



FY2022 NDAA: Parental Leave Benefits

November 18, 2021

Background

Uniformed Servicemembers

Leave authorities for uniformed servicemembers are specified under [Chapter 40](#) of Title 10, and [Chapter 9](#) of Title 37 United States Code. Annual leave accrues at a rate of 2.5 days per month of active service, and individuals may accrue up to 60 days of leave or up to 120 days under certain circumstances. Sick leave or convalescent leave is based on medical circumstances and physician's approval. Military commanders also have the discretion to grant a one-time non-chargeable [emergency leave of absence](#) for up to 14 days due to a medical condition of the servicemember or immediate family, or other hardship. In addition to other leave, a uniformed servicemember designated as the primary caregiver (typically the parent giving birth) [is authorized](#) up to 12 weeks of paid parental leave (including up to six weeks convalescent leave) in connection with the birth of a child, or up to six weeks for adoption. Individuals designated as secondary caregivers are authorized up to 21 days of leave in connection with a birth or adoption. Parental leave may be taken in more than one increment and must be taken within one year of birth or adoption. [DOD policies](#) further define primary and secondary caregivers.

Federal Civilians

The National Defense Authorization Act for Fiscal Year 2020 (FY2020 NDAA, P.L. 116-92, as amended by the FY2021 NDAA, P.L. 116-283) amended the [Family and Medical Leave Act](#) (FMLA, P.L. 103-3) to provide a new paid parental leave benefit to most federal civil service employees. Covered federal employees may use up to 12 weeks of paid parental leave for the arrival of a new child by birth, adoption, or foster care placement and for bonding with that child. The leave is available for children born to or placed with the employee on or after October 1, 2020, and must be used within 12 months of the child's arrival. Such leave may be used by an employee intermittently or on a reduced leave schedule only with the employing agency's agreement. The paid parental leave benefit must be used together with the employee's FMLA leave entitlement. (This leave is in addition to federal employees' annual and sick leave benefits.)

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Several proposals included in the FY2022 NDAA would amend parental leave policies for servicemembers and federal civilians (see **Figure 1**).

Figure 1. FY2022 NDAA Proposals

| House-passed | Senate Armed Services Committee |
|---|---|
| <p>Uniformed Servicemembers</p> <p>Section 621 would</p> <ul style="list-style-type: none"> • Allow up to 12 weeks of primary and secondary caregiver leave in connection with foster child placement, • Extend primary caregiver parental leave in connection with a birth (up to 18 weeks) or adoption (up to 12 weeks), • Extend secondary caregiver leave up to 12 weeks for a birth or adoption, • Allow a secondary caregiver to take up to 12 weeks of leave in the case of a miscarriage, stillbirth, or infant death, • Allow an active duty member who gives birth to defer physical fitness testing and meeting body fat standards for a period of 12 months following the birth, and • Require annual DOD reporting on use of parental leave benefits. <p>Section 627 would allow continuation of pre-approved paid parental leave for primary and secondary caregivers upon the death of a child.</p> | <p>Uniformed Servicemembers</p> <p>Section 520 would</p> <ul style="list-style-type: none"> • Remove the primary and secondary caregiver distinction, • Allow up to 12 weeks of non-chargeable parental leave in connection with a birth, adoption, or foster child placement, • Clarify that six weeks of convalescent leave in conjunction with the birth of a child shall be taken concurrently with 12 weeks of authorized parental leave, • Allow the Secretary concerned to extend eligibility for parental leave beyond a year for those who would otherwise lose leave due to military obligations. <p>Section 520A would allow military servicemembers with accrued leave of less than 30 days to take up to two weeks of non-chargeable bereavement leave in connection with the death of a spouse or child. Those with greater than 30 days of accrued leave would be required to take accrued leave until their balance falls below 30 days.</p> |
| <p>Federal Employees</p> <p>Section 1122 would, for certain federal employees, include the death of a child as an FMLA-qualifying use of leave and allow eligible federal employees to use their paid parental leave benefit in such instances.</p> <p>Section 1110 would allow prior service in the armed forces to be counted toward the FMLA time-in-service requirement for federal employees eligibility if certain conditions are met.</p> | <p>Federal Employees</p> <p>No similar provisions</p> |

Source: Congressional Research Service review of H.R. 4350 and S. 2792.

