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PAID LEAVE MODIFICATIONS

2024 GENERAL SESSION STATE OF UTAH

Chief Sponsor: Stephanie Gricius

Senate Sponsor: Wayne A. Harper

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LONG TITLE

- 4 General Description:
- 5 This bill addresses paid leave for certain state employees.
- 6 Highlighted Provisions:
- 7 This bill:
- 8 defines terms;
- provides that a state employee may use parental leave in order to bond with a child or an
- incapacitated adult with whom the employee is assuming a parental role;
- h makes parental leave available to a state employee who fosters a child;
- provides that a state employee may use postpartum recovery leave to recover from a
- childbirth that occurs at 20 weeks or greater gestation;
- 14 authorizes the director of the Division of Human Resource Management to waive or
- 15 modify the requirement that a state employee use postpartum recovery leave in a single
- 16 continuous period; and
 - makes technical and conforming changes.
- 18 Money Appropriated in this Bill:
- 19 None
- 20 Other Special Clauses:
- None None
- 22 Utah Code Sections Affected:
- 23 AMENDS:
- 24 **63A-17-511**, as last amended by Laws of Utah 2022, Chapter 425

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- 26 *Be it enacted by the Legislature of the state of Utah:*
- 27 Section 1. Section **63A-17-511** is amended to read:

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| 28 | 63A-17-511 . Parental leave Postpartum recovery leave. |
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| 29 | (1) As used in this section: |
| 30 | (a) "Child" means an individual who is younger than 18 years old. |
| 31 | (b) "Parental leave" means leave hours a state employer provides to a parental leave |
| 32 | eligible employee to bond with a child or, in the case of a guardianship appointment, |
| 33 | an incapacitated adult. |
| 34 | [(b)] (c) "Parental leave eligible employee" means an employee who, on the date an |
| 35 | event described in Subsections (2)(a)(i)(A) through (D) occurs: |
| 36 | (i) is an employee of a state employer; |
| 37 | (ii) is in a position that receives retirement benefits under Title 49, Utah State |
| 38 | Retirement and Insurance Benefit Act; |
| 39 | [(iii)] (iii) accrues paid leave benefits that can be used in the current and future |
| 40 | calendar years; |
| 41 | [(iii)] (iv) is not reemployed as defined in Section 49-11-1202; [and] |
| 42 | [(iv)] (v) [(A) is a birth parent as defined in Section 78B-6-103] is assuming a |
| 43 | parental role with respect to the child or the incapacitated adult for which |
| 44 | parental leave is requested; and |
| 45 | [(B)] (vi) (A) [legally adopts a minor child, unless the individual is the spouse of |
| 46 | the pre-existing parent] is the child's biological parent; |
| 47 | [(C)] (B) [is the intended parent of a child born under a validated gestational |
| 48 | agreement in accordance with Title 78B, Chapter 15, Part 8, Gestational |
| 49 | Agreement] is the spouse of the person who gave birth to the child; [or] |
| 50 | [(D)] (C) [is appointed the legal guardian of a minor child or incapacitated adult.] is |
| 51 | the adoptive parent of the child, unless the employee is the spouse of the |
| 52 | pre-existing parent; |
| 53 | (D) is the intended parent of the child and the child is born under a validated |
| 54 | gestational agreement in accordance with Title 78B, Chapter 15, Part 8, |
| 55 | Gestational Agreement; |
| 56 | (E) is appointed the legal guardian of the child or the incapacitated adult; or |
| 57 | (F) is the foster parent of the child. |
| 58 | [(e)] (d) "Postpartum recovery leave" means leave hours a state employer provides to a |
| 59 | postpartum recovery leave eligible employee to recover from childbirth that occurs at |
| 60 | 20 weeks or greater gestation. |
| 61 | [(d)] (e) "Retaliatory action" means to do any of the following to an employee: |

