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# Family and Medical Leave and Paid Parental Leave for United States Personal Services Contractors (USPSCs)

A Mandatory Reference for ADS Chapter 309

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As authorized by [AIDAR Appendix D, section 12, contract clause #5, Leave and Holidays, paragraph \(i\) on Family and Medical Leave, and paragraph \(j\) Paid Parental Leave \(PPL\)](#), this mandatory reference provides the policies and procedures for implementing [these leave programs](#) for United States Personal Services Contractors (USPSCs).

## **A. FAMILY AND MEDICAL LEAVE (FML) – CLAUSE #5 PARAGRAPH (i)**

### **1. Entitlement to FML**

The Family and Medical Leave Act (FMLA) was enacted in 1993, and later amended, to allow employees to balance work and family life by protecting their employment and benefits status when taking reasonable leave for medical reasons, including childbirth, adoption or care, or care for a spouse, parent or oneself in the event of a serious health condition.

Title I of the Family Medical and Leave Act applies to USPSCs working within the U.S. As a matter of policy and to maintain consistency, USAID is extending family and medical leave to USPSCs working outside the U.S. The Department of Labor, not Office of Personnel Management (OPM), is responsible for implementing regulations for FMLA Title I. The Department of Labor has issued regulations that implement FMLA Title I at [29 CFR Part 825](#).

Under FMLA Title I, an “eligible employee” is defined as an employee who has been employed:

- For at least 12 months by the employer with respect to whom leave is requested, and
- For at least 1,250 hours of service with such employer during the previous 12-month period.

A USPSC who has worked [with a U.S. Federal agency as a Direct-Hire or a personal services contractor](#) for at least a total of 12 months and who has performed work in on-duty status amounting to at least 1,250 hours during the previous 12 months immediately preceding the leave will be eligible for this coverage. [29 CFR 825.110\(b\)](#) states that the 12 months an employee must have been employed by the employer need not be consecutive months; it allows for separations or other breaks in service of up to seven years. Under limited circumstances, [specifically](#) military service or a union agreement allowing re-employment, a break in service of more than seven years is allowed to be counted.

In accordance with [29 CFR 825.200\(a\)](#), an eligible USPSC may take leave under FMLA Title I for the following reasons:

- a. The care of the USPSC’s newborn child.
- b. The care of the USPSC’s newly placed adopted or foster care child.

- c. The care of the USPSC's spouse, child, or parent with a serious health condition.
- d. The USPSC's own serious health condition.
- e. A qualifying exigency arising from the USPSC's spouse, child, or parent in active duty military status.
- f. Other qualifying exigencies as determined by the Department of Labor.

Consistent with [29 CFR 825.200](#), the 12-month period in which the 12 workweeks of leave entitlement occurs is based on the 12-month period measured forward from the first date when the USPSC's FMLA leave begins. Except in the case of care for a covered service member with a serious injury or illness, the USPSC's FMLA leave entitlement is limited to a total of 12 workweeks of leave during any 12-month period for anyone, or more, of the above-listed reasons.

As stated in 29 CFR 825.200(h), for purposes of determining the amount of leave used by a USPSC, the fact that a holiday may occur within a workweek taken as FMLA leave has no effect; the workweek is counted as a workweek of FMLA leave. However, if the USPSC is using FML in increments of less than one workweek, the holiday will not count against the USPSC's FMLA entitlement unless the employee was otherwise scheduled and expected to work during the holiday.

For details of the FMLA's provisions and information concerning the procedures for filing complaints of violations of the Act with the Department of Labor's Wage and Hour Division, see [WHD Publication 1420](#).

## **2. Duration of Family and Medical Leave**

The USPSC's supervisor must authorize only the amount of FML that is necessary to manage the circumstances that prompted the need for the leave. FMLA is not authorized for any period beyond the completion date of the **USPSC's contract**.

## **3. FML LWOP and Substitution of Paid Leave**

In accordance with [29 CFR 825.207](#), generally FMLA leave is unpaid leave. However, the USPSC may choose to substitute leave without pay (LWOP) with accrued paid leave, including accrued annual or sick leave, or compensatory time earned under the contract. If the USPSC does not choose to substitute accrued paid leave, the **Contracting Officer (CO), including a warranted Executive Officer (EXO)**, in consultation with the USPSC's supervisor, may require the USPSC to substitute accrued paid leave for FML LWOP. The CO must verify the accuracy of the USPSC's accrued paid leave request and obtain the required certifications for approval of FML in accordance with this USAID policy.

