



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: State Board of Education

2. Rule citation & name: 16 NCAC 06C .0408 (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: 8/7/23
- b. Proposed Temporary Rule published on the OAH website: 8/10/23
- c. Public Hearing date: 8/25/23; 9/13/23
- d. Comment Period: 8/15/23 – 9/13/23
- e. Notice pursuant to G.S. 150B-21.1(a3)(2): 8/14/23
- f. Adoption by agency on: 10/5/23
- 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: S.L. 2023-14, Part V
Effective date: July 1, 2023
- 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: S.L. 2023-14, Part V—as amended by S.L. 2023-65, Part XIII-A, and S.L. 2023-134, Section 7.83—added G.S. 126-8.6 to the North Carolina General Statutes, which provides for paid parental leave for State employees and employees of other public entities, including the public school system. G.S. 126-8.6(c) directs the State Human Resources Commission (SHRC) to adopt rules and policies providing for State employees to receive paid parental leave of up to 8 weeks after giving birth to a child and up to 4 weeks after any other qualifying event (defined as becoming a parent to a child). G.S. 126-8.6(e) directs the “appropriate governing board, officer, or entity” to adopt rules and policies awarding paid parental leave to other employees covered by the law that are “substantially equivalent” to those adopted by the State Human Resources Commission. As the governing board for the North Carolina public school system, the State Board of Education is charged with adopting paid parental leave rules for public school employees. The SHRC adopted its temporary rules, effective August 25, 2023, and published in the North Carolina Register at 38:06 NCR 354–357 (attached). The SBE has adopted a temporary rule in accordance with the statutory requirement that it be “substantially equivalent” to the SHRC rules and will move forward with permanent rulemaking in a timely fashion.

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

The immediate adoption of this rule is required because of the effective date of the relevant section of S.L. 2023-14, which provides that the paid parental leave benefit would be available starting July 1, 2023. The General Assembly required the relevant governing body for each type of employee covered by the new paid parental leave law to adopt "rules and policies" to administer paid parental leave that are "substantially equivalent" to those adopted by the State Human Resources Commission (SHRC). To achieve the General Assembly's objective to make paid parental leave available to public school employees, the State Board of Education (SBE) needs to adopt rules as quickly as possible following the adoption of ancestral rules by the SHRC. The SBE has already updated its policies (specifically its Employee Benefits Manual) in a way that conforms with the adopted temporary rules to provide guidance to public school units that have already received requests from employees who qualify for the new benefit. To ensure enforceability of that policy by the SBE, immediate adoption of these rules is necessary.

The SBE believes that the accelerated notice and hearing process under G.S. 150B-21.1 was helpful for these temporary rules. The SBE received numerous comments during the public comment period from members of the public, attorneys representing local boards of education, and others that enabled the SBE to refine its rules to improve clarity and equity. Although the SBE held two public hearings on the rule, it received no comments during either of those hearings. Even with the accelerated timeline, the SBE received and incorporated an extensive amount of feedback.

The SBE incorporates by reference additional justifications for immediate adoption of this rule that are listed in the SHRC's "Reason for Action" in 38:06 NCR 354-355. The SBE is committed to working closely with the SHRC, its partners in the field of public education, and the public to address remaining issues during permanent rulemaking. These include rules related to paid parental leave in cases of stillbirth, miscarriage, and surrogacy.

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: Ryan M. Collins

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Agency contact, if any:

Phone:

E-Mail:

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: Eric C. Davis

Title: Chair, State Board of Education

E-Mail: eric.davis@dpi.nc.gov

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 Board of Education

RULE CITATION: 16 NCAC 06C .0408

DEADLINE FOR RECEIPT: October 17, 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:

In paragraph b, you use the terms “pay status,” lines 23 to 24, and “break in service,” line 25. These are defined terms in the SHRC rules, 25 NCAC 01D .0105 and 25 NCAC 01D .0114 respectively. I do not see a definition for these terms in SBE rules. Either include a definition or refer to the SHRC definitions, i.e., “have been in pay status status, as defined in 25 NCAC 01D .0105.” on line 24 and “without a break in service service, as defined in 25 NCAC 01D .0114.” on line 25.

On p. 2, line 35, you say “when reasonably possible” the employee shall provide ten weeks’ notice. The equivalent SHRC rule, 25 NCAC 01E .1907 says “whenever possible”. The “reasonably” standard has the potential to be unclear, particularly when compared with the SHRC rule. Is this intended to mean something different? If so, what? If not, use the same language.

The relevant statutes direct the SBE to adopt “substantially equivalent” rules to SHRC. On p. 2, lines 31-33, it appears that the SBE rules limit a PSU from delaying or denying leave without an employee’s consent. The SHRC rule includes a provision describing circumstances where an agency may delay parental leave, 25 NCAC 01E .1907. Why isn’t a similar provision necessary to have “substantially equivalent” rules?

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: October 13, 2023

1 16 NCAC 06C .0408 is proposed for adoption under temporary procedures as follows:

2
3 **16 NCAC 06C .0408 PARENTAL LEAVE**

4 (a) For the purposes of this Rule, the following definitions shall apply:

5 (1) “Child” means a newborn biological child or a newly placed adopted, foster, or otherwise legally
6 placed child under the age of 18 whose parent is an eligible employee.

7 (2) “Continuous” leave means leave taken over a continuous period for the full amount of leave to
8 which an eligible employee is entitled under Paragraph (c) of this Rule.

9 (2) “Eligible employee” means a person employed to fill a permanent, probationary, or time-limited
10 position in a public-school unit (“PSU”) who meets the eligibility requirements set forth in
11 Paragraph (b) of this Rule. “Eligible employee” shall not include temporary employees or
12 independent contractors.

