



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: State Human Resources Commission	
2. Rule citation & name: 25 NCAC 01E .1901 Definitions	
3. Action: <input checked="" type="checkbox"/> Adoption <input type="checkbox"/> Amendment <input type="checkbox"/> Repeal	
4. Was this an Emergency Rule: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Effective date:	
5. Provide dates for the following actions as applicable: a. Proposed Temporary Rule submitted to OAH: June 22, 2023 b. Proposed Temporary Rule published on the OAH website: June 26, 2023 c. Public Hearing date: July 10, 2023 d. Comment Period: June 23, 2023 – July 19, 2023 e. Notice pursuant to G.S. 150B-21.1(a3)(2): June 22, 2023 f. Adoption by agency on: August 8, 2023 g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]: n/a h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:	
6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review. <input type="checkbox"/> A serious and unforeseen threat to the public health, safety or welfare. <input checked="" type="checkbox"/> The effective date of a recent act of the General Assembly or of the U.S. Congress. Cite: N.C. Sess. Law 2023-14, Part V, and N.C. Sess. Law 2023-65, Section 13A.1 Effective date: 07/01/2023 for both acts <input type="checkbox"/> A recent change in federal or state budgetary policy. Effective date of change: <input type="checkbox"/> A recent federal regulation. Cite: Effective date: <input type="checkbox"/> A recent court order. Cite order: <input type="checkbox"/> State Medical Facilities Plan. <input type="checkbox"/> Other:	
Explain: Part V of N.C. Sess. Law 2023-14 enacted G.S. 126-8.6 and 126-5(c19), new statutes that became effective July 1, 2023 to provide paid parental leave to certain North Carolina government employees. Section 13A.1 of N.C. Sess. Law 2023-65 amended those statutes, effective July 1, 2023. The new statutes require that the State Human Resources Commission “adopt rules and policies” on paid parental leave. G.S. 126-8.6(b),(c). The new statutes also require that for the University of North Carolina, for public school employees, and for community college employees, the appropriate governing entities “adopt rules and policies” on paid parental leave “that are substantially equivalent to those adopted by the State Human Resources Commission.” G.S. 126-8.6(e). Because these other government employers must model their rules on the rules adopted by the Human Resources Commission, the Commission is moving as quickly as possible to put temporary rules in place.	

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

Under the standard provided in G.S. 150B-21.1(a)(2), an agency or commission “may adopt a temporary rule when it finds that adherence to the notice and hearing requirements of G.S. 150B-21.2 would be contrary to the public interest and that the immediate adoption of the rule is required by ... [t]he effective date of a recent act of the General Assembly.”

Here, the immediate adoption of the rule is required because of the effective date of Part V of N.C. Sess. Law 2023-14 and Section 13A.1 of N.C. Sess. Law 2023-65. Both acts are recent; Session Law 2023-14 became law on May 16, 2023, and Session Law 2023-65 became law on June 29, 2023. Both acts specify that they are effective July 1, 2023. The General Assembly required “rules and policies” to govern paid parental leave, and the General Assembly required the “rules and policies” for the University System, public schools, and community colleges to be “substantially equivalent” to those from the State Human Resources Commission. G.S. 126-8.6(b),(c),(e). To have the General Assembly’s paid parental leave program be in place as close as possible to the July 1, 2023, effective date specified in the statute, the Commission’s rules must be adopted as quickly as possible so that the University System, public schools, and community colleges can adopt their rules. For this reason, the recent acts’ effective date requires immediate adoption of the temporary rule.

The Human Resources Commission believes that the accelerated notice and hearing process under G.S. 150B-21.1 was helpful for this temporary rule. No formal comments were received, and there were no comments at the public hearing, but during the period for public comment, stakeholders reached out to Commission staff and made informal recommendations to improve the temporary rule. Those recommendations resulted in the Commission adopting the temporary rule with three changes after the accelerated notice and hearing process.

For four reasons, immediate adherence to the full notice and hearing requirements in G.S. 150B-21.2 would be contrary to the public interest at this time for this temporary rule.

- First, there is a lesser need for the full period of public comment under G.S. 150B-21.2 in this situation because the details of this temporary rule are not new and were developed through years of feedback from state agencies. The temporary rule matches the paid parental leave program that has existed at Cabinet agencies under Executive Order 95 and the previous Human Resources Commission policy. As a result, for most executive branch agencies, the material in the temporary rule is not new, and since the Executive Order was adopted in 2019, agencies have provided input that has been used to clarify and better implement the paid parental leave program.
- Second, a feature of the statute shows that the legislature was comfortable with the program details that were part of the pre-existing paid parental leave program and are now in the proposed temporary rule. The legislature showed support for the Human Resources Commission’s implementation of the program under Executive Order 95 by requiring that the new rules and policies for universities, public schools, and community colleges must be “substantially equivalent” to the Human Resources Commission rules and policies. G.S. 126-8.6(e). This suggests a legislative intent for continuity with existing Commission practices. The accelerated notice and hearing process is more appropriate when a temporary rule matches existing practices and there are signs of legislative intent favoring continuity with existing practices.
- Third, the Commission is using the abbreviated notice and hearing process under G.S. 150B-21.1 for the noncontroversial topics in the temporary rule, but delaying for full notice and hearing under G.S. 150B-21.2 the topic that has the greatest need for public notice and comment. The Human Resources Commission has left for permanent rulemaking—and has not included in the temporary rule—the most controversial and complicated topic for paid parental leave. Under Executive Order 95 and the previous Human Resources Commission policy, questions sometimes arose on whether agencies could provide paid parental leave in the event of miscarriage or stillbirth. There was no provision in the Executive Order or existing policy on this topic. On June 29, 2023, Session Law 2023-65 added a provision to the statute that expressly requires the Human Resources Commission to “adopt rules and policies” on paid parental leave for “miscarriage or the death of a child during birth.” G.S. 126-8.6(c1). On the difficult and complex topic of paid leave following miscarriage or stillbirth, the full period of notice and hearing under G.S. 150B-21.2 is in the public interest. That is why that topic is not part of the temporary rule that is being submitted to the Rules Review Commission.
- Fourth, requiring the full period of notice and hearing under G.S. 150B-21.2 would substantially delay the system of paid parental rules that the General Assembly required in G.S. 126-8.6(b)-(c). It would be contrary to the public interest to delay the effect of the General Assembly’s statute for any longer than is necessary.

