

## Paid Parental Leave Policy

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Note: The new law on paid parental leave for state employees, G.S. 126-8.6, became effective July 1, 2023. Section 126-8.6 was revised by 2023 House Bill 190, Session Law 2023-65, before its effective date. This version of the Paid Parental Leave Policy includes the effect of the House Bill 190 revisions. To implement section 126-8.6, the State Human Resources Commission expects to adopt temporary rules on paid parental leave. These temporary rules are expected to go into effect in August or September 2023, under the schedule and process provided in the Administrative Procedure Act. A permanent rule will then be issued for public notice and comment. This policy will be updated after each rule becomes effective.

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**§ 1. Purpose**

Paid Parental Leave is designed to promote families' physical and mental health, increase worker retention, and improve worker productivity and morale. In accordance with G.S. 126-1 and 126-8.6, the Office of State Human Resources has established the following policy to provide guidance to agencies regarding the Paid Parental Leave programs.

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## Paid Parental Leave Policy (cont.)

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### § 2. Covered Employees

An employee's eligibility for Paid Parental Leave shall be determined based on the employee's months of service and hours of work as of the date of the qualifying life event. Employees who become parents via childbirth, adoption, foster care, or another legal placement are eligible if:

- Employee is full-time or part-time (regardless whether half-time or more) in a permanent, probationary, or time-limited appointment.
- For the immediate twelve (12) preceding months, employee has been employed without a break in service<sup>1</sup> by the State of North Carolina in a permanent, time-limited, or probationary appointment.
  - Periods of worker's compensation or short-term disability in the 12 months preceding the qualifying events do not make the employee ineligible for paid parental leave.
  - Periods of leave without pay, as defined in 25 NCAC 01E .1100 and the Leave Without Pay Policy, shall not constitute a break in service.<sup>2</sup>
- Employee must be eligible for Family and Medical Leave (FML) by being in pay status for at least 1,040 hours in the previous twelve-month period.
  - Whether an employee exhausted FML does not affect eligibility for paid parental leave.

Temporary employees are not eligible to participate in this program.

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### § 3. Definitions

For purposes of this policy, the terms below mean the following:

State Agency - Any State agency, department, institution, office, board, or commission, including institutions and offices of the University of North Carolina, but excluding the legislative branch, the judicial branch, community college institutions, and public schools. Whether an agency is covered by G.S 126-8.6 and this Policy does not

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<sup>1</sup> Under 25 NCAC 01D .0114, "A break in service shall be deemed to occur when an employee is not in pay status, as defined in 25 NCAC 01D .0105, for more than 31 calendar days." Pay status is defined to mean, "An employee shall be deemed to be in pay status when working, when on paid leave, when exhausting vacation or sick leave, or when on workers' compensation leave." 25 NCAC 01D .0105(a).

<sup>2</sup> 25 NCAC 01D .0114.

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depend on whether its employees are otherwise subject to the State Human Resources Act, G.S. Chapter 126.
Eligible State Employee - A full-time or part-time employee in a permanent, probationary, or time-limited appointment who has been employed without a break in service by the State of North Carolina <u>in a permanent, time-limited, or probationary appointment</u> for the immediate twelve (12) preceding months and who is eligible for Family and Medical Leave (FML) by being in pay status for at least 1,040 hours in the previous twelve-month period, as set forth in 25 N.C. Admin. Code 01E .1402(a).
Parent – Either (a) the mother or father of a child through birth or legal adoption, or (b) an individual who cares for a child through foster or other legal placement under the direction of a government authority.
Child - A newborn biological Child or a newly-placed adopted, foster or otherwise legally placed Child under the age of eighteen (18), whose Parent is an Eligible State Employee.
Paid Parental Leave – 100% paid leave to be provided to an Eligible State Employee either (a) upon the Eligible State Employee giving birth for both recuperation during the disability period and bonding with a newborn Child, or (b) to other Eligible State Employees to care for and bond with a newborn Child or newly adopted, foster or otherwise legally placed Child.
Note: Agencies granting parental leave must uphold the principle of equal treatment. See Equal Employment Opportunity Commission, <i>Enforcement Guidance on Pregnancy Discrimination and Related Issues</i> , Section I(C)(3) (June 25, 2015), available at <a href="https://www.eeoc.gov/laws/guidance/enforcement-guidance-pregnancy-discrimination-and-related-issues">https://www.eeoc.gov/laws/guidance/enforcement-guidance-pregnancy-discrimination-and-related-issues</a> . For example under G.S. 126-8.6, the birth mother receives four (4) weeks for recuperation and recovery and four (4) weeks for parental bonding leave, which is equal to the four (4) weeks the other parent receives for parental bonding leave. The non-birth parent did not give birth, so they are not receiving unequal treatment by not receiving recuperation and recovery leave. Alternatively, equal treatment could be structured as both parents receiving eight (8) weeks of parental, bonding

