

SOUTH DAKOTA BOARD OF REGENTS

Budget and Finance

AGENDA ITEM: 6 – C (2)

DATE: June 24, 2020

SUBJECT

BOR Policy 4:15 – Leave Revisions (Second Reading)

CONTROLLING STATUTE, RULE, OR POLICY

[SDCL Chapter 3-6C](#)

[ARSD Chapter 55:09:04](#)

[COHE Agreement](#)

BACKGROUND / DISCUSSION

BOR Policy 4:15 is being revised to align with the Family and Medical Leave Act (FMLA), SD Codified Law (SDCL) and SD Administrative Rules (ARSD) changes related to a new paid family leave administrative rule that will take effect on July 1, 2020. In addition, there were changes made to add clarification and remove unnecessary language. The only revisions made to this policy since the December meeting are to address the new paid family leave which were approved by the Interim Rules Review Committee on June 9, 2020. The substantive proposed revisions are outlined below:

1. Updated references to SDCL and ARSD;
2. Removed examples from the policy;
3. Updated definitions and qualifying events language to align with Family and Medical Leave Act (FMLA) language;
4. Added language consistent with the state of South Dakota related to use of additional sick leave usage when medically necessary at the birth of a child;
5. Updated the policy title, and terms throughout the policy to provide clarity and consistency;
6. Clarified the process for medical certification;
7. Added the previously negotiated changes to the sabbatical section related to the maximum salary while on sabbatical leave;
8. Updated to incorporate the newly created paid family leave provisions which provide for partial (60%) pay for up to eight (8) weeks for eligible employees following the birth or adoption of a child.

DRAFT MOTION 20206024_6-C (2):

I move to approve the second and final reading of the proposed revisions to BOR Policy 4:15, to be effective June 22, 2020, as outlined in Attachment I.

BOR Policy 4:15 – Leave Revisions (Second Reading)

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IMPACT AND RECOMMENDATION:

Approve the second and final reading of the proposed changes to BOR Policy 4:15.

ATTACHMENTS

Attachment I – Proposed revisions to BOR Policy 4:15.

SOUTH DAKOTA BOARD OF REGENTS

Policy Manual

SUBJECT: [Medical Leave and Leaves of Absence](#)

NUMBER: 4:15

A. PURPOSE

[To outline the policy for employees on leave related to the Family and Medical Leave Act and other leaves of absence available to employees.](#)

~~Please see Human Resources for more information regarding the Family Medical Leave Act. Anything not included in this policy that is covered by federal or state regulations will be adhered to according to the law.~~

B. DEFINITIONS

~~1. **Benefit:** Employees eligible for family medical leave are entitled to twelve (12) weeks of paid or unpaid leave due to a serious health condition, birth or adoption of a child, and for the care of a child, spouse, or parent who has a serious health condition. The use of paid leave must comply with SDCL 3-6-6, 3-6-7, and 3-6-8.~~

~~2. **12-month period:** The 12-month period is defined as a measuring forward period from the date of an employee's first qualifying event. For example, an employee has a child on April 1; therefore, the 12-month period is April 1 through March 31.~~

~~3. **Health Care Provider:** A doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the State of South Dakota, or any person determined by the U.S. Secretary of Labor to be capable of providing health care services.~~

~~4. **Intermittent Leave:** This is leave taken in separate periods of time due to a single illness or injury, rather than for a continuous period of time. It may include leave periods from one hour or more to several weeks. Examples include leave taken on an occasional basis for medical appointments, or leave taken several days at a time spread over a period of months, such as for chemotherapy.~~

~~5. **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.](#)~~

~~6. **Parent:** [The biological, adoptive, step or foster parent of an employee or an individual who stood in loco parentis to an employee when the employee was a son or daughter. This is a person who is the biological parent of the employee or an individual who stands or stood in as a parent to an employee when the employee was a child.](#)~~

7.6.Reduced Leave Schedule: This is a leave schedule that reduces the usual number of hours per workweek or workday of an employee.

