

BUSINESS AFFAIRS AND HUMAN RESOURCES
NOVEMBER 14, 2016

SUBJECT

Idaho State Board of Education Policy II.F.2 and 3. – Second Reading

REFERENCE

June 2016	The Idaho State Board of Education (Board) approved the second reading of amendment to Board policy II.F (pertaining to coach and athletic director employment agreements)
August 2016	Board approved first reading of amendment to Board policy II.F (courtesy vehicle policy)
October 2016	Board approved second reading of amendments pertaining to courtesy vehicles and the first reading of amendment to Board policy II.F. 2. and 3. Pertaining to annual leave

APPLICABLE STATUTE, RULE, OR POLICY

Idaho State Board of Education (Board) Governing Policies & Procedures, Sections II.A. and II.F., subsections 2 and 3.
Sections 59-1607, 67-5303(j), 67-5329 and 67-5334, Idaho Code

BACKGROUND/DISCUSSION

In March 2014, President Obama directed the US Department of Labor (DOL) to review and update overtime eligibility standards under the Fair Labor Standards Act (FLSA) through the federal rulemaking process. The DOL published its final rule on May 23, 2016, with an implementation date of December 1, 2016 (Final Rule). The Final Rule updates the salary level required for the executive, administrative, and professional overtime exemptions from \$455 per week (\$23,660 per year) to \$913 per week (\$47,476 per year). As a result of implementation of the Final Rule, a number of non-classified professional staff at the institutions and agencies under the Board's governance who have been "overtime exempt" (i.e., not eligible for overtime) will now become overtime-eligible.

Section 59-1606, Idaho Code, authorizes the Board to set the vacation leave policies for its non-classified employees. Board Policy II.F., "Policies Regarding Non-classified Employees," sets out the requirements for non-classified employees at the agencies and institutions under the Board's governance, with the exception of policies for those employees who are in classifications that are called out specifically in other Board policies, such as Board Policy II.G. (Faculty) and II.H. (Coaching Personnel).

Board Policy II.F. specifies that non-classified employees who are not overtime eligible accrue annual leave (vacation time) at a rate of two (2) days per month. Board Policy II.F. also specifies that non-classified employees who are overtime eligible earn annual leave in accordance with the provisions of Section 67-5334, Idaho Code. Section 67-5334, Idaho Code sets the rate of vacation accrual for classified and non-classified state employees. The rate of vacation accrual varies

BUSINESS AFFAIRS AND HUMAN RESOURCES
NOVEMBER 14, 2016

depending on whether an employee is classified or non-classified and the employee's length of service with the state, from approximately one (1) day to one point seventy five (1.75) days per month. Vacation accrual rates also impact the maximum amount of vacation that may be accumulated. State employees earning vacation time at the rate of two (2) days per month may not accumulate more than 240 hours of leave, while employees earning leave at the lower rates of accrual may accumulate between 192 hours to 336 hours depending on the length of time employed with the state.

Institutions and agencies under the Board are grappling with how to deal with the increased overtime-exempt threshold. Current employees affected by the change have been identified by the institutions and agencies. Institutions and agencies have the option of limiting payment of overtime by restricting employees' working hours to 40 hours per week, where possible. Raising salaries above the \$47,476 annual threshold is also an option, for those positions that also meet the "duties" test for overtime-exempt positions.

Under the current Board policy II.F.3 Annual Leave, when the new Final Rule goes into effect, some current non-classified employees' vacation time accruals would be reduced from two (2) days per month to a lesser amount, regardless of whether those employees actually earned overtime or compensatory time in their assigned work units.

In addition to addressing the issue of vacation time accrual for non-classified employees who will become overtime-eligible under the new federal rule, the proposed amendment also deals with a technical error in the language of Board Policy II.F.2.b.iii., which was discovered to be inconsistent with state law. Sections 59-1607 and 67-5329, Idaho Code, prohibit classified and non-classified officers and employees who are included in the definition of Section 67-5303(j), Idaho Code, from earning either overtime compensation or compensatory time. Until such time as state law can be amended, it is necessary to remove the conflicting language from Board Policy II.F.2 (Compensation). Section 67-5303(j), Idaho Code authorizes the Board to designate certain positions that meet minimum criteria as non-classified positions.