## **4. Notice of Intent to Invoke Entitlement to FML**

- a. The USPSC's supervisor must confirm that the USPSC meets FML eligibility requirements as of the date on which any FML is to commence. The USPSC must have worked with a U.S. Federal agency as a Direct-Hire or a personal services contractor for a total of at least 12 months within the previous seven years, unless a break in service and period of absence from work was due to, or necessitated by, the USPSC's fulfillment of a service obligation covered under the [Uniformed Services Employment and Reemployment Rights Act \(USERRA\), 38 U.S.C. 4301, et seq.](#) Such USERRA-covered service must be counted in determining whether the USPSC has met the requirement of work with a U.S. Federal agency for at least 12 months. Note, however, that USAID's FML does not provide any greater entitlement than what is afforded to the USPSC under the USERRA.
- b. When the USPSC invokes the intent to take FML, the USPSC's supervisor must adhere to the notification and certification requirements detailed in this section, as well as sections 6 and 7, as applicable. The USPSC must meet the eligibility requirements and comply with the requirements and obligations of this guidance.
- c. When the USPSC intends to take FML, the USPSC must complete a [Family and Medical Leave Application Request, Form AID 481-1](#). The USPSC's supervisor must review the information, confirm that the request meets USAID's FML requirements, sign the form, and provide the documentation to the CO.
- d. The CO must retain the approved application form, medical certificate, and other related documents in the USPSC's ASIST contract file.
- e. Foreseeable and Unforeseeable FML:
  - 1) If the need for family and medical leave is foreseeable based on an expected birth, placement for adoption or foster care, or planned medical treatment, the USPSC must provide not less than 30 days' notice of the USPSC's intent to take FML, before the date the leave is to begin. If the date of birth or placement or planned medical treatment requires leave to begin within 30 days, the USPSC must provide such notice as soon as is practicable.
  - 2) If the need for leave is foreseeable and the USPSC fails to give 30 days' notice with no reasonable excuse for the delay of notification, the CO has the right to delay the taking of family and medical leave until at least 30 days after the date the USPSC provides official notice of intent to take FML.
  - 3) If the need for family and medical leave is unforeseeable for such reasons as a medical emergency or the unexpected availability of a child for adoption or foster care, and the USPSC cannot provide 30 days advance notice, the USPSC or personal representative (e.g., a family member) must provide notice within a reasonable period of time appropriate to the circumstances involved. (Note: If a USPSC and the USPSC's personal

representative are physically or mentally incapable of invoking the USPSC's entitlement to FMLA leave during the entire period in which the USPSC is absent from work for an FMLA-qualifying purpose, the USPSC may retroactively invoke the entitlement to FMLA leave within a reasonable period after returning to work. In such cases, the incapacity of the USPSC must be documented by a written medical certification from a health care provider. In addition, the USPSC must provide a brief memo to the USPSC's supervisor explaining that the USPSC's personal representative was unable or was unaware of the requirement to contact the agency and invoke the USPSC's entitlement to FMLA leave during the entire period in which the USPSC was absent from work for an FMLA-qualifying purpose.)

## **5. Intermittent Leave or Reduced Leave Schedule**

A USPSC may take FML on an intermittent basis or on a reduced leave schedule under certain circumstances in accordance with [29 CFR 825.202](#) and [203](#). All intermittent or reduced schedule leave is subject to the limits on the duration of FML under section 2 of this policy.

## **6. Certification for Birth, Adoption, or Foster Care**

The USPSC's supervisor must obtain a certificate, or other administratively acceptable evidence, in support of the [USPSC's Family and Medical Leave Application Request, Form AID 481-1](#) for the birth of a child or placement of a child for adoption or foster care, [once the USPSC takes leave after such event occurs.](#)

## **7. Medical Certification**

When a USPSC requests FML for the USPSC's own serious health condition, or for care of an eligible family member with a serious health condition, the USPSC's supervisor must obtain a written medical certification issued by the USPSC's health care provider or the health care provider of the eligible family member as appropriate, using the [Family and Medical Leave Application Request, Form AID 481-1](#)

The USPSC may use the U.S. Department of Labor [Form WH-380E, Certification of Health Care Provider for Employee's Serious Health Condition](#), and [WH-380F, Certification of Health Care Provider for Family Member's Serious Health Condition](#) to obtain written medical certification. The USPSC's supervisor may also accept a statement from the USPSC's health care provider as a substitute for the forms as long as the statement contains the same basic information. In all instances, the information on the forms must relate only to the serious health condition for which the current need for leave exists.