8.7.Serious Health Condition: This is defined as an illness, injury, impairment, or physical or mental condition that involves:

~~8.1.~~**7.1.** Any period of incapacity or treatment in connection with or consequent to inpatient care in a hospital, hospice, or medical care facility;

~~8.2.~~**7.2.** Any period of incapacity requiring absence from work, school, or other regular activities, of more than three calendar days, that also involves continuing treatment by a health care provider, or continuing treatment by a health care provider for a chronic or long-term health condition that is incurable or so serious that, if not treated, would likely result in a period of incapacity of more than three calendar days; and for prenatal care. The term is not intended to cover short-term conditions in which treatment and recovery are brief. These conditions are covered by the usual sick leave policy.

9.8.Son or Daughter: This is a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in for the parent, who is under 18 years of age. It includes others who may be older if the son or daughter is not capable of self-care due to a mental or physical disability. A person who stands in as a parent includes a person who has the day-to-day responsibility to care for and financially support a child. In the case of an employee, this includes the person who had that responsibility for the employee when the employee was a child. A biological or legal relationship is not necessary.

10.9. Spouse: A spouse is a husband or wife as defined or recognized under state law for the purposes of marriage. South Dakota does not recognize common law marriage.

C. POLICY

Employee Eligibility Requirements

- 1.1. The employee must have worked at least twelve (12) months for the state.
- 1.2. If the employee is subject to the overtime provisions of the Fair Labor Standards Act, the employee must have worked at least 1250 hours, excluding overtime, during the 12-month period immediately prior to the date the leave would begin

2. Qualifying Events Eligible for Family Medical Leave

- 2.1. The birth or the care of the employee's newborn child;
- 2.2. The placement with the employee of a child for adoption or foster care;
- 2.3. The care of the employee's spouse, child, or parent with a serious health condition;
~~and~~
- 2.4. The serious health condition of the employee that leaves the employee unable to perform the functions of his or her job; or,
- ~~2.4.~~2.5. For any qualifying exigency arising out of the fact that a spouse, son, daughter or parent is a military member on covered active duty or call to covered active duty status.

3. Length of Leave

- 3.1. Employees eligible for family medical leave are entitled to a total of twelve (12) weeks of family medical leave during the course of each 12-month period; however, employees utilizing family medical leave for the birth of a child, for the placement for adoption of a child in their home, or to provide foster care of a child can use only twelve (12) weeks for that purpose within one year of the date of birth or placement of the child.
- 3.2. An eligible employee may also take up to 26 workweeks of leave during a single 12-month period to care for a covered service member with a serious injury or illness when the employee is the spouse, son, daughter, parent, or next of kin of the service member.
- ~~3.1.3.2.1.~~ An eligible employee is limited to a combined total of 26 workweeks of leave for any FMLA-qualifying reasons during the single 12-month period.
- 3.3. Employees are able to take leave through a reduced schedule or for intermittent periods for their personal serious health conditions or to care for the employee's sick family member.
- ~~3.2.3.3.1.~~ However, if leave is taken due to the birth of a child or placement of a child for adoption or foster care, an employee may take leave intermittently or on a reduced schedule only with supervisory approval. ~~the approval of his/her supervisor.~~
- 3.4. Employees are not eligible for more than twelve (12) weeks of protected leave status as required by FMLA.
- ~~3.3.3.4.1.~~ With approval, Aadditional leave may be granted to employees beyond the amounts mandated by the Family Medical Leave Act. However, Board policies, SD codified law (SDCL), and administrative rules (ARSD) ~~and CSA rules~~ governing leaves continue to apply.

