



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

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The Director

Memorandum for Heads of Executive Departments and Agencies

From: Kiran A. Ahuja
Director

Subject: Amendment Related to Inclusion of Certain Military Active Service for Family and Medical Leave and Paid Parental Leave Eligibility Purposes under Section 1114 of the National Defense Authorization Act for Fiscal Year 2024

This memorandum provides information regarding an amendment made by section 1114 of the National Defense Authorization Act for Fiscal Year 2024 (Public Law 118-31, hereafter “FY 2024 NDAA”), which was enacted on December 22, 2023. This amendment relates to the types of service qualifying for purposes of determining eligibility for Family and Medical Leave Act (FMLA) leave and paid parental leave.

One of the requirements for an employee to be eligible for FMLA leave under the authority in title 5, United States Code, is that the employee must have completed at least 12 months of Federal service of a type that is covered under the title 5 FMLA provisions. Previously, only certain types of Federal civilian service were qualifying for this purpose; military service was not qualifying. Section 1114 of the FY 2024 NDAA amended the FMLA statute to make certain military service qualifying for FMLA leave eligibility purposes by adding a new clause (ii) in 5 U.S.C. 6381(1)(B), which provides that service “which qualifies as honorable active service in the Army, Navy, Air Force, Space Force, or Marine Corps of the United States” is qualifying service for FMLA leave eligibility purposes. This means that certain employees who were not previously eligible for FMLA leave may become immediately eligible based on this statutory change. Employees who become immediately eligible for FMLA leave may also become immediately eligible for paid parental leave if they otherwise qualify for such leave based on the birth or placement of a child since paid parental leave is used via substitution for FMLA leave. Please note that the statutory change affects eligibility for FMLA leave and paid parental leave on a prospective basis beginning on December 22, 2023; it does not provide for retroactive eligibility.

Agencies should send out notifications to their employees that any employee with prior military service who previously had not yet met the 12-month service requirement for FMLA leave eligibility purposes should contact their human resources or other identified agency office to determine whether they now meet the service requirement and are eligible to use FMLA leave. This is especially important for employees who have recently had or will soon have a child born or placed with them for adoption or foster care since under FMLA an employee's entitlement to FMLA leave with substitution of paid parental leave may only be used during the 12-month period beginning on the date of the birth or placement of the employee's child.

For example, if an employee's child was born on July 1, 2023, an employee who was previously ineligible for FMLA leave and paid parental leave may become immediately eligible on December 22, 2023, through the inclusion of newly covered military active service and would have until June 30, 2024, to use available paid parental leave.

Additional Information

Agency headquarters-level human resources offices may contact OPM at leavepolicy@opm.gov. Component human resources staff should contact their agency headquarters level human resource policy office. Employees must 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 Amendment Made by Section 1114 of the FY 2024 NDAA, Public Law 118-31

Attachment**Summary of Title 5 Technical Amendment Made by Section 1114 of the FY 2024 NDAA, Public Law 118-31**

To be eligible for Family and Medical Leave Act (FMLA) leave and paid parental leave under the authority in title 5, United States Code, a Federal employee must meet FMLA leave eligibility requirements, including the following:

- Has completed at least 12 months of qualifying Federal service as described 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 (i.e., employees with an intermittent work schedule are ineligible); and
- Has an appointment of more than 1 year in duration (i.e., employees with temporary appointments not to exceed 1 year are ineligible).

Section 1114 of the [FY 2024 National Defense Authorization Act](#) (NDAA) included the following change to the Family and Medical Leave Act (FMLA) provisions in title 5, United States Code:

- The title 5 FMLA leave law was amended in 5 U.S.C. 6381(1)(B) to add a provision providing that service “which qualifies as honorable active service in the Army, Navy, Air Force, Space Force, or Marine Corps of the United States” is qualifying service for the purpose of establishing eligibility for FMLA leave (and for paid parental leave for employees who otherwise qualify based on the birth or placement of a child). See section 1114(a) of Public Law 118-31.
- The law in effect **before** the amendment required completion of at least 12 months of service “as an employee (as defined in section 2105) of the Government of the United States, including service with the United States Postal Service, the Postal Regulatory Commission, and a nonappropriated fund instrumentality as described in section 2105(c).” Section 2105 refers to civilian employees appointed in the civil service. Thus, service with an armed force (other than service qualifying under the Uniformed Services Employment and Reemployment Rights Act or otherwise performed during an interruption in Federal civilian service as described in 5 CFR 630.1201(b)(1)(ii)(F)) was not qualifying service.
- The law in effect **after** the amendment added language providing that honorable active service in the Army, Navy, Air Force, Space Force, or Marine Corps of the United States counts towards the 12-month service requirement for establishing eligibility for FMLA leave (and for paid parental leave for employees who otherwise qualify based on the birth or placement of a child).

- OPM is using the definition of “active service” in 10 U.S.C. 101(d)(3), which defines that term as “service on active duty or full-time National Guard duty.”
 - The reference to “service on active duty” in 10 U.S.C. 101(d)(3) is to service meeting the definition of “active duty” in 10 U.S.C. 101(d)(1)—i.e., it is “full-time duty in the active military service of the United States” which “includes full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned” and excludes “full-time National Guard duty.” It includes active duty performed by a member of a reserve component of one of the armed forces (other than the National Guard). It excludes any type of inactive duty.
 - “Full-time National Guard duty” has the meaning given that term in 10 U.S.C. 101(d)(5)—i.e., it is “training or other duty, other than inactive duty” performed by a member of the National Guard “for which the member is entitled to pay from the United States or for which the member has waived pay from the United States.”
 - Although the definition of “active duty” excludes full-time National Guard duty, the definition of “active service” includes it. Also, full-time National Guard duty with the Army National Guard or the Air National Guard is considered to be active service in the Army or the Air Force, respectively. Therefore, full-time National Guard duty is considered active service in applying the 12-month service requirement in the FMLA leave law (5 U.S.C. 6381(1)(B)).
 - Since the amended FMLA leave law covers only honorable active service in the Army, Navy, Air Force, Space Force, or Marine Corps (5 U.S.C. 6381(1)(B)(ii)), it does not include other active service, such as in the Coast Guard or in the commissioned corps of the Public Health Service. Such other active service would count toward the 12-month service requirement only if it is covered by the Uniformed Services Employment and Reemployment Rights Act or otherwise performed during an interruption in Federal civilian service as described in 5 CFR 630.1201(b)(1)(ii)(F).
- An employee may meet the title 5 12-month service requirement for FMLA leave eligibility purposes through any combination of qualifying civilian service and qualifying military service.
 - This statutory change supersedes OPM’s FMLA leave regulation at 5 CFR 630.1201(b)(1)(ii) to the extent that the regulation does not currently include the military service now qualifying under 5 U.S.C. 6381(1)(B)(ii).

- This change is effective on the date of the enactment of section 1114 of the FY 2024 NDAA, December 22, 2023. Thus, the change does not affect FMLA leave eligibility determinations made during periods of time before December 22, 2023. However, this change does mean that some employees will become immediately eligible for FMLA leave due to the amendment becoming effective upon enactment of the FY 2024 NDAA (i.e., December 22, 2023). Some employees could also become immediately eligible to substitute paid parental leave for FMLA leave if they are still in the 12-month period that began on the date of a birth or placement event.

Examples

These examples assume that the service mentioned was honorable active service in the Army, Navy, Air Force, Space Force, or Marine Corps of the United States and that the employee is determined to be in a FMLA leave eligible position after enactment of the FY 2024 NDAA on December 22, 2023.

Example #1:

An individual has no prior Federal civilian service but served 8 years in the Marine Corps. The employee is hired into a Federal civilian position on January 29, 2024, and immediately meets the 12-month service requirement for FMLA leave and paid parental leave eligibility purposes due to having at least 12 months of service in the Marine Corps that qualifies as honorable active service.