13 (4) “Intermittent” leave means leave taken in separate periods for a single qualify event that
14 cumulatively equal the amount of leave to which an eligible employee is entitled under Paragraph
15 (c) of this Rule. Intermittent leave may include periods of leave ranging from half of an employee’s
16 regularly scheduled workday to several consecutive workdays.

17 (3) “Parent” means the legal guardian or custodian of a child through birth, adoption, foster care, or
18 other legal placement.

19 (4) “Public school unit” or “PSU” is defined in G.S. 115C-5(7a). This Rule shall only apply to a charter
20 school if the board of directors for the charter school has opted to provide for paid parental leave in
21 accordance with G.S. 115C-218.90(a)(6).

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

23 (b) To be eligible for paid parental leave, a PSU employee shall, at the time of the qualifying event, have been in pay
24 status with a PSU, state agency, or other public entity providing paid parental leave under G.S. 126-8.6 for at least
25 1,040 hours without a break in service within the previous 12-month period. The employee may aggregate periods of
26 employment with different employers to satisfy this requirement, except that any period of employment by a charter
27 school shall not satisfy this requirement unless the governing board of the charter school has elected to provide paid
28 parental leave in accordance with G.S. 115C-218.90(a)(6). For purposes of this Rule, a break in service shall not
29 include:

30 (1) Any period in the past 12 months during which the employee was receiving workers’ compensation
31 under G.S. 97-1 et seq. or on short-term disability under G.S. 135-105.

32 (2) Any period in which the employee was on leave without pay.

33 (3) Any period in which the employee was absent due to military service in the Armed Forces of the
34 United States, in accordance with the Uniformed Services Employment and Reemployment Rights
35 Act of 1994, 38 U.S.C. §§ 4301–4333.

1 (4) For a 10- or 11-month employee whose employment will continue for the following school year,
2 the time between the conclusion of one employment period and the commencement of the following
3 employment period.

4 (5) For an employee who transitions from one employer offering paid parental leave under G.S. 126-
5 8.6 to another employer providing paid parental leave under G.S. 126-8.6, any time between the
6 date of separation from the first employer and the date of hire for the second employer, not to exceed
7 31 days.

8 (c) A full-time eligible employee who becomes a parent to a child shall be entitled to the following:

9 (1) Up to eight (8) weeks of paid parental leave after giving birth to a child; or

10 (2) Up to four (4) weeks of paid parental leave after any other qualifying event.

11 (d) A part-time eligible employee who becomes a parent to a child shall be entitled to a prorated share of paid parental
12 leave based upon the hours in the employee's regular, weekly schedule compared to the hours worked by a full-time
13 employee in a similar position within the PSU, provided that the prorated share of leave shall not exceed:

14 (1) Eight (8) weeks of paid parental leave after the parent gives birth to a child; or

15 (2) Four (4) weeks of paid parental leave after any other qualifying event.

16 (e) The paid parental leave provided by this Rule shall result in compensation at 100 percent of the eligible employee's
17 regular, straight-time pay.

18 (f) The paid parental leave provided under this Rule is in addition to any other leave authorized by this Chapter, State
19 or federal law, or policies established by the PSU, provided that the paid parental leave:

20 (1) Shall not be counted against or deducted from an eligible employee's sick, vacation, or other accrued
21 leave.

22 (2) Shall be reported by the PSU separately from all other paid leave.

23 (3) Shall not accrue and is not eligible for donation to another employee.

24 (4) Shall not be used for calculating the employee's retirement benefits.

25 (5) Shall run concurrently with any leave to which the employee may be entitled under the Family and
26 Medical Leave Act, 28 U.S.C. §§ 2601–2654, provided the PSU has complied with the appropriate
27 notice requirements in 29 C.F.R. § 825.300.

28 (g) An eligible employee who requests paid parental leave shall do so in accordance with policies adopted by the
29 employee's PSU, subject to the following:

30 (1) The paid parental leave may be used any time during the 12 months following a qualifying event on
31 either a continuous or intermittent basis. A PSU shall not deny or delay an employee's request to
32 use paid parental leave, or otherwise require the employee to use the leave on a prescribed schedule,
33 without the employee's consent.

34 (2) The employee shall provide advanced notice to the PSU of the employee's intent to use paid parental
35 leave in accordance with policies adopted by the PSU. When reasonably possible, the employee
36 shall provide notice at least ten (10) weeks in advance of a qualifying event, but under no
37 circumstances shall a PSU require more than ten (10) weeks' notice.

1 (3) The paid parental leave provided by this Rule may be used only once for a qualifying event within
2 a 12-month period. Multiple births, adoptions, or other legal placements within the same 12-month
3 period shall not entitle an otherwise eligible employee to more than one award of paid parental
4 leave.

5 (4) If both parents of a child are employed by the same PSU, the PSU shall permit both parents to take
6 paid parental leave simultaneously if they so request, subject to Subparagraphs (1) and (2) of this
7 Paragraph.

8 (5) An employee shall forfeit any unused paid parental leave 12 months after the date of the qualifying
9 event.

10 (h) This paid parental leave provided by this Rule applies only to requests for paid parental leave related to qualifying
11 events occurring on or after July 1, 2023. Nothing in this Rule shall prohibit an employer, if authorized, from providing
12 paid parental leave in amounts greater than what is required by this Rule.

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14 History Note: Authority G.S. 115C-12(5); 115C-12(8); 115C-12(16); 115C-272; 115C-285; 115C-302.1; 115C-
15 315; 126-8.6.

16 Temporary Adoption Eff. Nov. 7, 2023
17