

Academic Staff Policies & Procedures

UWPA 9 LAYOFF OF ACADEMIC STAFF FOR REASONS OF BUDGET OR PROGRAM

9.01 GENERAL. Notwithstanding Section 36.15, Wisconsin Statutes, and UWPA 3, 5, 6, and 8, the chancellor or his/her designee may lay off a member of the academic staff holding an indefinite appointment, or may lay off a member of the academic staff holding either a fixed-term or a probationary appointment prior to the end of the appointment period, when such action is deemed necessary due to budget or programs decisions requiring program discontinuance, curtailment, modification or redirection. Layoff decisions for reason of budget or program shall not be made without consultation with the Academic Staff Committee and the director of the operational area, in addition to such other institutional committees and individuals as the chancellor deems appropriate for such purposes. Decisions affecting individuals shall be communicated to the affected persons by the appropriate hiring authority together with a description of the change in available resources which has required the layoff decision. Non-renewal of a probationary academic staff appointment under UWPA 5, or a fixed-term appointment, even if for financial reasons, is not a layoff for reasons of program or budget.

9.02 LAYOFF. For the purpose of this chapter, "layoff" is the suspension of an academic staff member's employment by the university during the appointment period, for reasons of budget or program. A laid off academic staff member retains the rights specified in UWPA 9.07 through 9.11, inclusive. For the purposes of Section 36.21, Wisconsin Statutes, termination occurs at the time of layoff.

9.03 INDIVIDUAL LAYOFF DECISION. When a reduction in program of a particular operational area is required, layoffs of academic staff members with indefinite, fixed-term, or probationary appointments should normally follow seniority based on length of service as academic staff at UW-Parkside. This presumption in favor of seniority may be overcome where program needs dictate other considerations (e.g., the need to maintain specific expertise within the program or operational area). The standard notice periods specified in UWPA 5.02 should be used for layoff of probationary and fixed-term appointments under this chapter, unless there are compelling reasons to the contrary (e.g., almost immediate cutoff of funds). Indefinite appointees shall have 12 months notice of layoff for reasons of budget or program, unless there are compelling reasons to the contrary.

9.04 HEARING BODY. The hearing body for the purposes of this chapter shall be the Academic Staff Committee. This hearing body shall operate as the hearing agent for the chancellor pursuant to Section 227.09, Wisconsin Statutes, and conduct the hearing, make a verbatim record of the hearing, prepare a summary of the evidence, and transmit such record and summary along with the findings of fact and decision to the chancellor.

9.05 REVIEW AND HEARING FOR INDEFINITE APPOINTMENTS, FIXED-TERM, AND PROBATIONARY ACADEMIC STAFF APPOINTMENTS.

1. An academic staff member with an indefinite appointment whose position is to be eliminated shall be notified in writing and shall, upon request made within 20 working days after such notification, be given a written statement of the reasons for the decisions within 15 working days, including a statement of the reasons for the determination that the budgetary or program needs should be met by curtailing or discontinuing the program in which the individual concerned works. If the academic staff member requests in writing within 20 working days after receipt of said statement, he/she shall be entitled to a hearing before the hearing body. However, such a request for hearing shall not forestall a layoff under this section.

- A. The request for hearing shall specify the grounds to be used in establishing the impropriety of the decision.
- B. The staff member shall be given at least 10 working days notice of such hearing. Such hearing shall be held not later than 20 working days after the request except that this time limit may be extended by order of the hearing body. Anyone who participated in the decision to lay off or who is a material witness shall not serve on the hearing body.

2. Any academic staff member whose position is to be eliminated shall have access to the evidence on which the administration intends to rely to support the decision to lay off and shall be guaranteed the following minimal procedural safeguards at the hearing:

- A. A right to be heard in his/her defense.
- B. A right to counsel and/or other representatives, and to offer witnesses.
- C. A right to confront and cross-examine witnesses.
- D. A verbatim record of all hearings, which might be a sound recording, provided at no cost.
- E. Written findings of fact and decision based on the hearing record.
- F. Admissibility of evidence governed by Section 227.09, Wisconsin Statutes.
- G. The hearing shall be closed unless the staff member whose position is to be eliminated requests an open hearing, in which case it shall be open.
- H. Adjournments shall be granted to enable either party to investigate evidence if a valid claim of new information is made.

3. Review by a hearing body shall be as follows:

- A. The hearing body may, on motion of either party, disqualify any one of its members for cause by a majority vote. If one or more members of the hearing body disqualify themselves or are disqualified, the remaining members may select a number of other replacements equal to the number who have been disqualified to serve.
- B. If the hearing body requests, the chancellor shall provide legal counsel after consulting with the hearing body concerning its wishes in this regard. The function of legal counsel shall be to advise the hearing body, consult with them on legal matters, and carry out such responsibilities as shall be determined by the hearing body.

4. The first question to be considered in the review is whether one or more of the following factors improperly entered into the decision to lay off:

- A. Conduct, expressions, or beliefs on the staff member's part which are constitutionally protected or actions which are consistent with an appropriate professional code of ethics.
- B. Employment practices prescribed by applicable state or federal laws.
- C. Improper consideration of the qualifications of the staff member. For the purposes of this section, "improper consideration" occurs if material prejudice resulted from any of the following:
 - 1) The procedures required by the chancellor or Board of Regents were not followed.
 - 2) Available data bearing materially on the quality of the staff member's actual or potential performance were not considered.
 - 3) Unfounded, arbitrary or irrelevant assumptions of fact were made about work or conduct.

