

BOARD OF REGENTS
BRIEFING PAPER

Code Revision, Emergency Covid-19 Vaccination Policy, and
Resolution Relating to Coronavirus Safety Measures
June 30, 2022

BACKGROUND & POLICY CONTEXT OF ISSUE:

The purpose of this item is for the Board of Regents to consider repeal of the Emergency Covid-19 Vaccination Policy prior to the beginning of the fall semester as required by Title 2, Chapter 12, Section 2 of the Board of Regents *Handbook*. This items previously came before the Board as an information only item at the May 25, 2022, Board of Regents Special Meeting and is now brought back before the Board for action in accordance with Title 2, Chapter 1, Section 1.3.3 of the *Code*.

Based on the direction of the Board at the May 25, 2022 Special Board Meeting, the Board may also consider and take action to adoption of a resolution that 1) restates NSHE’s commitment adhering to any and all state directives and regulatory mandates regarding the coronavirus, 2) encourages students, faculty and staff to stay up to date on vaccines and to use masks when appropriate, and 3) acknowledges that it is within the purview of the President of each institution to assess the need for utilization of masks on campus based on guidance from the CDC, State Board of Health and local health districts, and implement one or more campus mask mandates when the President determines that doing so is in the best interest of the health and safety of the institution’s students, faculty and staff.

SPECIFIC ACTIONS BEING RECOMMENDED OR REQUESTED:

Officer in Charge Crystal Abba and Interim Chief General Counsel Jimmy Martines will present for action the repeal of NSHE Code (*Title 2, Chapter 12*), which sets forth policies and procedures regarding the COVID-19 vaccine requirement for all NSHE employees. The Board may also take action to adopt a resolution that 1) restates NSHE’s commitment adhering to any and all state directives and regulatory mandates regarding the coronavirus, 2) encourages students, faculty and staff to stay up to date on vaccines and to use masks when appropriate, and 3) acknowledges that it is within the purview of the President of each institution to assess the need for utilization of masks on campus based on guidance from the CDC, State Board of Health and local health districts, and implement one or more campus mask mandates when the President determines that doing so is in the best interest of the health and safety of the institution’s students, faculty and staff.

IMPETUS (WHY NOW?):

Title 2, Ch. 12, Section 2 states that “this Chapter will be reconsidered at a public meeting of the Board of Regents prior to the beginning of the fall 2022 semester.” This action item constitutes said reconsideration.

CHECK THE NSHE STRATEGIC PLAN GOAL THAT IS SUPPORTED BY THIS REQUEST:

- Access (Increase participation in post-secondary education)
- Success (Increase student success)
- Close the Achievement Gap (Close the achievement gap among underserved student populations)
- Workforce (Collaboratively address the challenges of the workforce and industry education needs of Nevada)
- Research (Co-develop solutions to the critical issues facing 21st century Nevada and raise the overall research profile)
- Not Applicable to NSHE Strategic Plan Goals

INDICATE HOW THE PROPOSAL SUPPORTS THE SPECIFIC STRATEGIC PLAN GOAL

N/A

BULLET POINTS TO SUPPORT REQUEST/RECOMMENDATION:

(SEE ATTACHED)

POTENTIAL ARGUMENTS AGAINST THE REQUEST/RECOMMENDATION:

(SEE ATTACHED)

ALTERNATIVE(S) TO WHAT IS BEING REQUESTED/RECOMMENDED:

N/A

RECOMMENDATION FROM THE CHANCELLOR'S OFFICE:

The Chancellor's Office supports the repeal of Title 2, Chapter 12, Section 2 and supports the resolution as presented herein.

COMPLIANCE WITH BOARD POLICY:

- Consistent With Current Board Policy: *Title 2, Chapter 12, Section 2*
- Amends Current Board Policy: Title # _____ Chapter # _____ Section # _____
- Amends Current Procedures & Guidelines Manual: Chapter # _____ Section # _____
- Other: _____
- Fiscal Impact: Yes _____ No
 Explain: _____

POLICY PROPOSAL - *HANDBOOK*
TITLE 2, CHAPTER 12, SECTIONS 1-15
Emergency COVID-19 Employee Vaccination Policy

Additions appear in *boldface italics*; deletions are [~~stricken~~ and bracketed]