For family and medical leave for a USPSC with a serious health condition, the health care provider's statement must confirm that the USPSC is unable to perform the essential functions of the USPSC's position. Note: The statement of the essential functions of the USPSC's position is based on written information provided by the

USPSC's supervisor or, if not provided, on discussion between the health care provider and the USPSC.

For family and medical leave for the care of an eligible family member with a serious health condition, the following is also required:

- a. A statement from the health care provider that the eligible family member requires psychological comfort and/or physical care; needs assistance for basic medical, hygienic, nutritional, safety, or transportation needs or in making arrangements to meet such needs; and would benefit from the USPSC's care or presence;
- b. A statement from the USPSC on the care the USPSC will provide and an estimate of the amount of time needed to care for the eligible family member; and
- c. Medical certification for intermittent leave or leave on a reduced leave schedule to care for a family member or to receive medical care must include the dates on which such treatment is expected to be given and the duration such treatment is required.

All medical information must be protected under the provisions of the Privacy Act (see [ADS 508, Privacy Program](#)) and released only to those who have a need to know.

### **7.1 Second Opinion**

A USPSC's supervisor has the right to request that the USPSC obtain an opinion of a second health care provider, subject to approval by the **CO**, in cases where the validity of the original medical certification concerning the USPSC or a family member is questioned or doubted. The Agency will reimburse the USPSC, upon submission of written proof of payment, for the cost of obtaining a second opinion.

### **7.2 Third Opinion**

If the opinion of the second health care provider differs from the original certification, the supervisor has the right to require, at Agency expense, that the contractor obtain the opinion of a third health care provider designated or approved jointly by the **CO** and the contractor. The opinion of the third health care provider must be binding on the Agency and the contractor.

### **7.3 Medical Recertification**

While a USPSC is on family and medical leave, the USPSC's supervisor has the right to obtain from the USPSC subsequent medical recertification on a periodic basis, not more often than every 30 calendar days. However, the USPSC's supervisor has the right to require more frequent medical recertification if the USPSC requests that the original leave period be extended, the circumstances described in the original medical certification have changed significantly, or if the Agency receives information that casts doubt upon the continuing validity of the medical certification. The Agency will reimburse

a USPSC, upon submission of written proof of payment, for the cost of the medical recertification.

#### **7.4 Medical Certification to Return to Work**

If a USPSC subject to a medical evaluation program (overseas USPSCs) is approved for leave because of a serious health condition that renders the USPSC unable to perform the essential functions of the USPSC's position, that USPSC will be required to provide written medical certification from the health care provider that the USPSC is able to perform these functions prior to return to duty. USPSCs will be informed of this requirement before FML commences, or to the extent practicable in emergency medical situations. The Agency will reimburse a USPSC, upon submission of written proof of payment, for the cost of the required medical certification.

#### **8. Protection of Employment and Benefits**

When the eligible USPSC takes FML during the period of performance of the USPSC contract, the USPSC is entitled, upon return to contract performance, to be restored to the same USPSC position held by the USPSC when the leave commenced provided that the contract period of performance has not expired. Leave under FML and the entitlement to return to the position must not, and cannot, exceed the completion date of the contract in accordance with the funding limitations under [FAR 43.105](#).

#### **9. Continuation of Health Benefits**

A USPSC who takes LWOP under FML will have the option to continue their health insurance enrollment by agreeing to pay 100 percent of the premium cost for the time that they are on unpaid leave. Such payment can be made either during the time of unpaid leave or upon returning to duty. The USPSC award requires the USPSC to contact their health insurance provider about continuing coverage under FML status.

Note: The USPSC's supervisor must ensure that if the USPSC elects LWOP FML, the USPSC indicates on the [Family and Medical Leave Application Request, Form AID 481-1](#) whether or not the USPSC will continue health insurance coverage while the USPSC is in LWOP status. The USPSC's supervisor must strike the term "health benefit" and substitute "insurance coverage" on this form.

#### **B. PAID PARENTAL LEAVE (PPL) – CLAUSE #5 PARAGRAPH (j)**

Since the [Federal Employee Paid Leave Act \(FEPLA\), 5 U.S.C. 6382, et seq](#), which authorizes paid parental leave for Federal employees, is implemented by the Office of Personnel Management, it does not apply to USAID USPSCs. In the interests of equity, on October 1, 2021, the USAID Administrator approved, as a matter of Agency policy, the provision of a PPL benefit for USPSCs that is similar to the benefit available for Direct-Hire Federal employees. Eligible USPSCs may be granted up to 12 workweeks (as described in [Appendix D, section 12, clause 5](#)) of PPL in connection with the birth of a child, or a new placement of a child for adoption or foster care, for which the USPSC assumes a parental role.