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

☐ Yes

Agency submitted request for consultation on:

Consultation not required. Cite authority:

☒ No

9. Rule-making Coordinator: Denise H. Mazza

Phone: 984 236-0823

E-Mail: Denise.Mazza@nc.gov

Agency contact, if any: Blake Thomas

Phone: 984 236-0822

E-Mail: Blake.Thomas@nc.gov

10. Signature of Agency Head*:



* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name of Agency Head: Dekhasta Becton Rozier

Title: Chair, State Human Resources Commission

E-Mail: dbrozier@bectonlaw.com

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01E .1901

DEADLINE FOR RECEIPT: August 15, 2023

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

The definition of agency excludes community colleges and public schools from the definition of agency. Is this because 126-8.6(e) directs them to independently create substantially equivalent policies through their governing board?

If so, why is UNC included within the definition of agency? Wouldn't they be in the same position as community colleges and public schools?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Seth Ascher
Commission Counsel

Date submitted to agency: August 14, 2023

25 NCAC 01E .1901 is adopted under temporary procedures as follows:

25 NCAC 01E .1901 DEFINITIONS

For the purposes of this Section, the following definitions shall apply:

(1) “Agency” means any State agency, department, institution, office, board, or commission, including institutions and offices of the University of North Carolina, but excluding the legislative branch, the judicial branch, community college institutions, and public schools.

(2) “Child” means a child as defined at G.S. 126-8.6(a)(1).

(3) “Parent” means:

(a) the mother or father of a child through birth or legal adoption; or

(b) an individual who cares for a child through foster or other legal placement under the direction of a government authority.

(4) “Qualifying event” means when an employee becomes a parent to a child.

History Note: Authority G.S. 126-5(c19); 126-8.6;

Temporary Adoption Eff. [date of adoption].



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: State Human Resources Commission	
2. Rule citation & name: 25 NCAC 01E .1902 Relationship to Other Rules and Policies	
3. Action: <input checked="" type="checkbox"/> Adoption <input type="checkbox"/> Amendment <input type="checkbox"/> Repeal	
4. Was this an Emergency Rule: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Effective date:	
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8. Rule establishes or increases a fee? (See G.S. 12-3.1)

☐ Yes

Agency submitted request for consultation on:

Consultation not required. Cite authority:

☒ No

9. Rule-making Coordinator: Denise H. Mazza

Phone: 984 236-0823

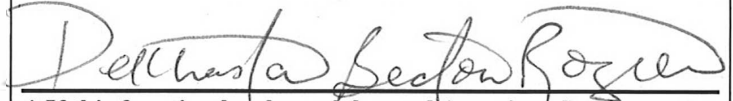
E-Mail: Denise.Mazza@nc.gov

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10. Signature of Agency Head*:



* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name of Agency Head: Dekhasta Becton Rozier

Title: Chair, State Human Resources Commission

E-Mail: dbrozier@bectonlaw.com

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01E .1902

DEADLINE FOR RECEIPT: August 15, 2023

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Regarding paragraph b, where does the State Human Resources Commission get authority to regulate all the entities covered by 126-8.6(e)?

To give a concrete example on the previous point, 126-8.6(e) appears to contemplate some entities that have independent rulemaking authority, such as public schools. In that case, 126-8.6(e) would require those entities to make rules that are "substantially similar" to yours, but it does not suggest that you have the authority to determine what is or is not substantially similar.

Additionally, if the Human Resources Commission has authority to control rule and policy making at other agencies, it likely cannot do so by policy as indicated in line 9.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

25 NCAC 01E .1902 is adopted under temporary procedures as follows:

25 NCAC 01E .1902 RELATIONSHIP TO OTHER RULES AND POLICIES

(a) This Section states the terms and conditions only for paid parental leave that is provided under G.S. 126-8.6 by an agency, as defined in Rule .1901 of this Section.

(b) For the employers who are required by G.S. 126-8.6(e) to adopt rules and policies that are “substantially equivalent” to this Section, different circumstances may require differences in terminology and in how to put into application or effect the general principles of this Section. Therefore, those employers may diverge from the text of this Section and any related State Human Resources Commission policies when adopting their rules and policies, so long as those employers’ rules and policies provide a substantially equivalent amount of leave to a substantially equivalent group of employees.

(c) The paid parental leave provided under this Section is in addition to any other leave authorized by State or federal law. Nothing in this Rule shall prohibit an employer, if authorized, from providing paid parental leave in amounts greater than as required by this Rule.

History Note: Authority G.S. 126-8.6:

Temporary Adoption Eff. [date of adoption].



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: State Human Resources Commission
2. Rule citation & name: 25 NCAC 01E .1903 Eligibility for Paid Parental Leave
3. Action: <input checked="" type="checkbox"/> Adoption <input type="checkbox"/> Amendment <input type="checkbox"/> Repeal
4. Was this an Emergency Rule: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Effective date:
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8. Rule establishes or increases a fee? (See G.S. 12-3.1)

☐ Yes

Agency submitted request for consultation on:

Consultation not required. Cite authority:

☒ No

9. Rule-making Coordinator: Denise H. Mazza

Phone: 984 236-0823


E-Mail: Denise.Mazza@nc.gov

Agency contact, if any: Blake Thomas

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* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name of Agency Head: Dekhasta Becton Rozier

Title: Chair, State Human Resources Commission

E-Mail: dbrozier@bectonlaw.com

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01E .1903

DEADLINE FOR RECEIPT: August 15, 2023

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In reviewing this Rule, the staff recommends the following changes be made:

No comments.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Seth Ascher
Commission Counsel

Date submitted to agency: August 14, 2023

25 NCAC 01E .1903 is adopted under temporary procedures with changes as follows:

25 NCAC 01E .1903 ELIGIBILITY FOR PAID PARENTAL LEAVE

(a) This Section applies to all agency employees subject to G.S. 126-8.6, whether or not those employees are exempt from other sections of the State Human Resources Act.

(b) Employees may receive paid parental leave under this Section only if they are in a permanent, time-limited, or probationary appointment. Temporary employees are not eligible for paid parental leave under this Section.

(c) An agency shall allow an employee to take paid parental leave under this Section only if, at the time of the qualifying event, the employee meets each of the following conditions.

(1) For the immediate 12 preceding months, the employee has been employed without a break in service as defined by 25 NCAC 01D .0114 by the State of North Carolina in a permanent, time-limited, or probationary appointment.