~~Section 1. Health and Safety Emergency Declaration~~

~~Due to the ongoing state, national, and global health and safety emergency caused by the COVID-19 pandemic, as declared by the Governor of the State of Nevada on March 12, 2020, and the President of the United States on March 13, 2020, the Board of Regents hereby enact this Chapter to protect the health, safety, and welfare of all students, employees, and members of the public within the Nevada System of Higher Education.~~

~~Section 2. Limited Purpose and Scope~~

~~This Chapter is an emergency and temporary amendment to the Code that is limited to the issue of employee COVID-19 vaccinations. Its purpose is to ensure that all employees within the Nevada System of Higher Education are fully vaccinated against the COVID-19 virus by December 1, 2021. No provision in this Chapter shall be used, cited, or relied upon to amend or impact any other policy, procedure, promise, right, or agreement that is outside of its express purpose and scope. The emergency provisions in this Chapter shall supersede, govern, and control all policies, procedures, terms and conditions of employment, and the workplace either express or implied to the contrary, including, but not limited to, those set forth in the Board of Regents *Handbook*, other provisions of the Code, and the *Procedures and Guidelines Manual*. The Board of Regents will re-evaluate the need for this Chapter as the emergency conditions underlying the COVID-19 pandemic substantially improve. In any event, this Chapter will be reconsidered at a public meeting of the Board of Regents prior to the beginning of the Fall 2022 Semester.~~

~~Section 3. Employee COVID-19 Vaccine Requirement~~

~~All employees of the Nevada System of Higher Education must receive a verified and complete COVID-19 vaccination series on or before December 1, 2021, and new hires must receive a verified and complete COVID-19 vaccination series prior to starting employment.~~

~~Section 4. Definitions~~

~~The terms and phrases used in the COVID-19 Vaccine Requirement shall have the following meaning.~~

A. Employee

The term “employee” means all tenured and untenured academic and administrative faculty; adjunct faculty; letter of appointment; classified staff; student employees; graduate assistants; post-doctoral fellows; research assistants; technologists; medical residents; resident physicians; temporary hourly; or any other individual, whether full-time, part-time, or hourly, who performs paid work.

B. Verified

The term “verified” means demonstrable proof of having received the vaccine as determined by the Office of Human Resources at the employee’s primary institution and documented in Workday, including, but not limited to, any one of the following:

1. Information in the Nevada WebIZ database as maintained by the Department of Health and Human Services, Nevada Division of Public and Behavioral Health and accessed through <https://izrecord.nv.gov>; or
2. A vaccination card or certificate issued by an authorized government entity or health care provider; or
3. Any other credible documentation through written or electronic means that establishes the employee has been vaccinated.

C. Complete COVID-19 Vaccination Series

The phrase “complete COVID-19 vaccination series” means fully completing any of the following vaccinations:

1. Two doses of the Pfizer BioNTech vaccine recommended 21 days apart; or
2. Two doses of the Moderna vaccine recommended 28 days apart; or
3. One dose of the Johnson & Johnson Janssen vaccine; or
4. Any other vaccine series for COVID-19 that receives emergency use authorization or approval by the United States Food and Drug Administration (FDA) after the effective date of the COVID-19 Vaccine Requirement; or
5. Any COVID-19 vaccine series that was administered internationally and has received an emergency use authorization or approval by the World Health Organization (WHO).

Section 5. Discipline Procedures and Notifications for Non-Compliance

Failure of an employee to comply with the Employee COVID-19 Vaccine Requirement constitutes cause for termination of employment.

A. All Employees (Except Classified Employees)

The following procedures govern the timeframes for providing notice to all employees, except classified employees, of non-compliance with the COVID-19 Vaccine Requirement set forth in this Chapter.