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leave, which matches the optional alternative form of leave authorized under § 8.2 of this Policy.
<p>Public Safety Concern - A significant impairment to the State Agency's ability to conduct its operations in a manner that protects the health and safety of North Carolinians. The extension of Paid Parental Leave to an Eligible State Employee may constitute a Public Safety Concern if:</p> <p>(1) Providing the Paid Parental Leave would result results in State Agency staffing levels below what is required by federal or state law to maintain operational safety; or</p> <p>(2) Providing the Paid Parental Leave may impact the health or safety of staff, patients, residents, offenders, or other individuals the State Agency is required by law to protect; and</p> <p>(3) The State Agency has been unable to secure supplemental staffing after requesting or diligently exploring alternative staffing options.</p>
Qualifying Event - When an Eligible State Employee becomes a Parent to a Child.

§ 4. **OSHR Responsibilities**

- Develop and disseminate the rule and policy on the administration of Paid Parental Leave to include how this leave interacts with FML and other leave as applicable.
- Collaborate with State Agencies to ensure State Agency employees, management and staff receive information about and understand the obligations and rights contained in the Paid Parental Leave Policy.
- Report to the Office of the Governor on usage of Paid Parental Leave by September 1 of each year.
- Initiate any additional steps necessary to provide guidance in administering Paid Parental Leave.

§ 5. **Agency Responsibilities**

- Provide required documentation to employees for completion of the certification process.

## Paid Parental Leave Policy (cont.)

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- Upon receiving a request for Paid Parental Leave and documentation from the Eligible State Employee, the agency must respond within five (5) business days. See § 9.3 of this Policy for how the agency must respond.
- There can be no disciplinary actions taken against the employee for being absent while on paid parental leave. However, this provision does not prevent the employee from receiving disciplinary actions for conduct/performance as long as it is not related to the four or eight weeks of paid parental leave unless there is evidence of fraudulent use.
- Employees that have begun approved paid parental leave should not be required to return to work early due to staffing issues.
- Disseminate information concerning the Paid Parental Leave Program to new and existing employees.
- Agencies shall report Paid Parental Leave activities to the Office of State Human Resources by August 1<sup>st</sup> of each year.
- If the State Agency delays or denies any Paid Parental Leave requests due to Public Safety Concerns, the State Agency must develop a written internal policy and procedure that identifies the criteria that the State Agency will use to provide consistent treatment for all similarly situated employees.
- If the State Agency provides additional leave under the optional authority provided in this Policy, submit to the Office of State Human Resources a written request, signed by the Agency Head (or designee), to develop a Paid Parental Leave program. This must include a copy of the policies and procedures for review.

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### § 6. Employee Responsibilities

- Whenever possible, employees shall be required to submit a written request to notify their Employing State Agency ten (10) weeks in advance of their intention to use Paid Parental Leave so that the State Agency may secure backfill coverage.
- Employees may withdraw their request for Paid Parental Leave at any time.
- Employees shall be required to comply with agency leave request procedures, absent unusual circumstances.

