

**Effective 7/1/2021**

**Superseded 7/1/2022**

**63A-17-511 Postpartum recovery leave.**

(1) As used in this section:

- (a) "Eligible employee" means an employee who:
  - (i) is in a position that receives retirement benefits under Title 49, Utah State Retirement and Insurance Benefit Act;
  - (ii) accrues paid leave benefits that can be used in the current and future calendar years;
  - (iii) is not reemployed as defined in Section 49-11-1202; and
  - (iv) gives birth to a child.
- (b) "Postpartum recovery leave" means leave hours a state employer provides to an eligible employee to recover from childbirth.
- (c) "Retaliatory action" means to do any of the following to an employee:
  - (i) dismiss the employee;
  - (ii) reduce the employee's compensation;
  - (iii) fail to increase the employee's compensation by an amount that the employee is otherwise entitled to or was promised;
  - (iv) fail to promote the employee if the employee would have otherwise been promoted; or
  - (v) threaten to take an action described in Subsections (1)(c)(i) through (iv).
- (d)
  - (i) "State employer" means:
    - (A) a state executive branch agency, including the State Tax Commission, the National Guard, and the Board of Pardons and Parole;
    - (B) the legislative branch of the state; or
    - (C) the judicial branch of the state.
  - (ii) "State employer" does not include:
    - (A) an institute of higher education;
    - (B) the Utah Board of Higher Education;
    - (C) the State Board of Education;
    - (D) an independent entity as defined in Section 63E-1-102;
    - (E) the Attorney General's Office;
    - (F) the State Auditor's Office; or
    - (G) the State Treasurer's Office.

- (2)
  - (a) Except as provided in Subsection (3), a state employer shall allow an eligible employee to use up to 120 hours of paid postpartum recovery leave based on a 40-hour work week for recovery from childbirth.
  - (b) A state employer shall allow an eligible employee who is part-time or who works in excess of a 40-hour work week or its equivalent to use the amount of postpartum recovery leave available to the eligible employee under this section on a pro rata basis as adopted by rule by the division under Subsection (11).

- (3)
  - (a) Postpartum recovery leave described in Subsection (2):
    - (i) shall be used starting on the day on which the eligible employee gives birth, unless a health care provider certifies that an earlier start date is medically necessary;
    - (ii) shall be used in a single continuous period; and
    - (iii) runs concurrently with any leave authorized under the Family and Medical Leave Act of 1993, 29 U.S.C. Sec. 2601 et seq.

- (b) The amount of postpartum recovery leave authorized under Subsection (2) does not increase if an eligible employee has more than one child born from the same pregnancy.
- (4)
  - (a) Except as provided in Subsection (4)(b), an eligible employee shall give the state employer notice at least 30 days before the day on which the eligible employee plans to:
    - (i) begin using postpartum recovery leave under this section; and
    - (ii) stop using postpartum recovery leave under this section.
  - (b) If circumstances beyond the eligible employee's control prevent the eligible employee from giving notice in accordance with Subsection (4)(a), the eligible employee shall give each notice described in Subsection (4)(a) as soon as reasonably practicable.
- (5) A state employer may not charge postpartum recovery leave under this section against sick, annual, or other leave.
- (6) A state employer may not compensate an eligible employee for any unused postpartum recovery leave upon termination of employment.
- (7)
  - (a) Following the expiration of an eligible employee's postpartum recovery leave under this section, the state employer shall ensure that the eligible employee may return to:
    - (i) the position that the eligible employee held before using postpartum recovery leave; or
    - (ii) a position within the state employer that is equivalent in seniority, status, benefits, and pay to the position that the eligible employee held before using postpartum recovery leave.
  - (b) If during the time an eligible employee uses postpartum recovery leave under this section the state employer experiences a reduction in force and, as part of the reduction in force, the eligible employee would have been separated had the eligible employee not been using the postpartum recovery leave, the state employer may separate the eligible employee in accordance with any applicable process or procedure as if the eligible employee were not using the postpartum recovery leave.
- (8) During the time an eligible employee uses postpartum recovery leave under this section, the eligible employee shall continue to receive all employment related benefits and payments at the same level that the eligible employee received immediately before beginning the postpartum leave, provided that the eligible employee pays any required employee contributions.
- (9) A state employer may not:
  - (a) interfere with or otherwise restrain an eligible employee from using postpartum recovery leave in accordance with this section; or
  - (b) take retaliatory action against an eligible employee for using postpartum recovery leave in accordance with this section.
- (10) A state employer shall provide each employee written information regarding an eligible employee's right to use postpartum recovery leave under this section.
- (11) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division shall, by July 1, 2021, make rules for the use and administration of postpartum recovery leave under this section, including a schedule that provides paid or postpartum recovery leave for an eligible employee who is part-time or who works in excess of a 40-hour work week on a pro rata basis.