(2) The employee has been in pay status with the State of North Carolina for at least 1,040 hours during the previous 12-month period.

(d) This Section applies to requests for paid parental leave related to qualifying events occurring on or after July 1, 2023.

*History Note: Authority G.S. 126-8.6;
Temporary Adoption Eff. [date of adoption].*



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: State Human Resources Commission	
2. Rule citation & name: 25 NCAC 01E .1904 Leave Available to Full-Time Employees	
3. Action: <input checked="" type="checkbox"/> Adoption <input type="checkbox"/> Amendment <input type="checkbox"/> Repeal	
4. Was this an Emergency Rule: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Effective date:	
5. Provide dates for the following actions as applicable: a. Proposed Temporary Rule submitted to OAH: June 22, 2023 b. Proposed Temporary Rule published on the OAH website: June 26, 2023 c. Public Hearing date: July 10, 2023 d. Comment Period: June 23, 2023 – July 19, 2023 e. Notice pursuant to G.S. 150B-21.1(a3)(2): June 22, 2023 f. Adoption by agency on: August 8, 2023 g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]: n/a h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:	
6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review. <input type="checkbox"/> A serious and unforeseen threat to the public health, safety or welfare. <input checked="" type="checkbox"/> The effective date of a recent act of the General Assembly or of the U.S. Congress. Cite: N.C. Sess. Law 2023-14, Part V, and N.C. Sess. Law 2023-65, Section 13A.1 Effective date: 07/01/2023 for both acts <input type="checkbox"/> A recent change in federal or state budgetary policy. Effective date of change: <input type="checkbox"/> A recent federal regulation. Cite: Effective date: <input type="checkbox"/> A recent court order. Cite order: <input type="checkbox"/> State Medical Facilities Plan. <input type="checkbox"/> Other:	
Explain: Part V of N.C. Sess. Law 2023-14 enacted G.S. 126-8.6 and 126-5(c19), new statutes that became effective July 1, 2023 to provide paid parental leave to certain North Carolina government employees. Section 13A.1 of N.C. Sess. Law 2023-65 amended those statutes, effective July 1, 2023. The new statutes require that the State Human Resources Commission “adopt rules and policies” on paid parental leave. G.S. 126-8.6(b),(c). The new statutes also require that for the University of North Carolina, for public school employees, and for community college employees, the appropriate governing entities “adopt rules and policies” on paid parental leave “that are substantially equivalent to those adopted by the State Human Resources Commission.” G.S. 126-8.6(e). Because these other government employers must model their rules on the rules adopted by the Human Resources Commission, the Commission is moving as quickly as possible to put temporary rules in place.	

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

Under the standard provided in G.S. 150B-21.1(a)(2), an agency or commission “may adopt a temporary rule when it finds that adherence to the notice and hearing requirements of G.S. 150B-21.2 would be contrary to the public interest and that the immediate adoption of the rule is required by ... [t]he effective date of a recent act of the General Assembly.”

Here, the immediate adoption of the rule is required because of the effective date of Part V of N.C. Sess. Law 2023-14 and Section 13A.1 of N.C. Sess. Law 2023-65. Both acts are recent; Session Law 2023-14 became law on May 16, 2023, and Session Law 2023-65 became law on June 29, 2023. Both acts specify that they are effective July 1, 2023. The General Assembly required “rules and policies” to govern paid parental leave, and the General Assembly required the “rules and policies” for the University System, public schools, and community colleges to be “substantially equivalent” to those from the State Human Resources Commission. G.S. 126-8.6(b),(c),(e). To have the General Assembly’s paid parental leave program be in place as close as possible to the July 1, 2023, effective date specified in the statute, the Commission’s rules must be adopted as quickly as possible so that the University System, public schools, and community colleges can adopt their rules. For this reason, the recent acts’ effective date requires immediate adoption of the temporary rule.

The Human Resources Commission believes that the accelerated notice and hearing process under G.S. 150B-21.1 was helpful for this temporary rule. No formal comments were received, and there were no comments at the public hearing, but during the period for public comment, stakeholders reached out to Commission staff and made informal recommendations to improve the temporary rule. Those recommendations resulted in the Commission adopting the temporary rule with three changes after the accelerated notice and hearing process.

For four reasons, immediate adherence to the full notice and hearing requirements in G.S. 150B-21.2 would be contrary to the public interest at this time for this temporary rule.

- First, there is a lesser need for the full period of public comment under G.S. 150B-21.2 in this situation because the details of this temporary rule are not new and were developed through years of feedback from state agencies. The temporary rule matches the paid parental leave program that has existed at Cabinet agencies under Executive Order 95 and the previous Human Resources Commission policy. As a result, for most executive branch agencies, the material in the temporary rule is not new, and since the Executive Order was adopted in 2019, agencies have provided input that has been used to clarify and better implement the paid parental leave program.
- Second, a feature of the statute shows that the legislature was comfortable with the program details that were part of the pre-existing paid parental leave program and are now in the proposed temporary rule. The legislature showed support for the Human Resources Commission’s implementation of the program under Executive Order 95 by requiring that the new rules and policies for universities, public schools, and community colleges must be “substantially equivalent” to the Human Resources Commission rules and policies. G.S. 126-8.6(e). This suggests a legislative intent for continuity with existing Commission practices. The accelerated notice and hearing process is more appropriate when a temporary rule matches existing practices and there are signs of legislative intent favoring continuity with existing practices.
- Third, the Commission is using the abbreviated notice and hearing process under G.S. 150B-21.1 for the noncontroversial topics in the temporary rule, but delaying for full notice and hearing under G.S. 150B-21.2 the topic that has the greatest need for public notice and comment. The Human Resources Commission has left for permanent rulemaking—and has not included in the temporary rule—the most controversial and complicated topic for paid parental leave. Under Executive Order 95 and the previous Human Resources Commission policy, questions sometimes arose on whether agencies could provide paid parental leave in the event of miscarriage or stillbirth. There was no provision in the Executive Order or existing policy on this topic. On June 29, 2023, Session Law 2023-65 added a provision to the statute that expressly requires the Human Resources Commission to “adopt rules and policies” on paid parental leave for “miscarriage or the death of a child during birth.” G.S. 126-8.6(c1). On the difficult and complex topic of paid leave following miscarriage or stillbirth, the full period of notice and hearing under G.S. 150B-21.2 is in the public interest. That is why that topic is not part of the temporary rule that is being submitted to the Rules Review Commission.
- Fourth, requiring the full period of notice and hearing under G.S. 150B-21.2 would substantially delay the system of paid parental rules that the General Assembly required in G.S. 126-8.6(b)-(c). It would be contrary to the public interest to delay the effect of the General Assembly’s statute for any longer than is necessary.

