

Senator Todd D. Weiler proposes the following substitute bill:

PAID LEAVE MODIFICATIONS

2022 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 ~~§~~ **or incapacitated**

adult ~~←§~~ ;

- ▶ requires the Department of Human Resource Management to adopt rules to administer parental leave; and
- ▶ allows the Department of Government Operations to transfer certain money for the costs of parental leave.

Money Appropriated in this Bill:

This bill appropriates in fiscal year 2023:

- ▶ to the Department of Government Operations -- 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 **63A-17-511**, as renumbered and amended by Laws of Utah 2021, Chapter 344

32 **63J-1-206**, as last amended by Laws of Utah 2021, Chapters 22 and 344



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

35 Section 1. Section **63A-17-511** is amended to read:

36 **63A-17-511. Parental leave -- Postpartum recovery leave.**

37 (1) As used in this section:

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

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

41 (i) is in a position that receives retirement benefits under Title 49, Utah State

42 Retirement and Insurance Benefit Act;

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

44 (iii) is not reemployed as defined in Section **49-11-1202**; and

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

46 (iv) (A) is a birth parent as defined in Section **78B-6-103**;

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

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

51 (D) is appointed the legal guardian of a minor child ~~§~~→ **or incapacitated adult** ←~~§~~ .

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

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

55 (i) dismiss the employee;

56 (ii) reduce the employee's compensation;

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

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

61 (v) threaten to take an action described in Subsections (1)[(e)](d)(i) through (iv).

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

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

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

66 (iii) is not reemployed as defined in Section 49-11-1202; and

67 (iv) gives birth to a child.

68 ~~[(e)]~~ (f) (i) "State employer" means:

69 (A) a state executive branch agency, including the State Tax Commission, the National
70 Guard, and the Board of Pardons and Parole;

71 (B) the legislative branch of the state; or

72 (C) the judicial branch of the state.

73 (ii) "State employer" does not include:

74 (A) an institute of higher education;

75 (B) the Utah Board of Higher Education;

76 (C) the State Board of Education;

77 (D) an independent entity as defined in Section 63E-1-102;

78 (E) the Attorney General's Office;

79 (F) the State Auditor's Office; or

80 (G) the State Treasurer's Office.

81 (g) "Qualified employee" means:

82 (i) a parental leave eligible employee; or

83 (ii) a postpartum leave eligible employee.

84 (2) (a) Except as provided in ~~[Subsection (3), a state employer shall allow an eligible~~
85 ~~employee to use up to 120 hours of paid postpartum recovery leave based on a 40-hour work~~
86 ~~week for recovery from childbirth.]~~ Subsections (4) and (5), a state employer shall:

87 (i) allow a parental leave eligible employee to use up to three work weeks of paid

88 parental leave for:

89 (A) the birth of the parental leave eligible employee's child;

90 (B) the adoption of a minor child; or

91 (C) the appointment of legal guardianship of a minor child ~~Ŝ~~ **→ or incapacitated**

91a **adult** ~~←Ŝ~~ ; and

92 (ii) allow a postpartum recovery leave eligible employee to use up to three work weeks
93 of paid postpartum recovery leave for recovery from childbirth.

94 (b) A state employer shall allow [~~an eligible~~] a qualified employee who is part-time or
95 who works in excess of a 40-hour work week or its equivalent to use the amount of parental
96 leave or postpartum recovery leave available to the [~~eligible~~] qualified employee under this
97 section on a pro rata basis as adopted by rule by the division under Subsection [~~(11)~~] (12).

98 (3) (a) Parental leave described in Subsection (2)(a)(i):

99 (i) may not be used before the day on which:

100 (A) the parental leave eligible employee's child is born;

101 (B) the parental leave eligible employee adopts a minor child; or

102 (C) the parental leave eligible employee is appointed legal guardian of a minor child ~~Ŝ~~ **→ or**

102a **incapacitated adult** ~~←Ŝ~~ ;

103 (ii) may not be used more than six months after the date described in Subsection

104 (3)(a)(i);

105 (iii) may not be used intermittently, unless:

106 (A) by mutual written agreement between the state employer and the parental leave
107 eligible employee; or

108 (B) a health care provider certifies that intermittent leave is medically necessary due to
109 a serious health condition of the child;

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

112 (v) runs consecutively to postpartum recovery leave.

113 (b) The amount of parental leave authorized under Subsection (2)(a)(i) does not
114 increase if a parental leave eligible employee:

115 (i) has more than one child born from the same pregnancy;

116 (ii) adopts more than one minor child; or

117 (iii) is appointed legal guardian of more than one minor child ~~Ŝ~~ **→ or incapacitated**

117a **adult** ~~←Ŝ~~ ;

118 (c) A parental leave eligible employee may not use more than three work weeks of paid

119 parental leave within a single 12-month period, regardless of whether during that 12-month
 120 period the parental leave eligible employee:

121 (i) becomes the parent of more than one child;

122 (ii) adopts more than one minor child; or

123 (iii) is appointed legal guardian of more than one minor child ~~§~~ **→ or incapacitated**

123a **adult** ~~←~~ ~~§~~ .