1. ~~Notice of Non-Compliance~~

~~On or before October 15, 2021, the Office of Human Resources of each institution, including, but not limited to, System Administration and System Computing Services, shall provide notice to every employee who does not have a record of having completed a COVID-19 vaccination series. This notice will include information on how the employee can correct any misinformation about their current vaccination status, resources available in their community to receive a vaccine, the ability to request a waiver, and a statement that failure to comply with the Employee COVID-19 Vaccine Requirement by December 1, 2021, will result in termination of employment.~~

2. ~~Notice of Warning~~

~~On or before November 1, 2021, the Office of Human Resources of each institution, including, but not limited to, System Administration and System Computing Services, shall provide notice to every employee who does not have a record of having completed a COVID-19 vaccination series. This notice will include information on how the employee can correct any misinformation about their current vaccination status, resources available in their community to receive a vaccine, the ability to request a waiver, and a warning that failure to comply with the Employee COVID-19 Vaccine Requirement by December 1, 2021, will result in termination of employment.~~

3. ~~Notice of Termination~~

~~On or before December 1, 2021, the Office of Human Resources of each institution, including, but not limited to, System Administration and System Computing Services, shall provide notice to every employee who does not have a record of having a complete COVID-19 vaccination series that they will be terminated from employment effective December 31, 2021, for non-compliance with the Employee COVID-19 Vaccine Requirement. This notice will include information on how the employee may request reconsideration of termination and to whom the request should be made. A notice of termination must be either hand delivered and/or mailed through the United States Postal Service to the employee's home address on file. A notice of termination must include a statement that its effective date is automatically stayed if the employee has submitted a request for a medical condition waiver or religious waiver that has not been approved or denied.~~

B. ~~Classified Employees~~

~~Classified employees will also be subject to termination for cause due to non-compliance with the Employee COVID-19 Vaccine Requirement. However, the procedures set forth in Section 12.5.A shall not govern classified employees. Employees within the classified service shall receive all notices and be subject to disciplinary procedures in accordance with the policies and regulations established by the Nevada Department of Administration, Division of Human Resource Management, including Nevada Revised Statutes (NRS) Chapter 284; Nevada Administrative Code (NAC) Chapter 284; and any other applicable statute, regulation, or collective bargaining agreement.~~

C. — Notices and Calendar Days

~~Unless otherwise specified in this Chapter, notices issued pursuant to this Chapter must be in writing and may be delivered via electronic means to the employee's work email account, hand delivered, and/or mailed through the United States Postal Service to the employee's home address on file. Notices are delivered upon sending the email, delivering in person, or within three (3) days after placing them in the United States Postal Service regular mail. Defects in the form of a notice are not a valid basis for a request for reconsideration. All days calculated pursuant to this Chapter shall be calendar days and inclusive of all weekends and holidays.~~

Section 6. — Request for Reconsideration

~~An employee who receives a notice of termination pursuant to this Chapter may file a request for reconsideration of the facts underlying the decision with their respective Office of Human Resources. A request for reconsideration may only be based upon a mistake of fact regarding the employee's COVID-19 vaccination status. No other basis for reconsideration shall be considered. A request for reconsideration must be in writing and submitted on or before December 31, 2021, and it must be supported by verifiable facts and documentation. The effective date of termination shall be stayed until a request for reconsideration is approved or denied. If reconsideration is denied, the termination shall become effective on the date of denial.~~

Section 7. — Request for Stay

~~At any time after an employee receives a notice of termination, an employee may file a request for a stay with supporting documentation with their respective Office of Human Resources. A request for a stay may only be based upon a showing that the employee has received the first dose of a two-shot COVID-19 vaccine series. No other basis for a stay shall be considered. A request for a stay with supporting documentation must be filed on or before December 31, 2021, and it must be supported by verifiable facts and documentation. A stay of the termination effective date will be granted to allow a reasonable amount of time for the employee to receive the second dose of the vaccine, but in no event shall the stay exceed forty (40) days. If the employee fails to complete the COVID-19 vaccination series within the stated time frame, the stay will be lifted and the termination shall become effective on that date. Timely submitting a request for a medical condition or religious waiver shall automatically stay the effective date of a notice of termination until the request is either approved or denied.~~

Section 8. — Request for Medical Condition or Religious Belief Waiver

~~An employee may request a waiver from the Employee COVID-19 Vaccine Requirement due to a diagnosis of a pre-existing and individual medical condition which presents a medical contraindication to the COVID-19 vaccination or if receiving a vaccine would violate a sincerely held religious belief. Employees seeking a waiver must fully complete the required waiver request form and provide all requested information and certifications that are necessary to review and evaluate the request. Throughout the review process,~~

an employee may be required to provide information to supplement their request for a medical condition or religious waiver or, if approved, to update their information from time to time. Employee's requesting a waiver must sign a certification that the facts and information contained in the request are true and accurate, and the waiver is not being sought for an improper purpose or under a false pretense.