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

☐ Yes

Agency submitted request for consultation on:
Consultation not required. Cite authority:

☒ No

9. Rule-making Coordinator: Denise H. Mazza

Phone: 984 236-0823

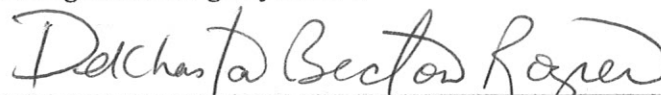
E-Mail: Denise.Mazza@nc.gov

Agency contact, if any: Blake Thomas

Phone: 984 236-0822

E-Mail: Blake.Thomas@nc.gov

10. Signature of Agency Head*:



*** If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.**

Typed Name of Agency Head: Dekhasta Becton Rozier

Title: Chair, State Human Resources Commission

E-Mail: dbrozier@bectonlaw.com

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01E .1904

DEADLINE FOR RECEIPT: August 15, 2023

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

On line 9, is "straight-time" defined somewhere?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

25 NCAC 01E .1904 is adopted under temporary procedures as follows:

25 NCAC 01E .1904 LEAVE AVAILABLE TO FULL-TIME EMPLOYEES

(a) Full-time employees eligible for paid parental leave under this Section may take, in their discretion, up to the following amounts of leave:

(1) Eight weeks of paid leave after a parent gives birth to a child.

(2) Four weeks of paid leave after any other qualifying event.

(b) Each week of paid parental leave under this Section shall result in compensation at 100% of the eligible employee's regular, straight-time weekly pay.

History Note: Authority G.S. 126-8.6;

Temporary Adoption Eff. [date of adoption].



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: State Human Resources Commission
2. Rule citation & name: 25 NCAC 01E .1905 Leave Available to Part-Time Employees
3. Action: <input checked="" type="checkbox"/> Adoption <input type="checkbox"/> Amendment <input type="checkbox"/> Repeal
4. Was this an Emergency Rule: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Effective date:
5. Provide dates for the following actions as applicable: a. Proposed Temporary Rule submitted to OAH: June 22, 2023 b. Proposed Temporary Rule published on the OAH website: June 26, 2023 c. Public Hearing date: July 10, 2023 d. Comment Period: June 23, 2023 – July 19, 2023 e. Notice pursuant to G.S. 150B-21.1(a3)(2): June 22, 2023 f. Adoption by agency on: August 8, 2023 g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]: n/a h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:
6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review. <input type="checkbox"/> A serious and unforeseen threat to the public health, safety or welfare. <input checked="" type="checkbox"/> The effective date of a recent act of the General Assembly or of the U.S. Congress. Cite: N.C. Sess. Law 2023-14, Part V, and N.C. Sess. Law 2023-65, Section 13A.1 Effective date: 07/01/2023 for both acts <input type="checkbox"/> A recent change in federal or state budgetary policy. Effective date of change: <input type="checkbox"/> A recent federal regulation. Cite: Effective date: <input type="checkbox"/> A recent court order. Cite order: <input type="checkbox"/> State Medical Facilities Plan. <input type="checkbox"/> Other: Explain: Part V of N.C. Sess. Law 2023-14 enacted G.S. 126-8.6 and 126-5(c19), new statutes that became effective July 1, 2023 to provide paid parental leave to certain North Carolina government employees. Section 13A.1 of N.C. Sess. Law 2023-65 amended those statutes, effective July 1, 2023. The new statutes require that the State Human Resources Commission “adopt rules and policies” on paid parental leave. G.S. 126-8.6(b),(c). The new statutes also require that for the University of North Carolina, for public school employees, and for community college employees, the appropriate governing entities “adopt rules and policies” on paid parental leave “that are substantially equivalent to those adopted by the State Human Resources Commission.” G.S. 126-8.6(e). Because these other government employers must model their rules on the rules adopted by the Human Resources Commission, the Commission is moving as quickly as possible to put temporary rules in place.

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

Under the standard provided in G.S. 150B-21.1(a)(2), an agency or commission “may adopt a temporary rule when it finds that adherence to the notice and hearing requirements of G.S. 150B-21.2 would be contrary to the public interest and that the immediate adoption of the rule is required by ... [t]he effective date of a recent act of the General Assembly.”

Here, the immediate adoption of the rule is required because of the effective date of Part V of N.C. Sess. Law 2023-14 and Section 13A.1 of N.C. Sess. Law 2023-65. Both acts are recent; Session Law 2023-14 became law on May 16, 2023, and Session Law 2023-65 became law on June 29, 2023. Both acts specify that they are effective July 1, 2023. The General Assembly required “rules and policies” to govern paid parental leave, and the General Assembly required the “rules and policies” for the University System, public schools, and community colleges to be “substantially equivalent” to those from the State Human Resources Commission. G.S. 126-8.6(b),(c),(e). To have the General Assembly’s paid parental leave program be in place as close as possible to the July 1, 2023, effective date specified in the statute, the Commission’s rules must be adopted as quickly as possible so that the University System, public schools, and community colleges can adopt their rules. For this reason, the recent acts’ effective date requires immediate adoption of the temporary rule.

The Human Resources Commission believes that the accelerated notice and hearing process under G.S. 150B-21.1 was helpful for this temporary rule. No formal comments were received, and there were no comments at the public hearing, but during the period for public comment, stakeholders reached out to Commission staff and made informal recommendations to improve the temporary rule. Those recommendations resulted in the Commission adopting the temporary rule with three changes after the accelerated notice and hearing process.

For four reasons, immediate adherence to the full notice and hearing requirements in G.S. 150B-21.2 would be contrary to the public interest at this time for this temporary rule.