124 ~~[(3)]~~ (4) (a) Postpartum recovery leave described in Subsection (2)(a)(ii):

125 (i) shall be used starting on the day on which the postpartum recovery leave eligible
 126 employee gives birth, unless a health care provider certifies that an earlier start date is
 127 medically necessary;

128 (ii) shall be used in a single continuous period; ~~[and]~~

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

131 (iv) runs consecutively to parental leave.

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

135 ~~[(4)]~~ (5) (a) Except as provided in Subsection ~~[(4)]~~ (5)(b), ~~[an eligible]~~ a qualified
 136 employee shall give the state employer notice at least 30 days before the day on which the
 137 ~~[eligible]~~ qualified employee plans to:

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

139 (ii) stop using postpartum recovery leave under this section.

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

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

147 ~~[(6)]~~ (7) A state employer may not compensate ~~[an eligible]~~ a qualified employee for
 148 any unused parental leave or postpartum recovery leave upon termination of employment.

149 ~~[(7)]~~ (8) (a) Following the expiration of ~~[an eligible]~~ a qualified employee's parental

150 leave or postpartum recovery leave under this section, the state employer shall ensure that the
151 [eligible] qualified employee may return to:

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

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

157 (b) If during the time [an-eligible] a qualified employee uses parental leave or
158 postpartum recovery leave under this section the state employer experiences a reduction in
159 force and, as part of the reduction in force, the [eligible] qualified employee would have been
160 separated had the [eligible] qualified employee not been using the parental leave or postpartum
161 recovery leave, the state employer may separate the [eligible] qualified employee in accordance
162 with any applicable process or procedure as if the [eligible] qualified employee were not using
163 the parental leave or postpartum recovery leave.

164 ~~[(8)]~~ (9) During the time [an-eligible] a qualified employee uses parental leave or
165 postpartum recovery leave under this section, the [eligible] qualified employee shall continue
166 to receive all employment related benefits and payments at the same level that the [eligible]
167 qualified employee received immediately before beginning the parental leave or postpartum
168 leave, provided that the [eligible] qualified employee pays any required employee
169 contributions.

170 ~~[(9)]~~ (10) A state employer may not:

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

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

175 ~~[(10)]~~ (11) A state employer shall provide each employee written information
176 regarding [an-eligible] a qualified employee's right to use parental leave or postpartum recovery
177 leave under this section.

178 ~~[(11)]~~ (12) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
179 Act, the division shall, [by] on or before July 1, ~~[2021]~~ 2022, make rules for the use and
180 administration of parental leave and postpartum recovery leave under this section, including a

181 schedule that provides paid parental leave or postpartum recovery leave for [~~an eligible~~] a
182 qualified employee who is part-time or who works in excess of a 40-hour work week on a pro
183 rata basis.

184 Section 2. Section **63J-1-206** is amended to read:

185 **63J-1-206. Appropriations governed by chapter -- Restrictions on expenditures --**
186 **Transfer of funds -- Exclusion.**

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

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

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

193 (b) This section does not apply to:

194 (i) the Legislature and its committees; and

195 (ii) the Investigation Account of the Water Resources Construction Fund, which is
196 governed by Section [73-10-8](#).

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

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

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

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

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

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

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

211 (A) transfer money from the lease payments line item to other line items within the

212 agency; and

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

214 (iii) The executive director of the Department of Human Services may transfer
215 unrestricted General Fund money appropriated to the department between line items within the
216 department in accordance with Section 62A-1-111.6.

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

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

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

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

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

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

231 (b) the Department of Government Operations may transfer money appropriated for the
232 purpose of paying the costs of paid employee parental leave and postpartum recovery leave
233 under Section 63A-17-511 to another department, agency, institution, or division.

234 **Section 3. Appropriation.**

235 The following sums of money are appropriated for the fiscal year beginning July 1,
236 2022, and ending June 30, 2023. These are additions to amounts previously appropriated for
237 fiscal year 2023. Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures
238 Act, the Legislature appropriates the following sums of money from the funds or accounts
239 indicated for the use and support of the government of the state of Utah.

240 ITEM 1

241 To Department of Government Operations -- Finance Mandated Paid Postpartum
242 Recovery and Parental Leave

243 From General Fund, Ongoing \$1,752,200

244 Schedule of Programs:

245 Paid Postpartum Recovery and Parental Leave \$1,752,200

246 The Legislature intends that the Department of Government Operations use the
247 appropriation under this item to offset incremental costs associated with hiring a replacement
248 employee, the payment of overtime to a current employee, or other labor-related costs due to an
249 employee utilizing parental leave or postpartum recovery leave under Section [63A-17-511](#). Any
250 unexpended funds remaining at the end of each fiscal year lapses to the General Fund.

251 **Section 4. Effective date.**

252 This bill takes effect on July 1, 2022.