**Paid Parental Leave Policy (cont.)**

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- Employees shall be required to submit documentation as listed in § 7 below. State Agencies may take appropriate action if there is evidence that the employee fraudulently requested, used, or otherwise abused Paid Parental Leave. This action may include revoking approval and disciplinary action up to and including dismissal.
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**§ 7. Certification of Eligibility for Paid Parental Leave**

Eligible State Employees shall be required to certify that they will use Paid Parental Leave to give birth to a Child or will use Paid Parental Leave to care for or bond with a Child.

Employees may be required to submit documentation of the birth or placement (if applicable). The initial certification form may be required before the Qualifying Event (unless a birth comes unexpectedly), while the documentation of the birth or placement will be required at a reasonable time after the Qualifying Event. Official documents may include but are not limited to:

<b><u>Qualifying Event</u></b>	<b><u>Acceptable Documentation</u></b>
Adoption	<ul style="list-style-type: none"> <li>• Adoption Order</li> <li>• Proof of Placement</li> </ul>
Birth	<ul style="list-style-type: none"> <li>• Birth Certificate or Report of Birth</li> <li>• Certified DNA Results</li> <li>• Custody Order</li> </ul>
Foster Placement	<ul style="list-style-type: none"> <li>• Foster Care Placement Agreement</li> <li>• Custody Order</li> <li>• Proof of Placement</li> </ul>
Other Legal Placements	<ul style="list-style-type: none"> <li>• Custody Order</li> <li>• Proof of Placement</li> </ul>

Documents provided must show the date of birth or date of placement, if placement was a date other than the date of birth. The name of the legal Parent must appear on some legal document establishing the birth or placement, such as the birth certificate, a legal document establishing paternity, or a legal document establishing adoption.

## Paid Parental Leave Policy (cont.)

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### § 8. Leave Available

Unless otherwise stated, the amounts of leave listed below are for a full-time employee. See the section on part-time employees below for the leave available to part-time employees.

#### **Note on Sunset Date of Section 8.2 of This Policy:**

When the Human Resources Commission's Paid Parental Leave Policy went into effect in 2019, it offered agencies two options for paid parental leave offered to employees. Almost all agencies selected the option that is reflected in Section 8.1 below. One agency and one commission selected the option reflected in Section 8.2. The May 2023 law on paid parental leave, G.S. 126-8.6(b), matches the structure in Section 8.1 of this policy. The 2023 law does not rescind the Commission's pre-existing authority to issue policies on paid parental leave, but to best match the new law, and to create a uniform policy for state agencies, Section 8.2 will expire February 16, 2024, nine months after the date when G.S. 126-8.6 went into effect.

### § 8.1. Leave Available Under G.S. 126-8.6

As a minimum, the leave provided under this § 8.1 of this Policy must be provided by all State Agencies to their Eligible State Employees who are subject to G.S. 126-8.6.

All Paid Parental Leave arrangements shall be written and include the responsibilities of both the agency and the employee. Each participant in the Paid Parental Leave arrangement must sign the document that contains the terms of the Paid Parental Leave arrangement. At a minimum, the document shall define the parameters of the Paid Parental Leave arrangement and shall comply with the policy provisions below:

1. Compensation and Benefits: Each week of Paid Parental Leave will be compensated at 100% of the employee's regular, straight-time weekly pay (to exclude shift differential, premium pay, or overtime).
2. State Agencies shall provide four (4) weeks (160 hours) of Paid Parental Leave to Eligible State Employees who have given birth for recuperation during the disability period.

## Paid Parental Leave Policy (cont.)

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3. In addition, State Agencies shall provide four (4) weeks (160 hours) of Paid Parental Leave to Eligible State Employees for bonding with a newborn child.
4. Parents shall certify that Paid Parental Leave past the recuperation and recovery stage of childbirth is being utilized for bonding with the Child.

§ 8.2.

### **Optional Alternative Parental Leave Program (available only for qualifying events on or before February 16, 2024)**

**Note:**

The Paid Parental Leave structure under this Section 8.2 is available only for Qualifying Events that take place on or before February 16, 2024. As long as the Qualifying Event takes place by that date, the leave can continue through and beyond February 2024.

For Qualifying Events that take place after February 16, 2024, employees may take Paid Parental Leave under Section 8.1, above.