4. Coordination of Family Medical Leave With Other Leave Benefits

- 4.1. Consistent with state law, Board policy, and the administrative rules governing leave usage, family medical leave is not necessarily paid leave. ~~BHR and the SDBOR The Board~~ requires all employees to use sick leave or, annual leave, ~~and/or personal leave~~ for the qualifying event of a serious health condition for self ~~and personal leave and/or annual leave~~ or for any other qualifying event. The use of paid leave must comply with SDCL Chapter 3-6C.3-6-6, 3-6-7, and 3-6-8.
- 4.2. Full-time employees who have been employed by the state for a continuous period of six months are entitled to 24 hours of paid family leave per week for up to eight weeks following the birth or placement of a child for adoption. Part-time employees will receive prorated hours.
- 4.2.1. Sick or vacation leave may be used to supplement the remaining hours in the workweek.
- 4.2.2. Paid family leave must be taken within one year following the birth or placement of a child for adoption. ~~It is the practice that any eligible employee,~~

~~as defined by the state, may take up to six (6) weeks of sick leave immediately following the birth or adoption of a child.~~

4.2.2.1. Employees ineligible for paid family leave may use sick and/or annual leave following the birth or adoption of a child.

~~4.2.4.2.3. When medically necessary, a birth mother may use additional accumulated sick leave upon providing documentation from a health care provider and provided to the human resources office at the institution.~~

4.3. In accordance with SDCL and ARSD, employees may be allowed to receive donated leave after all other leave has been exhausted.

~~4.4. — At no time will an employee be eligible for more than the allotted 12 weeks approved by federal law for the purpose of FMLA; however, with approval employee could utilize a leave of absence beyond the 12 weeks depending upon the circumstance.~~

5. Notification

5.1. Employees must provide their supervisor with at least 30 days notification if the family medical leave event is foreseeable. Typical foreseeable events are the birth or adoption of a child or the planned medical treatment for a serious health condition of the employee or the employee's family member. If the need for the leave is not foreseeable due to a change in circumstances or due to an emergency, the notice must be given as soon as practicable. Notice may be verbal, but a written request must be submitted to the supervisor to comply with record keeping requirements.

5.2. If an employee does not give timely advance notice of the need for family medical leave that is foreseeable, the employee's supervisor may deny the leave request until thirty (30) days after the employee provides the notice.

~~5.2.~~5.3. The institutional human resources office will inform the employee and supervisor when an FMLA event has been approved.

6. Medical Certification

6.1. ~~The supervisor may, after consulting~~In consultation with ~~Human~~the human Resources~~resources department, the institution may~~ require that the employee certify through a physician that a serious health condition does exist. ~~If requested,~~ the ~~The~~ employee will have a reasonable time period (in most cases 15 days) in which to supply such certification. Employee may lose eligibility of the Family Medical Leave Act if proper certification is not completed prior to onset of leave or within 15 days of the onset of the serious health condition. This certification shall contain the following:

6.1.1. The date when the serious health condition began,

6.1.2. The probable duration of the condition,

6.1.3. The appropriate medical facts within the knowledge of the health care provider regarding the condition,

- 6.1.4. If the leave is due to the employee's serious health condition, the certificate must include a statement that the employee is unable to perform the functions of his or her position,
 - 6.1.5. If planned medical treatment is the reason for the leave and employee wants intermittent leave or leave on a reduced time schedule, the date when the treatment begins and the estimated duration of the treatment,
 - 6.1.6. If the leave request is necessitated by a serious medical condition of the employee or the employee's child, spouse or parent, the certificate shall state that there is a medical necessity for the leave and an estimate of how long the leave will be, and
 - 6.1.7. Date and Signature of Health Care Provider.
- 6.2. The employee may be required to obtain a second opinion at the institution's ~~employer's~~ cost from a second health care provider of the institution's~~employer's~~ choice. If the second opinion conflicts with the first opinion, the ~~employer~~institution may request a third opinion at the institution's ~~employer's~~ cost. The ~~employer~~institution and the employee must jointly agree on the person providing the third opinion. The third opinion is final and binding.
- ~~6.3. If an employee has suffered from a serious health condition which would prevent the employee from performing the essential functions of the employee's job or which would jeopardize workplace safety, the supervisor may, after consulting with Human Resources, require medical certification before reinstating the employee.~~
- 6.3. The ~~employer~~institution may request additional medical certifications as deemed necessary and in compliance with FMLA.
- 6.4. The human resources department will review FMLA certification documents and issue approval notices.

