

Regulatory Impact Analysis Secure Leave Periods for Attorneys

Agency:	North Carolina Industrial Commission
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Proposed Amended Rule Title:	Secure Leave Periods for Attorneys
Rule Proposed for Amendment:	Rule 11 NCAC 23E .0104 (see proposed rule text in Appendix 1)
State Impact:	No
Local Impact:	No
Private Impact:	Yes
Substantial Economic Impact:	Undetermined but unlikely
<i>Statutory Authority:</i>	<i>G.S. § 97-80(a).</i>

Background and Purpose of Proposed Rule Changes:

The purpose of this rule is to establish and regulate the procedure for attorneys who appear before the Industrial Commission to request one or more secure leave periods each year. A secure leave period means a period of time during which the attorney who has been granted the secure leave is excused from having to appear in any trial, hearing, deposition, or other proceeding.

Rule 104 of the Administrative Rules of the Industrial Commission, in its current form, does not specifically state that a secure leave period may be a partial calendar week, as opposed to having to be a complete calendar week. This lack of specificity in the Industrial Commission's rules has created some confusion because the rules of the North Carolina superior and district courts do not allow a secure leave period to be less than a complete calendar week. Therefore, even though a partial calendar week is not disallowed under the Industrial Commission rules, in order to provide clarity for the regulated parties it seems reasonably necessary to clarify that a secure leave period may be a partial calendar week or a complete calendar week.

Rule 104 of the Administrative Rules of the Industrial Commission, in its current form, also does not allow any additional secure leave periods to be requested for the birth or adoption of a child. However, the North Carolina Chief Justice's Commission on Professionalism recently voted unanimously in support of the expansion of court rules to allow up to 12 additional weeks of secure leave for the birth or adoption of an attorney's child.

Finally, Rule 104 of the Administrative Rules of the Industrial Commission, in its current form, specifically allows the Commission to make an exception to the requirement that the request for secure leave be filed no later than 90 days before the beginning of the secure leave period and before any trial, hearing, deposition or other matter has been scheduled but it does not specifically allow the Commission

to make an exception to the maximum aggregate number of secure leave periods that is allowed in a calendar year. However, because extraordinary circumstances arise where it is reasonable for the Commission to make an exception to the maximum aggregate number of secure leave periods generally allowed in a calendar year and where the Commission has done so in the past, both the Commission and the stakeholder groups believe it is necessary to clarify that the Commission may make such exception in appropriate circumstances.

Summary of Aggregate Impact:

It is expected that there will be great benefits to the regulated parties as attorneys in terms of work-life balance. The legal profession is inherently stressful, as recognized by the American Bar Association Task Force on Lawyer Well-Being. Allowing attorneys who practice before the Industrial Commission to request secure leave periods that consist of partial calendar weeks and longer periods after birth or adoption will help them better fulfill and coordinate work and family obligations. Likewise, allowing additional secure leave periods to cover the recent birth or adoption of an attorney's child is intended to help alleviate some of the stress and juggling of schedules and responsibilities that accompanies the recent birth or adoption of a child. Finally, specifically allowing the Commission to make an exception to the general limit on the aggregate number of secure leave periods allowed in a calendar year, just like the Commission is specifically allowed to do with regard to the general 90-day filing rule, will enable the Commission to exercise appropriate discretion in extraordinary circumstances and reasonably accommodate attorneys who are faced with unexpected, exceptional medical or other situations. While clearly valuable, it is difficult to monetize these non-market benefits and it is not known how many attorneys will avail themselves of the more flexible amended secure leave rules. Therefore, these benefits cannot be quantified.

These proposed rule changes are not expected to have any state or local impact of significance. The Industrial Commission already has processes and procedures in place for blocking out secure leave periods for attorneys, and allowing partial calendar weeks and additional periods of time for the birth or adoption of a child is not expected to create additional work for the Industrial Commission that would result in anything more than *de minimus*, if any, costs. Assuming attorney staffing is sufficient, allowing additional secure leave is not expected to disrupt normal business operations.

APPENDIX 1- Proposed Rule Text

11 NCAC 23E .0104 is proposed for amendment as follows:

11 NCAC 23E .0104 SECURE LEAVE PERIODS FOR ATTORNEYS

(a) Any attorney may request one or more secure leave periods each year as provided in this Rule.

~~(b) For the purpose of this Paragraph only, a “secure leave period” is defined as a partial calendar week or a complete calendar week. During any~~ Within a calendar year, an attorney's secure leave periods pursuant to this Rule shall not exceed an aggregate of three weeks. attorney is entitled to obtain secure leave periods totaling up to 15 business days for any purpose.

~~(c) For the purpose of this Paragraph only, a “secure leave period” is defined as a complete calendar week. Within a 24-week period surrounding the birth or adoption of an attorney’s child, that attorney is entitled to have the benefit of up to 12 additional secure leave periods.~~

~~(e) To request a secure leave period an attorney shall file a written request, by letter or motion, containing the information required by Paragraph (d) of this Rule with the Office of the Chair within the time provided in Paragraph (e). Upon such filing, the Chair shall review the request and, if the request complies with Paragraphs (d) and (e) of this Rule, issue a letter allowing the requested secure leave period. The attorney shall not be required to appear at any trial, hearing, deposition, or other proceeding before the Commission during that secure leave period.~~

