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August 25, 2023

Byron P. Decoteau, Jr., Director
State Civil Service Commission
Post Office Box 94111
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Submitted via e-mail to civilservicecommission@la.gov.

Re: Proposed Changes to Civil Service Rules Chapter 11 – Hours of Work, Annual, Sick and Other Forms of Leave (Proposed Adoption of Parental Leave)

Dear Director Decoteau:

We thank you for the opportunity to comment on the regulations regarding the proposed adoption of State Civil Service Commission Rule 11.36. A Better Balance, a national nonprofit advocacy organization, with a Southern Office and Louisiana presence, uses the power of the law to advance justice for workers, so they can care for themselves and their loved ones without jeopardizing their economic security. Through legislative advocacy, direct legal services and strategic litigation, and public education, our expert legal team combats discrimination against pregnant workers and caregivers and advances supportive policies like paid sick time, paid family and medical leave, fair scheduling, and accessible, quality childcare and eldercare.

To that end, we have been leaders in the fight for workplace leave laws around the country for over a decade. A Better Balance has been proud to work closely alongside partners in Louisiana to advocate for paid family and medical leave in the state, and we are excited about the State Civil Service Commission's proposed paid parental leave rule for state classified employees. We thank the Commission for considering our enclosed comments.

Section I describes our support for different provisions of the proposed rule, and Section II details some suggested modifications to other provisions. Finally, Section III highlights our strong concerns and opposition to the proposed three-child maximum in section 11.36(g)(5).



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I. A Better Balance supports the following provisions:

11.36(a) No deduction to an employee’s annual, sick, or compensatory leave balances

We strongly support this provision, which explains that paid parental leave serves as an additional benefit to employees that does not count against an employee’s annual, sick, or compensatory leave. Without dedicated paid parental leave, many state employees may have no choice but to use up any sick or vacation days they have accrued when a new child arrives, leaving them with no remaining paid leave in case they or their child become sick later on. Providing paid parental leave separately ensures that employees can reserve their paid sick days for when they truly need them. It is critical that taking parental leave not result in penalties, such as the diminution of existing leave balances, as this would discourage the use of the benefit.

11.36(d)(1), (g)(7) Equal bonding time for both parents

A Better Balance strongly supports these provisions, which explain that both parents can take paid parental leave for the full 6 weeks allowed under the rule. As noted above, the equal leave time for both parents is an important inclusion in the proposed rule. Ensuring that both parents—when both are state employees—are entitled to full and equal parental leave time, within the same period, recognizes both the joys and stresses of welcoming a new child into the home.

While welcoming a new child is an exciting life moment, it is a difficult and demanding experience to give birth. That experience is made all the more difficult when a parent must both care for themselves, as well as the new addition to their family. Allowing both parents to take parental leave to bond with a new child is beneficial to not only the parents, but also to the child. Studies have shown that fathers who take paternity leave experience greater engagement in their child’s life, which in turn has cognitive and developmental advantages for children.¹ Additionally, studies have shown that fathers who take paternity leave take less sick time, need fewer days of inpatient care, and even have a longer life expectancy compared to fathers who did not take parental leave.² Paid leave is tied to a reduction in infant and child mortality and it is positively associated with improved infant brain development.³

For foster or adopted children, having both parents at home for bonding purposes is also of the utmost importance. The adjustment period for both parent and child is an exciting and important time for all parties, and having the time to bond during those first few weeks together will help set a positive course for those relationships. For foster and adopted children, “[b]onding is likely

¹ A Better Balance, *The Health Case for Paid Family and Medical Leave*, November 30, 2021, <https://www.abetterbalance.org/resources/the-health-case-for-paid-family-and-medical-leave/>

² *Id.*

³ *Id.*

after three months, probable after six, and almost certain after 12 months of constant daily contact.”⁴ According to the research, “disruption of a bond significantly raises the possibility that the child will experience problems with mental health, criminal behavior, homelessness, and other serious life problems.”⁵

Overall, when birth, foster, and adoptive parents can take the leave they need, both parents and children are physically and mentally healthier. Equal bonding time for each parent with a new child is a critical necessity for Louisiana families.

11.36(e)(3) Intermittent leave

We strongly support this provision allowing an employee to take leave intermittently. Giving employees the option to take leave on an intermittent—not just continuous—basis will allow them the flexibility of meeting their and their family’s specific needs. Life does not always happen in a linear fashion, and the inclusion of intermittent leave in the rule is responsive to that reality. We applaud the Commission for recognizing the need for intermittent leave as it relates to parental leave.