- First, there is a lesser need for the full period of public comment under G.S. 150B-21.2 in this situation because the details of this temporary rule are not new and were developed through years of feedback from state agencies. The temporary rule matches the paid parental leave program that has existed at Cabinet agencies under Executive Order 95 and the previous Human Resources Commission policy. As a result, for most executive branch agencies, the material in the temporary rule is not new, and since the Executive Order was adopted in 2019, agencies have provided input that has been used to clarify and better implement the paid parental leave program.
- Second, a feature of the statute shows that the legislature was comfortable with the program details that were part of the pre-existing paid parental leave program and are now in the proposed temporary rule. The legislature showed support for the Human Resources Commission’s implementation of the program under Executive Order 95 by requiring that the new rules and policies for universities, public schools, and community colleges must be “substantially equivalent” to the Human Resources Commission rules and policies. G.S. 126-8.6(e). This suggests a legislative intent for continuity with existing Commission practices. The accelerated notice and hearing process is more appropriate when a temporary rule matches existing practices and there are signs of legislative intent favoring continuity with existing practices.
- Third, the Commission is using the abbreviated notice and hearing process under G.S. 150B-21.1 for the noncontroversial topics in the temporary rule, but delaying for full notice and hearing under G.S. 150B-21.2 the topic that has the greatest need for public notice and comment. The Human Resources Commission has left for permanent rulemaking—and has not included in the temporary rule—the most controversial and complicated topic for paid parental leave. Under Executive Order 95 and the previous Human Resources Commission policy, questions sometimes arose on whether agencies could provide paid parental leave in the event of miscarriage or stillbirth. There was no provision in the Executive Order or existing policy on this topic. On June 29, 2023, Session Law 2023-65 added a provision to the statute that expressly requires the Human Resources Commission to “adopt rules and policies” on paid parental leave for “miscarriage or the death of a child during birth.” G.S. 126-8.6(c1). On the difficult and complex topic of paid leave following miscarriage or stillbirth, the full period of notice and hearing under G.S. 150B-21.2 is in the public interest. That is why that topic is not part of the temporary rule that is being submitted to the Rules Review Commission.
- Fourth, requiring the full period of notice and hearing under G.S. 150B-21.2 would substantially delay the system of paid parental rules that the General Assembly required in G.S. 126-8.6(b)-(c). It would be contrary to the public interest to delay the effect of the General Assembly’s statute for any longer than is necessary.

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

☐ Yes

Agency submitted request for consultation on:
Consultation not required. Cite authority:

☒ No

9. Rule-making Coordinator: Denise H. Mazza

Phone: 984 236-0823

E-Mail: Denise.Mazza@nc.gov

Agency contact, if any: Blake Thomas

Phone: 984 236-0822

E-Mail: Blake.Thomas@nc.gov

10. Signature of Agency Head*:



* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name of Agency Head: Dekhasta Becton Rozier

Title: Chair, State Human Resources Commission

E-Mail: dbrozier@bectonlaw.com

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01E .1905

DEADLINE FOR RECEIPT: August 15, 2023

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

On line 11, is "straight-time" defined somewhere?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Seth Ascher
Commission Counsel

Date submitted to agency: August 14, 2023

25 NCAC 01E .1905 is adopted under temporary procedures with changes as follows:

25 NCAC 01E .1905 LEAVE AVAILABLE TO PART-TIME EMPLOYEES

(a) Part-time employees (regardless whether they work half-time or more) shall receive paid parental leave under this Section if they meet all other requirements for eligibility.

(b) Part-time employees eligible for paid parental leave under this Section may take, in their discretion, a prorated amount of leave based on the hours worked in the employee's regular, weekly schedule compared to the hours worked by a full-time employee in a similar position at that agency.

(c) Each week of paid parental leave under this Section shall result in compensation at 100% of the eligible employee's regular, straight-time weekly pay.

History Note: Authority G.S. 126-8.6;

Temporary Adoption Eff. [date of adoption].



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: State Human Resources Commission

2. Rule citation & name: 25 NCAC 01E .1906 Use of Other Leave

3. Action: ☒ Adoption ☐ Amendment ☐ Repeal

4. Was this an Emergency Rule: ☐ Yes ☒ No Effective date:

5. Provide dates for the following actions as applicable:

- a. Proposed Temporary Rule submitted to OAH: June 22, 2023
- b. Proposed Temporary Rule published on the OAH website: June 26, 2023
- c. Public Hearing date: July 10, 2023
- d. Comment Period: June 23, 2023 – July 19, 2023
- e. Notice pursuant to G.S. 150B-21.1(a3)(2): June 22, 2023
- f. Adoption by agency on: August 8, 2023
- g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]: n/a
- h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:

6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.

- ☐ A serious and unforeseen threat to the public health, safety or welfare.
- ☒ The effective date of a recent act of the General Assembly or of the U.S. Congress.
Cite: N.C. Sess. Law 2023-14, Part V, and N.C. Sess. Law 2023-65, Section 13A.1
Effective date: 07/01/2023 for both acts
- ☐ A recent change in federal or state budgetary policy.
Effective date of change:
- ☐ A recent federal regulation.
Cite:
Effective date:
- ☐ A recent court order.
Cite order:
- ☐ State Medical Facilities Plan.
- ☐ Other:

Explain: Part V of N.C. Sess. Law 2023-14 enacted G.S. 126-8.6 and 126-5(c19), new statutes that became effective July 1, 2023 to provide paid parental leave to certain North Carolina government employees. Section 13A.1 of N.C. Sess. Law 2023-65 amended those statutes, effective July 1, 2023. The new statutes require that the State Human Resources Commission “adopt rules and policies” on paid parental leave. G.S. 126-8.6(b),(c). The new statutes also require that for the University of North Carolina, for public school employees, and for community college employees, the appropriate governing entities “adopt rules and policies” on paid parental leave “that are substantially equivalent to those adopted by the State Human Resources Commission.” G.S. 126-8.6(e). Because these other government employers must model their rules on the rules adopted by the Human Resources Commission, the Commission is moving as quickly as possible to put temporary rules in place.

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

Under the standard provided in G.S. 150B-21.1(a)(2), an agency or commission “may adopt a temporary rule when it finds that adherence to the notice and hearing requirements of G.S. 150B-21.2 would be contrary to the public interest and that the immediate adoption of the rule is required by ... [t]he effective date of a recent act of the General Assembly.”

