

Senator Todd D. Weiler proposes the following substitute bill:

PAID LEAVE MODIFICATIONS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd D. Weiler

House Sponsor: Val L. Peterson

LONG TITLE

General Description:

This bill requires certain state employers to offer paid parental leave.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires certain state employers to provide certain employees paid parental leave

upon:

- the birth of the employee's child;
- the adoption of a minor child; or
- the appointment of legal guardianship of a minor child;
- ▶ requires the Department of Human Resource Management to adopt rules to administer parental leave; and
- ▶ allows the Department of Administrative Services to transfer certain money for the costs of parental leave.

Money Appropriated in this Bill:

This bill appropriates in fiscal year 2022:

- ▶ to the Department of Administrative Services -- Finance Mandated Paid Parental Leave -- Paid Parental Leave, as ongoing appropriation:



26 • from the General Fund, \$1,752,200.

27 **Other Special Clauses:**

28 This bill provides a special effective date.

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **63J-1-206**, as last amended by Laws of Utah 2020, Chapters 152, 231, 402 and last
32 amended by Coordination Clause, Laws of Utah 2020, Chapter 231

33 **67-19-14.7 (Effective 07/01/21)**, as last amended by Laws of Utah 2020, Fifth Special
34 Session, Chapter 20

35

36 *Be it enacted by the Legislature of the state of Utah:*

37 Section 1. Section **63J-1-206** is amended to read:

38 **63J-1-206. Appropriations governed by chapter -- Restrictions on expenditures --**
39 **Transfer of funds -- Exclusion.**

40 (1) (a) Except as provided in Subsections (1)(b) and (2)(e), or where expressly
41 exempted in the appropriating act:

42 (i) all money appropriated by the Legislature is appropriated upon the terms and
43 conditions set forth in this chapter; and

44 (ii) any department, agency, or institution that accepts money appropriated by the
45 Legislature does so subject to the requirements of this chapter.

46 (b) This section does not apply to:

47 (i) the Legislature and its committees; and

48 (ii) the Investigation Account of the Water Resources Construction Fund, which is
49 governed by Section **73-10-8**.

50 (2) (a) Each item of appropriation is to be expended subject to any schedule of
51 programs and any restriction attached to the item of appropriation, as designated by the
52 Legislature.

53 (b) Each schedule of programs or restriction attached to an appropriation item:

54 (i) is a restriction or limitation upon the expenditure of the respective appropriation
55 made;

56 (ii) does not itself appropriate any money; and

57 (iii) is not itself an item of appropriation.

58 (c) (i) An appropriation or any surplus of any appropriation may not be diverted from
59 any department, agency, institution, division, or line item to any other department, agency,
60 institution, division, or line item.

61 (ii) If the money appropriated to an agency to pay lease payments under the program
62 established in Section 63A-5b-703 exceeds the amount required for the agency's lease
63 payments to the Division of Facilities Construction and Management, the agency may:

64 (A) transfer money from the lease payments line item to other line items within the
65 agency; and

66 (B) retain and use the excess money for other purposes.

67 (d) The money appropriated subject to a schedule of programs or restriction may be
68 used only for the purposes authorized.

69 (e) In order for a department, agency, or institution to transfer money appropriated to it
70 from one program to another program within a line item, the department, agency, or institution
71 shall revise its budget execution plan as provided in Section 63J-1-209.

72 (f) (i) The procedures for transferring money between programs within a line item as
73 provided by Subsection (2)(e) do not apply to money appropriated to the State Board of
74 Education for the Minimum School Program or capital outlay programs created in Title 53F,
75 Chapter 3, State Funding -- Capital Outlay Programs.

76 (ii) The state superintendent may transfer money appropriated for the programs
77 specified in Subsection (2)(f)(i) only as provided by Section 53F-2-205.

