

Paid Parental Leave Frequently Asked Questions (FAQs) and Examples

Eligibility:

If an employee is eligible for FMLA Leave as a temporary, time-limited, or research grant employee are they eligible for Paid Parental Leave (PPL)?

No. Only employees in FTE positions are eligible for PPL.

If an employee is currently in a temporary, research grant, or time-limited position and gives birth, adopts a child, or fosters a child, and later is hired into an FTE position, is the employee eligible for PPL?

No. To be eligible for PPL, the employee must meet all eligibility requirements at the time of the qualifying event (birth, adoption, or foster care placement).

If an employee is hired into an FTE position and gives birth, adopts a child, or fosters a child prior to their date, is the employee eligible for PPL?

No. To be eligible for PPL, the employee must meet all eligibility requirements at the time of the qualifying event (birth, adoption, or foster care placement).

Does an employee have to work for a period of time before being eligible to take PPL?

No. There is no service requirement to take PPL.

If an employee has exhausted their FMLA leave, is the employee eligible for PPL?

Yes. PPL will run concurrently with FMLA leave, however, if FMLA leave has been exhausted, the employee is still eligible for PPL if all other criteria are met.

Change of Status:

If an employee is in an FTE position and is taking PPL leave and then moves to a non-FTE position prior to exhausting their two or six weeks of PPL, is

the employee able to take the remaining PPL while occupying a non-FTE position?

No. The employee's PPL would end when the employee moves to the non-FTE position even if they have not exhausted the two or six weeks of leave.

Is an adoptive or foster parent able to use PPL for reasons related to the adoption or foster placement, (for example, traveling to a foreign country to meet the child before the actual adoption) before the initial legal placement for adoption or foster care placement occurs?

No. PPL is not available until the qualifying event occurs. The employee may, however, be eligible for FMLA leave.

Is PPL available for surrogacy?

While not specifically included in the Paid Parental Leave Bill, through its authority to promulgate guidance, the Division of State Human Resources determined the birth of a child through surrogacy to an eligible state employee will be considered a qualifying event.

Is PPL available for the birth of a non-biological child conceived through in vitro fertilization?

While not specifically included in the Paid Parental Leave Bill, through its authority to promulgate guidance, the Division of State Human Resources determined the birth of a non-biological child conceived through in vitro fertilization to an eligible state employee will be considered a qualifying event.

Coordination with Other Paid Leave or LWOP:

Does PPL have to be taken immediately following the birth, adoption, or foster care placement?

No. PPL may be taken at any point in the twelve months following the qualifying event. However, if the employee is taking FMLA leave, they will have to use PPL prior to taking LWOP for the time on FMLA leave.

If an employee is eligible for FMLA, in which order is sick and annual leave taken?

Sick leave and PPL run concurrently with FMLA leave, but the employee may decide which leave to use first. However, the employee may only use sick leave for the period they are medically unable to work or for family sick leave (up to ten working days) if the leave qualifies. Also, once the PPL begins, the employee must continue with PPL until the leave is exhausted.

If the employee exhausts sick leave and PPL and has remaining FMLA leave available, they may use annual leave, other available leave, or leave without pay.

If an employee is on paid military leave and gives birth, adopts, or fosters a child are they eligible for PPL?

If the employee is on paid Short Term Military Training Leave, the employee is eligible. However, if the employee is on a Long-Term Military Leave of Absence, the employee would not be eligible for PPL.

Is an employee required to use PPL for legal holidays which occurs during the period of PPL?

No. Legal holidays are not counted against PPL.

If an employee is on Leave Without Pay and experiences a qualifying event, are they eligible for PPL?

Yes, the employee is eligible for PPL if they would otherwise be eligible to use other paid leave types if available (sick leave, annual leave, etc.). However, if an employee is suspended pending an investigation or for disciplinary reasons, they would not be able to substitute any type of paid leave, including PPL, for the time they are suspended.

Taking Paid Parental Leave:

If leave for the birth of a biological newborn child and adoption must be taken consecutively, does that mean the employee must take full days consecutively? Or can the employee take a few hours over consecutive days until they use up their allotment?

The employee must take all time consecutively. The employee may take a partial day at the start of the leave period but then, they would have to take full days until their leave

is exhausted. Depending on the shift worked by the employee, the PPL may be exhausted in the middle of a workday, resulting in a partial day of PPL. An employee may use a different type of leave (sick, annual, leave without pay) or may work for the partial workday following the exhaustion of the PPL.

If both parents work for state government, are both eligible for PPL?

Yes. PPL for both employees may be taken concurrently, consecutively, or at a different time, subject to all other requirements. However, the number of weeks available to each employee may be different.

If the employee is primarily responsible for the care and nurture of their child, can they work and use PPL consecutively?

No. Employees may not use PPL and work at the same time.

If an employee gives birth, adopts a child, or has a foster child placed before October 1, 2022, is the employee eligible for PPL within twelve months of October 1, 2022?

No. PPL is only available if the qualifying event occurs on or after October 1, 2022.

If the mother is admitted to the hospital on one day but the birth does not occur until the following day, can PPL be used by either parent for the day prior to the birth?

No. PPL can only be used on or after the date the qualifying event occurs. The parents may, however, be permitted to use other types of leave.

If the employee begins parental leave but leaves state employment before their leave is exhausted and then becomes reemployed with state government within 12 months of the qualifying event, can they take the remaining PPL beginning on the date they return to employment?

No. PPL must be taken consecutively and is forfeited at separation of employment.

Can an employer deny an employee's request to take PPL at a certain time?