Example #2:

An employee served in the Air Force for 4 years, but only had 3 months of Federal civilian service when her father was diagnosed with stage 4 pancreatic cancer in October 2023. Prior to enactment of section 1114 of the FY 2024 NDAA, she did not have enough qualifying service to be eligible for FMLA leave. She has exhausted her accrued sick leave and annual leave caring for him. Upon enactment of the FY 2024 NDAA on December 22, 2023, she is immediately eligible for FMLA leave to care for her father because of his serious health condition since she meets the 12-month service requirement based on her 5 months of Federal civilian service and 4 years of honorable active service in the Air Force.

Example #3:

An employee was hired March 20, 2023, and therefore had less than 6 months of Federal civilian service when his baby was born on September 9, 2023. He previously served 20 years in the Navy. Upon the birth of his child in September 2023, he had

inquired about using FMLA leave with the substitution of paid parental leave (PPL) but was told he would only be able to take FMLA leave as of March 20, 2024, when he would have the 12 months of qualifying Federal civilian service required for FMLA eligibility purposes. He was also told that once he had 12 months of qualifying Federal civilian service, he could begin to take FMLA leave (and substitute paid parental leave), but his entitlement to FMLA leave for the birth of his child would expire on September 8, 2024, since the entitlement to FMLA leave for birth of a child expires at the end of the 12-month period beginning on the date of the child's birth.

Upon enactment of section 1114 of the FY 2024 NDAA, the employee had 9 months of Federal civilian service and 20 years of honorable active service in the Navy. Thus, the employee may immediately take FMLA leave and substitute paid parental leave between December 22, 2023, the date of enactment of the FY 2024 NDAA, and September 8, 2024, the end of the 12-month period during which he may use FMLA leave based on the birth of his child.

FMLA leave based on the birth of a child, and paid parental leave substituted for such FMLA leave, must be used during the 12-month period that began on the day of the child's birth. There are no statutory provisions that would allow extension of that period.

Example #4

An employee served honorably in the Army for 10 months and was medically retired when it was discovered he had a brain tumor that was causing a seizure disorder. Despite surgery, he still is under treatment. He is hired into Federal civilian service and has served for 7 months while still dealing with the seizure disorder. Upon enactment of section 1114 of the FY 2024 NDAA on December 22, 2023, he immediately meets the 12-month service requirement for FMLA leave eligibility purposes because of his 10 months of honorable Army service and 7 months of civilian service.

Example #5

An employee has 8 months of civilian service and 5 months of honorable active service in the Air National Guard when she adopts a baby on November 10, 2023. Upon enactment of section 1114 of the FY 2024 NDAA on December 22, 2023, the employee is immediately eligible for FMLA leave (including the substitution of paid parental leave for that FMLA leave based on placement of a child with the employee for adoption) because of her 5 months of honorable active service in the Air National Guard and 9

months of civilian service. The employee may use available FMLA leave and paid parental leave from December 22, 2023 (the date of enactment of section 1114 of the FY 2024 NDAA) through November 9, 2024, the final day of the 12-month period beginning on the date of the child's placement with the employee for adoption.

Example #6

An employee was hired in a Federal civilian position on August 14, 2023, with 5 months of honorable active service in the Army National Guard. The employee has a baby born on November 10, 2023. Upon enactment of section 1114 of the FY 2024 NDAA on December 22, 2023, the employee is not immediately eligible for FMLA leave (including the substitution of paid parental leave for that FMLA leave based on the birth of a child) because the employee's 5 months of honorable active service in the Air National Guard and slightly less than 3 months of civilian service does not equate to the required 12-month of eligible service (either civilian, military, or a combination of both). The employee will be eligible to begin using FMLA leave on March 14, 2024, because at that time, the employee will have 7 months of civilian service and 5 months of honorable active service in the Army, thus meeting the FMLA 12-month service requirement. The employee may use available FMLA leave and paid parental leave from March 14, 2024, through November 9, 2024, the final day of the 12-month period beginning on the date of the child's birth.