11.36(f)(1), (f)(2) Compensation

We strongly support the provisions of the proposed rule that grant full-time and part-time employees compensation at the rate of 100% of the employee’s base pay. This is especially critical because when employees are welcoming a new child, families need 100% of their wages. By providing state employees with their full pay while on parental leave, Louisiana will be consistent with nearly every other state that has enacted a similar policy. This policy will help the State of Louisiana’s employees, and their families, remain financially secure during an exciting yet challenging new chapter of their lives.

11.36(g)(9) No negative or adverse impact on employment relationship

We strongly support the inclusion of this language in the rule, which states that employees will not suffer any negative or adverse impacts on their employment relationship as a result of their taking parental leave under this policy. Paid parental leave is a critical benefit, and no employee should feel as though they cannot take the benefits that are afforded to them. As is reflected in the FMLA, an employer should never be able to retaliate against an employee for taking parental

⁴ James Kenny, MSW, PhD and Peter Kenny, JD, *What Is Bonding and Why Does It Matter?*, March 10, 2018, <https://adoptioninchildtime.org/articles/what-is-bonding-and-why-does-it-matter>. See also A Better Balance, *The Case for Paid Family and Medical Leave for Foster Placement*, Aug. 22, 2023, <https://www.abetterbalance.org/resources/fact-sheet-the-case-for-paid-family-and-medical-leave-for-foster-placement/>

⁵ *Id.*



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leave. During an exciting new phase of life, we appreciate that Louisiana state employees will be protected before, during, and after the taking of parental leave.

II. A Better Balance supports the following provisions, with suggested modifications:

11.36(e)(1) Availability of leave

Currently, the proposed rule would only allow workers to use their paid parental leave during the 12 weeks immediately following the qualifying leave event. While we understand the need to limit the period within which leave can be taken, we strongly recommend that the Commission adjust this period so that employees can access their paid parental leave within a year of the qualifying event, as is the case under the FMLA.⁶ Additionally, no other Southern peer states with similar policies have such a stringent requirement on when leave may be taken. Louisiana would be out of conformity with its neighboring states, and not in a positive direction.

Twelve weeks following the qualifying event is not enough. Expanding the period within which employees can use paid parental leave would allow needed flexibility for parents. The realities of having a new child mean that the child's needs and the parent's needs are not confined to a 12-week period. Many parents might wish to delay their leave following welcoming a new child into their family so as to take leave after their co-parent's parental leave, thus ensuring that a new child has full access to at least one parent for a longer period during their first year in the family. Only allowing leave to be taken 84 calendar days immediately following the qualifying event is not responsive to the realities of new parenthood. Additionally, one parent may wish to take leave several weeks after the birth or placement to alleviate stress for the other parent who needs to return to work, or because child care is unavailable. There are numerous reasons why parents may need to take leave beyond the 12 weeks immediately following their qualifying event, and confining paid parental leave benefits to that 12-week period is not responsive to those needs.

Further, if leave is to be taken intermittently, as the proposed rule allows, the 12-week period immediately following the qualifying event is not sufficient to take leave as needed. We strongly encourage the Commission to model the rule after the FMLA for this provision, which will also create greater consistency across leave programs. Increasing the window of time in which leave can be taken will allow families the flexibility of meeting their needs, without unduly burdening the state.

⁶ The Family and Medical Leave Act of 1993, § 102(a)(1), https://www.dol.gov/agencies/whd/fmla/law#SEC_102_LEAVE_REQUIREMENT



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11.36(c)(2) Eligibility requirements

While we recognize the need to ensure the State of Louisiana is properly protected, the 12-month and 1,250-hour eligibility requirements in the proposed rule will inevitably leave out hard working employees who keep Louisiana running. We celebrate the deliberate inclusion of some part-time employees in this rule, but we must urge the Commission to recognize that a requirement that employees have worked 1,250-hours in the previous 12 months prior to taking leave will effectively eliminate a large number of those workers. Providing proportional leave for part-time employees, as expressly listed in the rule, is clearly the intent of the Commission and sufficient by itself. Changing the eligibility requirement as currently drafted to state that part-time employees, who are employed the requisite number of months, will receive proportional leave is the appropriate way to ensure that both the State and the employees are being served by this rule. This is especially true since many women and caregivers are disproportionately part-time and have the least access to paid leave.⁷ Additionally, requiring a 12-month work requirement in conjunction with an hours worked requirement creates an overly-restrictive effect. We urge the Commission to eliminate the hours worked requirement altogether. We would also urge the Commission to reduce the 12-month requirement to 6 months, as originally proposed. This would ensure that newer employees are able to access their leave as needs arise. With these suggestions incorporated, 11.36(c)(2) would read as follows:

Parental leave is only available to employees who on the date of the qualifying event have been employed by the State for at least 6 months.