In summary, the proposed changes to Board Policy II.F. amend subsection 2.b., bringing it into alignment with existing state law, and subsection 3.a., allowing those individuals who are non-classified and currently earning leave at a rate of two (2) days per month to continue to earn leave at that rate as long as they remain in their current positions.

IMPACT

The primary purpose of the proposed amendment to Board Policy II.F. is to prevent adverse impacts on those newly overtime-eligible non-classified staff members whose leave accrual rates would be reduced, but whose weekly schedules may not include overtime work and the associated compensatory time or overtime pay.

BUSINESS AFFAIRS AND HUMAN RESOURCES
NOVEMBER 14, 2016

Moving these non-classified employees to the classified leave accrual schedule, as required under current Board policy, would represent a significant reduction in these employees' overall compensation/benefits, through no fault of their own. Subsequent to the Board's approval of the first reading of the proposed amendment, staff has received additional inputs from concerned employees who will fall beneath the new FLSA weekly salary threshold, whose work situations will not allow them to work overtime, and whose leave rates would be reduced—urging that the leave policies under which they were hired be maintained.

While the proposed amendment to “grandfather” the current leave entitlement rate (two days per month) for newly overtime-eligible employees may mitigate adverse morale/financial impacts on this affected group of employees, a possible negative impact could be a perception of unfairness by co-workers in cases where some of the grandfathered employees earned overtime or compensatory pay in addition to their current two days per month leave accrual.

The proposed Board Policy amendment does not increase the affected units' current leave costs. Absent the proposed policy amendment, which would grandfather affected employees at their current leave accrual rates, institutions would realize salary savings as a result of leave rate reductions which could partially offset the overtime costs under the new FLSA rules. Provided below are estimates of the employees who would be directly impacted by the new FLSA rule, the impact on annual leave accrual rates if Board policy is not amended, and the approximate dollar value of the difference in the leave accrual rates.

Estimated number of non-classified employees impacted by change in overtime eligibility

Boise State University	336
Eastern Idaho Technical College	19
Idaho State University	131
Lewis-Clark State College	57
University of Idaho	138
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Total	681
Office of the State Board of Education	2
Career Technical Education	2
Vocational Rehabilitation	34
Idaho Public Television	0
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Total	38

**BUSINESS AFFAIRS AND HUMAN RESOURCES
NOVEMBER 14, 2016**

Comparison of Leave Accrual Rates with/without Policy Amendment

Years of Service	Current Rate	Without Policy Amendment	Days Lost per Year
Tier 1 (0-5 yrs.)	24 days	12 days	12 days
Tier 2 (5-10 yrs.)	24 days	15 days	9 days
Tier 3 (10-15 yrs.)	24 days	18 days	6 days
Tier 4 (>15 yrs.)	24 days	21 days	3 days

Estimated dollar savings without Policy Amendment

BSU	\$531K
ISU	\$202K
LCSC	\$83K
UI	\$140K

ATTACHMENTS

Attachment 1 - Amendment to Board Policy Section II.F. – 2nd Reading Page 5

STAFF COMMENTS AND RECOMMENDATIONS

The proposed amendment to Board Policy II.F. would minimize the negative impact on non-classified employees who will become overtime-eligible (but may or may not be permitted to work overtime) and who would be required to accrue leave at a lesser rate under the current policy.

Under the proposed amendment, the protection of these employees' current leave accrual rate would be limited to their time in the specific position. "Grandfather" protection would end if the employee departs or moves to a new position. The proposed amendment would not increase the current costs to the institutions for the leave accrued by the affected individuals—they would continue to accrue leave at a rate based on two (2) days per month for full-time employees. The proposed amendment would result in the institutions and agencies forgoing any immediate leave accrual savings, which would not be available until the "grandfather" protection lapsed for the affected positions.

There have been no changes between the first and second reading. Staff recommends approval.

