

## Frequently Asked Questions – Guidance for University Employees and Community Regarding State Laws on Abortion and Contraceptives

University of Idaho Leadership is committed to supporting our faculty, staff and students as we navigate through the challenges associated with the state law, [No Public Funds for Abortion Act\(NPFAA\)](#) passed by the Idaho legislature in 2021 as affected by the more recent United States Supreme Court’s ruling in *Dobbs*.

Part of being a member of the UI Brave and Bold Family, is leading with humility, patience, and empathy. We want you to feel acknowledged and heard as valued members of our UI family. Your feedback is essential to the health of our campus culture. To that end, we have created this FAQ.

In September, communications were sent to our UI community, providing guidance, requested by our employees around this new law. However, some members were left feeling confused and without support. This was not the intention. University of Idaho Leadership hopes the FAQ content below serves to clear up some of the uncertainty, as we navigate an exceedingly complicated issue and confront the ramifications of a law, which is vague and unvetted in the courts.

To each member of our UI family, please know:

- The University of Idaho is committed to the safety and well-being of our faculty, our staff, and our students.
- The University of Idaho supports and stands behind women.
- The University of Idaho affirms our commitment to the first amendment.
- No university policies have been added or changed as a result of the state law, [No Public Funds for Abortion Act \(NPFAA\)](#) passed by the Idaho legislature in 2021 as affected by the more recent United States Supreme Court’s ruling in *Dobbs*.
- The University of Idaho is not changing its education about or distribution of contraceptives from its current practice.
- Penalties of the laws addressed in these FAQs are criminal in nature. The university does not impose criminal charges or conduct criminal investigations.
- There are no changes to the university’s academic freedom policy. [III.B. - Academic Freedom and Academic Responsibility | Idaho State Board of Education](#)
- The information in these FAQs is provided for general guidance and is not legal advice.

## **A. What does the law say?**

### **A-1. Where can I find information on the laws addressed in the September 23, 2022 Guidance Memo?**

The No Public Funds for Abortion Act (NPFAA) can be found [here](#) and by visiting the website that contains [Idaho Statutes](#).

The Idaho law pertaining to Abortion and Contraceptives can be found [here](#) in Idaho Code Section [18-603](#).

### **A-2. Where is the law regarding contraceptives that was discussed in the September 23, 2022 Guidance Memo?**

The law regarding contraceptives addressed in the Guidance Memo is Idaho Code Section 18-603 and can be found [here](#).

## **B. Employee Concerns and Questions**

### **B-1. Academic Freedom: Can I teach or talk about abortion in my class?**

The university's academic freedom policies remain the same. The university encourages faculty to engage in educational discussions on topics of their choice. Faculty have academic freedom to address relevant subjects in class as part of their teaching, and the university supports this. The university does not intend to create a chilling effect on academic freedom or first amendment rights.

However, the [No Public Funds for Abortion Act](#) (NPFAA) applies criminal penalties to individuals. The language of the law is vague in many respects which creates uncertainty as to the extent of the law. Consequently, the administration wants each individual employee to know they can choose to assess for themselves what level of risk they are comfortable with when determining what they teach or talk about in performing their job.

### **B-2. Education: Can employees and students discuss their reproductive health care options?**

University policies remain the same since the [No Public Funds for Abortion Act](#) (NPFAA) passed by the Idaho legislature. No University policy limits discussions related to reproductive health care options. The university continues to offer the same education about and distribution of contraceptives.

However, the NPFAA is new and unclear. This law makes it a crime for university employees to use public funds to “promote” “counsel in favor of” or “refer” individuals for abortion, but does not appear to prohibit discussions of reproductive health care. However, the NPFFA places the decision with local prosecutors for enforcing violations of the act. These decisions are outside the control of the University. This too creates some uncertainty and risk with respect to discussions regarding abortion. Consequently, the administration wants each individual employee to know they can choose to assess for themselves what level of risk they are comfortable with.

**B-3. Do employees risk prosecution under the No Public Funds for Abortion Act if they direct a student or employee to abortion services?**

The language of the [No Public Funds for Abortion Act](#) (NPFAA) makes it a crime for university employees to use public funds to, “promote”, “counsel in favor of”, or “refer” individuals for an abortion regardless of where the abortion may occur, or to do so while they are acting as an employee or otherwise using public funds.

Decisions to bring criminal prosecution lie with local prosecutors. These decisions fall outside of the University’s control.

The NPFAA applies to state employees and the use of public funds. This law does not prohibit university employees, acting outside the course and scope of their employment and not using public funds, from having a personal conversation with anyone about any topic of their choice.

**B-4. If I am an advisor to a student club, can I be found in violation of the No Public Funds for Abortion Act for the actions of an organization that I advise?**

The language of the [No Public Funds for Abortion Act](#) (NPFAA) makes it a crime for university employees to use public funds of the University to “promote”, “counsel in favor of”, or “refer” individuals for an abortion. Depending on the particular facts of the club’s actions, advisors to student groups likely are not at risk of violating the law as long as they are not deemed to have promoted, counseled in favor of, or referred individuals for an abortion.

**B-5. Will the university defend my alleged violation of these laws?**

Claims that employees violated these laws could be made as civil claims or criminal charges. Generally, the State of Idaho Risk Management program defends civil claims made against university employees when the claim arises out of the employee’s actions in the course and scope of employment. In a criminal prosecution, however, the university may not be able to provide a legal defense to university employees.