78 (3) Notwithstanding Subsection (2)(c)(i):

79 (a) the state superintendent may transfer money appropriated for the Minimum School
80 Program between line items in accordance with Section 53F-2-205;

81 (b) the Department of Administrative Services may transfer money appropriated for the
82 purpose of paying the costs of paid employee parental leave and postpartum recovery leave
83 under Section 67-19-14.7 to another department, agency, institution, or division; and

84 (c) the Department of Administrative Services may transfer or divert money to another
85 department, agency, institution, or division only for the purposes of coordinating and providing
86 a state response to the coronavirus.

87 Section 2. Section 67-19-14.7 (Effective 07/01/21) is amended to read:

88 **67-19-14.7 (Effective 07/01/21). Parental leave -- Postpartum recovery leave.**

89 (1) As used in this section:

90 (a) "Parental leave" means leave hours a state employer provides to a parental leave
91 eligible employee.

92 ~~[(a)]~~ (b) "~~Eligible~~ Parental leave eligible employee" means an employee who:

93 (i) is in a position that receives retirement benefits under Title 49, Utah State
94 Retirement and Insurance Benefit Act;

95 (ii) accrues paid leave benefits that can be used in the current and future calendar years;

96 (iii) is not reemployed as defined in Section [49-11-1202](#); and

97 ~~[(iv) gives birth to a child.]~~

98 (iv) (A) is a birth parent as defined in Section [78B-6-103](#);

99 (B) legally adopts a minor child, unless the individual is the spouse of the pre-existing
100 parent;

101 (C) is the intended parent of a child born under a validated gestational agreement in
102 accordance with Title 78B, Chapter 15, Part 8, Gestational Agreement; or

103 (D) is appointed the legal guardian of a minor child.

104 ~~[(b)]~~ (c) "Postpartum recovery leave" means leave hours a state employer provides to
105 ~~a~~ a postpartum recovery leave eligible employee to recover from childbirth.

106 ~~[(c)]~~ (d) "Retaliatory action" means to do any of the following to an employee:

107 (i) dismiss the employee;

108 (ii) reduce the employee's compensation;

109 (iii) fail to increase the employee's compensation by an amount that the employee is
110 otherwise entitled to or was promised;

111 (iv) fail to promote the employee if the employee would have otherwise been
112 promoted; or

113 (v) threaten to take an action described in Subsections (1)~~[(c)]~~(d)(i) through (iv).

114 (e) "Postpartum recovery leave eligible employee" means an employee who:

115 (i) is in a position that receives retirement benefits under Title 49, Utah State
116 Retirement and Insurance Benefit Act;

117 (ii) accrues paid leave benefits that can be used in the current and future calendar years;

118 (iii) is not reemployed as defined in Section [49-11-1202](#); and

- 119 (iv) gives birth to a child.
- 120 [~~(f)~~] (f) (i) "State employer" means:
- 121 (A) a state executive branch agency, including the State Tax Commission, the National
- 122 Guard, and the Board of Pardons and Parole;
- 123 (B) the legislative branch of the state; or
- 124 (C) the judicial branch of the state.
- 125 (ii) "State employer" does not include:
- 126 (A) an institute of higher education;
- 127 (B) the Utah Board of Higher Education;
- 128 (C) the State Board of Education;
- 129 (D) an independent entity as defined in Section [63E-1-102](#);
- 130 (E) the Attorney General's Office;
- 131 (F) the State Auditor's Office; or
- 132 (G) the State Treasurer's Office.
- 133 (g) "Qualified employee" means:
- 134 (i) a parental leave eligible employee; or
- 135 (ii) a postpartum leave eligible employee.
- 136 (2) (a) Except as provided in Subsection [~~(3)~~], ~~a state employer shall allow an eligible~~
- 137 ~~employee to use up to 120 hours of paid postpartum recovery leave based on a 40-hour work~~
- 138 ~~week for recovery from childbirth.] (4) and (5), a state employer shall:~~
- 139 (i) allow a parental leave eligible employee to use up to 120 hours of paid parental
- 140 leave based on a 40-hour week for:
- 141 (A) the birth of the parental leave eligible employee's child;
- 142 (B) the adoption of a minor child; or
- 143 (C) the appointment of legal guardianship of a minor child; and
- 144 (ii) allow a postpartum recovery leave eligible employee to use up to 120 hours of paid
- 145 postpartum recovery leave based on a 40-hour work week for recovery from childbirth.
- 146 (b) A state employer shall allow [~~an eligible~~] qualified employee who is part-time or
- 147 who works in excess of a 40-hour work week or its equivalent to use the amount of parental
- 148 leave or postpartum recovery leave available to the [~~eligible~~] qualified employee under this
- 149 section on a pro rata basis as adopted by rule by the department under Subsection [~~(11)~~] (12).