Here, the immediate adoption of the rule is required because of the effective date of Part V of N.C. Sess. Law 2023-14 and Section 13A.1 of N.C. Sess. Law 2023-65. Both acts are recent; Session Law 2023-14 became law on May 16, 2023, and Session Law 2023-65 became law on June 29, 2023. Both acts specify that they are effective July 1, 2023. The General Assembly required “rules and policies” to govern paid parental leave, and the General Assembly required the “rules and policies” for the University System, public schools, and community colleges to be “substantially equivalent” to those from the State Human Resources Commission. G.S. 126-8.6(b),(c),(e). To have the General Assembly’s paid parental leave program be in place as close as possible to the July 1, 2023, effective date specified in the statute, the Commission’s rules must be adopted as quickly as possible so that the University System, public schools, and community colleges can adopt their rules. For this reason, the recent acts’ effective date requires immediate adoption of the temporary rule.

The Human Resources Commission believes that the accelerated notice and hearing process under G.S. 150B-21.1 was helpful for this temporary rule. No formal comments were received, and there were no comments at the public hearing, but during the period for public comment, stakeholders reached out to Commission staff and made informal recommendations to improve the temporary rule. Those recommendations resulted in the Commission adopting the temporary rule with three changes after the accelerated notice and hearing process.

For four reasons, immediate adherence to the full notice and hearing requirements in G.S. 150B-21.2 would be contrary to the public interest at this time for this temporary rule.

- First, there is a lesser need for the full period of public comment under G.S. 150B-21.2 in this situation because the details of this temporary rule are not new and were developed through years of feedback from state agencies. The temporary rule matches the paid parental leave program that has existed at Cabinet agencies under Executive Order 95 and the previous Human Resources Commission policy. As a result, for most executive branch agencies, the material in the temporary rule is not new, and since the Executive Order was adopted in 2019, agencies have provided input that has been used to clarify and better implement the paid parental leave program.
- Second, a feature of the statute shows that the legislature was comfortable with the program details that were part of the pre-existing paid parental leave program and are now in the proposed temporary rule. The legislature showed support for the Human Resources Commission’s implementation of the program under Executive Order 95 by requiring that the new rules and policies for universities, public schools, and community colleges must be “substantially equivalent” to the Human Resources Commission rules and policies. G.S. 126-8.6(e). This suggests a legislative intent for continuity with existing Commission practices. The accelerated notice and hearing process is more appropriate when a temporary rule matches existing practices and there are signs of legislative intent favoring continuity with existing practices.
- Third, the Commission is using the abbreviated notice and hearing process under G.S. 150B-21.1 for the noncontroversial topics in the temporary rule, but delaying for full notice and hearing under G.S. 150B-21.2 the topic that has the greatest need for public notice and comment. The Human Resources Commission has left for permanent rulemaking—and has not included in the temporary rule—the most controversial and complicated topic for paid parental leave. Under Executive Order 95 and the previous Human Resources Commission policy, questions sometimes arose on whether agencies could provide paid parental leave in the event of miscarriage or stillbirth. There was no provision in the Executive Order or existing policy on this topic. On June 29, 2023, Session Law 2023-65 added a provision to the statute that expressly requires the Human Resources Commission to “adopt rules and policies” on paid parental leave for “miscarriage or the death of a child during birth.” G.S. 126-8.6(c1). On the difficult and complex topic of paid leave following miscarriage or stillbirth, the full period of notice and hearing under G.S. 150B-21.2 is in the public interest. That is why that topic is not part of the temporary rule that is being submitted to the Rules Review Commission.
- Fourth, requiring the full period of notice and hearing under G.S. 150B-21.2 would substantially delay the system of paid parental rules that the General Assembly required in G.S. 126-8.6(b)-(c). It would be contrary to the public interest to delay the effect of the General Assembly’s statute for any longer than is necessary.

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

☐ Yes

Agency submitted request for consultation on:

Consultation not required. Cite authority:

☒ No

9. Rule-making Coordinator: Denise H. Mazza

Phone: 984 236-0823

E-Mail: Denise.Mazza@nc.gov

Agency contact, if any: Blake Thomas

Phone: 984 236-0822

E-Mail: Blake.Thomas@nc.gov

10. Signature of Agency Head*:



*** If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.**

Typed Name of Agency Head: Dekhasta Becton Rozier

Title: Chair, State Human Resources Commission

E-Mail: dbrozier@bectonlaw.com

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01E .1906

DEADLINE FOR RECEIPT: August 15, 2023

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

No comments.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

1 25 NCAC 01E .1906 is adopted under temporary procedures with changes as follows:

2
3 **25 NCAC 01E .1906 USE OF OTHER LEAVE**

4 The paid parental leave provided under this Section shall not be counted against or deducted from the employee's
5 sick, vacation, or other accrued leave. For agency employees, the paid parental leave provided under this Section is
6 in addition to any other leave authorized by law, rule, or policy, including but not limited to leave without pay provided
7 under 25 NCAC 01E .1110, voluntary shared leave under G.S. 126-8.3 and 25 NCAC 01E .1300, or family and
8 medical leave. However, when an employee becomes eligible, as described in 25 NCAC 01E .1400, for family and
9 medical leave, the paid parental leave under this Section shall run concurrently with the family and medical leave.

10
11
12 *History Note: Authority G.S. 126-8.6;*
13 *Temporary Adoption Eff. [date of adoption].*
14



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: State Human Resources Commission

2. Rule citation & name: 25 NCAC 01E .1907 Requesting Use of Paid Parental Leave

3. Action: ☒ Adoption ☐ Amendment ☐ Repeal

4. Was this an Emergency Rule: ☐ Yes ☒ No Effective date:

5. Provide dates for the following actions as applicable:

- a. Proposed Temporary Rule submitted to OAH: June 22, 2023
- b. Proposed Temporary Rule published on the OAH website: June 26, 2023
- c. Public Hearing date: July 10, 2023
- d. Comment Period: June 23, 2023 – July 19, 2023
- e. Notice pursuant to G.S. 150B-21.1(a3)(2): June 22, 2023
- f. Adoption by agency on: August 8, 2023
- g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]: n/a
- h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:

6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.