| 62 | (i) dismiss the employee; |
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| 63 | (ii) reduce the employee's compensation; |
| 64 | (iii) fail to increase the employee's compensation by an amount that the employee is |
| 65 | otherwise entitled to or was promised; |
| 66 | (iv) fail to promote the employee if the employee would have otherwise been |
| 67 | promoted; or |
| 68 | (v) threaten to take an action described in Subsections [(1)(d)(i)] (1)(e)(i) through (iv) |
| 69 | [(e)] (f) "Postpartum recovery leave eligible employee" means an employee who: |
| 70 | (i) is in a position that receives retirement benefits under Title 49, Utah State |
| 71 | Retirement and Insurance Benefit Act; |
| 72 | (ii) accrues paid leave benefits that can be used in the current and future calendar |
| 73 | years; |
| 74 | (iii) is not reemployed as defined in Section 49-11-1202; and |
| 75 | (iv) gives birth to a child. |
| 76 | [(f)] (g) (i) "State employer" means: |
| 77 | (A) a state executive branch agency, including the State Tax Commission, the |
| 78 | National Guard, and the Board of Pardons and Parole; |
| 79 | (B) the legislative branch of the state; or |
| 80 | (C) the judicial branch of the state. |
| 81 | (ii) "State employer" does not include: |
| 82 | (A) an institute of higher education; |
| 83 | (B) the Utah Board of Higher Education; |
| 84 | [(C) the State Board of Education;] |
| 85 | [(D)] (C) an independent entity as defined in Section 63E-1-102; |
| 86 | [(E)] (D) the Attorney General's Office; |
| 87 | [(F)] <u>(E)</u> the State Auditor's Office; or |
| 88 | [(G)] <u>(F)</u> the State Treasurer's Office. |
| 89 | [(g)] (h) "Qualified employee" means: |
| 90 | (i) a parental leave eligible employee; or |
| 91 | (ii) a postpartum leave eligible employee. |
| 92 | (2) (a) Except as provided in Subsections (4) and (5), a state employer shall: |
| 93 | (i) allow a parental leave eligible employee to use up to three work weeks of paid |
| 94 | parental leave for: |
| 95 | (A) the birth of the parental leave eligible employee's child; |

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| 96 | (B) the adoption of a [minor]child; [or] |
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| 97 | (C) the appointment of legal guardianship of a [minor-]child or incapacitated |
| 98 | adult; [and] <u>or</u> |
| 99 | (D) the placement of a foster child in the parental leave eligible employee's care; |
| 100 | <u>and</u> |
| 101 | (ii) allow a postpartum recovery leave eligible employee to use up to three work |
| 102 | weeks of paid postpartum recovery leave for recovery from childbirth. |
| 103 | (b) A state employer shall allow a qualified employee who is part-time or who works in |
| 104 | excess of a 40-hour work week or its equivalent to use the amount of parental leave |
| 105 | or postpartum recovery leave available to the qualified employee under this section |
| 106 | on a pro rata basis as adopted by rule by the division under Subsection (12). |
| 107 | (3) (a) Parental leave described in Subsection (2)(a)(i): |
| 108 | (i) may not be used before the day on which: |
| 109 | (A) the parental leave eligible employee's child is born; |
| 110 | (B) the parental leave eligible employee adopts a [minor-]child; [or] |
| 111 | (C) the parental leave eligible employee is appointed legal guardian of a [minor-] |
| 112 | child or incapacitated adult; or |
| 113 | (D) a foster child is placed in the parental leave eligible employee's care. |
| 114 | (ii) may not be used more than six months after the date described in Subsection |
| 115 | (3)(a)(i); |
| 116 | (iii) may not be used intermittently, unless: |
| 117 | (A) by mutual written agreement between the state employer and the parental |
| 118 | leave eligible employee; or |
| 119 | (B) a health care provider certifies that intermittent leave is medically necessary |
| 120 | due to a serious health condition of the child; |
| 121 | (iv) runs concurrently with any leave authorized under the Family and Medical Leave |
| 122 | Act of 1993, 29 U.S.C. Sec. 2601 et seq.; and |
| 123 | (v) runs consecutively to postpartum recovery leave. |
| 124 | (b) The amount of parental leave authorized under Subsection (2)(a)(i) does not increase |
| 125 | if a parental leave eligible employee: |
| 126 | (i) has more than one child born from the same pregnancy; |
| 127 | (ii) adopts more than one [minor-]child; [or] |
| 128 | (iii) has more than one foster child placed in the parental leave eligible employee's |
| 129 | care; or |

