

## Introduction

On May 12, 2023, Governor Henry McMaster signed into law [H. 3908](#), which adds Section 8-11-151 (A) and Section 8-11-156 of the South Carolina Code of Laws to provide six weeks or two weeks of paid parental leave (PPL) to school district employees who occupy a full-time equivalent position (FTE). This guidance and FAQs are designed to aid school districts in implementing PPL and answer the most common questions the Department has received. The South Carolina Department of Education has carefully reviewed the guidance contained in the South Carolina Department of Administration's Paid Parental Leave Toolkit as well as questions unique to the public school district setting. This guidance will be periodically reviewed and updated as necessary.

## Definitions

**Child:** a newborn biological child or foster of a child in state custody and under the age of 18 or a child initially legally placed for adoption and under the age of 18. No child can have more than two parents eligible for paid parental leave.

**Eligible school district employee:** An employee defined by the Department of Education using the Professional Certified Staff system or any full-time equivalent position categorized as classified staff.

**Paid Parental Leave (PPL):** means six weeks of paid leave at one hundred percent of the eligible school district employee's base pay or two weeks of paid leave at one hundred percent of the eligible school district employee's base pay.

**Parent/Co-Parent:** the person listed as a legal parent in the applicable required documentation (birth certificate, adoption order, etc.) or the foster parent of a child.

**Qualifying Event:** the birth of a newborn biological child to an eligible school district employee or after a co-parent's birth of a newborn child or fostering a child in state custody or the initial legal placement of a child by adoption. **To qualify for PPL, the adoption, birth or foster care placement must occur on or after June 26, 2023.**

## Eligibility

To be eligible for PPL the employee must occupy a full-time equivalent position. Employees in temporary, temporary grant, time-limited, research grant and all other non-FTE positions are not eligible for PPL. There is no service requirement to be eligible for PPL. Employees occupying a FTE position are immediately eligible for PPL. Eligibility determinations are made as of the date of the qualifying event.

**To qualify for PPL, the adoption, birth or foster care placement must occur on or after June 26, 2023.**

An eligible school district employee shall receive no more than one occurrence of six or two weeks of PPL for any twelve-month period, even if more than one qualifying event occurs. Regardless of the qualifying

event (adoption, birth or foster care placement), the entitlement to PPL expires at the end of the twelve-month period beginning on the date of the qualifying event. If the leave is not used by the eligible school district employee before the end of the twelve-month period following the birth, adoption or foster placement, the leave cannot be carried forward for subsequent use. Any leave remaining at the end of the twelve-month period following the qualifying event or at separation of employment is forfeited and the employee is not paid out for the leave. PPL may not be donated.

## Leave Amount

The amount of leave available depends on the qualifying event (adoption, birth or foster care placement) and the relationship of the school district employee to the child. Employees occupying all of a full-time equivalent (FTE) position are eligible for PPL as described below:

- ***Adoption:***
  - a. Employees occupying a FTE position and who are primarily responsible for furnishing the care and nurture of their child initially placed for legal adoption and under the age of 18 on or after June 26, 2023, are entitled to six weeks of PPL.
  - b. Employees occupying a FTE position and who are not primarily responsible for furnishing the care and nurture of their child initially placed for legal adoption under the age of 18 on or after June 26, 2023, are entitled to two weeks of PPL.
  - c. Only one Eligible District Employee may be designated the parent primarily responsible for furnishing the care and nurture of their child.
- ***Birth:***
  - a. Employees occupying a FTE position and who give birth to a biological newborn child on or after June 26, 2023, are entitled to six weeks of PPL.
  - b. Employees occupying a FTE position and whose co-parent gives birth to a biological newborn child are entitled to receive two weeks of PPL.
- ***Foster Care:***
  - a. Employees occupying a FTE position and who foster a child under the age of 18 in state custody are entitled to receive two weeks of PPL.

## Paid Parental Leave Usage

Employees do not have to exhaust all other forms of leave, such as sick or annual leave, before being eligible to take PPL.

If both parents are eligible school district employees, PPL may be taken concurrently, consecutively, or at a different time than the other eligible school district employee. No child may have more than two parents eligible for PPL.

