

Burgos, Alexander N

Subject: FW: RFC for State Human Resources Commission temporary rule-August 2023
Attachments: 25 NCAC 01E .1902 Paid Parental Leave (revised after RRC comments).docx; 25 NCAC 01E .1904 Leave Available to Full-Time Employee (revised after RRC comments).docx; 25 NCAC 01E .1905 Leave Availabl to Part-Time Employees.docx; 25 NCAC 01E.1908 Leave Administration (revised after RRC comments).docx

From: Mazza, Denise H <denise.mazza@nc.gov>
Sent: Wednesday, August 16, 2023 8:57 AM
To: Ascher, Seth M <seth.ascher@oah.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Cc: Thomas, Blake <Blake.Thomas@nc.gov>; Dekhasta Rozier <dbrozier@bectonlaw.com>
Subject: RE: RFC for State Human Resources Commission temporary rule-August 2023

Good morning, Seth.

Attached are 25 NCAC 01E .1902, .1904, .1905 and .1908 with the formatting corrected as instructed. Please let me know if you need anything else from us regarding these rules.

Thanks!

Denise

Denise H. Mazza
Paralegal
Desk: 984-236-0823
denise.mazza@nc.gov



North Carolina Office of State Human Resources

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1331 Mail Service Center, Raleigh, NC 27699-1331

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1 25 NCAC 01E .1902 is adopted under temporary procedures with changes as follows:

2

3 **25 NCAC 01E .1902 RELATIONSHIP TO OTHER RULES AND POLICIES**

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

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

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

15

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

18

1 25 NCAC 01E .1904 is adopted under temporary procedures with changes as follows:

2

3 **25 NCAC 01E .1904 LEAVE AVAILABLE TO FULL-TIME EMPLOYEES**

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

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

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

8 (b) Each week of paid parental leave under this Section shall result in compensation at 100% of the eligible employee's
9 regular, straight time weekly pay- regular pay on a straight-time basis (without including overtime pay or paid time
10 off, on the employee's regular weekly schedule).

11

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

13 *Temporary Adoption Eff. [date of adoption].*

14

1 25 NCAC 01E .1905 is adopted under temporary procedures **with changes** as follows:

2

3 **25 NCAC 01E .1905 LEAVE AVAILABLE TO PART-TIME EMPLOYEES**

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

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

9 (c) Each week of paid parental leave under this Section shall result in compensation at 100% of the eligible employee’s
10 ~~regular, straight-time weekly pay.~~ **regular pay on a straight-time basis (without including overtime pay or paid time**
11 **off, on the employee’s regular weekly schedule).**

12

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

15

1 25 NCAC 01E .1908 is adopted under temporary procedures **with changes** as follows:

2

3 **25 NCAC 01E .1908 LEAVE ADMINISTRATION**

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

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

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

10 (d) Employees shall submit documentation that they will use paid parental leave for a qualifying event under this
11 Section. An agency may take appropriate action if an employee fraudulently requested or used paid parental leave.

12 This action may include revoking approval and disciplinary action up to and including dismissal, **pursuant to 25 NCAC**
13 **01J .0600.**

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

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

19

20 *History Note:* Authority **G.S. 126-4(6); 126-8.6; 126-35(a);**

21 *Temporary Adoption Eff. [date of adoption].*

Burgos, Alexander N

Subject: FW: RFC for State Human Resources Commission temporary rule-August 2023

From: Thomas, Blake <Blake.Thomas@nc.gov>
Sent: Tuesday, August 15, 2023 6:31 PM
To: Ascher, Seth M <seth.ascher@oah.nc.gov>; Mazza, Denise H <denise.mazza@nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Dekhasta Rozier <dbrozier@bectonlaw.com>
Subject: RE: RFC for State Human Resources Commission temporary rule-August 2023

Thank you, Seth, and sorry about the formatting mistakes, which were entirely my fault. --Blake

Blake Thomas, General Counsel, N.C. Office of State Human Resources. Phone: (984) 236-0822.

From: Ascher, Seth M <seth.ascher@oah.nc.gov>
Sent: Tuesday, August 15, 2023 6:24 PM
To: Thomas, Blake <Blake.Thomas@nc.gov>; Mazza, Denise H <denise.mazza@nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Dekhasta Rozier <dbrozier@bectonlaw.com>
Subject: RE: RFC for State Human Resources Commission temporary rule-August 2023

Blake,

I have looked through your updates and I believe you have adequately addressed the substantive issues, either by adjusting the rule or providing additional information. However, the updated rules (.1902, .1904., .1905, and .1908) need to be formatted correctly. Specific format examples are available on our website here: <https://www.oah.nc.gov/rule-format-examples#RuleFormatExamplesforPublicationintheNCAdministrativeCode-6054>. The updated rules would fall under this category:

- **Temporary Adoption with changes from publication** - any text to be deleted shall be struck through and new text shall be underlined. The unchanged text shall not be underlined. [Example](#)

Please correct the formatting on those rules and resend them. Once you've done that, I will make sure the RRC is aware of the updated rules.

