

PROPOSED PERMANENT RULE

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) “Continuous” leave means leave taken over a continuous period for the full amount of leave to which an eligible employee is entitled under Paragraph (c) of this Rule.
- (3) “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.
- (4) “Intermittent” leave means leave taken in separate periods for a single qualify event that cumulatively equal the amount of leave to which an eligible employee is entitled under Paragraph (c) of this Rule. Intermittent leave may include periods of leave ranging from half of an employee’s regularly scheduled workday to several consecutive workdays.
- (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). The board shall notify the Division of Financial and Business Services at the Department of Public Instruction of its intent to offer paid parental leave no later than October 1 of the fiscal year for which it intends the leave to be available.
- (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, as defined in 25 NCAC 01D .0105, with a PSU, state agency, or other public entity providing paid parental leave under G.S. 126-8.6 for at least 1,040 hours without a break in service within the previous 12-month period. The employee may aggregate periods of employment with different employers to satisfy this requirement, except that any period of employment by a charter school shall not satisfy this requirement unless the governing board of the charter school has elected to provide paid parental leave in accordance with G.S. 115C-218.90(a)(6). For purposes of this Rule, a break in service is defined in 25 NCAC 01D .0144, provided it 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) Any period in which the employee was absent due to military service in the Armed Forces of the United States, in accordance with the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. 4301–4333.

- (4) 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.
 - (5) For an employee who transitions from one employer offering paid parental leave under G.S. 126-8.6 to another employer providing paid parental leave under G.S. 126-8.6, any time between the date of separation from the first employer and the date of hire for the second employer, not to exceed 31 days.
- (c) A full-time eligible employee who becomes a parent to a child shall be entitled to the following:
- (1) For a parent who gives birth to a child, up to eight weeks of paid parental leave consisting of:
 - (A) Four weeks for physical and mental recuperation; and
 - (B) Four weeks for bonding with the child.
 - (2) For any other qualifying event, up to four weeks of paid parental leave for bonding with the child.
- (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 the total number of weeks provided to a full-time employee under Paragraph (c).
- (e) If an eligible employee gives birth to a child and places the child up for adoption or into foster care, or otherwise legally places the child with another person to serve as the child's parent, the employee shall be entitled to up to four weeks of leave for physical and mental recuperation from the time of the child's birth. Neither a birthing parent nor a non-birthing parent shall be entitled to additional leave for bonding with the child.
- (f) If a fetus dies prior to a completed birth, or if a child dies after a completed birth, the following rules shall apply:
- (1) If the fetus dies before the conclusion of the 12th week of pregnancy, there is no qualifying event creating an entitlement to paid parental leave under this Rule.
 - (2) If the fetus dies after the conclusion of the 12th week of pregnancy but prior to a completed birth, an otherwise eligible employee who carried the child shall be entitled to up to four weeks of leave for physical and mental recuperation. Neither a birthing parent nor a non-birthing parent shall be entitled to additional leave for bonding with the child.
 - (3) If a child dies after a completed birth, an otherwise eligible employee shall be entitled to the same amount of leave to which the employee would be entitled under Paragraph (c) or (d).
- (g) The paid parental leave provided by this Rule shall result in compensation at 100 percent of the eligible employee's regular, straight-time pay.
- (h) 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, bonus, 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 not be used for calculating the employee's retirement benefits.
- (5) Shall run concurrently with any leave to which the employee may be entitled under the Family and Medical Leave Act, 28 U.S.C. §§ 2601–2654, provided the PSU has complied with the appropriate notice requirements in 29 C.F.R. § 825.300.

~~(g)~~ (i) 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 on either a continuous or intermittent basis. A PSU shall not deny or delay an employee's request to use paid parental leave, or otherwise require the employee to use the leave on a prescribed schedule, without the employee's consent.
- (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 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)~~ (j) 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.

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

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