



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT  
Washington, DC 20415

The Director

Thursday, January 14, 2021  
CPM 2021-07

**MEMORANDUM FOR: HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES**

FROM: MICHAEL J. RIGAS, ACTING DIRECTOR

Subject: Technical Amendments Related to Family and Medical Leave and Paid Parental Leave under Section 1103 of the National Defense Authorization Act for Fiscal Year 2021

Technical Amendments Related to Family and Medical Leave and Paid Parental Leave under Section 1103 of the National Defense Authorization Act for Fiscal Year 2021

This memorandum provides information on the technical amendments in section 1103 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Public Law 116-283, FY 2021 NDAA), which was enacted on January 1, 2021. Those technical amendments related to Family and Medical Leave Act (FMLA) leave, including paid parental leave.

The technical amendments included provisions addressing the coverage of certain categories of employees under agency-administered FMLA leave (including paid parental leave) programs. Affected executive branch employees include employees of the Federal Aviation Administration, employees of the Transportation Security Administration, employees in the Executive Office of the President, and employees of the Department of Veterans Affairs covered by a title 38 leave system.

The technical amendments also included some changes to the title 5 FMLA provisions. A summary of those technical amendments is provided in the attachment to this memorandum.

**Additional Information**

Agency headquarters-level human resources offices may contact OPM at [pay-leave-policy@opm.gov](mailto:pay-leave-policy@opm.gov). Employees should contact their agency human resources office for further information on this memorandum.

cc: Chief Human Capital Officers (CHCOs), Deputy CHCOs, and Human Resources Directors

Attachment: Summary of Title 5 Technical Amendments Made by the Paid Parental Leave Technical Corrections Act of 2020 (Section 1103 of the FY 2021 NDAA, Public Law 116-283 (see below)

**Summary of Title 5 Technical Amendments Made by the  
Paid Parental Leave Technical Corrections Act of 2020  
(Section 1103 of the FY 2021 NDAA, Public Law 116-283)**

Section 1103 of the FY 2021 National Defense Authorization Act (NDAA) included the following changes to the Family and Medical Leave Act (FMLA) provisions in title 5, United States Code:

- The title 5 FMLA law was amended in 5 U.S.C. 6382(d)(1) and (2) to remove references to the leave system established under 5 U.S.C. chapter 63, subchapter I, since some employees covered by the title 5 FMLA law are not covered by that leave system. This change clarifies that the rules governing the substitution of annual or sick leave for unpaid FMLA leave apply equally to annual or sick leave provided under a non-title 5 authority. This clarifying change is effective on the date of the enactment the FY 2021 NDAA, January 1, 2021.
- The title 5 FMLA law was amended in 5 U.S.C. 6381(1)(B) to change the FMLA leave eligibility requirement linked to completing of a minimum amount of qualifying Federal service.
  - The law in effect before the amendment required completion of at least 12 months of service as an “employee” who was otherwise eligible to be covered by the Title 5 FMLA leave provisions (as described in 5 U.S.C. 6381(1)(A)). Thus, Federal service under other family and medical leave laws was not qualifying service. The law in effect after the amendment requires that an employee complete at least 12 months of service as an employee (as defined in 5 U.S.C. 2105) of the Government of the United States, including service with the United States Postal Service, the Postal Regulatory Commission, and a non-appropriated fund instrumentality as described in section 2105(c). Thus, virtually all types of civilian Federal service (including employment on a temporary or intermittent basis) are now qualifying for purposes of applying the FMLA eligibility requirement for 12 months of qualifying service. (Those currently employed on a temporary or intermittent basis remain ineligible to use FMLA leave.)
  - This statutory change supersedes OPM’s FMLA regulation at 5 CFR 630.1201(b)(1)(ii).
  - This change is effective on the date of the enactment of the FY 2021 NDAA, January 1, 2021. Thus, the change does not affect the FMLA leave eligibility rule applicable during periods of time before January 1, 2021. However, this change does mean that some employees with Federal service previously treated as nonqualifying may become immediately eligible for FMLA leave on January 1, 2021, which could also trigger immediate eligibility for paid parental leave (substituted for qualifying FMLA leave) for otherwise eligible employees who had a child born or placed on or after October 1, 2020. For example, if an employee had a child born on November 15, 2020, but lacked 12 months of qualifying service under the old rule, but has 12 months of qualifying service under the new rule when it takes effect on January 1, 2021, the employee could prospectively use FMLA leave based on the birth event by making an election to do so on or after January 1, 2021, and then could substitute up to 12 weeks of paid parental leave during the period ending on November 14, 2021.