| 130 | | [(iii)] (iv) is appointed legal guardian of more than one [minor-]child or incapacitated |
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| 131 | | adult. |
| 132 | (c) | A parental leave eligible employee may not use more than three work weeks of paid |
| 133 | | parental leave within a single 12-month period, regardless of whether during that |
| 134 | | 12-month period the parental leave eligible employee: |
| 135 | | (i) becomes the parent of more than one child; |
| 136 | | (ii) adopts more than one [minor-]child; [or] |
| 137 | | (iii) has more than one foster child placed in the parental leave eligible employee's |
| 138 | | <u>care; or</u> |
| 139 140 | | [(iii)] (iv) is appointed legal guardian of more than one [minor] child or incapacitated adult. |
| 141 | (4) (a) | Postpartum recovery leave described in Subsection (2)(a)(ii): |
| 142 | | (i) shall be used starting on the day on which the postpartum recovery leave eligible |
| 143 | | employee gives birth, unless a health care provider certifies that an earlier start |
| 144 | | date is medically necessary; |
| 145 | | (ii) shall be used in a single continuous period, unless otherwise authorized in writing |
| 146 | | by the director of the division; |
| 147 | | (iii) runs concurrently with any leave authorized under the Family and Medical Leave |
| 148 | | Act of 1993, 29 U.S.C. Sec. 2601 et seq.; and |
| 149 | | (iv) runs consecutively to parental leave. |
| 150 | (b) | The amount of postpartum recovery leave authorized under Subsection (2)(a)(ii) |
| 151 | | does not increase if a postpartum recovery leave eligible employee has more than one |
| 152 | | child born from the same pregnancy. |
| 153 | (5) (a) | Except as provided in Subsection (5)(b), a qualified employee shall give the state |
| 154 | em | ployer notice at least 30 days before the day on which the qualified employee |
| 155 | pla | ans to: |
| 156 | | (i) begin using parental leave or postpartum recovery leave under this section; and |
| 157 | | (ii) stop using postpartum recovery leave under this section. |
| 158 | (b) | If circumstances beyond the qualified employee's control prevent the qualified |
| 159 | | employee from giving notice in accordance with Subsection (5)(a), the qualified |
| 160 | | employee shall give each notice described in Subsection (5)(a) as soon as reasonably |
| 161 | | practicable. |
| 162 | (6) Ex | cept as provided in Subsections (3)(a)(iv) and (4)(a)(iii), a state employer may not |
| 163 | cha | arge parental leave or postpartum recovery leave under this section against sick, |

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- annual, compensatory, excess, or other leave a qualified employee is entitled to.
- 165 (7) A state employer may not compensate a qualified employee for any unused parental leave or postpartum recovery leave upon termination of employment.
- 167 (8) (a) Following the expiration of a qualified employee's parental leave or postpartum 168 recovery leave under this section, the state employer shall ensure that the qualified 169 employee may return to:
 - (i) the position that the qualified employee held before using parental leave or 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 qualified employee held before using parental leave or postpartum recovery leave.
 - (b) If during the time a qualified employee uses parental leave or postpartum recovery leave under this section the state employer experiences a reduction in force and, as part of the reduction in force, the qualified employee would have been separated had the qualified employee not been using the parental leave or postpartum recovery leave, the state employer may separate the qualified employee in accordance with any applicable process or procedure as if the qualified employee were not using the parental leave or postpartum recovery leave.
 - (9) During the time a qualified employee uses parental leave or postpartum recovery leave under this section, the qualified employee shall continue to receive all employment related benefits and payments at the same level that the qualified employee received immediately before beginning the parental leave or postpartum leave, provided that the qualified employee pays any required employee contributions.
- 187 (10) A state employer may not:

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- (a) interfere with or otherwise restrain a qualified employee from using parental leave or postpartum recovery leave in accordance with this section; or
- (b) take retaliatory action against a qualified employee for using parental leave or postpartum recovery leave in accordance with this section.
- (11) A state employer shall provide each employee written information regarding a
 qualified employee's right to use parental leave or postpartum recovery leave under this
 section.
- 195 (12) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the 196 division shall, on or before July 1, 2022, make rules for the use and administration of 197 parental leave and postpartum recovery leave under this section, including a schedule

| 198 | that provides paid parental leave or postpartum recovery leave for a qualified employee |
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| 199 | who is part-time or who works in excess of a 40-hour work week on a pro rata basis. |
| 200 | Section 2. Effective date. |
| 201 | This bill takes effect on May 1, 2024. |