- ☐ A serious and unforeseen threat to the public health, safety or welfare.
- ☒ The effective date of a recent act of the General Assembly or of the U.S. Congress.
Cite: N.C. Sess. Law 2023-14, Part V, and N.C. Sess. Law 2023-65, Section 13A.1
Effective date: 07/01/2023 for both acts
- ☐ A recent change in federal or state budgetary policy.
Effective date of change:
- ☐ A recent federal regulation.
Cite:
Effective date:
- ☐ A recent court order.
Cite order:
- ☐ State Medical Facilities Plan.
- ☐ Other:

Explain: Part V of N.C. Sess. Law 2023-14 enacted G.S. 126-8.6 and 126-5(c19), new statutes that became effective July 1, 2023 to provide paid parental leave to certain North Carolina government employees. Section 13A.1 of N.C. Sess. Law 2023-65 amended those statutes, effective July 1, 2023. The new statutes require that the State Human Resources Commission “adopt rules and policies” on paid parental leave. G.S. 126-8.6(b),(c). The new statutes also require that for the University of North Carolina, for public school employees, and for community college employees, the appropriate governing entities “adopt rules and policies” on paid parental leave “that are substantially equivalent to those adopted by the State Human Resources Commission.” G.S. 126-8.6(e). Because these other government employers must model their rules on the rules adopted by the Human Resources Commission, the Commission is moving as quickly as possible to put temporary rules in place.

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

Under the standard provided in G.S. 150B-21.1(a)(2), an agency or commission “may adopt a temporary rule when it finds that adherence to the notice and hearing requirements of G.S. 150B-21.2 would be contrary to the public interest and that the immediate adoption of the rule is required by ... [t]he effective date of a recent act of the General Assembly.”

Here, the immediate adoption of the rule is required because of the effective date of Part V of N.C. Sess. Law 2023-14 and Section 13A.1 of N.C. Sess. Law 2023-65. Both acts are recent; Session Law 2023-14 became law on May 16, 2023, and Session Law 2023-65 became law on June 29, 2023. Both acts specify that they are effective July 1, 2023. The General Assembly required “rules and policies” to govern paid parental leave, and the General Assembly required the “rules and policies” for the University System, public schools, and community colleges to be “substantially equivalent” to those from the State Human Resources Commission. G.S. 126-8.6(b),(c),(e). To have the General Assembly’s paid parental leave program be in place as close as possible to the July 1, 2023, effective date specified in the statute, the Commission’s rules must be adopted as quickly as possible so that the University System, public schools, and community colleges can adopt their rules. For this reason, the recent acts’ effective date requires immediate adoption of the temporary rule.

The Human Resources Commission believes that the accelerated notice and hearing process under G.S. 150B-21.1 was helpful for this temporary rule. No formal comments were received, and there were no comments at the public hearing, but during the period for public comment, stakeholders reached out to Commission staff and made informal recommendations to improve the temporary rule. Those recommendations resulted in the Commission adopting the temporary rule with three changes after the accelerated notice and hearing process.

For four reasons, immediate adherence to the full notice and hearing requirements in G.S. 150B-21.2 would be contrary to the public interest at this time for this temporary rule.

- First, there is a lesser need for the full period of public comment under G.S. 150B-21.2 in this situation because the details of this temporary rule are not new and were developed through years of feedback from state agencies. The temporary rule matches the paid parental leave program that has existed at Cabinet agencies under Executive Order 95 and the previous Human Resources Commission policy. As a result, for most executive branch agencies, the material in the temporary rule is not new, and since the Executive Order was adopted in 2019, agencies have provided input that has been used to clarify and better implement the paid parental leave program.
- Second, a feature of the statute shows that the legislature was comfortable with the program details that were part of the pre-existing paid parental leave program and are now in the proposed temporary rule. The legislature showed support for the Human Resources Commission’s implementation of the program under Executive Order 95 by requiring that the new rules and policies for universities, public schools, and community colleges must be “substantially equivalent” to the Human Resources Commission rules and policies. G.S. 126-8.6(e). This suggests a legislative intent for continuity with existing Commission practices. The accelerated notice and hearing process is more appropriate when a temporary rule matches existing practices and there are signs of legislative intent favoring continuity with existing practices.
- Third, the Commission is using the abbreviated notice and hearing process under G.S. 150B-21.1 for the noncontroversial topics in the temporary rule, but delaying for full notice and hearing under G.S. 150B-21.2 the topic that has the greatest need for public notice and comment. The Human Resources Commission has left for permanent rulemaking—and has not included in the temporary rule—the most controversial and complicated topic for paid parental leave. Under Executive Order 95 and the previous Human Resources Commission policy, questions sometimes arose on whether agencies could provide paid parental leave in the event of miscarriage or stillbirth. There was no provision in the Executive Order or existing policy on this topic. On June 29, 2023, Session Law 2023-65 added a provision to the statute that expressly requires the Human Resources Commission to “adopt rules and policies” on paid parental leave for “miscarriage or the death of a child during birth.” G.S. 126-8.6(c1). On the difficult and complex topic of paid leave following miscarriage or stillbirth, the full period of notice and hearing under G.S. 150B-21.2 is in the public interest. That is why that topic is not part of the temporary rule that is being submitted to the Rules Review Commission.
- Fourth, requiring the full period of notice and hearing under G.S. 150B-21.2 would substantially delay the system of paid parental rules that the General Assembly required in G.S. 126-8.6(b)-(c). It would be contrary to the public interest to delay the effect of the General Assembly’s statute for any longer than is necessary.

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

☐ Yes

Agency submitted request for consultation on:

Consultation not required. Cite authority:

☒ No

9. Rule-making Coordinator: Denise H. Mazza

Phone: 984 236-0823

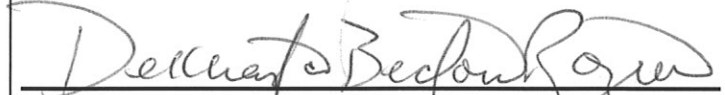
E-Mail: Denise.Mazza@nc.gov

Agency contact, if any: Blake Thomas

Phone: 984 236-0822

E-Mail: Blake.Thomas@nc.gov

10. Signature of Agency Head*:



*** If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.**

Typed Name of Agency Head: Dekhasta Becton Rozier

Title: Chair, State Human Resources Commission

E-Mail: dbrozier@bectonlaw.com

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01E .1907

DEADLINE FOR RECEIPT: August 15, 2023

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

On line 8, is "backfill" defined somewhere?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Seth Ascher
Commission Counsel

Date submitted to agency: August 14, 2023

25 NCAC 01E .1907 is adopted under temporary procedures as follows:

25 NCAC 01E .1907 REQUESTING USE OF PAID PARENTAL LEAVE

(a) Eligible employees may take paid parental leave in one continuous period or may take intermittent use of paid parental leave. Requests for intermittent use of paid parental leave are subject to the agency's approval as stated in Paragraph (d) of this Rule.