A. Medical Condition Waiver

A request for a waiver from the Employee COVID-19 Vaccine Requirement due to a diagnosis of a pre-existing and individual medical condition that presents a contraindication(s) to the COVID-19 vaccination must be supported and signed by a physician, nurse practitioner, or physician's assistant licensed to practice medicine and must include a written statement describing the nature and duration of the employee's medical condition, how receiving a COVID-19 vaccine would cause an unreasonable risk of harm to the employee, and any additional relevant information that would assist in reviewing the request.

B. Religious Belief Waiver

A request for a waiver from the Employee COVID-19 Vaccine Requirement based on an employee's sincerely held religious belief that prohibits the employee from receiving the COVID-19 vaccination must be supported by a written statement and any relevant information that may assist in evaluating the employee's request.

C. Procedure for Waiver Request Review

Waiver requests must be completed fully and submitted to the employee's respective Office of Human Resources on the forms provided in this Chapter and must be received on or before December 1, 2021, to be considered for review. No request for a waiver will be considered if it is submitted by an employee after December 1, 2021.

1. Initial Screening

Upon receipt, waiver requests shall be reviewed by the Office of Human Resources to determine if all required information in the waiver request is complete, including necessary certification signatures, dates, and statements. If required information is incomplete, the request shall be returned to the employee with notice of any deficiency. If the request is returned to the employee after December 1, 2021, the employee shall have ten (10) days within which to resubmit the request.

2. Review Committee

If the Office of Human Resources determines that the waiver request satisfies the initial review, the Office of Human Resources shall forward the waiver request to a Review Committee. The Review Committee shall be appointed by the Office of the President of each institution, or the Office of the Chancellor, as applicable, and shall consist of three (3) to five (5) members and include individuals with experience or knowledge in human resources, medicine and/or public health, appropriate safety-related accommodations and implementation, equal employment, or any other area of expertise that will assist in reviewing a waiver request and establishing appropriate accommodations. All information in the waiver request submitted by an employee will be

~~maintained as confidential. During consideration of a waiver request, the Review Committee may request supplemental information or clarification from the employee. The Review Committee may also consult and seek legal guidance from the General Counsel of their respective institution. After review of the waiver request by the Review Committee is complete, the request will be either approved or denied. If the waiver request is denied, the Review Committee will provide the employee notice and a written basis for the denial.~~

3. Appeal

~~An employee may appeal the denial of a waiver request to the Office of the President of their respective institution, or for System Administration and System Computing Services employees, to the Office of the Chancellor, as applicable, or their designee, within seven (7) days of the date of the denial. An appeal must be in writing and set forth any mistake of fact or reason as to why the denial of the waiver request was in error. If an appeal is timely submitted, the effective date of a notice of termination shall be stayed until the appeal is final. Upon receiving a request for appeal, the Office of the President or the Office of the Chancellor, as applicable, or their designee, shall review the employee's waiver request, the basis for denial by the Review Committee, and the reasons for the appeal. The Office of the President, or the Office of the Chancellor, as applicable, shall issue a decision either affirming or reversing the decision of the Review Committee, or remanding the matter to the Review Committee for further consideration. A decision affirming or reversing an employee's appeal by the Office of the President, or the Office of the Chancellor, is final. A decision affirming or denying an employee's request by the Review Committee after remand is final.~~

D. Approved Waiver and COVID-19 Safety Protocols

~~Employees who are granted a waiver will be subject to reasonable and appropriate safety requirements to ensure the safety of themselves and the communities they serve as a member of a higher education organization. Examples of reasonable and appropriate safety requirements may include, but not be limited to, wearing face coverings, while inside or outside a structure or building or property owned or leased by the Board of Regents and/or an institution or sponsored events; undergoing weekly or periodic COVID-19 testing; exclusion from the workplace upon a COVID-19 outbreak or cluster; or other measures as recommended by health care professionals to mitigate risks and dangers of COVID-19.~~

Section 9. Request for Reinstatement

~~An academic or administrative faculty member, a classified employee, or a technologist who is terminated for non-compliance with the Employee COVID-19 Vaccine Requirement may request to be reinstated to their former position of employment at any time within thirty (30) days of the effective date of their termination upon a verified showing of having completed a COVID-19 vaccination series. An employee's request for reinstatement must be submitted to the Office of Human Resources and approved by the Office of the~~