150 (3) (a) Parental leave described in Subsection (2)(a)(i):
151 (i) may not be used before the day on which:
152 (A) the parental leave eligible employee's child is born;
153 (B) the parental leave eligible employee adopts a minor child; or
154 (C) the parental leave eligible employee is appointed legal guardian of a minor child;
155 (ii) may not be used more than six months after the date described in Subsection
156 (3)(a)(i);
157 (iii) may not be used intermittently, unless:
158 (A) by mutual written agreement between the state employer and the parental leave
159 eligible employee; or
160 (B) a health care provider certifies that intermittent leave is medically necessary due to
161 a serious health condition of the child;
162 (iv) runs concurrently with any leave authorized under the Family and Medical Leave
163 Act of 1993, 29 U.S.C. Sec. 2601 et seq.; and
164 (v) runs consecutively to postpartum recovery leave.
165 (b) The amount of parental leave authorized under Subsection (2)(a)(i) does not
166 increase if a parental leave eligible employee:
167 (i) has more than one child born from the same pregnancy;
168 (ii) adopts more than one minor child; or
169 (iii) is appointed legal guardian of more than one minor child.
170 (c) A parental leave eligible employee may not use more than 120 hours of paid
171 parental leave within a single 12-month period, regardless of whether during that 12-month
172 period the parental leave eligible employee:
173 (i) becomes the parent of more than one child;
174 (ii) adopts more than one minor child; or
175 (iii) is appointed legal guardian of more than one minor child.
176 ~~[(3)]~~ (4) (a) Postpartum recovery leave described in Subsection (2)(a)(ii):
177 (i) shall be used starting on the day on which the postpartum recovery leave eligible
178 employee gives birth, unless a health care provider certifies that an earlier start date is
179 medically necessary;
180 (ii) shall be used in a single continuous period; [and]

181 (iii) runs concurrently with any leave authorized under the Family and Medical Leave
182 Act of 1993, 29 U.S.C. Sec. 2601 et seq.; and

183 (iv) runs consecutively to parental leave.

184 (b) The amount of postpartum recovery leave authorized under Subsection (2)(a)(ii)
185 does not increase if ~~an~~ a postpartum recovery leave eligible employee has more than one child
186 born from the same pregnancy.

187 ~~[(4)]~~ (5) (a) Except as provided in Subsection ~~[(4)]~~ (5)(b), ~~[an eligible]~~ a qualified
188 employee shall give the state employer notice at least 30 days before the day on which the
189 ~~[eligible]~~ qualified employee plans to:

190 (i) begin using parental leave or postpartum recovery leave under this section; and

191 (ii) stop using parental leave or postpartum recovery leave under this section.

192 (b) If circumstances beyond the ~~[eligible]~~ qualified employee's control prevent the
193 ~~[eligible]~~ qualified employee from giving notice in accordance with Subsection ~~[(4)]~~ (5)(a), the
194 ~~[eligible]~~ qualified employee shall give each notice described in Subsection ~~[(4)]~~ (5)(a) as soon
195 as reasonably practicable.

196 ~~[(5)-A]~~ (6) Except as provided in Subsections (3)(a)(iv) and (4)(a)(iii), a state
197 employer may not charge parental leave or postpartum recovery leave under this section against
198 sick, annual, compensatory, excess, or other leave a qualified employee is entitled to.

