

1                                   **PAID LEAVE MODIFICATIONS**

2                                                           2022 GENERAL SESSION

3                                                           STATE OF UTAH

4                                   **Chief Sponsor: Todd D. Weiler**

5                                   House Sponsor: Val L. Peterson

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7 **LONG TITLE**

8 **General Description:**

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

10 **Highlighted Provisions:**

11           This bill:

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

14 upon:

- 15           • the birth of the employee's child;
- 16           • the adoption of a minor child; or
- 17           • the appointment of legal guardianship of a minor child or incapacitated adult;
- 18           ▶ requires the Department of Human Resource Management to adopt rules to

19 administer parental leave; and

- 20           ▶ allows the Department of Government Operations to transfer certain money for the
- 21 costs of parental leave.

22 **Money Appropriated in this Bill:**

23           This bill appropriates in fiscal year 2023:

- 24           ▶ to the Department of Government Operations -- Finance Mandated Paid Parental
- 25 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

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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 ~~(d)~~ (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 or incapacitated adult; 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 or  
103 incapacitated adult;

104 (ii) may not be used more than six months after the date described in Subsection  
105 (3)(a)(i);

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

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

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

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

113 (v) runs consecutively to postpartum recovery leave.

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

- 116 (i) has more than one child born from the same pregnancy;
- 117 (ii) adopts more than one minor child; or
- 118 (iii) is appointed legal guardian of more than one minor child or incapacitated adult.

119 (c) A parental leave eligible employee may not use more than three work weeks of paid  
120 parental leave within a single 12-month period, regardless of whether during that 12-month  
121 period the parental leave eligible employee:

- 122 (i) becomes the parent of more than one child;
- 123 (ii) adopts more than one minor child; or
- 124 (iii) is appointed legal guardian of more than one minor child or incapacitated adult.

125 ~~{3}~~ (4) (a) Postpartum recovery leave described in Subsection (2)(a)(ii):

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

129 (ii) shall be used in a single continuous period; ~~and~~

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

132 (iv) runs consecutively to parental leave.

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

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

- 139 (i) begin using parental leave or postpartum recovery leave under this section; and
- 140 (ii) stop using postpartum recovery leave under this section.

141 (b) If circumstances beyond the ~~eligible~~ qualified employee's control prevent the

142 ~~[eligible]~~ qualified employee from giving notice in accordance with Subsection ~~[(4)]~~ (5)(a), the  
143 ~~[eligible]~~ qualified employee shall give each notice described in Subsection ~~[(4)]~~ (5)(a) as soon  
144 as reasonably practicable.

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

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

150 ~~[(7)]~~ (8) (a) Following the expiration of ~~[an eligible]~~ a qualified employee's parental  
151 leave or postpartum recovery leave under this section, the state employer shall ensure that the  
152 ~~[eligible]~~ qualified employee may return to:

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

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

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

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

170 contributions.

171 [~~(9)~~] (10) A state employer may not:

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

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

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

179 [~~(11)~~] (12) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking  
180 Act, the division shall, [by] on or before July 1, [~~2021~~] 2022, make rules for the use and  
181 administration of parental leave and postpartum recovery leave under this section, including a  
182 schedule that provides paid parental leave or postpartum recovery leave for [~~an eligible~~] a  
183 qualified employee who is part-time or who works in excess of a 40-hour work week on a pro  
184 rata basis.

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

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

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

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

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

194 (b) This section does not apply to:

195 (i) the Legislature and its committees; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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



226 Chapter 3, State Funding -- Capital Outlay Programs.

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

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

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

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

235 Section 3. **Appropriation.**

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

241 ITEM 1

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

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

245 Schedule of Programs:

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

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

252 Section 4. **Effective date.**

253 This bill takes effect on July 1, 2022.