~~(d) To request a secure leave period, an attorney shall file a written request, by letter or motion, containing the information required by Paragraph (e) of this Rule with the Office of the Chair within the time period provided in Paragraph (f) of this Rule. Upon such filing, the Chair shall review the request. If the request is made pursuant to Paragraph (b) or Paragraph (c) of this Rule and the request complies with Paragraphs (e) and (f) of this Rule, the Chair shall issue a letter allowing the requested secure leave period. The attorney shall not be required to appear at any trial, hearing, deposition, or other proceeding before the Commission during a secure leave period that is allowed.~~

~~(d) The request shall contain the following information:~~

- ~~(1) — the attorney's name, address, telephone number and state bar number;~~
- ~~(2) — the date(s) for which secure leave is being requested;~~
- ~~(3) — the dates of all other secure leave periods during the current calendar year that have previously been designated by the attorney pursuant to this Rule;~~
- ~~(4) — a statement that the secure leave period is not being designated for the purpose of delaying, hindering or interfering with the timely disposition of any matter in any pending action or proceeding; and~~
- ~~(5) — a statement that no action or proceeding in which the attorney has entered an appearance has been scheduled, tentatively set, or noticed for trial, hearing, deposition or other proceeding during the designated secure leave period.~~

~~(e) The request shall contain the following information:~~

- ~~(1) the attorney's name, mailing address, telephone number, email address, and state bar number;~~
- ~~(2) the date(s) for which secure leave is being requested;~~
- ~~(3) the dates of all other secure leave periods during the current calendar year that have previously been designated by the attorney pursuant to this Rule;~~
- ~~(4) a statement that the secure leave period is not being designated for the purpose of delaying, hindering, or interfering with the disposition of any matter in any pending action or proceeding;~~
- ~~(5) a statement that no action or proceeding in which the attorney has entered an appearance has been scheduled, tentatively set, or noticed for trial, hearing, deposition, or other proceeding during the designated secure leave period; and~~

(6) for secure leave requests that arise under Paragraph (c) of this Rule, the expected birth date or adoption date of the child.

~~(e) To be allowed, the request shall be filed:~~

~~(1) no later than 90 days before the beginning of the secure leave period; and~~

~~(2) before any trial, hearing, deposition or other matter has been regularly scheduled, peremptorily set or noticed for a time during the designated secure leave period.~~

~~An untimely request will be denied by letter. In the event that a party has been denied secure leave because the request was not timely filed and there are extraordinary circumstances, the attorney may file a motion requesting an exception. If the case has been scheduled for hearing before a Deputy Commissioner, the motion shall be addressed to the Deputy Commissioner. If the matter is scheduled for hearing before the Full Commission, the motion shall be addressed to the Chair of the Panel before which the hearing will be held. In all other cases, the motion should be directed to the Office of the Chair.~~

(f) The request shall be filed:

(1) no later than 90 days before the beginning of the secure leave period; and

(2) before any trial, hearing, deposition, or other matter has been scheduled, peremptorily set, or noticed for a time during the designated secure leave period.

~~(f) If, after a secure leave period has been allowed pursuant to this Rule, any trial, hearing, deposition, or other proceeding is scheduled or tentatively set for a time during the secure leave period, the attorney shall file with the Deputy Commissioner or chair of the Full Commission panel before which the matter was calendared or set, and serve on all parties, a copy of the letter allowing the secure leave period with a certificate of service attached. Upon receipt, the proceeding shall be rescheduled for a time that is not within the attorney's secure leave period.~~

(g) The Chair may, as set forth in Rule .0301 of this Subchapter, make exception to the 15-day aggregate limit set forth in Paragraph (b) of this Rule, the requirement set forth in Paragraph (e)(5) of this Rule, and the limitations set forth in Paragraphs (f)(1) and (f)(2) of this Rule. An attorney requesting that the Chair make this exception under this Paragraph shall inform the Chair of all known actions or proceedings involving that attorney that are scheduled, tentatively set, or noticed for trial, hearing, deposition, or other proceeding during the requested secure leave period. The attorney also shall provide notice to all opposing parties or, if represented, opposing counsel of record in all cases subject to the jurisdiction of the Industrial Commission of the beginning and ending dates of the requested secure leave period and of all known actions or proceedings involving that attorney that are scheduled, tentatively set, or noticed for trial, hearing, deposition, or other proceeding during the requested secure leave period.

~~(g) If, after a secure leave period has been allowed pursuant to this Rule, any deposition is noticed for a time during the secure leave period, the attorney may serve on the party that noticed the deposition a copy of the letter allowing the secure leave period with a certificate of service attached, and that party shall reschedule the deposition for a time that is not within the attorney's secure leave period.~~

(h) After a secure leave period has been allowed pursuant to this Rule, if any trial, hearing, or other proceeding is scheduled or tentatively set for a time during the secure leave period, the attorney shall file with the Deputy Commissioner or chair Chair of the Full Commission panel before which the matter was calendared or set, and serve on all parties, a copy of the letter allowing the secure leave period with a certificate of service attached. Upon receipt, the proceeding shall be rescheduled for a time that is not within the attorney's secure leave period.

(i) After a secure leave period has been allowed pursuant to this Rule, if any deposition is noticed for a time during the secure leave period, the attorney may serve on the party that noticed the deposition a copy of the letter allowing the secure leave period with a certificate of service attached, and that party shall reschedule the deposition for a time that is not within the attorney's secure leave period.

*History Note: Authority G.S. 97-80(a);
Eff. July 1, 2014;
Recodified from 04 NCAC 10E .0104 Eff. June 1, 2018;
Amended Eff. _____.*