199 ~~[(6)]~~ (7) A state employer may not compensate ~~[an eligible]~~ a qualified employee for
200 any unused parental leave or postpartum recovery leave upon termination of employment.

201 ~~[(7)]~~ (8) (a) Following the expiration of ~~[an eligible]~~ a qualified employee's parental
202 leave or postpartum recovery leave under this section, the state employer shall ensure that the
203 ~~[eligible]~~ qualified employee may return to:

204 (i) the position that the ~~[eligible]~~ qualified employee held before using parental leave
205 or postpartum recovery leave; or

206 (ii) a position within the state employer that is equivalent in seniority, status, benefits,
207 and pay to the position that the ~~[eligible]~~ qualified employee held before using parental leave or
208 postpartum recovery leave.

209 (b) If during the time ~~[an eligible]~~ a qualified employee uses parental leave or
210 postpartum recovery leave under this section the state employer experiences a reduction in
211 force and, as part of the reduction in force, the ~~[eligible]~~ qualified employee would have been

212 separated had the ~~[eligible]~~ qualified employee not been using the parental leave or postpartum
213 recovery leave, the state employer may separate the ~~[eligible]~~ qualified employee in accordance
214 with any applicable process or procedure as if the ~~[eligible]~~ qualified employee were not using
215 the parental leave or postpartum recovery leave.

216 ~~[(8)]~~ (9) During the time ~~[an-eligible]~~ a qualified employee uses parental leave or
217 postpartum recovery leave under this section, the ~~[eligible]~~ qualified employee shall continue
218 to receive all employment related benefits and payments at the same level that the ~~[eligible]~~
219 qualified employee received immediately before beginning the parental leave or postpartum
220 leave, provided that the ~~[eligible]~~ qualified employee pays any required employee
221 contributions.

222 ~~[(9)]~~ (10) A state employer may not:

223 (a) interfere with or otherwise restrain ~~[an-eligible]~~ a qualified employee from using
224 parental leave or postpartum recovery leave in accordance with this section; or

225 (b) take retaliatory action against ~~[an-eligible]~~ a qualified employee for using parental
226 leave or postpartum recovery leave in accordance with this section.

227 ~~[(10)]~~ (11) A state employer shall provide each employee written information
228 regarding ~~[an-eligible]~~ a qualified employee's right to use parental leave or postpartum recovery
229 leave under this section.

230 ~~[(11)]~~ (12) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
231 Act, the department shall, ~~[by]~~ on or before July 1, 2021, make rules for the use and
232 administration of parental leave and postpartum recovery leave under this section, including a
233 schedule that provides paid parental leave or postpartum recovery leave for ~~[an-eligible]~~ a
234 qualified employee who is part-time or who works in excess of a 40-hour work week on a pro
235 rata basis.

236 Section 3. **Appropriation.**

237 The following sums of money are appropriated for the fiscal year beginning July 1,
238 2021, and ending June 30, 2022. These are additions to amounts previously appropriated for
239 fiscal year 2022. Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures
240 Act, the Legislature appropriates the following sums of money from the funds or accounts
241 indicated for the use and support of the government of the state of Utah.

242 ITEM 1

243 To Department of Administrative Services -- Finance
244 Mandated Paid Postpartum Recovery and Parental Leave
245 From General Fund ongoing \$1,752,200
246 Schedule of Programs:
247 Paid Postpartum Recovery and Parental Leave \$1,752,200
248 The Legislature intends that the Department of Administrative Services use the
249 appropriation under this item to offset incremental costs associated with hiring a replacement
250 employee, the payment of overtime to a current employee, or other labor-related costs due to an
251 employee utilizing parental leave or postpartum recovery leave under Section [67-19-14.7](#). Any
252 unexpended funds remaining at the end of each fiscal year lapses to the General Fund.
253 Section 4. **Effective date.**
254 This bill takes effect on July 1, 2021.