

BOARD OF REGENTS BRIEFING PAPER

1. AGENDA ITEM TITLE: Handbook Revision, Paid Family Leave

MEETING DATE: 12/12/2023

2. BACKGROUND & POLICY CONTEXT OF ISSUE:

During the 2023 Nevada Legislative Session, the Legislature passed AB 376, establishing provisions governing paid family leave for certain state employees under certain circumstances. Under existing Nevada law, eligible state employees are entitled to various types of leave, including, without limitation, annual leave, sick leave, and disability leave, as well as leaves of absence under other particular provisions. AB 376 provides that certain state employees are entitled to take up to eight (8) weeks of paid family leave over the course of a 12-month period to: (1) bond with a newborn child of the employee or a newborn child of the domestic partner of the employee; (2) bond with a newly adopted child of the employee; (3) recover from or undergo treatment for a serious illness; (4) care for a seriously ill member of the immediate family of the employee; or (5) participate in a qualifying event resulting from the military deployment to a foreign country of an immediate family member of the employee. Many of the circumstances under which AB 376 is intended to provide paid family leave are currently covered under the federal Family Medical Leave Act (FMLA). AB 376 allows individuals covered, and in some cases not covered, by FMLA to take up to 8 weeks of paid family leave at 50% pay when otherwise their leave would be unpaid.

Paid Family Leave During a Qualifying FMLA Period (Title 4, Chapter 3, Section 19, Subsect. 7)

Currently, an NSHE professional staff member who qualifies under the FMLA is entitled to a total of twelve (12) work weeks of leave during a “rolling” 12-month period. To qualify, a staff member must have been employed by NSHE for at least 12 months and have been in a paid status for a minimum of 60% FTE averaged over the 12-month period immediately preceding the leave. Currently, while in FMLA status, all available paid leave must be used before leave without pay. In order to align with AB 376, staff recommends Board of Regents policies be revised to provide that such NSHE professional staff members with a sick leave balance of forty (40) hours may choose to hold 40 hours of sick leave in reserve. Once all other paid leave is exhausted, the NSHE professional staff member may utilize the remaining 40 hours of sick leave or take paid family leave at 50% of their salary for up to eight (8) weeks as long as it is within the approved FMLA period.

Paid Family Leave without a Qualifying FMLA Event to Care for Sibling, Grandparent, Grandchild and Son or Daughter Over 18 Only (Title 4, Chapter 3, Section 19, Subsect. 8)

There are certain individuals who do not qualify for FMLA, because FMLA does not cover leave to care for a sibling, grandparent, grandchild, or son or daughter over the age of 18 whose care does not qualify for FMLA. AB 376 provides for paid family leave to care for these family members in applicable circumstances. Staff recommend revising Board of Regents policy to provide that an NSHE professional staff member who has been employed by the NSHE for at least twelve (12) months and has been in a paid status for a minimum of 60% FTE averaged over the preceding 12-month period with a sick leave balance of forty (40) hours is eligible for eight (8) weeks of paid family leave at 50% of their salary to care for a sibling, grandparent, grandchild, or son or daughter whose care does not qualify for FMLA with a serious health condition after they have exhausted any remaining family sick leave allowed under subsection 4 of the sick leave policy (Section 19).

Military Deployment of Certain Family Members to a Foreign Country (Title 4, Chapter 3, Section 19, Subsect. 5, 12, and 13)

AB 376 also addresses certain military events, many of which are also covered by the FMLA. The FMLA covers certain military events related to the deployment of a spouse, parent, son, or daughter. These needs include, without limitation, arranging for childcare or parental care during deployment; representing the military family member at a federal, state or local event during deployment; and addressing issues due to the death of the military family member.

Paid family leave for purposes covered by the FMLA are addressed in revised subsection 7 of section 19, noted above.

Because events related to the military deployment of a sibling, grandparent, or grandchild are not covered by the FMLA, but are covered by AB 376, staff recommends revising Board of Regents policies to address deployment of these family members. Under the proposed revisions, a professional staff member who has been employed by the NSHE for at least twelve (12) months for a minimum of 60% FTE averaged over the immediately preceding 12-month period with a sick

leave balance of forty (40) hours and who has exhausted leave allowed may take up to eight (8) weeks of paid family leave to address an essential need resulting from the military deployment of a sibling, grandparent, or grandchild to a foreign country.