BOARD ACTION

I move to approve the second reading of the proposed amendment to Board Policy Section II.F. Policies Regarding Non-classified Employees – Annual Leave, subsections 2 and 3, as provided in Attachment 1.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

BUSINESS AFFAIRS AND HUMAN RESOURCES
NOVEMBER 14, 2016

Idaho State Board of Education

GOVERNING POLICIES AND PROCEDURES

SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES

SUBSECTION: F. Policies Regarding Non-classified Employees ~~June~~ November 2016

(Break in Continuity of Sections)

2. Compensation

- a. Salary – All non-classified employees shall receive a fixed salary. A payment in addition to the fixed salary for an employee on annual contract or agreement may be authorized by the chief executive officer for documented meritorious performance, to compensate a professional annual employee for short-term work assignments or additional duties beyond what is outlined in an employee’s contract or agreement, or as incentive pay. Incentive pay may be paid for achievement of specific activities, goals or certifications as may be established by an institution in conjunction with certain programs or initiatives. All initial salaries for non-classified employees are established by the chief executive officer, subject to approval by the Board where applicable. The Board may make subsequent changes for any non-classified employee salary or may set annual salary guidelines and delegates to its executive director authority to review compliance with its annual guidelines. Any annual salary increase outside Board guidelines requires specific and prior Board approval before such increase may be effective or paid to the non-classified employee. With the exception of the chief executive officers, and other positions whose appointment is a reserved Board authority, approval of salaries shall be effective concurrently with Board approval of annual operating budgets for that fiscal year.

- b. Salaries, Salary Increases and other Compensation related items
 - i. Salaries for new appointments to dean, associate/assistant dean, vice president, and president/vice president direct-report positions may not exceed the median rate for such position established by the College and University Professional Association for Human Resources (CUPA-HR), or its equivalent, without prior Board approval.

 - ii. Appointments to acting or interim positions shall be at base salary rates no greater than ten percent (10%) more than the appointees’ salary rate immediately prior to accepting the interim appointment or ninety-five percent (95%) of the prior incumbent’s rate, whichever is greater.

 - iii. Overtime Compensation – ~~Non-classified employees earning annual leave at the equivalent rate of two (2) days for each month or major fraction thereof of credited state service are not eligible for either cash compensation or compensatory time off for overtime work.~~ Non-classified employees in positions that are defined as “non-exempt” overtime eligible

BUSINESS AFFAIRS AND HUMAN RESOURCES
NOVEMBER 14, 2016

under the Fair Labor Standards Act (FLSA) earn ~~overtime—cash compensation or compensatory time off~~ at a rate of one and one-half (1½) hours for each overtime hour worked. ~~Other non-classified employees may earn compensatory time off at the discretion of the chief executive officer at a rate not to exceed one (1) hour of compensatory time for each hour of overtime worked.~~

- iv. Credited State Service - The basis for earning credited state service will be the actual hours paid not to exceed forty (40) per week.
- v. Pay Periods - All non-classified employees are paid in accordance with a schedule established by the state controller.
- vi. Automobile Exclusion - Unless expressly authorized by the Board, no non-classified employee will receive an automobile or automobile allowance as part of his or her compensation.

3. Annual Leave

- a. Non-classified employees at the institutions, agencies earn annual leave at the equivalent rate of two (2) days per month or major fraction thereof of credited state service. Twelve-month employees employed at the entities named above may accrue leave up to a maximum of 240 hours. An employee who has accrued the maximum will not earn further leave until the employee's use of annual leave reduces the accrual below the maximum.

Notwithstanding the preceding paragraph, Non-classified employees in positions which ~~are covered~~ are overtime eligible under the ~~Fair Labor Standards Act~~ FLSA earn annual leave in accordance with and subject to the maximum leave accruals in Section 67-5334, Idaho Code (Personnel System). Non-classified employees in positions which are not overtime eligible under the FLSA as of November 30, 2016, but become overtime eligible under the federal Department of Labor's final rule updating the FLSA's overtime regulations which goes into effect on December 1, 2016, shall continue to accrue vacation leave as set forth in the preceding paragraph, provided the employee remains in the same position.

- b. Non-classified employees appointed to less than full-time positions earn annual leave on a proportional basis dependent upon the terms and conditions of employment.
- c. Professional Leave - At the discretion of the chief executive officer, non-classified employees may be granted professional leave with or without compensation under conditions and terms as established by the chief executive officer.
- d. Pursuant to section 59-1606(3), Idaho Code, when a classified employee's position is changed to non-classified, or when a classified employee is moved into a non-

BUSINESS AFFAIRS AND HUMAN RESOURCES
NOVEMBER 14, 2016

classified position, and that employee, due to the employee's years of service, has an annual leave balance in excess of 240 hours, then the institution may pay the employee as supplemental pay the balance that is in excess of 240 hours.

(Break in Continuity of Sections)

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