7. Benefits

- 7.1. Employees utilizing family medical leave will be allowed to continue to participate in the state health insurance plan as if the employee were not on leave. The institution will continue to pay the amount necessary to continue the employee's personal health insurance coverage on the same basis while the employee is participating in the leave program. However, the employee will be required to pay the amount needed to continue coverage beyond that provided as part of the institution ~~state benefit package~~paid health benefits.
- 7.2. If the state provides a new health plan or revises the health plan during the employee's family medical leave, the employee is entitled to change his/her benefit selections just as if the employee were continuously employed.
- 7.3. If an employee does not return from a family medical leave, the ~~state~~institution is entitled to recover the health premiums paid on behalf of the employee. However, ~~a campus~~an institution may not recover its share of the employee's health plan premium if the employee does not return to work due to the continuation, recurrence or onset of a serious health condition or other circumstances beyond the employee's control.

~~A campus~~[The institution](#) may not recover its share of health insurance premiums for any period of FMLA leave covered by paid leave.

7.4. Employees on an unpaid leave will not accrue sick or annual leave ~~benefits.~~

8. Returning From Family Medical Leave

8.1. Upon returning to work from a family medical leave, an employee is entitled to the same or equivalent position. An equivalent position must have the same pay, benefits and working conditions, including privileges, perquisites, and status. It must involve the same or substantially similar duties and responsibilities, which must entail substantially equivalent skill, effort, responsibility, and authority.

8.2. Employees on family medical leave have no greater entitlements to continued employment or benefits than they would have had if they remained continuously employed during the family medical leave period.

8.3. ~~Employer~~[Institution](#) may request a return-to-work certificate to ensure employee is able to perform the essential functions of the position.

9. Extended Leave of Absence

Leave of absence without pay may be granted to faculty or other Regental employees for one (1) year, with an allowable extension not to exceed one (1) additional year for educational reasons, employment, or experiences that would be of benefit to individuals, their disciplinary area, or administrative assignment at the institution, or in order to hold political office.

10. ~~Employer~~[Institution](#)-Paid Group Insurance for Employees on Leave Without Pay or Temporary Reduction to Less than Full-Time Employment

10.1. Employees granted leave without pay or a temporary reduction to less than full-time employment for one (1) month or more shall continue to have the employee's share of the group health/life/ADD (Accidental Death and Dismemberment) paid for by the ~~employer~~[institution](#) for up to a total of three (3) months per leave without pay or temporary reduction. An employee granted a leave or temporary reduction that exceeds these conditions shall be required to continue group health/life/ADD coverage if they have not been allowed to opt out of the state of South Dakota group health insurance plan by the Bureau of Human Resources. If the employee has not opted out of the health plan, the institution has the option to pay the premiums on behalf of the employee or to require that the employee make the premium payments as a condition of granting the leave without pay request.

10.2. Nine, ten or eleven month employees who have contracts and/or letters of intent and/or letters of notification of employment for the following year shall continue to have their share of the premium paid for by the ~~employer~~[institution](#) for the non-appointment period.

10.3. ~~NOTE:~~—Only those leave without pay periods or temporary reductions to less than full-time employment that are of one (1) month or more duration are considered under this policy.