[Appendix D, section 12, clause 5, “Leave and Holidays” paragraph \(j\)](#) is a separate paragraph for the provision of PPL. Paragraph (j) describes in detail:

- When a USPSC may be eligible for PPL,
- The procedures the USPSC must follow to request it, and
- The contractual requirements applicable when PPL is approved.

## 1. Contract Terms

COs must include [Clause #5 Leave and Holidays \[Deviation \(NOV 2021\)\]](#), or the most recent version of the clause when officially revised into AIDAR Appendix D through the rulemaking process, in all USPSC contracts.

For existing contracts, if a USPSC has a need for PPL and the most current clause is not included in the contract, the CO must modify the contract to include the clause. The modification must be in effect before the CO is authorized to approve PPL, and the CO must not approve PPL retroactively. The contract modification must be bilateral and include the USPSC’s written agreement to extend the minimum written notice period for the USPSC to initiate termination of the contract under [Section 12, clause 16 Termination \(NOV 1989\), paragraph \(b\)](#), from 15 days to 12 workweeks, equivalent to the 12 workweek mandatory period of performance obligation incurred for using PPL. Paragraph (j)(4) of clause #5 contains the terms and conditions for the mandatory period of performance obligation, including the limitations on use of PPL towards the end of the contract period of performance.

## 2. Process for Invoking PPL

Personal services contractors will only be eligible to receive Paid Parental Leave if the clause with paragraph (j) is included in the contract. Neither the CO nor the supervisor has the authority to approve PPL if the clause is not in the contract.

- a. In accordance with Clause #5 paragraph (j), the USPSC must submit a request to the CO for approval of PPL.

To establish eligibility for PPL, the above-cited clause states that the CO must require the contractor to provide the following documentation:

1. Family and Medical Leave. The CO must obtain the required certifications for approval of family and medical leave in accordance with USAID policy, including [Family and Medical Leave Application Request, Form AID 481-1](#).
2. Attestation of eligibility for Paid Parental Leave. To comply with paragraph (j)(3) of Clause #5, the contractor must provide the CO with a written attestation that:



- a. The USPSC is using PPL for up to 12 workweeks in lieu of family and medical leave in connection with the anticipated birth or placement, including the expected date that PPL will start, and
- b. The contractor has a continuing parental role with respect to the newly born or placed child.
- c. The anticipated schedule for the USPSC's use of PPL as approved by the USPSC's supervisor, and
- d. The USPSC's acknowledgement that the CO will require the USPSC to provide appropriate documentation to show that the contractor's use of PPL is directly connected with a birth or placement that has occurred, such as a birth certificate or a document from an adoption or foster care agency regarding the placement. The USPSC must provide the required documentation or certification no later than 15 calendar days after the date the CO requests such documentation or certification. If it is not practicable under the circumstances for the USPSC to respond within the 15-day timeframe, despite the USPSC's diligent, good faith efforts, the USPSC must provide the documentation or certification within a reasonable period of time under the circumstances involved, but no later than 30 calendar days after the date of the CO's original request.

**3. Contractor's Agreement to Continue Performance (Clause #5, paragraph (j)(4)).** To affirm the contractor's agreement with the return service requirement associated with PPL, the contractor must agree, in writing and before commencement of the leave, to return immediately after completing paid parental leave to continue performance under the contract for at least 12 workweeks, and to meet this return service requirement regardless of the amount of leave taken by the contractor.

**b.** As part of the process to verify the USPSC's eligibility for PPL, the CO must also ensure that there are at least 24 weeks left in the period of performance of the contract (12 weeks for the leave and 12 weeks for the mandatory period of performance requirement after completion of the leave). If the contractor's request for PPL falls within the last 24 weeks of the contract, the CO must only authorize PPL for the time remaining before the contract completion date minus the 12 weeks mandatory return to work period. In other words, if there are only 18 weeks left before the completion date of the period of performance, the CO can only approve a maximum of six continuous weeks of PPL because the PSC must return to work for the 12 week mandatory period, irrespective of how much leave is taken.

c. Once the CO has verified the eligibility for the USPSC to be granted paid parental leave, the CO must send an email to **uspsc@usaid.gov**, with the following information (a template for this email is in paragraph f. below):

- Name of USPSC;
- Contract Number;
- Period of Performance (including any Options);
- Supervisor's Name;
- Date of birth or placement of the child;
- Start date of PPL [must be the date of birth or placement];
- End date of PPL [must not exceed one year from the start date or 12 weeks before the completion date of the period of performance of the contract, whichever is earlier]; and
- Dates of planned use of PPL by the PSC; or tentative plans if the PSC will take the leave intermittently during the one-year period.

