

1 **PAID LEAVE AMENDMENTS**

2 2020 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Todd Weiler**

5 House Sponsor: Val L. Peterson

7 **LONG TITLE**

8 **General Description:**

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

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ defines terms;
- 13 ▶ requires certain state employers to provide certain employees paid postpartum
14 recovery leave to recover from childbirth;
- 15 ▶ requires the Department of Human Resource Management to adopt rules to
16 administer postpartum recovery leave; and
- 17 ▶ allows the Department of Administrative Services to transfer certain money for the
18 costs of postpartum recovery leave.

19 **Money Appropriated in this Bill:**

20 This bill appropriates in fiscal year 2021:

- 21 ▶ to the Department of Administrative Services -- Finance Mandated Paid Postpartum
22 Recovery Leave -- Paid Postpartum Recovery Leave, as on ongoing appropriation:
 - 23 • from the General Fund, \$507,000.

24 **Other Special Clauses:**

25 None

26 **Utah Code Sections Affected:**

27 AMENDS:

28 **63J-1-206**, as last amended by Laws of Utah 2019, Chapters 182 and 468

29 ENACTS:

30 [67-19-14.7](#), Utah Code Annotated 1953

31

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

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

34 **63J-1-206. Appropriations governed by chapter -- Restrictions on expenditures --**
35 **Transfer of funds -- Exclusion.**

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

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

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

42 (b) This section does not apply to:

43 (i) the Legislature and its committees; and

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

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

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

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

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

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

54 (c) (i) Except as provided in [~~Subsection~~] Subsections (2)(c)(ii) and (iii), an
55 appropriation or any surplus of any appropriation may not be diverted from any department,

56 agency, institution, division, or line item to any other department, agency, institution, division,
57 or line item.

58 (ii) The state superintendent may transfer money appropriated for the Minimum School
59 Program between line items in accordance with Section 53F-2-205.

60 (iii) The Department of Administrative Services may transfer money appropriated for
61 the purpose of paying the costs of paid employee postpartum recovery leave under Section
62 67-19-14.7 to another department, agency, institution, or division.

63 [(iii)] (iv) If the money appropriated to an agency to pay lease payments under the
64 program established in Subsection 63A-5-228(3) exceeds the amount required for the agency's
65 lease payments to the Division of Facilities Construction and Management, the agency may:

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

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

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

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

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

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

80 Section 2. Section 67-19-14.7 is enacted to read:

81 **67-19-14.7. Postpartum recovery leave.**

82 **(1) As used in this section:**

- 83 (a) "Eligible employee" means an employee who:
84 (i) is in a position that receives retirement benefits under Title 49, Utah State
85 Retirement and Insurance Benefit Act;
86 (ii) accrues paid leave benefits that can be used in the current and future calendar years;
87 (iii) is not reemployed as defined in Section [49-11-1202](#); and
88 (iv) gives birth to a child.
89 (b) "Postpartum recovery leave" means leave hours a state employer provides to an
90 eligible employee to recover from childbirth.
91 (c) "Retaliatory action" means to do any of the following to an employee:
92 (i) dismiss the employee;
93 (ii) reduce the employee's compensation;
94 (iii) fail to increase the employee's compensation by an amount that the employee is
95 otherwise entitled to or was promised;
96 (iv) fail to promote the employee if the employee would have otherwise been
97 promoted; or
98 (v) threaten to take an action described in Subsections (1)(f)(i) through (iv).
99 (d) (i) "State employer" means:
100 (A) a state executive branch agency, including the State Tax Commission, the National
101 Guard, and the Board of Pardons and Parole;
102 (B) the legislative branch of the state; or
103 (C) the judicial branch of the state.
104 (ii) "State employer" does not include:
105 (A) an institute of higher education;
106 (B) the Board of Regents;
107 (C) the State Board of Education;
108 (D) an independent entity as defined in Section [63E-1-102](#);
109 (E) the Attorney General's Office;

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

111 (G) the State Treasurer's Office.