As an alternative program, State Agencies may provide the same amount of Paid Parental Leave to parents who gave birth and parents who did not give birth. In this alternative, optional program:

All Paid Parental Leave arrangements shall be written and include the responsibilities of both the agency and the employee. Each participant in the Paid Parental Leave arrangement must sign the document that contains the terms of the Paid Parental Leave arrangement. At a minimum, the document shall define the parameters of the Paid Parental Leave arrangement and shall comply with the policy provisions below:

1. Compensation and Benefits: Each week of Paid Parental Leave will be compensated at 100% of the employee's regular, straight-time weekly pay (to exclude shift differential, premium pay, or overtime).
2. State Agencies shall provide eight (8) weeks (320 hours) of Paid Parental Leave to Eligible State Employees to care for and bond with a newborn Child or newly adopted, foster or otherwise legally placed Child. The amount of Paid Parental Leave awarded through this alternative program shall not exceed eight (8) weeks to Eligible State Employees for birth, adoption, foster or otherwise legal placement of a Child.

## Paid Parental Leave Policy (cont.)

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3. Parents shall certify that Paid Parental Leave is being utilized for bonding with the Child.

### § 8.3. Leave for Part-Time Employees

Leave for part-time employees will be prorated from the State Agency's standard amount of Paid Parental Leave, as listed above, corresponding to the percentage of hours they normally are scheduled to work.

#### **Note on Effective Date of this Section:**

The changes to Section 8.3 of this policy, on the amount of leave for part-time employees, reflect the changes to the paid parental leave law, G.S. 126-8.6, that were made by 2023 House Bill 190, Session Law 2023-65. Therefore, the changes to this section (and this section only) are retroactive to House Bill 190's effective date, July 1, 2023. The changes made by House Bill 190 removed the "not to exceed" limit in G.S. 126-8.6 that would have caused some part-time employees to receive less than a prorated amount of leave.

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## § 9. Requesting Use of Paid Parental Leave

### § 9.1. Type of Leave

Eligible State Employees may take Paid Parental Leave in one continuous period or may take intermittent use of Paid Parental Leave. Requests for intermittent use of paid parental leave are subject to the agency's approval as stated below.

### § 9.2. Notification about Intent to Use Leave

Whenever possible, Eligible State Employees shall notify their employing agencies at least 10 weeks in advance of their intention to use Paid Parental Leave. This requirement is so that agencies can secure backfill coverage.

### § 9.3. Agency Response

The agency shall respond in writing to the employee as promptly as possible, and in no fewer than two weeks from the date of receipt.

## Paid Parental Leave Policy (cont.)

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*For employees who gave birth* -- The agency shall not deny, delay, or require intermittent use of paid parental leave to Eligible State Employees who have given birth, so long as they seek to use the paid parental leave in one continuous period. If an employee who gave birth wishes to use intermittent, rather than continuous, Paid Parental Leave, the agency may work with the employee on timing as listed below.

*For all other employees* – This paragraph applies only to Eligible State Employees who either (1) are not birthing parents or (2) are seeking intermittent leave. For these parents, the agency may delay providing Paid Parental Leave or may provide Paid Parental Leave intermittently if it determines that providing the leave will cause a Public Safety Concern.

If the State Agency determines that it must delay Paid Parental Leave, or make Paid Parental Leave intermittent, because of a Public Safety Concern, the agency shall provide Paid Parental Leave as soon as practical following the Qualifying Event.

If both parents are Eligible State Employees, each may receive Paid Parental Leave. Both parents may take their leave simultaneously or at different times, pending no Public Safety Concern.

