

**Note from the Codifier:** The OAH website includes notices and the text of proposed temporary rules as required by G.S. 150B-21.1(a1). Prior to the agency adopting the temporary rule, the agency must hold a public hearing no less than five days after the rule and notice have been published and must accept comments for at least 15 business days.  
For questions, you may contact the Office of Administrative Hearings at 984-236-1850 or email oah.postmaster@oah.nc.gov.

## TITLE 16 – DEPARTMENT OF PUBLIC INSTRUCTION

**Notice** is hereby given in accordance with G.S. 150B-21.1(a3) that the State Board of Education intends to adopt the rule cited as 16 NCAC 06C .0408.

**Codifier of Rules** received for publication the following notice and proposed temporary rule(s) on: August 7, 2023.

### Public Hearing:

**Date:** August 25, 2023

**Time:** 9:00 a.m.

**Location:** <https://ncgov.webex.com/j.php?MTID=m66a55b17c0a8961dacfc43c71bb3a4484>

**Reason for Proposed Temporary Action:** The State Board of Education (SBE) proposed adopting 16 NCAC 06C .0408, as a temporary rule to meet its obligations under S.L. 2023-14, Part V, Sec. 5.1.

S.L. 2023-14, Part V, Sec. 5.1, enacted G.S. 126-8.6-Paid parental leave. G.S. 126-8.6 directs State agencies to provide paid parental leave to all exempt and non-exempt State employees in the executive branch; to public school employees; and to community college employees. G.S. 126-8.6(e) specifically states:

*The provisions of this section shall apply to employees of State agencies, departments, and institutions, including The University of North Carolina; to public school employees; and to community college employees. The appropriate governing board, officer, or entity shall adopt rules and policies to award paid parental leave to employees that are substantially equivalent to those adopted by the State Human Resources Commission. (Emphasis added.)*

In accordance with the directives in G.S. 126-8.6(e), 16 NCAC 06C.0408 is substantially equivalent to 25 NCAC 01E .1901 to .1908 which are temporary rules the State Human Resources Commission proposes to adopt to govern parental leave for State employees and will extend to public school employees parental leave benefits substantially equivalent to those granted State employees. The effective date of G.S. 126-8.6 is July 1, 2023. S.L. 2023-14, Part V, Sec. 5.1(f).

**Comment Procedures:** Comments from the public shall be directed to: Thomas Ziko, 6301 Mail Service Center, Raleigh, NC 27699-6301; phone (984) 236-2249; email [thomas.ziko@dpi.nc.gov](mailto:thomas.ziko@dpi.nc.gov). The comment period begins August 15, 2023 and ends September 6, 2023.

## CHAPTER 06 - ELEMENTARY AND SECONDARY EDUCATION

### SUBCHAPTER 06C - PERSONNEL

#### SECTION .0400 – ANNUITIES AND PENSIONS

#### 16 NCAC 06C .0408 PARENTAL LEAVE

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

- (1) "Child" means a newborn biological child or a newly placed adopted, foster, or otherwise legally placed child under the age of 18 whose parent is an eligible employee.
- (2) "Eligible employee" means a person employed to fill a permanent, probationary, or time-limited position in a public-school unit ("PSU") who meets the eligibility requirements set forth in Paragraph (b) of this Rule. "Eligible employee" shall not include temporary employees or independent contractors.
- (3) "Parent" means the legal guardian or custodian of a child through birth, adoption, foster care, or other legal placement.
- (4) "Public school unit" or "PSU" is defined in G.S. 115C-5(7a). This Rule shall only apply to a charter school if the board of directors for the charter school has opted to provide for paid parental leave in accordance with G.S. 115C-218.90(a)(6).
- (5) "Qualifying event" means when an eligible employee becomes a parent to a child.

(b) To be eligible for paid parental leave, a PSU employee shall, at the time of the qualifying event, have been in pay status for at least 1,040 hours with the same PSU and without a break in service within the previous 12-month period. For purposes of this Rule, a break in service shall not include:

- (1) Any period in the past 12 months during which the employee was receiving workers' compensation under G.S. 97-1 et seq. or on short-term disability under G.S. 135-105.
- (2) Any period in which the employee was on leave without pay.
- (3) For a 10- or 11-month employee whose employment will continue for the following school year, the time between the conclusion of one employment period and the commencement of the following employment period.

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

- (1) Up to eight (8) weeks of paid parental leave after giving birth to a child; or
- (2) Up to four (4) weeks of paid parental leave after any other qualifying event.

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

- (1) Eight (8) weeks of paid parental leave after the parent gives birth to a child; or
- (2) Four (4) weeks of paid parental leave after any other qualifying event.

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

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

- (1) Shall not be counted against or deducted from an eligible employee's sick, vacation, or other accrued leave.
- (2) Shall be reported by the PSU separately from all other paid leave.
- (3) Shall not accrue and is not eligible for donation to another employee.
- (4) Shall no longer be available to the employee upon separation from employment with the PSU.
- (5) Shall not be used for calculating the employee's retirement benefits.

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

- (1) The paid parental leave may be used any time during the 12 months following a qualifying event. A PSU shall not deny, delay, or require intermittent use of paid parental leave to an eligible employee, except by mutual agreement of the PSU and employee.
- (2) The employee shall provide advanced notice to the PSU of the employee's intent to use paid parental leave in accordance with policies adopted by the PSU. When reasonably possible, the employee shall provide notice at least ten (10) weeks in advance of a qualifying event, but under no circumstances shall a PSU require more than ten (10) weeks' notice.
- (3) The paid parental leave provided by this Rule may be used only once for a qualifying event within a 12-month period. Multiple births, adoptions, or other legal placements within the same 12-month period shall not entitle an otherwise eligible employee to more than one award of paid parental leave.
- (4) If both parents of a child are employed by the same PSU, the PSU shall permit both parents to take paid parental leave simultaneously if they so request, subject to Subparagraphs (1) and (2) of this Paragraph.
- (5) An employee shall forfeit any unused paid parental leave 12 months after the date of the qualifying event.

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

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