112 (2) (a) Except as provided in Subsection (3), a state employer shall allow an eligible
113 employee to use up to 120 hours of paid postpartum recovery leave based on a 40-hour work
114 week for recovery from childbirth.

115 (b) A state employer shall allow an eligible employee who is part-time or who works in
116 excess of a 40-hour work week or its equivalent to use the amount of postpartum recovery
117 leave available to the eligible employee under this section on a pro rata basis as adopted by rule
118 by the department under Subsection (11).

119 (3) (a) Postpartum recovery leave described in Subsection (2):

120 (i) shall be used starting on the day on which the eligible employee gives birth, unless a
121 health care provider certifies that an earlier start date is medically necessary;

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

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

125 (b) The amount of postpartum recovery leave authorized under Subsection (2) does not
126 increase if an eligible employee has more than one child born from the same pregnancy.

127 (4) (a) Except as provided in Subsection (4)(b), an eligible employee shall give the
128 state employer notice at least 30 days before the day on which the eligible employee plans to:

129 (i) begin using postpartum recovery leave under this section; and

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

131 (b) If circumstances beyond the eligible employee's control prevent the eligible
132 employee from giving notice in accordance with Subsection (4)(a), the eligible employee shall
133 give each notice described in Subsection (4)(a) as soon as reasonably practicable.

134 (5) A state employer may not charge postpartum recovery leave under this section
135 against sick, annual, or other leave.

136 (6) A state employer may not compensate an eligible employee for any unused

137 postpartum recovery leave upon termination of employment.

138 (7) (a) Following the expiration of an eligible employee's postpartum recovery leave
139 under this section, the state employer shall ensure that the eligible employee may return to:

140 (i) the position that the eligible employee held before using postpartum recovery leave;
141 or

142 (ii) a position within the state employer that is equivalent in seniority, status, benefits,
143 and pay to the position that the eligible employee held before using postpartum recovery leave.

144 (b) If during the time an eligible employee uses postpartum recovery leave under this
145 section the state employer experiences a reduction in force and, as part of the reduction in
146 force, the eligible employee would have been separated had the eligible employee not been
147 using the postpartum recovery leave, the state employer may separate the eligible employee in
148 accordance with any applicable process or procedure as if the eligible employee were not using
149 the postpartum recovery leave.

150 (8) During the time an eligible employee uses postpartum recovery leave under this
151 section, the eligible employee shall continue to receive all employment related benefits and
152 payments at the same level that the eligible employee received immediately before beginning
153 the postpartum leave, provided that the eligible employee pays any required employee
154 contributions.

155 (9) A state employer may not:

156 (a) interfere with or otherwise restrain an eligible employee from using postpartum
157 recovery leave in accordance with this section; or

158 (b) take retaliatory action against an eligible employee for using postpartum recovery
159 leave in accordance with this section.

160 (10) A state employer shall provide each employee written information regarding an
161 eligible employee's right to use postpartum recovery leave under this section.

162 (11) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
163 the department shall, by July 1, 2020, make rules for the use and administration of postpartum

164 recovery leave under this section, including a schedule that provides paid or postpartum
165 recovery leave for an eligible employee who is part-time or who works in excess of a 40-hour
166 work week on a pro rata basis.

167 Section 3. **Appropriation.**

168 The following sums of money are appropriated for the fiscal year beginning July 1,
169 2020, and ending June 30, 2021. These are additions to amounts previously appropriated for
170 fiscal year 2021. Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures
171 Act, the Legislature appropriates the following sums of money from the funds or accounts
172 indicated for the use and support of the government of the state of Utah.

173 ITEM 1

174 To Department of Administrative Services -- Finance

175 Mandated Postpartum Recovery Leave

176 From General Fund \$507,000

177 Schedule of Programs:

178 Paid Postpartum Recovery Leave \$507,000

179 The Legislature intends that the Department of Administrative Services use the
180 appropriation under this item to offset incremental costs associated with hiring a replacement
181 employee or the payment of overtime to a current employee due to an employee utilizing
182 postpartum recovery leave under Section 67-19-14.7. Any unexpended funds remaining at the
183 end of each fiscal year lapses to the General Fund.