

BOARD OF REGENTS
BRIEFING PAPER

Agenda Item Title: Leave without Pay Policy

BACKGROUND & POLICY CONTEXT OF ISSUE:

Current NSHE policies provide 24 days annual leave per year for administrative faculty and 24 days of sick leave per year for both administrative and academic faculty. Additionally, NSHE policies recognize a variety of other leave categories including administrative leave, civil leave, family medical leave, and military leave. However, NSHE leave policies do not include Leave without Pay.

From time to time, situations arise in which a faculty member is willfully absent from work without approved leave or who is unable or unwilling to report to work after exhausting all available leave. Common sense and prevailing business practice would provide that employees who are absent from work without authorized leave (or who are unable or unwilling to return to work after exhausting available leave) would be placed on leave without pay, pending resolution of the individual's employment status.

Campus level system counsel have advised, however, that in the absence of a leave without pay (LWOP) policy, NSHE institutions must continue to pay full salary to employees who are absent from work without authorized leave, pending resolution of their employment status through separation proceedings pursuant to Chapter 5 or 6 of the NSHE Code.

SPECIFIC ACTIONS BEING RECOMMENDED OR REQUESTED:

Recommend that the Board approve the following addition to the Handbook:

Title 4, Chapter 3, Section 39. Leave Without Pay.

1. If an academic or administrative faculty member is absent from work without authorized leave, as defined in this Chapter, the absence must be charged as unauthorized leave without pay.
2. Unauthorized leave may be grounds for disciplinary action; however, placement of a faculty member on leave without pay under this Section shall not constitute a disciplinary action, as defined in Chapter 6 of the Code. If a disciplinary action is brought under Chapter 6 of the Code, any disciplinary measures are in addition to the absences charged as unauthorized leave under section 1 above.

IMPETUS (WHY NOW?):

Both UNLV and UNR have experienced situations in the past year in which the universities were required to pay full salary for up to three months to employees who willfully refused to report to work while discharge proceedings were pending.

BULLET POINTS TO SUPPORT REQUEST/RECOMMENDATION:

- Will support public accountability, by ensuring that employees who are absent from work without authorized leave do not continue to receive full salary when no work is performed.
- Will provide consistency in the treatment of administrative and academic faculty in the NSHE in relation to classified employees who are placed on leave without pay under the provisions of NAC 284.594, which provides in relevant part:

NAC 284.594.1: "An unauthorized leave and unreported absence must be considered an absence without leave and a deduction of pay must be made for the absence."

- The authority to make partial day reductions in salary for public employees is consistent with the provisions of 29 CFR §541.710 which provides in relevant part:

29 CFR §541.710 (a) An employee of a public agency ... shall not be disqualified from exemption under 29 CFR §541.100, 541.200, 541.300, or 541.400 on the basis that such employee is paid according to a pay system established ...pursuant to principles of public accountability, under which the employee accrues personal leave and sick leave and which requires the public agency employee's pay to be reduced or such employee to be placed on leave without pay for absences for personal reasons or because of illness or injury of less than one work-day when accrued leave is not used by an employee because: (1) Permission for its use has not been sought or has been sought and denied; (2) Accrued leave has been exhausted; or (3) The employee chooses to use leave without pay.

- Will reduce salary expenditures for employees who are absent from work without authorized leave and facilitate timelier, non-disciplinary resolution of such employees' employment status.

POTENTIAL ARGUMENTS AGAINST THE REQUEST/RECOMMENDATION:

None

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

Continue to pay faculty and professional staff, pending separation or discharge proceedings pursuant to Chapters 5 or 6 of the Code, notwithstanding the fact that the employee may not report to work while such proceedings are pending.

COMPLIANCE WITH BOARD POLICY:

- Consistent With Current Board Policy: Title #____ Chapter #____ Section #____
- Amends Current Board Policy: Title # 4 Chapter # 3 Section # 39 (new)
- Other:_____
- Fiscal Impact: Yes____ No____
Explain:_____

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