If the USPSC is not able to provide the birth certificate, or a document from an adoption or foster care agency regarding the placement of a child, prior to the start of the PPL, the CO may email Payroll to activate the code in WebTA and ensure that the USPSC provides the documentation within the timeframe specified in paragraph (a)(2)d. above.

d. Payroll will inform the USPSC (with a copy to the CO and the Supervisor) when the code is available in WebTA for the USPSC's use.

e. If the contractor fails to return to work for the required 12-week obligation, the Agency will require reimbursement from the contractor of an amount equal to the total amount of the government contributions paid by the Agency to, or on behalf of, the contractor to maintain the contractor's health insurance coverage during the period of paid parental leave.

f. Email Template for CO to send to Payroll:

TO: USPSC Payroll (uspsc@usaid.gov)  
From: Cognizant CO [*Name/Office Symbol/Mission*]  
CC: [*USPSC's Supervisor*], [*USPSC*]

Subject: USPSC Paid Parental Leave: [*USPSC Name*]

I am the Contracting Officer for Contract # [*insert contract number*] with [*insert name of USPSC*] (cc'd above). In accordance with Section 5. Leave and

Holidays, para. (j), Paid Parental Leave of the above-cited contract, [*Name of USPSC*] is eligible for paid parental leave.

Reason FMLA leave is being requested: (select appropriate reason)

- Birth of a child
- Placement for adoption
- Foster care placement

Date of birth or placement [*Month/Date/Year*]

Start date of PPL [*Month/Date/Year*]

End date of PPL [*Month/Date/Year*]

Indicate if USPSC prefers:

- Intermittent use
- Continuous use

Please let [*Name of USPSC*] and me know when the code will be available for the USPSC's use.

Thank you.

#### g. Eligibility Requirements for PPL

To qualify for PPL, the USPSC must be eligible for Family Medical Leave (FML). The two eligibility requirements for FML are described in Section A above as well as [29 CFR 825](#).

##### Been a direct-hire employee or a PSC with a U.S. federal agency for at least 12 months

- This time does not need to be consecutive months; however, the 12 months cannot be broken up by a gap in service of seven years or more
- Under limited circumstances (e.g., military service) a break in service of more than seven years may be counted.
- This requirement can be met either under the USPSC's current contract, or as a previous direct-hire or PSC under a prior engagement with the federal government.

##### Performed at least 1,250 hours of service during the previous 12-month period

- The 1,250 hours does not need to be consecutive, but must be performed in "on-duty" status amounting to at least 1,250 hours during the previous 12 months immediately preceding the leave.
- This requirement can be met either under the USPSC's current contract, or as a previous direct-hire or PSC under a prior engagement with the federal government.

#### h. Parameters for Using PPL

**How many weeks of PPL does a USPSC receive?**

When authorized by the CO, the USPSC may elect to substitute up to 12 workweeks of paid parental leave in lieu of family and medical leave.

**When can PPL be taken?**

PPL may be taken continuously, intermittently, or on a reduced leave schedule. NOTE: PPL must be used no later than one year from the date of the birth or placement.

**Can an unused PPL balance be carried over?**

At the end of the one year period, any unused balance of PPL expires and is not available for future use or payment.

**What are the obligations when taking PPL?**

The PSC has to fulfill a mandatory period of performance obligation of 12 weeks at the end of the leave. The mandatory obligation starts after the last day the leave is taken.

## C. CONTRACT FILE RECORD

The CO is responsible for ensuring that all final versions of documents related to requests for and approvals of FML and PPL are filed in the USPSC's ASIST contract file.

## D. MANDATORY FORMS

- a. [AID 481-1 \(Family and Medical Leave Request Application\)](#)
- b. [WH-380-E, Certification of Health Care Provider for Employee's Serious Health Condition](#)
- c. [WH-380-F, Certification of Health Care Provider for Family Member's Serious Health Condition](#)

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