Let me know if you have any questions.

Seth Ascher
Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984) 236-1934

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

Burgos, Alexander N

From: Thomas, Blake
Sent: Tuesday, August 15, 2023 4:59 PM
To: Ascher, Seth M; Mazza, Denise H
Cc: Burgos, Alexander N; Dekhasta Rozier; Thomas, Blake
Subject: RE: RFC for State Human Resources Commission temporary rule-August 2023
Attachments: SHRC Temp RFC August 2023 - OSHR response 8-15-2023.docx; 25 NCAC 01E .1902 Paid Parental Leave (revised after RRC comments).docx; 25 NCAC 01E .1904 Leave Available to Full-Time Employee (revised after RRC comments).docx; 25 NCAC 01E .1905 Leave Availabl to Part-Time Employees (revised after RRC comments).docx; 25 NCAC 01E.1908 Leave Administration (revised after RRC comments).docx; 25 NCAC 01E .1901 Definitions.docx; 25 NCAC 01E .1903 Eligibility for Paid Parental Leave .docx; 25 NCAC 01E .1906 Use of Other Leave.docx; 25 NCAC 01E .1907 Requesting Use of Paid Parental Leave .docx

Seth, thanks for your message and your thoughtful comments. Here are our responses.

The first attachment contains OSHR's response to each of your comments. Because of those comments, we have retyped proposed temporary rules 25 NCAC 01E .1902, .1904, .1905, and .1908. Retyped versions of each of those rules are enclosed here. The altered text is marked with a yellow highlight in each of those rules.

For easy reference, we have also enclosed the same Microsoft Word files for the other rules that we have not retyped (proposed temporary rules .1901, .1903, .1906, and .1907).

Please don't hesitate to reach out if you have any questions, additional comments, or concerns. (And if you have any trouble using any of the attachments, please let me know; seems like my computer is having a tough day, perhaps because of the weather.) I'm available at the number below, and I'll also be present for the Rules Review Commission meeting on Thursday.

Finally, if you or the Commissioners determine that it would be best for the Human Resources Commission to reissue the rules for another round of notice and comment under the abbreviated temporary rule process, we would be happy to do so. We are simply looking to move the process forward in the most efficient and effective way.

Best regards,

Blake Thomas

General Counsel

Desk: (984) 236-0822 Cell: (704) 315-3823

Blake.Thomas@nc.gov

he/him/his



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From: Ascher, Seth M <seth.ascher@oah.nc.gov>
Sent: Monday, August 14, 2023 1:50 PM
To: Mazza, Denise H <denise.mazza@nc.gov>; Thomas, Blake <Blake.Thomas@nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Dekhasta Rozier <dbrozier@bectonlaw.com>
Subject: RFC for State Human Resources Commission temporary rule-August 2023

Good afternoon,

I'm the attorney who reviewed the Temporary Rules submitted by the State Human Resources Commission on Friday, August 11th. The RRC will formally review these Rules at its meeting on Thursday, August 17, 2023, at 9:00 a.m. The meeting will be a hybrid of in-person and WebEx attendance, and an evite should be sent to you as we get close to the meeting. If there are any other representatives from your agency who want to attend virtually, let me know prior to the meeting, and we will get evites out to them as well.

Attached are Requests for Changes Pursuant to G.S. 150B-21.10. Please submit the revised Rules and forms to me via email, no later than 5 p.m. on August 15, 2023.

Also, I noticed in your justification for temporary rule making, that you intend to address the 126-8.6(c1) issue regarding miscarriage in your permanent rulemaking. It looks like (c1) also requires rules about minimum service before eligibility for paternal leave, which I did not see in your temporary rules. This does not impact the review of your temporary rule, but I wanted to flag it for you in case you need to account for it in your permanent rule.

Please let me know if you have any questions of concerns.

Seth Ascher
Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984) 236-1934

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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.

Response:

This definition is designed to include only the employers that provide benefits under rules from the State Human Resources Commission. Because many university employees are subject to the State Human Resources Act, this includes not only executive branch state agencies, but also University of North Carolina institutions. See G.S. 126-5(c)(2)-(3) and 126-5(c1)(8), which were recently modified by Session Law 2023-102 § 5. To summarize subdivisions (c)(2)-(3) and (c1)(8) of G.S. 126-5, university employees are governed by the Human Resources Act if (i) they are subject to the minimum wage and overtime provisions of the Fair Labor Standards Act, or (ii) if the employee has chosen not to select exempt status after originally being hired into a position that was subject to the Human Resources Act. These employees are governed by the same rules and policies as state agency employees who are subject to the Human Resources Act.