Discussion

Proposed Amendments to Servicemember Leave Benefits

Both the House-passed (Section 621) and Senate committee-reported (Section 520) bills would expand servicemember parental leave to include a foster child placement (See **Table 1**). The House bill would extend the leave allowance in connection with an adoption or foster placement from 6 weeks to 12 weeks

for the primary caregiver and from 21 days to 12 weeks for the secondary caregiver. The House bill would also extend primary caregiver leave in connection with the birth of a child from 12 weeks to 18 weeks. The Senate committee bill would remove the statutory designation of *primary* and *secondary* caregivers and allow all servicemembers to take up to 12 weeks of non-chargeable parental leave in connection with a birth, adoption, or foster placement of a child. The Senate version would not extend the parental leave allowance for those designated primary caregivers and would add clarification to 10 U.S.C. §702(i) that convalescent leave shall be taken concurrently with the 12 weeks of authorized leave. The Senate committee bill would provide some flexibility to use parental leave beyond one year if operational commitments prevent the member from using all authorized leave; the House bill has no similar provision.

Table I. Comparison of Maximum Leave Allowances Under Current Law and NDAA Proposals
FY2022 NDAA

| Caregiver Type | Current | H.R. 4350 | S. 2792 |
|------------------------------|---------------------------------------|---------------------------------------|---|
| Primary – Birth | 12 weeks including convalescent leave | 18 weeks including convalescent leave | 12 weeks, all convalescent leave concurrent |
| Primary –Adoption | 6 weeks | 12 weeks | 12 weeks |
| Primary – Foster Placement | None | 12 weeks | 12 weeks |
| Secondary – Birth | 21 days | 12 weeks | 12 weeks |
| Secondary – Adoption | 21 days | 12 weeks | 12 weeks |
| Secondary – Foster Placement | None | 12 weeks | 12 weeks |

Source: Congressional Research Service review of current law and H.R. 4350 and S. 2792.

Section 621 of the House-passed bill would allow a servicemember “who would have been a secondary caregiver but for a miscarriage, stillbirth, or infant death” with up to 12 weeks of leave. Another provision in the House bill (Section 627) would allow continuation of pre-approved paid parental leave for caregivers upon the death of a child. A [similar provision](#) was included in the House version of the FY2021 NDAA (P.L. 116-283), but not enacted. Section 520A of the Senate committee bill would allow for two weeks of bereavement leave in connection with the death of a spouse or child. Those with greater than 30 days of accrued leave would be required to take accrued leave until the balance falls below 30 days.

Proposed Amendments to FMLA-protected Leave for Federal Employees

The House-passed version of the bill (Section 1122) proposes to amend [FMLA provisions at Title 5 of the U.S. Code](#) to include needs related to the death of a child (bereavement leave) as an FMLA-qualifying use of leave, and to allow eligible federal employees covered by Title 5 FMLA provisions to use their paid parental leave benefit for such needs. Similar amendments to FMLA provisions at [Title 29](#) (certain [legislative](#) and executive branch employees) and [Title 3](#) (certain White House employees) are not proposed.

The House bill further proposes (Section 1110) to amend the time-in-service eligibility requirement for federal workers covered by [FMLA provisions at U.S. Code Title 5](#) and [Title 29](#) to account for prior service in the armed forces. Such service would be counted toward the requirement if the employee served on active duty as a member of the armed forces for at least one year; and separation from the armed forces is characterized as honorable.

There are no similar provisions for federal civilians in the Senate committee-reported version of the bill.

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