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Phone: 615-741-2650
Email: publications.information@tn.gov

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Rule ID(s): 9951-9952
File Date: 10/25/2023
Effective Date: 1/23/2024

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission:	Department of Human Resources
Division:	Office of General Counsel
Contact Person:	Andrew Puryear, Senior Associate Counsel
Address:	William R. Snodgrass Tennessee Tower, 17 th Floor, 312 Rosa L. Parks Boulevard, Nashville, TN
Zip:	37243
Phone:	(615) 741-0569
Email:	Andrew.Puryear@tn.gov

Revision Type (check all that apply):

<input checked="" type="checkbox"/> Amendment	<input type="checkbox"/> Content based on previous emergency rule filed on _____
<input type="checkbox"/> New	<input type="checkbox"/> Content is identical to the emergency rule
<input type="checkbox"/> Repeal	

Rule(s) (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row.)

Chapter Number	Chapter Title
1120-06	Attendance & Leave
Rule Number	Rule Title
1120-06-.15	Holidays
1120-06-.20	Parental Leave
Chapter Number	Chapter Title
1120-09	Programs Administered by the Department of Human Resources
Rule Number	Rule Title
1120-09-.02	Sick Leave Bank

Place substance of rules and other info here. Please be sure to include a detailed explanation of the changes being made to the listed rule(s). Statutory authority must be given for each rule change. For information on formatting rules go to <https://sos.tn.gov/products/division-publications/rulemaking-guidelines>.

Chapter 1120-06

Attendance & Leave

Proposed Amendments

1120-06-.15 Holidays. This rule is amended in response to legislative changes adding Juneteenth to the list of holidays designated by the General Assembly so that, as amended, the rule in its entirety shall read:

1120-06-.15 HOLIDAYS. The General Assembly, by law, establishes legal holidays which are observed by the closing of State offices. The Governor, upon request by the Commissioner, may also establish additional time off for observance of holidays. The following days have been designated by the General Assembly as legal holidays:

New Year's Day	January 1
Martin Luther King, Jr. Day	Third Monday in January
President's Day	Third Monday in February
Good Friday	Friday before Easter
Memorial Day	Last Monday in May
Juneteenth	June 19
Independence Day	July 4
Labor Day	First Monday in September
Columbus Day	Second Monday in October
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Christmas Day	December 25

The Governor may, at his discretion, substitute the Friday after the fourth (4th) Thursday in November for Columbus Day. Employees who are ineligible to accrue leave are not eligible for holiday pay.

Authority: T.C.A. §§ 8-30-406 and 15-1-101. **Administrative History:** (For history prior to January 2, 1988, see pages 1-2 of the Introduction at the beginning of the chapters.) Repeal and new rule filed November 18, 1987; effective January 2, 1988. Amendment filed August 25, 1994; effective December 29, 1994. Repeal and new rule filed December 14, 2010; effective May 31, 2011. Repeal and new rule filed July 5, 2012; effective October 3, 2012

1120-06-.20 Parental Leave. This rule is amended in response to legislative changes providing for six (6) weeks of paid parental leave for qualifying employees so that, as amended, the rule in its entirety shall read:

1120-06-.20 PARENTAL LEAVE.

- (1) An employee who has been employed for at least twelve (12) consecutive months as a full-time employee, may be absent from such employment for a period not to exceed four (4) months for adoption, pregnancy, childbirth and nursing an infant, where applicable. With regard to adoption, the four (4) month period shall begin at the time an employee receives custody of the child.
- (2) An employee on parental leave for the following qualifying reasons will be granted six (6) weeks of absence from work with pay:
 - (a) The birth of the employee's child and to bond with the newborn child within one (1) year of birth or;
 - (b) The placement of a child with the employee for adoption and to bond with the newly-placed child within one (1) year of placement.
- (3) The paid leave does not count against an employee's annual, sick, or compensatory leave. For the purpose of calculating an anniversary date, this absence from work is considered full-time employment. Additionally,

an eligible employee may receive no more than six (6) workweeks of paid leave for any twelve-month period, even if there is more than one (1) qualifying birth or adoption.