~~President or the Chancellor, as applicable, of the respective institution. An employee's request that complies with the provisions of this Chapter shall be granted. An employee's reinstatement date shall be established by the Office of the President or the Chancellor, as applicable, and may be based upon amended job duties and the resource needs of the institution. A decision by the Office of the President or the Chancellor is final. A reinstated employee shall not be entitled to any retroactive compensation or benefits from the effective date of their termination to the date of their reinstatement.~~

Section 10. ~~Miscellaneous Employee Provisions~~

~~A. New Hires and Job Postings~~

~~All candidates for employment hired after the effective date of this Chapter must receive a verified and complete COVID-19 vaccination series or an approved waiver request prior to any start date. All candidates will be notified on the job postings published after the effective date of this Chapter that a complete COVID-19 vaccination series is a requirement for employment.~~

~~B. Remote Work or Telecommuting Employees~~

~~Employees who exclusively work remotely or telecommute pursuant to an approved agreement with their respective institution are not subject to this Chapter. The COVID-19 Vaccine Requirement shall not be used as a basis or consideration for an employee to request or be approved to work remotely or telecommute. Employees who exclusively work remotely or telecommute shall be prohibited from being on property owned or leased in any capacity by the Board of Regents and/or an institution or at sponsored event without a verified complete COVID-19 vaccination series or an approved waiver when their presence is necessary for any work purposes.~~

~~C. Employees on Approved Leave or International Work~~

~~Employees who are on a leave of absence, sabbatical leave, continuous family medical leave, or other forms of long-term pre-approved non-annual leave, international research, or work during October 1, 2021, through December 31, 2021, shall not be subject to the disciplinary procedures and timeframes set forth in this Chapter. Employees who fall into these leave categories shall be notified by their respective Office of Human Resources that they must have a verified and complete COVID-19 vaccination series or an approved waiver request on file prior to the expiration of their leave or international trip and return to work. However, employees on intermittent family medical leave are subject to all provisions of this Chapter.~~

~~D. Contract Term and Condition~~

~~A provision shall be added as a mandatory term and condition of all contracts negotiated and signed after the effective date of the Employee COVID-19 Vaccine Requirement. An independent contractor, employees of a contractor, or subcontractor who perform any type of in-person work, including, but not limited to, the practice of medicine and health care, consulting, training, construction, maintenance, and vendor services, on property owned or leased in any capacity by the Board of Regents and/or an institution or sponsored event, must have completed a COVID-19 vaccination series.~~

~~Section 11. Miscellaneous Vaccine Provisions~~

~~A. Boosters~~

~~The Employee COVID-19 Vaccine Requirement does not apply to any COVID-19 booster doses that may subsequently be authorized or recommended by the Centers for Disease Control and Prevention (CDC) or the United States Food and Drug Administration (FDA) after the effective date of this Chapter.~~

~~B. Vaccine Unavailability~~

~~If at any time between October 1, 2021, and December 1, 2021, a shortage in the availability of a COVID-19 vaccine occurs within the State of Nevada that renders the ability of employees to receive the vaccine impossible after good faith and reasonable attempts to do so, the Board of Regents shall reconsider the timelines set forth in this Chapter.~~

~~C. False or Misleading Information~~

~~Any employee who knowingly and willfully provides false, fraudulent, or forged documentation or provides false or misleading information to their respective Office of Human Resources regarding their COVID-19 vaccination status shall be terminated for cause and may be reported to the Office of the Nevada Attorney General and/or the United States Attorney's Office, District of Nevada for possible criminal prosecution.~~

~~Section 12. Interpretation, Implementation, and Forms~~

~~Any ambiguity or inconsistency in the interpretation of the provisions of this Chapter or omission or unforeseen circumstance in its implementation, including the need to periodically update any required forms, may be resolved by the Office of the Chief General Counsel in consultation with the Human Resources Advisory Council in a manner that is consistent with this Chapter's purpose and intent.~~

~~Section 13. Effective Date~~

~~This Chapter shall become effective upon approval by the Board of Regents on September 30, 2021.~~

~~Section 14. Medical Condition Waiver Request Form~~

[FORM DELETED]

~~Section 15. Religious Belief Waiver Request Form~~

[FORM DELETED]