In general, the same considerations applied to requests for FMLA time off for bonding should be applied to requests for PPL. Therefore, requests for periods of leave should generally be granted for the time requested by the employee so long as the requested time is within twelve months of the qualifying event.

If an employee works an alternate work schedule, how is PPL calculated?

PPL is calculated based on the employee's average workday as defined in State Human Resources Regulations.

Workday (Average): the number of hours upon which leave, and holidays are based. To determine the number of hours in an average workday, divide the total number of hours an employee is regularly scheduled to work during a week by five (regardless of the number of days the employee actually reports to work).

Therefore, an employee who works an alternate work schedule will be eligible for the number of hours equal to the average workday multiplied by five days multiplied by two or six weeks, regardless of the employee's actual work schedule. For example, an employee whose average workday is eight hours but works an alternate work schedule of 10 hours for four days and is off one day a week will be eligible to use 80 hours (two weeks) or 240 hours (six weeks) of PPL.

The employee would enter 10 hours of PPL for four days and no leave for the fifth day each week.

Example Scenarios

Employee adopts a child in another country. Employee takes leave from work beginning on September 17th to begin the adoption process and prepare for the placement. The initial legal placement occurs on October 3, 2022. Is the employee eligible for PPL?

Yes. PPL does not start until October 3, 2022, and may not be retroactively applied to any period before October 3, 2022.

Employee's due date is October 15, 2022. The employee experiences complications and an emergency delivery is performed on September 10, 2022. The baby is in the NICU until October 2, 2022. Is the employee eligible for parental leave once the baby comes home?

No. The qualifying event, the birth, occurred before the October 1, 2022 implementation date.

The initial legal placement of a child for adoption occurs on October 5, 2022, and the same employee gives birth to a biological newborn child on October 30, 2022. Both the employee and spouse work for state agencies. What leaves are they eligible?

Both employees are eligible for PPL (provided they meet all eligibility criteria), but they need to pick which event to apply for the leave. They do not have to select the same event for PPL. For example, the mother could take six weeks of PPL for the birth, and the father could take six weeks of leave for the adoption, if the father certifies that they are the person primarily responsible for furnishing the care and nurture of their child.

If the parents choose to use PPL for the same event (adoption or birth), only one parent would be eligible for six weeks of leave and the other parent would be eligible for two weeks of leave. For example, if the mother uses PPL for the birth event, the mother is eligible for six weeks of PPL and the father may take two weeks of PPL for the birth.

Employee adopts a child on October 22, 2022, and then gives birth on May 15, 2023. Both parents work for the State. How might they use PPL?

The parents may choose to use the PPL for the same or different events. In addition, both parents would be able to use PPL for both qualifying events provided the period of PPL for the second qualifying event begins at least twelve months from the end of the period of PPL for the first qualifying event.

An employee has multiple foster care placements in a single twelve-month period. Can PPL be used for each foster placement?

An eligible state employee shall receive no more than one occurrence of six or two weeks of PPL for any twelve-month period, even if more than one qualifying event occurs. However, the employee may be able to use PPL for two qualifying events which occur in the same twelve-month period provided the period of PPL for the second qualifying event begins at least twelve months from the end of the period of PPL for the first qualifying event.

Employee works 12.5-hour day shift and adopts a child. The co-parent cares for the child during the early day hours (8 hours) when the employee normally works. The employee wants to continue working during the early day hours and take 4.5 hours of PPL in the afternoons.

This scenario is not permitted. PPL must be taken consecutively so the employee would not be permitted to take partial days.

Employee's spouse gives birth on May 30, 2023, but there are complications from the birth. The employee is eligible for FMLA.

The employee may take two weeks of PPL which will run concurrent with FMLA leave for the baby's birth. The co-parent may also be entitled to take family sick leave to care for the spouse if needed. In addition, the spouse's serious health condition may qualify the employee for FMLA separate from the birth event. In this case, the employee is still limited to 12 weeks total of FMLA leave.

Employee exhausts FMLA before using all their PPL.

The employee can still use PPL. While PPL must run concurrently with FMLA leave, if FMLA leave is available, the employee may take PPL if the employee exhausted their FMLA leave prior to the PPL qualifying event.

Agency advances an employee who is ineligible for FMLA leave 10 days of their own sick leave before the employee gives birth. The employee returns to work and begins paying back the advanced sick leave shortly before

giving birth. The employee gives birth before paying back all the advanced leave.

The use of advanced sick leave has no impact on the use of PPL. The employee will accrue sick leave while on PPL and this time should be used to “pay back” the advanced leave.

An employee gives birth on January 2, 2023, and qualifies for FMLA leave. The employee has 15 days of sick leave and 10 days of annual leave. The employee’s doctor releases them to work six weeks following the birth. Below are two scenarios demonstrating how this employee may choose to use their leave.

| Type of Leave | Period |
|--------------------------|----------------------------|
| Sick Leave/FMLA | January 3 – 24, 2023 |
| Paid Parental Leave/FMLA | January 25 – March 8, 2023 |
| Annual Leave/FMLA | March 9 - 22, 2023 |
| LWOP/FMLA | March 23 - 24, 2023 |

| Type of Leave | Period |
|--|--------------------------------|
| Paid Parental Leave/FMLA | January 3 – February 14, 2023 |
| Annual Leave/FMLA | February 15 – March 1, 2023 |
| LWOP/FMLA | March 2, 2023 – March 24, 2023 |
| Note: This employee could not use their sick leave after February 14, 2023, because at that point, they had been medically released to work. They could, however, continue FMLA which allows 12 weeks of leave following the birth of the child. | |

Note: Legal holidays should not be included in the application of PPL. In the above example, legal holidays are January 2nd and 16th, as well as February 20th.