Because paid family leave under AB 376 can only be used when an employee has drawn down their sick leave to forty (40) hours, staff recommends for the sake of clarity and consistency for administration that NSHE allow professional staff members who need leave resulting from military deployment under certain circumstances to use sick leave for those purposes. Staff recommends revising Board of Regents policies to designate a need resulting from the military deployment of certain family members as a qualifying reason for a professional staff member to use earned sick leave.

Under current policy, an NSHE professional staff member may take up to ten (10) working days of their earned sick leave in the event of the death of certain family members. Because AB 376 also provides paid family leave to address the death of an employee's spouse, parent, child, sibling, grandparent, or grandchild resulting from military deployment to a foreign country, staff recommends revising Board of Regents policies to provide paid family leave for this purpose.

Limitations

Under the proposed policy changes, to be eligible for paid family leave, an NSHE professional staff member must have been employed by the NSHE for at least twelve (12) months for a minimum of 60% FTE averaged over the 12-month period with a sick leave balance of forty (40) hours. The total paid family leave an NSHE professional staff member may take is capped at eight (8) weeks per rolling 12-month period regardless of the number of qualifying events during the 12-month period. NSHE professional staff members shall not be paid for any unused paid family leave upon termination of employment.

3. SPECIFIC ACTIONS BEING RECOMMENDED OR REQUESTED:

Deputy General Counsel Carrie Parker and Director of Human Resources Sherry Olson will present for possible action revisions to the NSHE *Handbook*, Title 4, Chapter 3, Section 19 Sick Leave section to provide paid family leave for eligible NSHE professional staff members under certain circumstances in alignment with AB 376, passed in the 2023 Nevada Legislative Session.

4. IMPETUS (WHY NOW?):

The *Handbook* revisions presented herein are brought forward to align with the provisions of AB 376 enacted during the 2023 session of the Nevada State Legislature, effective January 1, 2024.

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

- Access (Increase access to higher education)
- Success (Improve student success)
- Close Institutional Performance Gaps
- Workforce (Meet workforce needs in Nevada)
- Research (Increase solutions-focused research)
- Coordination, Accountability, and Transparency (Ensure system coordination, accountability, and transparency)
- Not Applicable to NSHE Strategic Plan Goals

6. INDICATE HOW THE PROPOSAL SUPPORTS THE SPECIFIC STRATEGIC PLAN GOAL

These proposed *Handbook* revisions do not directly relate to a specific strategic plan goal.

7. BULLET POINTS TO SUPPORT REQUEST/RECOMMENDATION:

- The proposed revisions will align NSHE policy with applicable Nevada state law.

8. POTENTIAL ARGUMENTS AGAINST THE REQUEST/RECOMMENDATION:

N/A

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

Maintain the current provisions of NSHE *Handbook*, T. 4, Ch. 3, S. 19 (sick leave).

10. RECOMMENDATION FROM THE CHANCELLOR’S OFFICE:

The Chancellor’s Office supports the revisions as presented herein.

11. COMPLIANCE WITH BOARD POLICY:

Consistent With Current Board Policy: Title # _____ Chapter # _____ Section # _____
X Amends Current Board Policy: *Title 4, Chapter 3, Section 19*
 Amends Current Procedures & Guidelines Manual: Chapter # _____ Section # _____
 Other: _____
X Fiscal Impact: Yes No _____
Explain: Because paid family leave is paid at 50% salary and the NSHE professional staff member must hold forty (40) hours sick leave in reserve to take paid family leave, there is a fiscal impact of allowing professional staff members to take paid family leave while holding onto sick leave. However, it is not possible to estimate the number of NSHE employees that will utilize paid family leave.

POLICY PROPOSAL
Title 4, Chapter 3, Section 19
Sick Leave

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

Section 19. Sick Leave

1. Full-time professional staff members on an "A" or "B" contract shall be granted sick leave as required, up to 30 working days at full salary, available at any time during the initial 12 months of service. Part-time professional staff members on an "A" or "B" contract shall be granted a pro rata amount as required.
2. Beginning one year after the starting date of his or her initial contract, each full-time staff member will begin to accrue additional sick leave at the rate of two days for each full month of paid service, to be added to any remaining balance of unused sick leave from the first 12 months of service. Sick leave may be accrued from year to year not to exceed 96 working days. Part-time staff members will earn a pro rata amount of sick leave for each calendar month worked. Paid sick leave shall not be granted in excess of sick leave earned except as provided in paragraph [7]8. The employee shall not be paid for any unused sick leave upon termination of employment.
3. A professional staff member is entitled to use accumulated sick leave for personal illness; disability; medical, optometry, or dental service or examinations; child bearing or temporary disability, upon approval of the appointing authority. The appointing authority may require a staff member to provide medical certification from a medical practitioner for absences of more than five consecutive days or if abuse is suspected.