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### § 10. Leave Usage

- Paid Parental Leave may be used only once for a Qualifying Event within a twelve-month period. The fact that a multiple birth, adoption or other legal placement occurs (e.g., the birth of twins or adoption of siblings) does not increase the total amount of paid parental leave granted for that event.
- Unused Paid Parental Leave is forfeited twelve (12) months from the date of the Qualifying Event.
- Paid Parental Leave shall not accrue or be donated to another state employee.
- Eligible State Employees may not use accrued sick leave, annual leave or other leave in lieu of Paid Parental Leave.
- Paid Parental Leave shall not be counted against or deducted from the eligible state employee's accrued leave balances.
- Employees shall not be paid for the leave provided by this Section upon separation from the employer. The leave provided by this Section shall not be used for

## Paid Parental Leave Policy (cont.)

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calculating an employee's retirement benefits and shall not accrue or be donated as voluntary shared leave.

- Leave usage must be recorded in same required increments as all other time.
- Paid parental leave provided under this Section shall be reported separately from all other paid leave. Employees and supervisors are responsible for accurate reporting of the use of this leave on the employee's time record.
- If the employee requires leave before the actual birth or adoption due to medical reasons or to fulfill legal adoption obligations, other available leave balances shall be utilized in accordance with the State Agency's leave policies. Paid Parental Leave shall not be used prior to the Qualifying Event.

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### § 11. Relationship to Family and Medical Leave

- Employees using Paid Parental Leave are afforded the remaining job protection under Family and Medical Leave (FML) for an absence up to a total of twelve (12) weeks (480 hours). They may charge personal leave or take leave without pay to cover the additional absence.
- An employee shall be eligible for Paid Parental Leave even if the employee has exhausted FML time consistent with the law covering FML.
- If an employee becomes eligible for FML while on Paid Parental Leave, the employee must apply for and use FML and the leave runs concurrently with FML.

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### § 12. Sources of Authority

This policy is issued under any and all of the following sources of law:

- N.C.G.S. § 126-8.6

It is compliant with the Administrative Code rules at:

- Temporary Rules 25 NCAC 01E .1901-.1908 Paid Parental Leave are currently pending before the Rules Review Commission with permanent rulemaking to begin thereafter pursuant to N.C.G.S. § 126-8.6

**Paid Parental Leave Policy (cont.)**§ 13. **History of This Policy**

Date	Version
August 1, 2019	First version. Pilot of Paid Parental leave Policy aligned with Executive Order 95, "Providing Paid Parental Leave to eligible state employees," signed by Governor Roy Cooper on May 23, 2019, provides eight (8) weeks of fully paid parental leave to eligible state employees who have given birth to a child and four (4) weeks of fully paid parental leave to eligible state employees in other circumstances involving the birth of a child to those employees, or the adoptive, foster or other legal placement of a child with an eligible state employee.
October 7, 2021	Update the policy to exclude the work "probationary" from the body of the policy as related to "Covered Employees" to alleviate confusion of who is eligible to be awarded the benefit.
June 13, 2023 (effective July 1, 2023)	Added to the policy material from the existing OSHR guidelines establishing implementation procedures. In addition, revised the policy to reflect the terms of new G.S. 126-8.6, which becomes effective July 1, 2023. The new law generally matches Paid Parental Leave policies and procedures under Executive Order 95 and the previous version of this policy. The primary differences are in Paid Parental Leave for part-time employees; to reflect these differences, the policy terms on part-time employees have been revised to reflect the terms of G.S. 126-8.6. The new law requires OSHR to adopt "rules and policies" on Paid Parental Leave. As a result, OSHR will engage in temporary and permanent rulemaking on Paid Parental Leave, and this policy will be updated after rules go into effect.
August 7, 2023	<ul style="list-style-type: none"> <li>Set a sunset date of February 16, 2024 for the alternative Paid Parental Leave structure provided in Section 8.2 of the policy. See the note at the beginning of Section 8 describing the reasons for this change.</li> </ul>

## Paid Parental Leave Policy (cont.)

	<ul style="list-style-type: none"><li>• In Section 8.3, changed the Paid Parental Leave formula for part-time employees to reflect statutory revisions in 2023 House Bill 190, Session Law 2023-65. The changes to Section 8.2 (and only those changes) are retroactive to the House Bill 190 effective date, July 1, 2023.</li><li>• In Section 9.3, clarified that the agency must respond in writing to an employee who has requested Paid Parental Leave.</li></ul>
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