

September 5th, 2023

Dear Defense Advisory Committee on Women in the Services,

I'm writing to you as a mid-career, field grade, Marine Corps officer who recently left active duty. I have 14 years of active service and served as a judge advocate and Northeast Asian foreign area officer. One of the main reasons I left active duty was the tone-deaf manner in which the "Expansion of the Military Parental Leave Program" was implemented by the DoD in early 2023. I was clued into the specifics of the implementation only because, at the time it came into effect, my newborn daughter was 5 months and 11 days old. I expected I would receive the benefit of the new law (specifically, an additional six weeks of maternity leave) as the benefit is authorized for use up until the child's first birthday and does not need to be taken in one continuous segment.

Unfortunately, my leave request was denied. What I learned by digging deeper into the regulations was that the DoD implementing guidance made an arbitrary distinction amongst those who could receive retroactive benefits. Per the DoD guidance, servicemembers with children under 1 year of age who had used all of their leave days under the legacy system AND those who had not taken their full legacy benefit would be treated differently. For example, I rated 6 weeks of primary care giver leave under the legacy Marine Corps policy or 42 days. I took all 42 days when my child was born on July 17th, 2022, before returning to my billet as the Marine Corps Air Station Cherry Point Staff Judge Advocate. According to the DoD policy, however, if I had taken 0 days of primary care giver leave or 41 days (not possible because the Marine Corps Order required continuous usage of all 42 days) then I would have rated an additional 42 days in 2023. I took all 42, however, so I rated 0 additional days. For birthing mothers, even if they had known about this bizarre method of retroactive accounting, abandoning the opportunity for bonding immediately after convalescent leave would have been an impossible decision.

I also started noticing a trend of who was using the most retroactive parental care leave benefits: active-duty, male Marines who had a child around the same time I did but, didn't need or want to take the time off immediately after the birth. Honestly, in February of 2023, I experienced a difficult time. I had just spent 9 months pregnant, 3 days in labor, and 6 months of post-partum psychiatric treatment for depression and pelvic floor physical therapy to restore the basic health of my core and back muscles. But I was the one reporting at my appointed place of duty, on the daily, while my male peers and subordinates were at home resting with their children.


Why is there still head scratching as to why successful, mid-career service women leave active duty? I felt that as a Major, and an attorney, that I should speak up for the women who were in the same predicament AND I should try and help the organization identify and fix its mistake. I filed Congressional Complaints with both North Carolina Senators and two DoDIG complaints but without any impact.

What is the cost of simply allowing someone to receive the six weeks of parental care leave mandated by Congress? Why would the DoD turn down this free recruiting and retention tool? By comparison, what is the cost of recruiting, training, and retaining another Japanese speaking, judge advocate with 14 years of active service?

It gets worse. The more I looked into the law and regulations for my own situation, the more I understood about the discriminatory way the policy would be implemented for birth mothers going forward. Under the new policy, there will be zero distinction between the total benefits given to fathers (also, adopting/foster/same gender parents) and birthing mothers. The new regulations now make it practically impossible to obtain convalescent leave. As a result, whether you physically birthed the child or not, you will receive a total of 12 weeks leave.

In the end, I realized that the performative allyship literature of the past decade produced by politicians and senior military leadership that catered to female talent recruiting, promotion, and retention had just belly flopped into . . . wait for it . . . 9 more weeks of parental care leave for men. I don't mean to sound facetious or bitter, but I don't want the irony to be lost. I feel a moral responsibility to inform the DoD how it unknowingly continues to shoot itself in the foot. Please see the attached detailing of issues and thank you again for taking the time to listen to my concerns.

Very Respectfully,

  
Maj Crystal Pearl

### **Implementation Issues with the “Expansion of the Military Parental Leave Program”**

**The legislative intent of Section 621 of the NDAA 2022 was for birthing mothers to receive a minimum of 6 weeks of convalescent leave in addition to the 12 weeks of parental care leave, for a minimum of 18 weeks of total leave, while non-birth, adoptive, and foster parents should receive the 12 weeks of parental leave.<sup>1</sup>**

Directive-Type Memorandum 23-001 (DTM), “Expansion of the Military Parental Leave Program,” implementing Section 621 is not, in its current form, consistent with Congressional intent for two reasons: (1) the DTM does not provide adequate protections for convalescent leave for birthing mothers and, (2) it's standard for retroactivity in approving parental care leave is too narrow. As written:

**(1)** The DTM language makes obtaining post-partum convalescent leave more burdensome than under legacy policies.

**Issue:** The DTM only permits post-partum convalescent leave, “for the recovery of the birth parent from giving birth if such leave is specifically recommended, in writing, by the health care provider of the birth parent to address a diagnosed medical condition and is approved by the unit commander. The period of convalescent leave immediately following childbirth will be taken in one increment. Such leave will begin on the first full day after the birth of the child or the date of release of the member from the hospital or similar facility where the birth took place, whichever is later.”

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<sup>1</sup> “Bipartisan, Bicameral Group of Members Urge Department of Defense to Follow Congressional Intent and Provide Equal Access to Parental Leave” (November 15, 2022).

**Recommendation:** To meet Congressional intent and ensure that servicemembers are receiving adequate treatment and care, this paragraph should be rewritten to include a standard minimum acceptable convalescent period for the medical condition of maternity for six weeks. If the service member requires more than six weeks of convalescent leave, only then will they need to obtain a specific recommendation, in writing, for a diagnosed medical condition.

(2) The DTM also narrowed the intended scope of retroactivity to only approve parental leave for service members who had not already used their full entitlement under legacy service policies irrespective of when the qualifying event occurred.

**Issue:** The language of 10 U.S. Code §701 states:

“a member of the armed forces . . . is allowed up to a total of 12 weeks of parental leave during the one-year period beginning after the following events: (i) the birth or adoption of a child. . .” The qualifying event did not need to take place on or after December 27, 2022, for this benefit to apply. Retroactive benefits should be applied to any parent whose one-year period was not exhausted as of December 27, 2022.

**Recommendation:** To meet Congressional intent and ensure birthing mothers are not discriminated against, all service members whose child was under one year of age on December 27, 2022, should receive the remainder of their unused 12 weeks of parental care leave benefit. Parents should be permitted to use the erroneously denied benefit up until the child is of a certain age, i.e., 24 months, to ensure they are not repeatedly denied a fair opportunity to use this entitlement.