If an eligible employee is using leave, with or without pay, in a manner which would qualify under the Family Medical Leave Act (FMLA), the appointing authority shall designate the leave as FMLA and shall provide written notice to the employee who details the obligations of the employee and the effects of using the leave. While in FMLA status, all available paid leave must be used before leave without pay.

4. Up to fifteen days of earned sick leave per contract year may be used by the professional staff member to care for or assist family members, in-laws, or step relatives within the third degree of consanguinity or relationship, or members of the professional staff member's household for the following events: illness; injury, or medical, optometry or dental service or examination. Requests for use of additional earned sick leave days beyond the fifteen-day limitation may be made in writing to the appropriate appointing authority. Approval is at the discretion of the appropriate appointing authority. The fifteen-day limitation does not apply if the leave is approved under the FMLA.
5. *Up to fifteen days of earned sick leave per contract year may be used by the professional staff member to address an essential need resulting from the military deployment to a foreign country of the staff member's spouse, parent, son, daughter, sibling, grandparent, or grandchild, including, without limitation, arranging for childcare or parental care during deployment, or representing the military family member at a federal, state or local event during deployment. Requests for use of additional earned sick leave days beyond the fifteen-day limitation may be made in writing to the appropriate appointing authority. Approval is at the discretion of the appropriate appointing authority. The fifteen-day limitation does not apply if the leave is approved under the FMLA as FMLA Qualifying Exigency Leave. The appointing authority may require a professional staff member seeking to use sick leave pursuant to this section to present a*

copy of the family member's military orders or other substantial evidence pertaining to a qualifying military event. For purposes of this section, the terms "son" and "daughter" mean a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis.

6. [5] A professional staff member may take up to 10 working days of employee's earned sick leave, in the event of the death of a person listed in paragraph 4 above. Requests for use of additional earned sick leave days beyond the ten-day limitation may be made in writing to the appropriate authority. Approval is at the discretion of the appropriate appointing authority.
7. [6] A professional staff member who qualifies under the FMLA is entitled to a total of 12 work weeks of leave during a "rolling" 12-month period. The period is measured backward from the date an ~~[employees]~~ **employee** uses a qualifying Family and Medical Leave. To qualify, a staff member must have been employed by the NSHE for at least 12 months and have been in a paid status ~~[or]~~ **for** a minimum of 60% FTE averaged over the 12-month period preceding the leave. While in FMLA status, all available paid leave must be used before leave without pay.

Paid Family Leave During a Qualifying FMLA Period. A professional staff member on approved FMLA leave, including but not limited to FMLA Qualifying Exigency Leave, with a sick leave balance of 40 hours may choose to hold 40 hours of sick leave in reserve once all other available paid leave is exhausted. Once all other paid leave is exhausted, the employee may utilize the remaining 40 hours of sick leave or take paid family leave at 50% of their salary for up to eight (8) weeks as long as it is within the approved FMLA period. A professional staff member who qualifies for paid family leave is entitled to up to eight (8) weeks during a "rolling" 12-month period. Employees shall not be paid for any unused paid family leave upon termination of employment.

A staff member may use FMLA leave for the birth of a child, and to care for a newborn child; for placement of a child with the staff member for adoption or foster care; to care for the staff member's spouse, parent or child with a serious health condition; or because the staff member is unable to perform one or more of the essential functions of his/her job due to a serious health condition. If a staff member must take unpaid leave under FMLA, the employer is required to maintain the staff member's health insurance coverage for the timeframe represented by the FMLA leave.

Additional unpaid leave directly related to the birth, the placement of a child with the staff member for adoption or foster care, or child rearing of a child who is a member of the professional employee's household shall be granted to either parent, upon request, up to a maximum of one year. During any unpaid leave the employer will not maintain the staff member's health insurance coverage, unless the unpaid leave is approved under the FMLA. The NSHE guarantees that the professional staff member will return to his or her original position, or if the original position no longer exists, to a comparable position, without loss of seniority or other benefits.

