizations limit or elevate approval to ensure manning is not jeopardized
 - Full spectrum of responses from managers
- Documenting LWOP
 - IAW GPPA, must document LWOP over 30 days using SF-50
- Best Practice: Employee education on effects of extended LWOP



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DoDI 1400.25, VOLUME 630 UPDATE


- Department policy for administering civilian leave recently reissued
 - Change 3 effective November 21, 2023
- **Administrative Leave for Voting:** Enclosure 3, paragraph 5.c
 - Supervisors are encouraged to grant employees (1) up to 4 hours for each election event the employee participates by voting and (2) up to a maximum of 4 hours per leave year if the employee serves as a poll worker or participate as an observer
 - Includes travel time to and from and time spent at the polling location
 - May be used for either on the established voting day or for early voting
 - Is granted only for the time needed; not granted during a non-workday or during overtime hours
- **Parental Bereavement Leave:** Enclosure 3, paragraph 6
 - Authorized by section 6329d of title 5, U.S.C.
 - Entitles employees to up to 2 workweeks of paid leave for bereavement in connection with the death of the employee's child occurring on or after December 27, 2021
 - Separate from sick leave for bereavement under 5 CFR 630.401(a)(4)
 - While not administered under FMLA, does use the FMLA definitions of "employee" and "son or daughter" to establish eligibility for PBL



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DISABLED VETERAN LEAVE

- Disabled Veteran Leave (DVL) is paid leave that is available to employees with a service-connected disability (30% or more) who are undergoing medical treatment for such disability
 - For employees hired on or after November 5, 2016
- **One-time** credit of 104 hours of DVL for eligible employees, unless offset provision applies
 - For use within a single, continuous 12-month eligibility period beginning on the "first day of employment". If not used, the leave is forfeited.
 - Available sick leave credited to employee or if employee used any hours of "equivalent" disabled veteran leave will reduce amount of DVL (i.e., off-set provision)
- Employee eligibility, 12-month use eligibility period, and DVL requirements are set by law
 - Section 6329, title 5, U.S.C.
 - Part 630, subpart M, title 5, CFR
 - No exception authority if employee does not receive or use the DVL within the 12-month eligibility period




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DISABLED VETERAN LEAVE

- DCPAS frequently received inquiries from employees, supervisors, or HR specialists asking about DVL. Inquiries include:
 - Employees asking how to get DVL credited to their leave account, or they were unaware of DVL availability until after their 12-month eligibility period ends
 - Supervisors asking what type of documents to request from the employee or what is the proper time and attendance code to use
 - HR Specialists asking if there is an exception to extend an employee's eligibility period because the employee did not receive the leave to use it
- Timely communication is key
 - Employees, supervisors, HR staff, timekeepers


Any changes to DVL eligibility and requirements require legislative change



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DISABLED VETERAN LEAVE

- Operational Considerations and Best Practices:
 - Automatic processing when military disability is disclosed in hiring, may require additional documentation during on-boarding
 - Standard literature, templates, and reference materials provided to all employees, including how and where to submit documentation
 - DVL education during on-boarding, return from military service
 - Publishing information on an internal website
 - Annual strategic communication on DVL



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