- (4) Leave granted under this rule must count toward the eligible employee's use of leave required to be provided by the State as an employer under the FMLA (29 U.S.C. § 2601, et seq.) and § 4-21-408, to the extent eligible.
- (5) An employee may use sick leave and annual leave for a period not to exceed said employee's accumulated sick leave and annual leave balance, or twelve (12) weeks, whichever is less.
- (6) When an employee adopts a child, an Appointing Authority has the discretion to grant additional special leave not to exceed one (1) year.
- (7) The Commissioner shall establish procedures pertaining to parental leave.

Authority: T.C.A. §§ 4-21-408, 8-30-104, 8-30-105, 8-30-406, 8-50-801, 8-50-802, and 8-50-806. **Administrative History:** (For history prior to January 2, 1988, see pages 1-2 of the Introduction at the beginning of the chapters.) Repeal and new rule filed November 18, 1987; effective January 2, 1988. Amendment filed August 25, 1994; effective December 29, 1994. Repeal and new rule filed December 14, 2010; effective May 31, 2011. Repeal and new rule filed July 5, 2012; effective October 3, 2012. Amendments filed February 7, 2017; effective May 8, 2017. Amendments filed May 17, 2019; effective August 15, 2019.

Chapter 1120-09

Programs Administered by the Department of Human Resources

Proposed Amendments

1120-09-.02 Sick Leave Bank. This rule is amended to reflect legislative changes allowing for the use of sick leave bank for the illness of the employee member's minor child so that, as amended, the rule in its entirety shall read:

1120-09-.02 SICK LEAVE BANK. The Department shall administer a bank which grants paid sick leave to qualifying members who have exhausted all their personal sick, compensatory, and annual leave balances and who are medically certified as unable to perform the duties of their jobs as a result of a personal illness, injury, accident, disability, medical condition, or quarantine; or illness of the member's minor child. The Sick Leave Bank Board shall:

- (1) Establish the criteria for distributing sick leave from the bank;
- (2) Hear appeals of denials of request for sick leave; and
- (3) Prescribe the form and manner of participation in the bank.

Authority: T.C.A. §§ 8-50-901 through 8-50-910. **Administrative History:** (For history prior to January 2, 1988, see pages 1-2 of the Introduction at the beginning of the chapters.) Repeal and new rule filed November 18, 1987; effective January 2, 1988. Repeal and new rule filed December 14, 2010; effective May 31, 2011. Repeal and new rule filed July 5, 2012; effective October 3, 2012. Amendments filed February 7, 2017; effective May 8, 2017. Amendments filed January 18, 2023; effective April 18, 2023.

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Department of Human Resources on September 15, 2023, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: July 24, 2023

Rulemaking Hearing(s) Conducted on: (add more dates). September 14, 2023

Date: September 15, 2023

Signature: Andrew Puryear

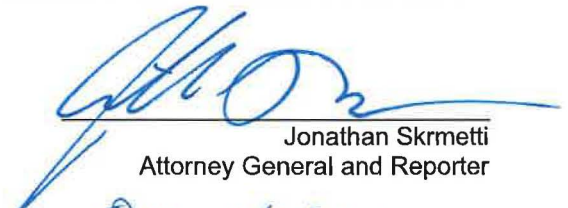
Name of Officer: Andrew Puryear

Title of Officer: Senior Associate Counsel

Agency/Board/Commission: Tennessee Department of Human Resources

Rule Chapter Number(s): 1120-06, 1120-09

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.


Jonathan Skrmetti
Attorney General and Reporter
October 25, 2023
Date

Department of State Use Only

Filed with the Department of State on: 10/25/2023

Effective on: 1/23/2024

RECEIVED

Oct 25 2023, 3:53 pm

Secretary of State
Division of Publications


Tre Hargett
Secretary of State

Public Hearing Comments

One copy of a document that satisfies T.C.A. § 4-5-222 must accompany the filing.

The Department of Human Resources held a Rulemaking Hearing for Public Comment on September 14, 2023, in the William R. Snodgrass Tennessee Tower, 3rd Floor, Nashville Room, beginning at 1:00 p.m. and ending at 3:00 p.m. No members of the public appeared to provide public comment. The Department of Human Resources has fulfilled its obligations, pursuant to T.C.A. § 4-5-204.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

The proposed rules and amendments are not projected to have an impact on small businesses as they only pertain to operations within state government.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228, "On any rule and regulation proposed to be promulgated, the proposing agency shall state in a simple declarative sentence, without additional comments on the merits or the policy of the rule or regulation, whether the rule or regulation may have a projected financial impact on local governments. The statement shall describe the financial impact in terms of increase in expenditures or decrease in revenues."