PPL shall not be used before the qualifying event. If an employee requires leave before the birth, adoption, or foster care placement due to medical reasons or to fulfill legal obligations, other available leave balances shall be utilized per the school district's leave policy.

- ***Adoption and Birth:***

- a. An eligible employee's PPL taken for an adoption or birth must be taken consecutively. Therefore, once leave commences, the employee must continue leave until the leave is exhausted or they choose to return to work. Any leave remaining when the employee returns to work is forfeited.

- ***Foster Care:***

- a. An eligible employee's PPL for foster care placement may be taken consecutively or upon request and approval in two, one-week, increments. The employee is not permitted to take leave in increments smaller than one week.

An eligible school district employee shall receive no more than one occurrence of six or two weeks of PPL for any twelve-month period, even if more than one qualifying event occurs. An eligible school district employee may, however, be able to use PPL for two qualifying events that occur within the same twelve-month period so long as the start date of the second period of PPL is at least 12 months from the end date of the first period of PPL.

## Paid Parental Leave and FMLA Leave

PPL must run concurrently with FMLA leave and any other unpaid leave to which the eligible school district employee may be entitled because of the qualifying event.

However, an eligible school district employee shall be eligible for PPL even if the employee has exhausted their FMLA leave, or is not eligible for FMLA coverage, at the time of the qualifying event.

If an employee becomes eligible for FMLA while on PPL, the employee must use FMLA leave, and the PPL runs concurrently with FMLA leave.

# Payment While Using Paid Parental Leave and Accrual of Other Leave Types

The hours of PPL are calculated based on the employee's average workday.

PPL is paid at 100% of the eligible school district employee's base pay. Therefore, PPL does not include any additional pay, such as overtime, supplements, bonuses, longevity pay, temporary salary adjustments, shift differential pay, on-call pay, call back pay, special assignment pay, or market or geographic differential pay. All additional pay which the employee would receive during non-PPL paid leave (for example annual leave) should be ended for the period of PPL.

Eligible school district employees shall accrue annual and sick leave at the normal rate and receive holiday pay while on PPL, if applicable.

## Frequently Asked Questions (FAQs)

- 1. If an employee is eligible for FMLA Leave as a temporary, time-limited, or temporary grant employee are they eligible for PPL?**

No. Only employees in FTE positions are eligible for PPL.

- 2. If an employee is working at a school district in a temporary, temporary grant, time-limited, or other non-FTE position and gives birth, adopts a child, or becomes a foster parent and then later is hired into an FTE position, is the employee eligible for PPL?**

No. To be eligible for PPL, the employee must meet all eligibility requirements at the time of the qualifying event (birth, adoption or foster care placement).

- 3. If an employee is in an FTE position and is taking PPL leave and then moves to a non-FTE position prior to exhausting their two or six weeks of PPL, is the employee able to take the remaining PPL while occupying a non-FTE position?**

No. The employee's PPL would end when they move to the non-FTE position even if they have not exhausted their two or six weeks of leave.

- 4. If an employee is hired into an FTE position and gave birth, adopted a child, or becomes a foster parent prior to their hire date are they eligible for PPL?**

No. To be eligible for PPL, the employee must meet all eligibility requirements at the time of the qualifying event (birth, adoption or foster care placement).

**5. Does an employee have to work for a period of time before being eligible to take PPL?**

No. There is no service requirement to take PPL.

**6. If an employee has exhausted their FMLA leave, are they eligible for PPL?**

Yes. PPL will run concurrently with FMLA leave, however, if FMLA leave has been exhausted the employee is still eligible for PPL if all other criteria are met.

**7. Is an adoptive or foster parent able to use PPL before the initial legal placement for adoption or foster care placement for reasons related to the adoption or foster placement such as traveling to a foreign country to meet the child before the actual adoption?**

No. PPL is not available until the qualifying event occurs. The employee may, however, be eligible for FMLA leave.

**8. Does PPL have to be taken immediately following the birth, adoption or foster care placement?**

No. PPL may be taken at any point in the 12 months following the qualifying event. However, if the employee is taking FMLA leave they would have to use PPL prior to taking leave without pay for the time on FMLA leave.