8. ***Paid Family Leave without a Qualifying FMLA Event to Care for Sibling, Grandparent, Grandchild, and Son or Daughter Over 18 Only. A professional staff member who has been employed by the NSHE for at least 12 months and has been in a paid status for a minimum of 60% FTE averaged over the preceding 12-month period with a sick leave balance of 40 hours is eligible for eight (8) weeks of paid family leave at 50% of their salary to care for a sibling, grandparent, grandchild, or son or daughter over the age of 18 whose care does not qualify for FMLA with a serious health condition after they have exhausted any remaining family sick leave allowed under subsection 4. After they have exhausted the family sick leave allowed under subsection 4 and have a sick leave balance of 40 hours, the professional staff member may take up to eight (8) weeks of paid family leave during a "rolling" 12-month period. For purposes of this section, the terms "son" and "daughter" have the same meaning as set forth under subsection 5.***

9[7]. After 12 continuous months employment, where a physician certifies that a professional staff member is unable to resume duties after exhausting all accumulated sick and annual leave, the professional staff member may petition for, and may be granted, with the approval of the President extended salaried sick leave. Approval may be given only if the funding source permits payment of extended salaried sick leave. An additional three calendar months may be granted to employees continuously employed for more than twelve months and up to twenty-four months; an additional six calendar months may be granted to employees continuously employed for more than twenty-four months and up to ~~thirty-six~~ **thirty-six** months; and an additional twelve calendar months plus one calendar month for each full year of employment with the NSHE may be granted to employees continuously employed for more than thirty-six months. An eligible employee may initially request less extended salaried sick leave than authorized under this policy, or may be granted less than the maximum amount of time authorized. The lifetime maximum, which may be granted to an employee, is twelve calendar months plus one calendar month for each full year of employment with the NSHE. During extended salaried sick leave, no annual or sick leave shall be earned. If at the end of the extension period a physician certifies that the professional staff member is still unable to resume duties, the appointment shall be terminated. Where employment shall be terminated under these circumstances, the provision of Title 2, Chapter 6 of the Board of Regent's Handbook shall not apply.

10[8]. If an employee has been employed for less than 12 consecutive months, the President may approve an employee request for unpaid sick leave not to exceed three months duration. If the employee is unable to return to employment after the expiration of this unpaid leave of absence, the appointment shall be terminated. Where employment shall be terminated under these circumstances, the provisions of Title 2, Chapter 6, of the Board of Regents' Handbook shall not apply.

11[9]. Cases of injury or accident or illness in connection with the work of professional staff members are covered by workers' compensation statutes and regulations. In order to ensure this protection for out-of-state travel, requests should always be submitted in advance by staff members conducting NSHE business, attending meetings, etc., even if work is undertaken outside of work hours and at the professional staff member's own expense.

12. Paid Family Leave for a Qualifying Military Event without an FMLA Qualifying Exigency. A professional staff member who has been employed by the NSHE for at least 12 months and has been in a paid status for a minimum of 60% FTE averaged over the preceding 12-month period with a sick leave balance of 40 hours is eligible for eight (8) weeks of paid family leave at 50% of their salary for a military event described in subsection 5 resulting from the deployment of a sibling, grandparent or grandchild after they have exhausted any remaining sick leave allowed under subsection 5. After they have exhausted the sick leave allowed under subsection 5 and have a sick leave balance of 40 hours, the professional staff member may take up to eight (8) weeks of paid family leave during a "rolling" 12-month period.

The appointing authority may require a professional staff member seeking to use paid family leave pursuant to this section to present a copy of the family member's military orders or other substantial evidence pertaining to a qualifying military event.

13. Death of a Family Member Resulting from Military Deployment. A professional staff member who has been employed by the NSHE for at least 12 months and has been in a paid status for a minimum of 60% FTE averaged over the preceding 12-month period with a sick leave balance of 40 hours is eligible for eight (8) weeks of paid family leave at 50% of their salary to address the death of the staff member's spouse, parent, son, daughter, sibling, grandparent, or grandchild resulting from military deployment to a foreign country. After the professional staff member has exhausted the bereavement leave allowed under subsection 6 and has a sick leave balance of 40 hours, they may take up to eight (8) weeks of paid family sick leave during a "rolling" 12-month period. For purposes of this section, the terms "son" and "daughter" have the same meaning as under subsection 5.

The appointing authority may require a professional staff member seeking to use paid family leave pursuant to this section to present a copy of the family member's military orders or other substantial evidence pertaining to a qualifying military event.