The proposed rules and amendments are not projected to have an impact on local governments as they only pertain to operations within state government.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

Substantive changes to Rule Chapter 1120-06 are in response to legislative changes made during the 2023 Legislative Session, wherein the general assembly passed legislation providing six (6) weeks of paid parental leave to state employees meeting certain service qualifications.

Additionally, the general assembly expanded the use of sick leave bank benefits by allowing employees to take said leave for the illness of their minor child, reflected in Rule Chapter 1120-09.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

Tennessee Code Annotated (T.C.A.) § 8-30-104 [Commissioner; duties] – This statute provides the Commissioner of Human Resources with the ability to direct and supervise all administrative and technical human resources activities in state service.

T.C.A. § 8-30-105 [Rules] – This statute provides that rules established by the Department of Human Resources have the effect of law, and may include any provision relating to state employment consistent with the laws of this state, which may be necessary or appropriate to give effect to the provisions and purposes of this chapter.

T.C.A. § 8-30-406 – Hours of work, holidays, attendance and regulations and leaves of absences; rules] – This statute provides for rules to establish hours of work, holidays, attendance, regulations and leaves of absence in state service. They may contain provisions for annual, sick, and special leaves of absence, with or without pay.

T.C.A. § 8-50-801 [Paid Absence from Work; Accrual of Annual Leave] – This statute provides for employees who have who meet certain qualifications with accrued annual leave.

T.C.A. § 8-50-802 [Sick Leave; Paternity and Maternity Leave] – This statute explains when and how sick leave can be used. It also allows for the use of annual and sick leave for maternity or paternity leave.

T.C.A. § 8-50-806 [Adoptive Parents; Special Leave] – This statute provides up to twelve (12) weeks to employees for the placement of a child for adoption.

T.C.A. § 8-50-901, et seq. [Sick Leave Banks] – This part provides for the conditions and requirements for the administration and use of sick leave bank within state government.

T.C.A. § 15-1-101 [Legal holidays; half-holidays] – This statute provides for holidays observed by state government.

There is no known federal rule or regulation that mandates promulgation of the relevant rules or guidelines relating to the Tennessee Department of Human Resources. Where any federal rule or regulation is cited, it acts as a supporting statute to the statutes promulgating departmental rules.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

State agencies and state employees will be the primary recipients of any and all relevant rule change submitted by within this document.

The Tennessee Department of Human Resources is not aware of any relevant party actively urging rejection or adoption of the above rule amendments. The Tennessee Department of Human Resources urges adoption of the proposed rules.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule or the necessity to promulgate the rule;

As the rules are proposed in response to legislation, there is no known opinion of the attorney general or reporter or any judicial ruling that directly relates to these proposed rules; however, we urge adoption due to comply with state law.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

As the rules are proposed in response to legislation, DOHR's agency rules would not have a probable increase or decrease in state and/or local government revenues and expenditures resulting from promulgation of these rules.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Andrew Puryear, Senior Associate Counsel, Tennessee Department of Human Resources

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Lesley T. Farmer, Deputy Commissioner & General Counsel, Tennessee Department of Human Resources
Andrew Puryear, Senior Associate Counsel, Tennessee Department of Human Resources

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

William R. Snodgrass Tennessee Tower, 17th Floor
312 Rosa L. Parks Boulevard
Nashville, TN 37243
(615) 741-0569
Lesley.T.Farmer@tn.gov
Andrew.Puryear@tn.gov

- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.

N/A

Proposed Rules – Redline

Tennessee Department of Human Resources

Chapter 1120-06

Attendance and Leave

Redline Amendments

1120-06-.15 HOLIDAYS. The General Assembly, by law, establishes legal holidays which are observed by the closing of State offices. The Governor, upon request by the Commissioner, may also establish additional time off for observance of holidays. The following days have been designated by the General Assembly as legal holidays:

New Year's Day	January 1
Martin Luther King, Jr. Day	Third Monday in January
President's Day	Third Monday in February
Good Friday	Friday before Easter
Memorial Day	Last Monday in May
<u>Juneteenth</u>	<u>June 19</u>
Independence Day	July 4
Labor Day	First Monday in September
Columbus Day	Second Monday in October
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Christmas Day	December 25

The Governor may, at his discretion, substitute the Friday after the fourth (4th) Thursday in November for Columbus Day. Employees who are ineligible to accrue leave are not eligible for holiday pay.