**9. If an employee has sick leave and annual leave and is eligible for FMLA, in what order should leave be taken?**

Sick leave and PPL run concurrently with FMLA leave but the employee may decide which leave to use first. However, the employee may only use sick leave for the period they are medically unable to work or for family sick leave (up to 10 working days) if the leave qualifies. Also, once the PPL begins, the employee must continue with PPL until this leave is exhausted.

If the employee exhausts sick leave and PPL and has remaining FMLA leave available, they may use annual leave, other available leave or leave without pay.

**10. If an employee is on Leave Without Pay and experiences a qualifying event, are they eligible for PPL?**

Yes, as long as the employee would otherwise be eligible to use other paid leave types if available (sick leave, annual leave, etc.). However, if an employee is suspended pending an investigation or for disciplinary reasons, they would not be able to substitute any type of paid leave, including PPL, for the time they are suspended.

**11. If leave for the birth of a biological newborn child and adoption must be taken consecutively, does that mean the employee must take full days consecutively? Or can the employee take a few hours over consecutive days until they use up their allotment?**

The employee must take all time consecutively. The employee could take a partial day at the start of the leave period but after that, they would have to take full days until their leave is exhausted. Depending on the shift worked by the employee, the PPL may be exhausted in the middle of a workday resulting in a partial day of PPL. Employees may use a different type of leave (sick, annual, leave without pay) or may work for the partial workday following the exhaustion of the PPL.

**12. Can an employee receive PPL while also working for the District if they are primarily responsible for furnishing the care and nurture of their child when not at work?**

No. Employees may not use PPL while also working in an FTE position.

**13. If an employee gives birth, adopts a child, or has a foster child placed before June 26, 2023, is the employee eligible for PPL within 12 months of June 26, 2023?**

No. PPL is only available if the qualifying event occurs on or after June 26, 2023.

**14. If the mother is admitted to the hospital on one day but the birth does not occur until the following day, can PPL be used by either parent for the day prior to the birth?**

No. PPL can only be used on or after the date the qualifying event occurs. The parents may, however, be permitted to use other types of leave.

**15. If both parents work for a school district, are both eligible for PPL?**

Yes. PPL for both employees may be taken concurrently, consecutively or at a different time, subject to all other requirements. However, the number of weeks available to each employee may be different.

**16. Can an employer deny an employee's request to take PPL at a certain time?**

In general, the same considerations applied to requests for FMLA time off for bonding should be applied to requests for PPL. Therefore, requests for periods of leave should, generally, be granted for the time requested by the employee so long as the requested time is within 12 months of the qualifying event.

**17. Are employees required to use PPL for school district holidays which occur during their period of leave?**

No. School district holidays are not counted against PPL. For purposes of calculating PPL, summer break is not considered a school district holiday. However, school districts may adopt policies allowing an employee to continue their period of leave in the subsequent contract year, provided they remain an eligible school district employee. For schools operating under a modified year-round calendar, the weeks taken throughout the year in lieu of summer break are counted towards the balance of an employee's PPL unless a school district adopts policies to the contrary.

**18. Are charter school employees eligible for PPL?**

No. South Carolina Code Section 59-40-50(A) states: Except as otherwise provided in this chapter, a charter school is exempt from all provisions of law and regulations applicable to a public school, a school board, or a district, although a charter school may elect to comply with one or more of these provisions of law or regulations. H. 3908 includes "eligible school district employees;" however, there is no express inclusion of charter school employees in the law. Even though there is no requirement for a charter school to provide PPL, charter school boards may still adopt policies providing PPL.

**19. Are employees who give birth during the summer able to take leave during the following school year?**

Yes, provided that the employee remains an eligible school district employee for the next school year and that the qualifying event occurs on or after June 26, 2023.

**20. If an FTE employee receives a supplement (for coaching or other reason) should the district pay the supplement during the employee's PPL?**

PPL is paid at 100% of the eligible school district employee's base pay. Therefore, PPL does not include any additional pay, such as overtime, supplements, bonuses, longevity

pay, temporary salary adjustments, shift differential pay, on-call pay, call back pay, special assignment pay, or market or geographic differential pay.