**B-6. What are the penalties for being found in criminal violation of the No Public Funds for Abortion Act?**

As a criminal law, the [No Public Funds for Abortion Act](#) (NPFAA) calls for, depending on the circumstances, misdemeanor or felony penalties. If an employee is found guilty under this law, the law also requires termination of employment, restitution, and disqualification from certain public employment.

**B-7. Q: How does the NPFAA affect faculty research?**

Guidance will be issued on this shortly.

**C. Student Concerns**

**C-1. Does the No Public Funds for Abortion Act prevent student groups from providing education about reproductive health care options for students?**

The [No Public Funds for Abortion Act](#) (NPFAA) does not prohibit student groups from providing education about reproductive healthcare options as long as the group does not use public funds to “promote”, “counsel in favor of”, or “refer” individuals for an abortion.

**C-2. If a student talks about abortion with their friend, can they get in trouble?**

Students not using public funds for the discussion and not employed as described below, are not subject to the NPFAA without regard to the content of the discussion.

The [No Public Funds for Abortion Act](#) (NPFAA) will only apply to a discussion deemed to be “providing”, “performing”, “counseling in favor of”, or “referring for” abortion.

The NPFAA only applies to a student if the student is:

- 1.) Using public funds in order to have the discussion, **or**
- 2.) The student is an employee of a “public institution of higher education,” or a “public school district,” and has the discussion while acting in the course and scope of their employment.

**C-3. If I am a student employee of the university, does the No Public Funds for Abortion Act apply to me?**

Yes; the [No Public Funds for Abortion Act](#) (NPFAA) applies to university employees, including student employees, in the course and scope of their employment, and to any use of public funds.

**C-4. If I have questions about reproductive health care, where can I go for assistance?**

Individuals are encouraged to visit their primary medical care provider for reproductive health care guidance, which can include the Vandal Health Clinic or Gritman Medical Center in Moscow and its affiliated clinics, or a trusted medical provider of your choice in your local area.

**C-5. Where can students go if they want to process pregnancy-related questions?**

In addition to external, community-based organizations, students can reach out to the Counseling & Testing Center, Vandal Health Clinic (or a trusted medical provider), and the Women's Center. Students can also submit a VandalCare report to get connected to these resources.

**D. Contraceptives**

**D-1 Will the university still provide education about sexual health and contraceptives to students?**

Yes, the university will continue to provide this education.

**D-2 Are contraceptives now illegal in Idaho?**

No. Contraceptives remain legal in Idaho and some are readily accessible.

**D-3 Will the university still provide contraceptives to students?**

Yes. Student access to contraceptives remains the same. Condoms continue to be available in restroom dispensers and [campus offices](#) (including the Vandal Health Clinic, the Women's Center, the Well Space located in the Student Recreation Center, and other [offices](#)). The Vandal Health Clinic and its affiliate clinics operated by Gritman Medical Center will continue to meet the reproductive health needs of all students and employees.

## **E. Enforcement**

### **E-1. Will the university enforce the No Public Funds for Abortion Act?**

Penalties under the [No Public Funds for Abortion Act \(NPFAA\)](#) are criminal in nature. The university does not enforce criminal laws. Local prosecutors enforce criminal laws. At this point in time, it is unclear how local prosecutors or law enforcement will enforce this law. Because the NPFAA mandates termination for state employees if convicted of a criminal violation of the act, the September 23, 2022 memo was intended to make employees aware of such risks.

### **E-2 Is it legal for university employees to drive someone to obtain an abortion while in the course and scope of their employment?**

The [No Public Funds for Abortion Act \(NPFAA\)](#) prohibits UI employees acting in the course and scope of their employment from using public funds to “assist in the provision or performance of an abortion.” The NPFAA is new and unclear. The University does not control the decisions of local prosecutors. Each individual employee can choose to assess for themselves what level of risk they are comfortable with. That said, the NPFAA does not expressly prohibit University employees, who believe that a pregnant person is having a medical emergency, from driving or otherwise arranging for transportation to a medical facility where appropriate medical decisions can be made and care can be given.

### **E-3 What is the university’s health insurance coverage as it relates to abortion?**

The Student Health Insurance Program and Employee Health Insurance Programs both comply with the No Public Funds for Abortion Act (NPFAA). Employees and students are encouraged to review their individual insurance policies to determine their coverage. Students using the Student Health Insurance Program (SHIP) may contact UnitedHealthCare Student Resources (UHCSR), the claims administrator, at 800-767-0700 for information regarding their off-campus benefits.

## **F. More Resources**

### **F-1. Where can I get additional guidance in my work?**

Employees, including student employees, with specific questions pertaining to their work are encouraged to communicate with their supervisors and if necessary, seek guidance from the Office of the General Counsel at [counsel@uidaho.edu](mailto:counsel@uidaho.edu).

The Office of General Counsel cannot provide legal guidance to students. Students who have questions should educate themselves about the law and visit a medical provider if they have personal medical questions or seek guidance from their own legal counsel.

### **G: Additional Questions**

#### **G-1. Who is the author of the Guidance Memo?**

Acting General Counsel, Kent E. Nelson, authored the September 23, 2022, Guidance Memo in response to requests for guidance from the university employees. These FAQs have been vetted with faculty, staff and student representatives.