11. Sabbatical, Faculty Member Improvement and Career Redirection Leaves

- 11.1. [At the discretion of the Board](#), [Aa](#) faculty member may be granted sabbatical leave after six (6) or more consecutive years of full-time employment in the system. A faculty member may be granted faculty member improvement or career redirection leave after three (3) consecutive years of full-time employment in the system. Approval for such leave shall be contingent upon the faculty member presenting plans for formal study, research, or other experiences which are designed to improve the quality of service of the faculty member to the institution, to the Board and to the State of South Dakota.
- 11.2. The number of all faculty member improvement, career redirection or sabbatical leaves granted by an institution during any fiscal year shall not exceed five percent (5%) of the faculty members or one (1) FTE, whichever is greater, in any one (1) year.
- 11.3. Sabbatical leave for nine (9) month faculty members shall be for not more than two (2) semesters at one-half the salary which would have been paid had the faculty member been on full-time employment, or not more than one (1) semester at the full salary which would have been paid had the faculty member been on full-time employment.
- 11.4. Sabbatical leave for twelve (12) month faculty members shall be for not more than twelve (12) months at one-half the salary which would have been paid on full-time employment, or not more than six (6) consecutive months at the full salary which would have been paid on full-time employment.
- 11.5. Faculty member improvement or career redirection leave for nine (9) month faculty members shall be for not more than two (2) semesters at eight percent (8%) of the salary which would have been paid on full-time employment for each full academic year of consecutive full-time service, up to a maximum of fifty percent (50%) of salary [when considering all funding sources flowing to or through an institution](#), or not more than one (1) semester at sixteen percent (16%) of the salary which would have been paid on full-time employment, for each full academic year of consecutive full-time service, up to a maximum of one hundred percent (100%) of salary, for each year of consecutive service.
- 11.6. Faculty member improvement or career redirection leaves for twelve (12) month faculty members shall be for not more than twelve (12) months at eight percent (8%) of the salary which would have been paid on full-time employment, for each full year of consecutive full-time service, up to a maximum of fifty percent (50%) of salary, or not more than six (6) consecutive months at sixteen percent (16%) of the salary which would have been paid on full-time employment, for each full year of consecutive service up to a maximum of one hundred percent (100%) of salary.
- 11.7. All faculty members receiving faculty member improvement, career redirection, or sabbatical leave are required to return to the institution granting the leave for at least two (2) academic years of full-time service or to refund the full salary and institutional costs of fringe benefits received while on leave. If a faculty member returns, but fails to perform the full two (2) years return-to-service obligation, then the repayment obligation shall be prorated. Should the faculty member return but fail to fulfill the full two-year service requirement, the amount to be reimbursed shall be pro-rated and

shall be due one (1) calendar year from termination. Any repayment obligation which remains unpaid after falling due shall accrue interest at an annual rate equal to the monthly average prime rate of interest offered by the ~~First Bank~~ Wells Fargo Bank System, or its successor, during the leave period plus two percentage points. A faculty member who cannot perform return-to-service obligations due to death or permanent and total disability or reduction in force shall be released of all repayment obligations. Determination of whether a faculty member is to be considered disabled shall be made by the Board.

- 11.7.1. At the request of the faculty member and the president of the university supporting the sabbatical, faculty member improvement, or career redirection leave, the Board may transfer all or part of the repayment obligation to another campus within the system.
- 11.7.2. Universities recruiting faculty members may not expend funds to assist faculty members in meeting financial commitments related to sabbatical, faculty member improvement, career redirection, or similar leave service repayment obligations.
- 11.7.3. At the request of the president of the university, the Board may waive some or all of the return-to-service obligations or some or all of the repayment obligation when the Board determines that such waiver is in the best interest of the institution.
- 11.8. All faculty members, upon return from faculty member improvement, career redirection, or sabbatical leave shall be returned to their former positions or be assigned to positions of like nature and status and shall be granted increment increases that were given during their leave. They may be considered for merit increases as if they had served at the institution during such period. They shall maintain tenure, insurance benefits, accumulated sick leave, and all other accrued benefits. While employees are on sabbatical, improvement or career redirection leaves the following policies shall apply:
 - 11.8.1. Employees shall neither accrue nor use sick and/or annual leave.
 - 11.8.2. The full cost of health and life insurance shall continue to be paid by the Regents for the employee. Dependent health and life and supplemental life may be continued if paid by the employee.
 - 11.8.3. Participation in the South Dakota Retirement System. Employees should refer to the South Dakota Retirement System for information. Employees can go to the following web site for participation information: www.sdrs.sd.gov or the employee can refer to SDCL 3-12-85.1
- 11.9. The following criteria shall be considered in selecting the candidates for faculty member improvement, career redirection or sabbatical leave:
 - 11.9.1. The merit of the objectives as they relate to improving the instructional program and enhancing the professional growth of the applicant, and where other institutions are involved, evidence of acceptance of the faculty member's program or project by the institution offering the advanced study or research.
 - 11.9.2. Years of experience in the system.
 - 11.9.3. Previous leaves.