Consistent with your comment, the other employers who provide paid parental leave under the new law shall provide the leave under “rules and policies” that are adopted by “the appropriate governing board, officer, or entity.” G.S. 126-8.6(e). This is why the legislative branch, the judicial branch, community college institutions, and public schools are excluded from the definition of “agency” in Rule .1901. The legislative branch and judicial branch are adopting their own

Seth Ascher

Commission Counsel

Date submitted to agency: August 14, 2023

policies for paid parental leave, separate from the State Human Resources Commission rules. Public schools and community colleges are adopting their own rules that are “substantially equivalent” to the Commission’s rules, as required under G.S. 126-8.6(e), but are customized for the unique aspects of those employers’ jobs.

For the reasons stated above, we have made no changes to this Rule in response to your comment. However, we are happy to work with Rules Review Commission counsel to make any changes that need to be made. Please do not hesitate to contact us with any follow-up questions or concerns.

Seth Ascher
Commission Counsel
Date submitted to agency: August 14, 2023

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.

Response:

Subsection (b) was meant to make clear that these other employers have broad authority to diverge from the State Human Resources Commission's rules to fit the unique aspects of their jobs. But we see your point that it could be construed as a limitation on authority. This was not our intent. Therefore, we have retyped the rule to remove paragraph (b) entirely.

Seth Ascher
Commission Counsel

Date submitted to agency: August 14, 2023

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

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.

Seth Ascher
Commission Counsel
Date submitted to agency: August 14, 2023

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.

Response:

There is no existing definition of "straight time" in the Commission's rules. "Straight time" is a Human Resources term of art that refers to the employee's regular pay, without any overtime or paid time off, on the employee's normal weekly schedule. We have retyped the Rule to add a parenthetical that makes this term of art more clear. Please do not hesitate to reach out with any additional concerns or questions.

Seth Ascher
Commission Counsel

Date submitted to agency: August 14, 2023

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.

Response:

There is no existing definition of "straight time" in the Commission's rules. "Straight time" is a Human Resources term of art that refers to the employee's regular pay, without any overtime or paid time off, on the employee's normal weekly schedule. We have retyped the Rule to add a parenthetical that makes this term of art more clear. Please do not hesitate to reach out with any additional concerns or questions.

Seth Ascher
Commission Counsel

Date submitted to agency: August 14, 2023

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.

Seth Ascher
Commission Counsel
Date submitted to agency: August 14, 2023

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.

Response:

The term "backfill" is not defined in State Human Resources Commission rules. We are using "backfill" according to the dictionary definition of the word, which is "where an employee is assigned to a new job and his/her position is filled by another employee." <https://definitions.uslegal.com/b/backfilling/> Since this word is familiar to Human Resources staff, and this reference in the Rule is illustrative rather than restrictive, we do not think this word needs to be further explained in the Rule.

For the reasons stated above, we have made no changes to this Rule in response to your comment. However, we are happy to work with Rules Review Commission counsel to make any changes that need to be made. Please do not hesitate to contact us with any follow-up questions or concerns.

Seth Ascher
Commission Counsel

Date submitted to agency: August 14, 2023

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.

Response:

On line 12, we have added a cross-reference to the disciplinary action rules.

We have also added in the history note the sources of authority for the State Human Resources Commission to adopt rules on disciplinary actions: G.S. 126-4(6), which authorizes the Human Resources Commission to establish policies governing the “appointment, promotion, transfer, demotion, and suspension of employees,” and G.S. 126-35(a), which states, “The State Human Resources Commission may adopt, subject to the approval of the Governor, rules that defined just cause.”

Thank you for your comments, and please do not hesitate to reach out with any questions or additional concerns.

Seth Ascher
Commission Counsel

Date submitted to agency: August 14, 2023

Seth Ascher
Commission Counsel
Date submitted to agency: August 14, 2023

1 25 NCAC 01E .1901 is adopted under temporary procedures as follows:

2

3 **25 NCAC 01E .1901 DEFINITIONS**

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

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

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

9 (3) “Parent” means:

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

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

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

14

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

16 Temporary Adoption Eff. [date of adoption].

17

1 25 NCAC 01E .1902 is adopted under temporary procedures as follows:

2

3 **25 NCAC 01E .1902 RELATIONSHIP TO OTHER RULES AND POLICIES**

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

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

9

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

11 Temporary Adoption Eff. [date of adoption].

12

1 25 NCAC 01E .1903 is adopted under temporary procedures with changes as follows:

2

3 **25 NCAC 01E .1903 ELIGIBILITY FOR PAID PARENTAL LEAVE**

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

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

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

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

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

15 (d) This Section applies to requests for paid parental leave related to qualifying events occurring on or after July 1,
16 2023.

