



# FY2022 NDAA: Parental Leave Benefits

Updated December 15, 2021

## Background

The House passed a Fiscal Year 2022 National Defense Authorization Act (FY2022 NDAA, H.R. 4350) on September 23, 2021. The Senate Armed Services Committee (SASC) reported a version of the bill (S. 2792) on July 21, 2021. On December 7, 2021, the House and Senate Armed Services Committees released the text of a negotiated agreement (“bicameral agreement,” S. 1605) based on the two versions of the bill. The House passed the bicameral agreement on the same day. This report discusses provisions in the FY2022 NDAA related to parental leave provisions for uniformed servicemembers and federal civilians (see **Table 1**).

## Uniformed Servicemembers

Leave authorities for uniformed servicemembers are specified under [Chapter 40](#) of Title 10, and [Chapter 9](#) of Title 37 United States Code. Servicemembers accrue 2.5 days of leave per month of active service. 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 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 FY2020 NDAA (P.L. 116-92, as amended by the FY2021 William M. (Mac) Thornberry 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

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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.)

**Table I. FY2022 NDAA Legislative Proposals**

House-passed (H.R. 4350)	Senate Armed Services Committee (S. 2792)	Bicameral Agreement (S. 1605)
<b>Uniformed Servicemembers</b>		
<p>Section 621 would</p> <ul style="list-style-type: none"> <li>• Allow up to 12 weeks of primary and secondary caregiver leave in connection with foster child placement,</li> <li>• Extend primary caregiver leave in connection with a birth (up to 18 weeks) or adoption (up to 12 weeks),</li> <li>• Extend secondary caregiver leave up to 12 weeks for a birth or adoption,</li> <li>• Allow a secondary caregiver to take up to 12 weeks of leave in the case of a miscarriage, stillbirth, or infant death,</li> <li>• Allow an active duty member who gives birth to defer physical fitness testing and meeting body fat standards for 12 months following birth, and</li> <li>• Require annual DOD reporting on the use of parental leave benefits.</li> </ul>	<p>Section 520 would</p> <ul style="list-style-type: none"> <li>• Remove the primary and secondary caregiver distinction,</li> <li>• Allow up to 12 weeks of non-chargeable parental leave in connection with a birth, adoption, or long-term foster child placement,</li> <li>• 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, and</li> <li>• Allow the Secretary concerned to extend eligibility for parental leave beyond a year for those who would otherwise lose leave due to military obligations.</li> </ul>	<p>Section 621 includes the Senate provision with amendments that would allow an active duty member who gives birth to defer physical fitness testing and meeting body fat standards for 12 months following birth, and would require annual DOD reporting on the use of parental leave benefits.</p>
<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>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 more than 30 days' leave accrued and who take up to two weeks of leave shall be charged for bereavement leave until their leave balance reaches 30 days.</p>	<p>Section 622 includes the Senate provision.</p>

**Federal Employees**

House-passed (H.R. 4350)	Senate Armed Services Committee (S. 2792)	Bicameral Agreement (S. 1605)
<b>Uniformed Servicemembers</b>		
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.	No similar provision.	Section 1111 would, for certain federal employees, create a new entitlement to 2 administrative workweeks of paid leave during any 12-month period because of the death of the employee’s child. Such leave would be in addition to other paid leave available to the employee and would not be deducted from the employee’s FMLA entitlement to unpaid job-protected leave.
Section 1110 would allow prior service in the armed forces to be counted toward the FMLA time-in-service requirement for federal employee eligibility if certain conditions are met.	No similar provision.	Not adopted.

**Source:** Congressional Research Service review of legislation.

**Note:** The bicameral agreement (S. 1605) is the FY2022 NDAA amendment negotiated by leaders of the House Armed Services Committee (HASC) and the Senate Armed Services Committee (SASC).

## Discussion

### Proposed Amendments to Servicemember Leave Benefits

Both the House-passed (Section 621) and Senate committee-reported (Section 520) bills included proposals to expand servicemember parental leave allowances and eligibility (see **Table 2**). The bicameral agreement adopts the Senate proposal which would remove the statutory designation of *primary* and *secondary* caregivers and allow servicemembers on active duty to take up to 12 weeks of non-chargeable parental leave in connection with a birth, adoption, or long-term foster placement of a child. The bicameral agreement also adopts the Senate clarification to 10 U.S.C. §702(i) that convalescent leave shall be taken concurrently with the 12 weeks of authorized leave and provides some flexibility to use parental leave beyond one year if operational commitments prevent the member from using all authorized leave.

Section 621 of the bicameral agreement adopts some provisions of the House bill, including authorization for an active duty member who gives birth to defer mandatory physical fitness testing and adherence to body fat standards for 12 months following birth. It would also require annual DOD reporting on the use of parental leave.

**Table 2. Comparison of Maximum Leave Allowances Under Current Law and NDAA Proposals**  
FY2022 NDAA

Caregiver Type	Current	H.R. 4350	S. 2792	S. 1605
Primary – Birth	12 weeks including convalescent leave	18 weeks including convalescent leave	12 weeks, all convalescent leave concurrent	12 weeks, all convalescent leave concurrent

Caregiver Type	Current	H.R. 4350	S. 2792	S. 1605
Primary – Adoption	6 weeks	12 weeks	12 weeks	12 weeks
Primary – Foster Placement	None	12 weeks	12 weeks	12 weeks
Secondary – Birth	21 days	12 weeks	12 weeks	12 weeks
Secondary – Adoption	21 days	12 weeks	12 weeks	12 weeks
Secondary – Foster Placement	None	12 weeks	12 weeks	12 weeks

**Source:** Congressional Research Service review of statute and legislation.

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. Section 622 of the bicameral agreement adopts the Senate proposal (Section 520A) that would allow 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 charged 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. Section 1111 of the bicameral agreement would create an entitlement to 2-weeks of paid parental bereavement leave in any 12-month period, but such leave would be separate from employees’ FMLA entitlement. The House-passed bill and the bicameral agreement do not propose similar amendments to FMLA provisions at [Title 29](#) (certain [legislative](#) and executive branch employees) and [Title 3](#) (certain White House employees).

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. This provision was not adopted in the bicameral agreement; however, the agreement called for a [congressional briefing by DOD on the impact of such a change](#).

## Author Information

Kristy N. Kamarck  
Specialist in Military Manpower

Sarah A. Donovan  
Specialist in Labor Policy

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