12. Exempt Employee Professional Development Leave

- 12.1. An exempt employee may be granted a professional development leave after (3) consecutive years of full-time employment in the system. Approval for such leave shall be contingent upon the employee presenting plans for formal study, research, or other experiences which are designed to improve the quality of service of the employee to the institution, the Board and the State of South Dakota. For purposes of this section, an exempt employee is a person who is exempt from the Civil Service system and who does not carry continuing faculty rank.
- 12.2. Exempt employee professional development leave shall be for not more than twelve months (12) at eight percent (8%) of the salary which would have been paid on full-time employment for each full year of consecutive full-time service, up to a maximum of fifty percent (50%) of salary, or not more than six months (6) at sixteen percent (16%) of the salary which would have been paid on full-time employment for each year of consecutive full-time service, up to a maximum of one hundred percent (100%) of salary.
- 12.3. All exempt employees receiving professional development leave are required to return to the institution granting the leave for at least two (2) years of full-time service or to refund the full salary and institutional costs of fringe benefits received while on leave. If an employee returns, but fails to perform the full two (2) years return-to-service obligation, then the repayment obligation shall be prorated. Should the employee return but fail to fulfill the full two-year service requirement, the amount to be reimbursed shall be pro-rated and shall be due one (1) calendar year from termination. Any repayment obligation which remains unpaid after falling due shall accrue interest at an annual rate equal to the monthly average prime rate of interest offered by the First Bank system during the leave period plus two percentage points. An employee who cannot perform return-to-service obligations due to death or permanent and total disability or reduction in force shall be released of all repayment obligations. Determination of whether an employee is to be considered disabled shall be made by the Board.
- 12.4. All exempt employees, upon return from professional development leave, shall be returned to their former positions or be assigned to positions of like nature and status and shall be granted increment increases that were given during their leave. They may be considered for merit increases as if they had served at the institution during such period. They shall maintain insurance benefits, accumulated leave, and all other accrued benefits. While employees are on leave the following policies shall apply:
 - 12.4.1. Employees shall neither accrue nor use sick and/or annual leave.
 - 12.4.2. The full costs of health and life insurance shall continue to be paid by the Regents for the employee. Dependent health, life, and other optional benefits may be continued if paid by the employee.
 - 12.4.3. Participation in the South Dakota Retirement System. Employees should refer to the South Dakota Retirement System for information. Employees can go to the following web site for participation information: www.sdrs.sd.gov or the employee can refer to SDCL 3-12-85.

12.5. The following criteria shall be considered in selecting the candidates for professional development leave:

12.5.1. Needs of the department and institution.

12.5.2. The merit of the objectives as they relate to the enhancement of the professional growth of the applicant.

12.5.3. Years of experience in the system.

12.5.4. Previous leaves.

FORMS / APPENDICES:

None

SOURCE:

BOR August 1979, P. 1226, BOR February 1980; BOR August 1987; BOR August 1979, P. 1226; BOR August 1987; BOR August 1987; April 1988; September 1992; BOR October, 1992; BOR May 1993; BOR October 1993; BOR March 1994; BOR June 1994; BOR March 1997; BOR March 2004; BOR October 2004; BOR May 2006; BOR August 2016; [BOR June 2020](#).