11.36(c)(3) Eligibility, relationship to child; role in parenting

The language stating that parental leave is only available to the “biological parents, adoptive parents or foster parents of the child” could be interpreted in a harmful and limiting way (*even if* expanded to include “legal” parents as well). This standard neglects the reality of the American family landscape, which includes parents who are not biologically related to a new child, and it could exclude from bonding leave those parents who have welcomed a new child but have not yet finished the complicated, restrictive, expensive and time-consuming process of legal adoption (including second-parent adoption) or who are waiting for another state’s adoption revocation period to end. Under this proposed language, a non-biological parent—who is not yet a legal parent but will maintain an active and ongoing role in parenting—can miss out on the irreplicable bonding time that paid parental leave affords. This limiting eligibility requirement will leave many Louisiana state employees without access to their earned benefit.

⁷ Diana Boesch, Katie Hamm, *Valuing Women’s Caregiving During and After the Coronavirus Crisis*, Jun. 3, 2020, <https://www.americanprogress.org/article/valuing-womens-caregiving-coronavirus-crisis/>

Further, the new language requiring “an active and on-going role in parenting” to be eligible for the leave is unnecessarily limiting and potentially harmful, in part due to the ambiguity of what constitutes *active* and *ongoing* parenting. Using the similar *in loco parentis* standard established under the FMLA would be a superior eligibility requirement, since it is well-established and already applies to many state employees’ right to unpaid leave under federal law. The FMLA regulations define “in loco parentis” as including “those with day-to-day responsibilities to care for and financially support a child; employees who have no biological or legal relationship with a child may nonetheless stand in loco parentis to the child and be entitled to FMLA leave.”⁸ By using “in loco parentis,” a flexible and long-interpreted standard, Louisiana will be better able to implement the rule and coordinate leave with the FMLA. Alternatively, the Commission might simply consider deleting the separate language around “active and ongoing role in parenting,” since the rule separately requires “ongoing mutual attachment;” the latter standard of “ongoing mutual attachment” seems less arbitrary than determinations of when one’s parenting is sufficiently *active*. Having consistent language around eligibility will allow the rule to be interpreted with ease, while also covering all eligible employees.

For the foregoing reasons, we recommend amending 11.36(c)(3) to read as follows:

Parental leave is only available to the biological parents, adoptive parents, foster parents, legal parents, or a person standing in loco parentis to the child for whom parental leave is taken when said parents are taking leave for one of the qualifying purposes set forth below.

(11.36(a); 11.36(f)(1), (2); 11.36(g)(3)) Amount of leave

Any amount of paid parental leave is an incredible first step for Louisiana state employees. However, we would recommend expanding the number of weeks of paid leave from 6 weeks (as currently proposed at 240 hours) to 8 weeks (or 320 hours). By only offering 6 weeks, Louisiana’s policy is below average when compared to other state paid parental leave policies. Historically, a full 12 weeks is the recommended period of parental leave recommended for both parents and children, but we recommend increasing this policy to 8 weeks. An increased number of weeks would result in increased post-partum health, reduced infant and child mortality, improved infant brain development, increased breastfeeding, and a stronger likelihood of infants

⁸ US Department of Labor, Wage and Hour Division, *Administrator’s Interpretation No. 2010-3*, June 22, 2010, <https://www.dol.gov/agencies/whd/opinion-letters/administrator-interpretation/fmla/20103#:~:text=The%20FMLA%20regulations%20define%20in,be%20entitled%20to%20FMLA%20leave.>



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receiving necessary medical checkups in those crucial first weeks.⁹ For foster and adopted children, the first few weeks are critical to the adjustment of the child. Both parents and children need adequate time for bonding and establishing a routine to make children feel safe, loved, and important.

Unfortunately, Louisiana consistently receives a rating of ‘F’ from the March of Dimes related to child and maternal health outcomes.¹⁰ The state now has the enormous opportunity to help shift this reality, not only by protecting its own workforce but by serving as a model employer that can set a powerful example for other Louisiana employers regarding the value of parental leave. While we are thrilled that state employees will be able to have some financial security during the critical first weeks of parenthood, we encourage the Commission to consider increasing the number of weeks for paid parental leave. This will have lasting beneficial impacts on family economic security, as well as the overall health of children and parents in Louisiana.