17

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

20

1 25 NCAC 01E .1904 is adopted under temporary procedures as follows:

2

3 **25 NCAC 01E .1904 LEAVE AVAILABLE TO FULL-TIME EMPLOYEES**

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

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

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

8 (b) Each week of paid parental leave under this Section shall result in compensation at 100% of the eligible employee's
9 regular pay on a straight-time basis (without including overtime pay or paid time off, on the employee's regular weekly
10 schedule).

11

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

13 *Temporary Adoption Eff. [date of adoption].*

14

1 25 NCAC 01E .1905 is adopted under temporary procedures with changes as follows:

2

3 **25 NCAC 01E .1905 LEAVE AVAILABLE TO PART-TIME EMPLOYEES**

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

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

9 (c) Each week of paid parental leave under this Section shall result in compensation at 100% of the eligible employee's
10 regular pay on a straight-time basis (without including overtime pay or paid time off, on the employee's regular weekly
11 schedule).

12

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

15

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

1 25 NCAC 01E .1907 is adopted under temporary procedures as follows:

2
3 **25 NCAC 01E .1907 REQUESTING USE OF PAID PARENTAL LEAVE**

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

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

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

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

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

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

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

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

25
26 *History Note: Authority G.S. 126-8.6;*

27 *Temporary Adoption Eff. [date of adoption].*
28
29

1 25 NCAC 01E .1908 is adopted under temporary procedures as follows:

2

3 **25 NCAC 01E .1908 LEAVE ADMINISTRATION**

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

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

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

10 (d) Employees shall submit documentation that they will use paid parental leave for a qualifying event under this
11 Section. An agency may take appropriate action if an employee fraudulently requested or used paid parental leave.
12 This action may include revoking approval and disciplinary action up to and including dismissal, pursuant to 25 NCAC
13 01J .0600.

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

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

19

20 *History Note: Authority G.S. 126-4(6); 126-8.6; 126-35(a);*

21 *Temporary Adoption Eff. [date of adoption].*

Burgos, Alexander N

From: Mazza, Denise H
Sent: Monday, August 14, 2023 2:40 PM
To: Ascher, Seth M
Cc: Thomas, Blake; Dekhasta Rozier; Burgos, Alexander N
Subject: RE: RFC for State Human Resources Commission temporary rule-August 2023

Mr. Ascher.

We have received the Requests for Changes for OSHR Temporary Rules 25 NCAC 01E .1901-.1908 and, per your instructions, will submit the revised Rules and responses to you no later than Tuesday, August 15, 2023 at 5 p.m. We will also make you aware at that time of any other representatives from our agency who may want to attend the Thursday, August 17, 2023 RRC meeting virtually.

Sincerely,

Denise H. Mazza
Paralegal
Desk: 984-236-0823
denise.mazza@nc.gov



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From: Ascher, Seth M <seth.ascher@oah.nc.gov>
Sent: Monday, August 14, 2023 1:50 PM
To: Mazza, Denise H <denise.mazza@nc.gov>; Thomas, Blake <Blake.Thomas@nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Dekhasta Rozier <dbrozier@bectonlaw.com>
Subject: RFC for State Human Resources Commission temporary rule-August 2023

Good afternoon,

I'm the attorney who reviewed the Temporary Rules submitted by the State Human Resources Commission on Friday, August 11th. The RRC will formally review these Rules at its meeting on Thursday, August 17, 2023, at 9:00 a.m. The meeting will be a hybrid of in-person and WebEx attendance, and an invite should be sent to you as we get close to the meeting. If there are any other representatives from your agency who want to attend virtually, let me know prior to the meeting, and we will get invites out to them as well.

Attached are Requests for Changes Pursuant to G.S. 150B-21.10. Please submit the revised Rules and forms to me via email, no later than 5 p.m. on August 15, 2023.

Also, I noticed in your justification for temporary rule making, that you intend to address the 126-8.6(c1) issue regarding miscarriage in your permanent rulemaking. It looks like (c1) also requires rules about minimum service before eligibility for paternal leave, which I did not see in your temporary rules. This does not impact the review of your temporary rule, but I wanted to flag it for you in case you need to account for it in your permanent rule.

Please let me know if you have any questions of concerns.

Seth Ascher

Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984) 236-1934

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