

SOUTH DAKOTA BOARD OF REGENTS

Budget and Finance

AGENDA ITEM: 7 – D (2)
DATE: December 9-10, 2020

SUBJECT

BOR Policy 4:16 – Military Service and Veterans Rights Revisions (First Reading)

CONTROLLING STATUTE, RULE, OR POLICY

[SDCL Chapter 3-6C](#)
[ARSD Chapter 55:09:04](#)

BACKGROUND / DISCUSSION

BOR Policy 4:16 is being revised to address recent SD Administrative Rules (ARSD) changes related to military training leave, and the elimination of personal leave. ARSD 55:09:04:08 has historically limited the use of 40 hours of sick or personal leave annually for employees called to active duty, the revised changes will allow the use of that leave for any military-related service as a member of the military reserve or National Guard.

The substantive changes to BOR Policy 4:16 are outlined below:

1. Replaced “personal leave” with “sick leave” to align with administrative rules changes;
2. Updated references to current administrative rules sections;
3. Clarified language to align with terminology in other leave policies;
4. Removed procedural language to make the policy more concise and clear;
5. Removed the section of the policy related to the Family and Medical Leave Act (FMLA), this is duplicative as [BOR Policy 4:15 – Medical Leave and Leaves of Absence](#) addresses FMLA for military service.

The Board office is also working with the campuses to establish a document that outlines the procedure for the various leave options for those on military related leave to assist with implementation of the policy and administrative rules. The guidance will outline how the campuses should work with the state employee health plan and the South Dakota Retirement system on coordination of pay and benefits during these types of leaves of absence.

(Continued)

DRAFT MOTION 20201209_6-C:

I move to approve the first reading of the proposed revisions to BOR Policy 4:16 – Military Service and Veterans Rights.

IMPACT AND RECOMMENDATION:

The policy revisions have been reviewed and supported by the campus human resources leadership and align with new administrative rules. The Board staff recommendation is that the Board approve the first reading of the proposed revisions to BOR Policy 4:16.

ATTACHMENTS

Attachment I – Proposed revisions to BOR Policy 4:16.

SOUTH DAKOTA BOARD OF REGENTS

Policy Manual

SUBJECT: Military Service and Veterans Rights

NUMBER: 4:16

A. PURPOSE

To provide guidance on leave and benefits available to Any eligible employees of South Dakota's Unified System of Higher Education who are called for training or active duty in the uniformed services of the United States ~~is eligible for military leave, provided the employee gives notice of his or her military obligations.~~ In carrying out the terms of this policy and in all its dealings with employees regarding military leave issues, ~~System~~ the Board complies fully with all federal and state laws granting leave and employment rights to employees serving in any branch of the military or other uniformed services of the United States.

~~Human Resource Directors from the Universities must submit the employee's name and activation date to the Director of Human Resources.~~

B. DEFINITIONS

1. Institution: Black Hills State University, Dakota State University, Northern State University, South Dakota School of Mines & Technology, South Dakota State University, South Dakota School for the Blind and the Visually Impaired, State School for the Deaf, University of South Dakota, and the Office of the Executive Director.

C. POLICY

1. Compensation Procedures

1.1. ~~Activated e~~ Employees may choose from the following five options, or can select a combination of these options:

1. Up to 15 days of unused military training leave.
2. Up to 40 hours of ~~unused personal leave~~ accrued sick leave.
3. Accrued vacation leave.
4. Active military duty status without pay.
5. Separation.

~~1.2. In the case of military training leave or personal leave, the employee must not have already exhausted his or her annual allotment. All restrictions regarding these types of leave still apply.~~

- ~~1.3.1.2.~~ **15 Days of Unused Military Training Leave** - An employee may use up to 15 calendar days of military training leave per calendar year as prescribed by ARSD ~~55:01:22:04~~55:09:04:08. ~~unless the employee has previously used the calendar year allotment.~~
- ~~1.4.1.3.~~ **40 Hours of Unused Personal Leave Accrued Sick Leave** - An employee may use up to 40 hours of ~~personal emergency leave~~accrued sick leave per calendar year as prescribed by ARSD ~~55:01:22:02.04~~55:09:04:05. ~~unless the employee has previously used the calendar year allotment.~~
- 1.4. Vacation Leave** - An employee may use accrued vacation leave to continue their monthly paychecks ~~until the leave is exhausted.~~
- ~~1.5.1.4.1.~~ Vacation leave may be used ~~either in small amounts~~intermittently to generate a partial paycheck that covers employee-paid deductions, ~~or to make up the entire monthly check.~~
- 1.5. Active Military Duty Status without Pay** - An employee may choose to remain on the ~~institution's~~ payroll system ~~and not be paid~~ on a leave without pay status.
- ~~1.6.1.5.1.~~ ~~This will also be the default option if~~ if the employee does not choose a form of leave, or if the chosen leave expires, they will be placed on a leave without pay status.
- ~~1.7.1.6.~~ **Separation** - ~~While most employees will elect to remain a state employee and use either paid leave or go on active military duty status without pay, an employee~~Employees may separate employment with the state. If the employee separates, the employee will be paid for any accrued annual and sick leave balance in accordance with the applicable laws and rules.