(b) Whenever possible, eligible employees shall notify their employing agencies at least 10 weeks in advance of their intention to use paid parental leave. This requirement is so that agencies can secure backfill coverage.

(c) The agency shall not deny, delay, or require intermittent use of paid parental leave to employees who gave birth and seek to use paid parental leave in one continuous period.

(d) For all other employees, the agency may delay providing paid parental leave or may provide paid parental leave intermittently if it determines that providing the leave will cause a public safety concern, meaning a significant impairment to the agency's ability to conduct its operations in a manner that protects the health and safety of North Carolinians. For example, the extension of paid parental leave to an eligible employee who did not give birth may constitute a public safety concern if:

(1) Providing the paid parental leave would result in agency staffing levels below what is required by federal or state law to maintain operational safety; or

(2) Providing the paid parental leave may impact the health or safety of staff, patients, residents, offenders, or other individuals the agency is required by law to protect; and

(3) The agency has been unable to secure supplemental staffing after requesting or diligently exploring alternative staffing options.

(e) If the agency determines that it must delay paid parental leave, or make paid parental leave intermittent, because of a public safety concern under Paragraph (d) of this Rule, the agency shall provide Paid Parental Leave as soon as practical following the qualifying event.

History Note: Authority G.S. 126-8.6;

Temporary Adoption Eff. [date of adoption].



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: State Human Resources Commission

2. Rule citation & name: 25 NCAC 01E .1908 Leave Administration

3. Action: ☒ Adoption ☐ Amendment ☐ Repeal

4. Was this an Emergency Rule: ☐ Yes ☒ No Effective date:

5. Provide dates for the following actions as applicable:

- a. Proposed Temporary Rule submitted to OAH: June 22, 2023
- b. Proposed Temporary Rule published on the OAH website: June 26, 2023
- c. Public Hearing date: July 10, 2023
- d. Comment Period: June 23, 2023 – July 19, 2023
- e. Notice pursuant to G.S. 150B-21.1(a3)(2): June 22, 2023
- f. Adoption by agency on: August 8, 2023
- g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]:
- h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:

6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.

- ☐ A serious and unforeseen threat to the public health, safety or welfare.
- ☒ The effective date of a recent act of the General Assembly or of the U.S. Congress.
Cite: N.C. Sess. Law 2023-14, Part V, and N.C. Sess. Law 2023-65, Section 13A.1
Effective date: 07/01/2023 for both acts
- ☐ A recent change in federal or state budgetary policy.
Effective date of change:
- ☐ A recent federal regulation.
Cite:
Effective date:
- ☐ A recent court order.
Cite order:
- ☐ State Medical Facilities Plan.
- ☐ Other:

Explain: Part V of N.C. Sess. Law 2023-14 enacted G.S. 126-8.6 and 126-5(c19), new statutes that became effective July 1, 2023 to provide paid parental leave to certain North Carolina government employees. Section 13A.1 of N.C. Sess. Law 2023-65 amended those statutes, effective July 1, 2023. The new statutes require that the State Human Resources Commission “adopt rules and policies” on paid parental leave. G.S. 126-8.6(b),(c). The new statutes also require that for the University of North Carolina, for public school employees, and for community college employees, the appropriate governing entities “adopt rules and policies” on paid parental leave “that are substantially equivalent to those adopted by the State Human Resources Commission.” G.S. 126-8.6(e). Because these other government employers must model their rules on the rules adopted by the Human Resources Commission, the Commission is moving as quickly as possible to put temporary rules in place.

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- Second, a feature of the statute shows that the legislature was comfortable with the program details that were part of the pre-existing paid parental leave program and are now in the proposed temporary rule. The legislature showed support for the Human Resources Commission’s implementation of the program under Executive Order 95 by requiring that the new rules and policies for universities, public schools, and community colleges must be “substantially equivalent” to the Human Resources Commission rules and policies. G.S. 126-8.6(e). This suggests a legislative intent for continuity with existing Commission practices. The accelerated notice and hearing process is more appropriate when a temporary rule matches existing practices and there are signs of legislative intent favoring continuity with existing practices.
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8. Rule establishes or increases a fee? (See G.S. 12-3.1)

☐ Yes

Agency submitted request for consultation on:

Consultation not required. Cite authority:

☒ No

9. Rule-making Coordinator: Denise H. Mazza

Phone: 984 236-0823

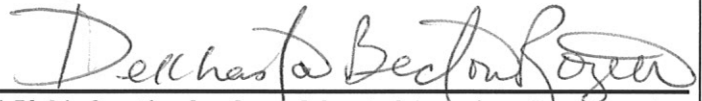
E-Mail: Denise.Mazza@nc.gov

Agency contact, if any: Blake Thomas

Phone: 984 236-0822

E-Mail: Blake.Thomas@nc.gov

10. Signature of Agency Head*:



* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name of Agency Head: Dekhasta Becton Rozier

Title: Chair, State Human Resources Commission

E-Mail: dbrozier@bectonlaw.com

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01E .1908

DEADLINE FOR RECEIPT: August 15, 2023

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

What policies and procedures govern the “disciplinary action” in line 12? This may just need a cross reference.

What authority allows the State Human Resources Commission to determine what disciplinary action is permitted here? If there is statutory authority, please include it in the history note.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

25 NCAC 01E .1908 is adopted under temporary procedures as follows:

25 NCAC 01E .1908 LEAVE ADMINISTRATION

(a) Paid parental leave under this Section may be used only once by an eligible employee within a rolling 12-month period.

(b) The birth or other qualifying event of twins, triplets, or other multiple children shall produce only one award of paid parental leave under this Section.

(c) Both parents may receive paid parental leave under this Section if they are both eligible agency employees. Both parents may take their leave simultaneously or at different times, subject to Rule .1907 of this Section.

(d) Employees shall submit documentation that they will use paid parental leave for a qualifying event under this Section. An agency may take appropriate action if an employee fraudulently requested or used paid parental leave. This action may include revoking approval and disciplinary action up to and including dismissal.

(e) Employees shall not be paid for the leave provided by this Section upon separation from the employer. The leave provided by this Section shall not be used for calculating an employee's retirement benefits and shall not accrue or be donated as voluntary shared leave.

(f) Paid parental leave provided under this Section shall be reported separately from all other paid leave. Employees and supervisors are responsible for accurate reporting of the use of this leave on the employee's time record.

History Note: Authority G.S. 126-8.6;

Temporary Adoption Eff. [date of adoption].