Authority: T.C.A. §§ 8-30-406 and 15-1-101. **Administrative History:** (For history prior to January 2, 1988, see pages 1-2 of the Introduction at the beginning of the chapters.) Repeal and new rule filed November 18, 1987; effective January 2, 1988. Amendment filed August 25, 1994; effective December 29, 1994. Repeal and new rule filed December 14, 2010; effective May 31, 2011. Repeal and new rule filed July 5, 2012; effective October 3, 2012.

1120-06-.20 PARENTAL LEAVE.

- (1) An employee who has been employed for at least twelve (12) consecutive months as a full-time employee, may be absent from such employment for a period not to exceed four (4) months for adoption, pregnancy, childbirth and nursing an infant, where applicable. With regard to adoption, the four (4) month period shall begin at the time an employee receives custody of the child.
- (2) An employee on parental leave for the following qualifying reasons will be granted six (6) weeks of absence from work with pay:
 - (a) The birth of the employee's child and to bond with the newborn child within one (1) year of birth or;
 - (b) The placement of a child with the employee for adoption and to bond with the newly-placed child within one (1) year of placement.

(Rule 1120-06-.25, continued)

- (3) The paid leave does not count against an employee's annual, sick, or compensatory leave. For the purpose of calculating the service anniversary date, this absence from work is considered full-time employment. Additionally, an eligible employee may receive no more than six (6) workweeks of paid leave for any twelve-month period, even if there is more than one (1) qualifying birth or adoption.
- (4) Leave granted under this rule must count toward the eligible employee's use of leave required to be provided by the State as an employer under the FMLA (29 U.S.C. § 2601, et seq.) and § 4-21-408, to the extent eligible.
- (5) An employee may use sick leave and annual leave for a period not to exceed said employee's accumulated sick leave and annual leave balance, or twelve (12) weeks, whichever is less.
- (63) When an employee adopts a child, an Appointing Authority has the discretion to grant additional special leave not to exceed one (1) year.
- (74) The Commissioner shall establish procedures pertaining to parental leave.

Authority: T.C.A. §§ 4-21-408, 8-30-104, 8-30-105, 8-30-406, 8-50-801, 8-50-802, and 8-50-806.
Administrative History: (For history prior to January 2, 1988, see pages 1-2 of the Introduction at the beginning of the chapters.) Repeal and new rule filed November 18, 1987; effective January 2, 1988. Amendment filed August 25, 1994; effective December 29, 1994. Repeal and new rule filed December 14, 2010; effective May 31, 2011. Repeal and new rule filed July 5, 2012; effective October 3, 2012. Amendments filed February 7, 2017; effective May 8, 2017. Amendments filed May 17, 2019; effective August 15, 2019.

Proposed Rules – Redline

Tennessee Department of Human Resources

Chapter 1120-09

Programs Administered by the Department of Human Resources

Redline Amendments

1120-09-.02 SICK LEAVE BANK. The Department shall administer a bank which grants paid sick leave to qualifying members who have exhausted all their personal sick, compensatory, and annual leave balances and who are medically certified as unable to perform the duties of their jobs as a result of a personal illness, injury, accident, disability, medical condition, or quarantine; or illness of the member's minor child. ~~are medically certified as unable to perform the duties of their jobs as a result of a personal illness, injury, accident, disability, medical condition, or quarantine and who have exhausted all their personal sick, compensatory, and annual leave balances. Administration of the Sick Leave Bank is governed by guidelines adopted by the Sick Leave Bank Board.~~ The Sick Leave Bank Board shall:

- (1) Establish the criteria for distributing sick leave from the bank;
- (2) Hear appeals of denials of request for sick leave; and
- (3) Prescribe the form and manner of participation in the bank.

Authority: T.C.A. §§ 8-50-901 through 8-50-910. **Administrative History:** (For history prior to January 2, 1988, see pages 1-2 of the Introduction at the beginning of the chapters.) Repeal and new rule filed November 18, 1987; effective January 2, 1988. Repeal and new rule filed December 14, 2010; effective May 31, 2011. Repeal and new rule filed July 5, 2012; effective October 3, 2012. Amendments filed February 7, 2017; effective May 8, 2017. Amendments filed January 18, 2023; effective April 18, 2023.