



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:
5. Provide dates for the following actions as applicable: a. Proposed Temporary Rule submitted to OAH: October 20, 2023 b. Proposed Temporary Rule published on the OAH website: October 26, 2023 c. Public Hearing date: November 1, 2023 d. Comment Period: October 20, 2023 – November 13, 2023 e. Notice pursuant to G.S. 150B-21.1(a3)(2): October 20, 2023 f. Adoption by agency on: December 6, 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 2023-134 Effective date: 10/03/2023 <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: The State Human Resources Commission proposes adopting 25 NCAC 01E .1903 as a new temporary rule, meeting the Commission's obligation established in Section 7.83(a) of Session Law 2023-134, the 2023 Appropriations Act. The State Human Resources Commission previously promulgated a temporary rule .1903 as directed by the legislature. Temporary rule .1903 was adopted on August 25, 2023. It was based on a new statute requiring that the Commission adopt rules specifying "a period of minimum service before an employee becomes eligible for parental leave." G.S. 126-8.6(c1), as amended by Session Law 2023-65. Then, the legislature added additional language to this statute in Section 7.83(a) of Session Law 2023-134. The new statute reads, "The rules shall provide that the period of minimum service may be met by aggregating employment at any of the following: (1) State agencies, departments, and institutions, including The University of North Carolina; (2) Public school units that provide paid parental leave in accordance with this section; (3) Community colleges located in this State." G.S. § 126-8.6(c1)(1)-(3), added by Session Law 2023-134 § 7.83(a). This section, like the rest of the Appropriations Act, became law on October 3, 2023. Under Section 43.8 of Session Law 2023-134, the effective date of Section 7.83(a) of the act is July 1, 2023.

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 Section 7.83 of N.C. Session Law 2023-134, the 2023 Appropriations Act. Session Law 2023-134 became law on October 3, 2023. Section 43.8 of Session Law specifies, “Except as otherwise provided, this act becomes effective July 1, 2023.” Section 7.83 of the act requires that the State Human Resources Commission’s rules “provide” the substance that is stated in the Commission’s new temporary rule. To implement this change to the paid parental leave program identified by the General Assembly, the Commission’s temporary rule must be modified as quickly as possible. 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.

For two 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 statute is clear about what the rules must specify on interchangeability of paid parental leave minimum service time, leaving little or no discretion for the Human Resources Commission on the details of the rule.
- Second, requiring the full period of notice and hearing under G.S. 150B-21.2 would delay the time when paid parental leave minimum service time becomes clearly interchangeable between state agencies, public school units, and community colleges. The General Assembly has indicated through the change in Section 7.83 of the Appropriations Act that this minimum service line should be interchangeable for purposes of paid parental leave. 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

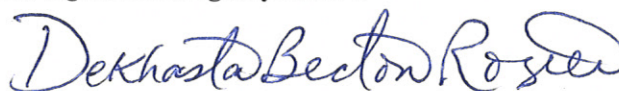
E-Mail: Denise.Mazza@nc.gov

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:

1 25 NCAC 01E .1903 is proposed for adoption under temporary procedures as follows:

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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
11 service as defined by 25 NCAC 01D .0114 in a permanent, time-limited, or probationary
12 appointment by:

13 (A) the State of North Carolina agencies, departments, and institutions, including without
14 limitation the University of North Carolina;

15 (B) public school units that provide paid parental leave in accordance with G.S. 126-8.6; or

16 (C) community college institutions of the State of North Carolina,
17 aggregating employment at any of these employers.

18 (2) The employee has been in pay status with:

19 (A) the State of North Carolina agencies, departments, and institutions, including without
20 limitation the University of North Carolina;

21 (B) public school units that provide paid parental leave in accordance with G.S. 126-8.6; or

22 (C) community college institutions of the State of North Carolina, for at least 1,040 hours,
23 aggregating employment at any of these employers, during the previous 12-month period.

24 (d) This Section applies to requests for paid parental leave related to qualifying events occurring on or after July 1,
25 2023.

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

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