2. Benefits Procedures

- 2.1.1. Federal Active Duty** — ~~For employees-~~ Employees who are called to federal active duty and dependents who are called to federal active duty, health, life insurance and flexible benefits are suspended because the federal government ~~covers them.~~provides the benefits.
- 2.1.1.1.** ~~However, employees-~~ Employees can purchase up to 18 months of continued health coverage if they opt to pay the full premium and administrative fee for the coverage. ~~For more information on health care continuation rights, contact the Human Resource Department. Employees and dependents returning from active duty will not be required to complete the pre-existing condition waiting period.~~
- 2.1.1.2.** ~~If an employee's dependent is called to federal active duty, the employee should notify the institution's Human Resource Office so that the appropriate adjustments can be made to the employee's benefit elections and premium payments.~~
- ~~2.1.1.~~**2.1.1.3.** ~~If an employee is called to federal active duty, the federal government provides dependent medical insurance. However, the~~ The employee may elect to continue group health, life insurance and/or flexible benefits for dependents through the state. ~~If the employee wants dependent benefits to continue while on active duty, the employee must notify the institution's Human Resource Office and make arrangements~~

~~for premium payments (including how to bill for dependent coverage if the employee is on active military duty status without pay).~~

2.1.2. **State Active Duty** — ~~For employees called to state active duty, State health, life insurance, and flexible benefits (including benefits for the employee and dependents,) will continue as normal since because the employee will receive a state active duty payment through the South Dakota National Guard. For dependents called to state active duty, state benefits will continue as normal and be paid by the employee. If an employee wants to change benefit elections while the employee or a dependent is on state active duty, the employee should contact the institution's Human Resource Office to see if the proposed change(s) can be made.~~

2.1.3. ~~**Employee Entitlement to Servicemember FMLA Leave Entitlement** — Servicemember Service member FMLA rights are outlined in BOR Policy 4:15 – Medical Leaves and Leaves of Absence.~~ provides eligible employees unpaid leave for any one, or for a combination, of the following reasons:

2.1.3.1. ~~A “qualifying exigency” arising out of a covered family member’s active duty or call to active duty in the Armed Forces in support of a contingency plan; and/or~~

2.1.3.2. ~~To care for a covered family member who has incurred an injury or illness in the line of duty while on active duty in the Armed Forces provided that such injury or illness may render the family member medically unfit to perform duties of the member’s office, grade, rank or rating.~~

2.1.3.3. ~~**Duration of Servicemember FMLA**~~

2.1.3.3.1. ~~When Leave Is Due To A “Qualifying Exigency”: An eligible employee may take up to 12 workweeks of leave during any 12-month period.~~

2.1.3.3.2. ~~When Leave Is to Care for an Injured or Ill Service Member. An eligible employee may take up to 26 workweeks of leave during a single 12-month period to care for the servicemember. Leave to care for an injured or ill servicemember, when combined with other FMLA-qualifying leave, may not exceed 26 weeks in a single 12-month period.~~

2.1.3.3.3. ~~Servicemember FMLA runs concurrent with other leave entitlements provided under federal, state and local law.~~

2.1.3.3.4. ~~Leave under State Military Leave Laws~~

2.1.3.3.5. ~~A growing number of states provide leave for family members of servicemembers. The entitlements for such leave differ from state to state. Our policy is to comply with such laws in any circumstances where they apply to employees of the State of South Dakota and the Board of Regents.~~

2.1.3.4. ~~If you have any questions regarding servicemember FMLA leave, please contact your local human resources office.~~

3. Reemployment Rights

3.1. Federal and state law requires that an employee returning after active duty be offered a job with the same pay, rank, and seniority the employee would have expected if

work had not been interrupted by military duty. ~~The actual position may or may not be the same, depending upon agency needs at the time.~~

3.2. An employee who returns to duty within 90 days of discharge, or within 90 days after a hospitalization continuing after such release for a period of not more than one year, will retain ~~their~~his most recent hire date and not serve another probationary period.

~~3.2.3.3.~~ 3.2.3.3. ~~_____~~—Military service will be considered credited service for the employee, provided the employee returns and continues to participate in the state retirement plan for one year after their return.

FORMS / APPENDICES:

None.

SOURCE:

SOURCE: BOR, August, 1974; BOR, October, 1993, ARSD August 1993; March 2003~~;~~; BOR, May 2008, BOR, April 2021.