5. The staff member shall present evidence on whether one or more of the factors specified above improperly entered into the decision to lay off. The hearing body shall then consider whether the evidence presented establishes a prima facie case that such factor or factors did enter significantly into the layoff decision. If the hearing body finds a prima facie case has not been established, the layoff decision shall be found to have been proper and the hearing shall be ended.

6. If the hearing body finds that a prima facie case has been established, the appropriate hiring authority for the operational area shall be entitled to present evidence in rebuttal. Thereafter, on the basis of all the evidence presented, the hearing body shall make its determination as follows:

- A. The hearing body shall first consider whether one or more of the above specified factors improperly entered into the decision to lay off. Unless the body is convinced that such factor or factors did improperly enter into that decision, the body shall find the decision to have been proper.
- B. If the hearing body is convinced that such factor or factors entered into the decision to lay off, then the body shall find that decision to be improper, unless the body is also convinced (1) that there was a bona fide program or budgetary reason(s), and that the determination of such reason(s) was made in the manner prescribed by, and in accordance with, the standards established by the institution; and (2) that the decision to lay off the particular academic staff member was in accordance with the provisions of UWPA 9.03.

7. In determining whether a bona fide budgetary or program reason existed for layoff of the academic staff member concerned, the hearing body shall presume that the decision to curtail the program was made in good faith and for the proper reasons. The hearing body shall not substitute its judgment or priorities for that of the administration.

8. If the hearing body finds that the layoff was improper, it shall report this decision and its recommendation to the chancellor and to the staff member. The chancellor shall review

the matter, decide whether the staff members should be laid off, and notify the hearing body and the academic staff member of the decision. This decision shall be deemed final unless the Board of Regents, upon request of the academic staff member, grants review based on the record.

9.06 LAYOFF STATUS.

1. An academic staff member whose position has been eliminated according to the provisions of this chapter may, at the end of the appropriate notice period, be placed on layoff status, unless the layoff notice has been rescinded prior to that time. The academic staff member whose notice period has expired, and who is placed on layoff status shall remain on layoff status until:

A. For fixed-term and probationary appointees, one of the following occurs:

- 1) The appointment expires under its own terms.
- 2) The staff member fails to accept an alternate appointment.

B. For academic staff on indefinite appointment, one of the following occurs:

- 1) The staff member is reappointed to the position from which laid off. Failure to accept such reappointment would terminate the academic staff member's association with the institution.
- 2) The staff member accepts an alternative continuing position in the institution. Failure to accept an alternate appointment would not terminate the academic staff member's association with the institution.
- 3) The staff member resigns.
- 4) The staff member fails to notify the chancellor or his/her designee not later than December 1 of each year while on layoff status, as to his/her location, employment status, and desire to remain on layoff status. Failure to provide such notice of desire to remain on layoff status shall terminate the academic staff member's association with the institution.
- 5) A period of three years elapses.

9.07 ALTERNATIVE EMPLOYMENT. UW-Parkside shall devote its best efforts to securing alternative appointments within the institution in positions for which staff laid off under this chapter are qualified under existing criteria. UW-Parkside should seek to provide financial assistance for academic staff members who have indefinite appointments and who are to be laid off to re-adapt within the operational area or within another operational area of the institution where such re-adaptation is feasible within one year's time. Further, UW-Parkside shall devote its best efforts to insure that such staff members laid off shall be made aware of openings within the UW System.

9.08 REAPPOINTMENT RIGHTS. In compliance with Section 36.21, Wisconsin Statutes, in cases where layoffs occur for reasons of budget or program, no person may be employed in that operational area at that institution within three years to perform reasonably comparable duties to those of the staff member laid off without first offering the laid-off staff member on layoff status reappointment without loss of rights or status. In addition, an institution shall continue for three years from the date of layoff to offer the reappointment rights stated in this section to a laid-off fixed-term appointee whose

appointment has expired under its own terms if such appointee notifies the chancellor or his/her designee by December 1 of each year, or more frequently if institutional policies and procedures require, as to his/her location, employment status, and desire to pursue reappointment rights. Failure to provide such notification shall terminate the academic staff member's reappointment rights under this section.

9.09 RETENTION OF SALARY. Any academic staff member reappointed within three years after layoff to reasonably comparable duties within the operational area shall be reappointed with a salary rate at least equivalent to his/her salary rate when laid off, together with such other rights and privileges which may have accrued at that time.

9.10 RIGHTS OF ACADEMIC STAFF MEMBERS ON LAYOFF. An academic staff member on layoff status in accordance with the provisions of this chapter has the re-employment rights guaranteed by UWPA 9.09 and 9.10, and has the following minimal rights:

1. Voluntary participation in fringe benefit programs where eligible.
2. Continued use of campus facilities within priorities established by the indicated units such as:
 - A. The Library.
 - B. The Sports and Activity Center.
 - C. The Parkside Union.
3. Participation in institutional activities such as campus organizations or clubs.

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