11.36(g)(4) Limitations, 12-month period between leaves

We support the proposed 12-month period between one parental leave until eligibility for another parental leave. As it is written, the requirement matches the federal Family and Medical Leave Act’s (FMLA) approach, which allows employees to take their leave within a 12-month period, and does not count the weeks of leave against the termination of a leave period. Coordination with the FMLA on this point will be administratively easier for the State. However, to further align with the FMLA, the Commission might consider including an FMLA-style “rolling” 12-month period to ensure that workers can use their maximum amount of leave in a year even if they have more than one qualifying event.¹¹ This would not add any additional leave time—it would simply permit employees to fully access their leave when they need it. For example, if a child is placed with a foster family, it may only be for a period of a few weeks; enabling foster parents more flexibility with their leave would ensure that foster families are permitted to play the crucial role of welcoming children into their home at a moment’s notice. A rolling 12-month period would make this policy not only easier to administer, but also match the needs of state employees.

⁹ A Better Balance, *The Health Case for Paid Family and Medical Leave*, November 30, 2021, <https://www.abetterbalance.org/resources/the-health-case-for-paid-family-and-medical-leave/>

¹⁰ March of Dimes, *2022 March of Dimes Report Card for Louisiana*, <https://www.marchofdimes.org/peristats/reports/louisiana/report-card>

¹¹ Department of Labor, Fact Sheet #28H: 12-month period under the Family and Medical Leave Act (FMLA), Feb. 2013, [https://www.dol.gov/agencies/whd/fact-sheets/28h-fmla-12-month-period#:~:text=Under%20the%20"rolling",the%20immediately%20preceding%2012%20months.](https://www.dol.gov/agencies/whd/fact-sheets/28h-fmla-12-month-period#:~:text=Under%20the%20)



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11.36(d)(2) Needs related to foster care and adoption

While we are very glad that this proposed rule would allow leave for post-placement needs related to foster care and adoption, we suggest adding *pre-placement* needs in relation to foster care and adoption, similar to the federal Family and Medical Leave Act or FMLA.¹² The first few months are a critical adjustment period in the transition to a new placement. However, prior to a child being placed in an adoptive or foster family, there are numerous steps that must be taken before the placement ever occurs, some of which can be quite costly for families. These steps could include traveling out of state or country, full day court hearings, or other meetings related to adoption and foster care. This requires a prospective adoptive or foster parent to take time off of work to handle any administrative or logistical tasks and ensure they are prepared for the journey ahead.

The rule already graciously allows for intermittent leave. Therefore, permitting an employee to take time off prior to the placement of a new child would not require any additional leave time. It would simply create a pathway for new adoptive or foster parents to successfully manage the required steps in the pre-placement process without worrying about sacrificing their paycheck or savings.

III. A Better Balance does not support the following provision:

11.36(g)(5) Limitations, three children maximum

Setting a limitation that prohibits paid parental leave beyond a third child is a very dangerous precedent to institute. As a family-oriented state, it is not in line with Louisiana values to effectively limit the number of children Louisianans can have. If this language is included, Louisiana will be the *only* state that A Better Balance is aware of to set such a limitation. Not only is this rule non-conforming with Louisiana values, it could cost the state valuable employees who plan to have more than three children. This could effectively be interpreted by employees to mean that there is a term limit on their employment, should they wish to have more children. Further, even if an employee plans to only have three children, circumstances do not always allow for perfect planning. Additional pregnancies, foster needs, or adoptions may not be planned, but will still inevitably happen for at least some state employees, and parents will still need to be able to bond with their new child *and* have financial security.

While we recognize the need to save costs, doing so at the expense of Louisiana families is not the solution. The cost of leave will regulate itself, as some employees may have five children and others may have none, leading to an inherent balance in leave costs throughout the workforce.

¹² 29 CFR § 825.121, Leave for adoption or foster care, <https://www.law.cornell.edu/cfr/text/29/825.121>.



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By including this language, the Commission is effectively determining how many children a state employee will be able to afford to welcome into their home. Or in the alternative, by including this limitation the State of Louisiana may be signaling to its employees that there is a ticking clock on their employment. Requiring a waiting period of 12 months is more than sufficient to regulate how often parental leave is taken by an employee. We strongly urge the Commission to remove this limitation and allow Louisiana state employees to continue choosing the size of their own family while maintaining their financial security.

We thank the State Civil Service Commission for its work on these regulations to ensure that paid parental leave for state classified employees will be successful. This policy will assist the State of Louisiana in retaining valuable employees. Thank you for giving us the opportunity to submit this comment. Please do not hesitate to contact A Better Balance at cmccoy@abetterbalance.org if we can provide any additional assistance.

Sincerely,

Carmen McCoy
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New Orleans, LA