

Chapter 110 Layoff of Academic Staff for Reasons of Budget or Program

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110.01 General

As provided in UWS 12.01, budget or program decisions that may result in the layoff of academic staff members shall be discussed by the Chancellor or his/her designee (must be either the Provost or a Vice Chancellor) with the Academic Staff Committee. The discussion, held in closed session, is to review proposed layoff action, determine viable alternatives, and to assure that all applicable policies have been met. This discussion shall include specific information about the college/school/division affected as well as job series and titles so that other alternatives may be considered and/or proper notice periods and mandated order of layoffs can be determined. This consultation shall be held no less than three months prior to the official written notice of the layoff decision.

(AS Doc 60R1, 4/11)

110.02 Time Limitations

The time limits stated in UWS 12.05 as a specified number of days shall be considered to be working days under these policies and procedures.

110.03 Definition

Layoff is the suspension of an academic staff member's employment by the University of Wisconsin- Milwaukee during the appointment period for reasons of budget or program (See UWS 12.01 and 12.02).

110.04 Seniority Policy for Layoff Decisions

Pursuant to UWS 12.03, layoffs of academic staff members with indefinite, probationary or fixed-term appointments shall follow seniority as defined in this section. Seniority shall be calculated based on years, months, and days of service as a member of the academic staff, tenure track faculty, or state classified service at the University of Wisconsin- Milwaukee including approved leaves of absence. Appointments totaling less than 50%, limited term appointments (LTE) or of employees in training shall not accrue seniority. For academic staff members on limited title appointments, seniority shall accumulate in the concurrent academic staff appointment.

110.05 Order of Layoffs for Academic Staff Members with Fixed-term, Probationary, and Indefinite Appointments

If layoffs occur within an operational area and the academic staff members involved do the same or similar work, fixed-term appointees shall be laid off before probationary appointees and probationary appointees shall be laid off before indefinite appointees. Seniority shall determine the order of layoff within each type of appointment. Exceptions to the order of layoff as defined in this section shall be recommended to the Chancellor by the dean or division head only to maintain specific expertise or to maintain established objectives within the operational area defined in UWM 104.05. The Chancellor shall solicit advice of the Academic Staff Committee prior to the decision on exceptions. Such advice shall be given within 20 working days of receipt of the Chancellor's request.

110.06 Review and Hearing for Layoff Decisions--Indefinite, Probationary and Fixed-term Academic Staff Appointments

Academic staff members with fixed-term, probationary, or indefinite appointments shall be given notice in accordance with UWS 12.03 and UWM Chapter 108. An academic staff member who has been given a written notice of layoff may request a hearing regarding that decision in accordance with the UWS 12.05 and 12.06. The request for a hearing shall not delay a layoff. The hearing shall proceed under UWS 12.04-12.06 and UWM Chapter 110.

110.07 Hearing Body

The Hearing and Appeals Committee shall serve as the hearing body as provided in UWS 12.04. On the motion of either party, the Hearing and Appeals Committee may disqualify any one of its members for cause by a majority vote. If any of the members of this hearing body disqualify themselves or are disqualified the hearing body shall select by majority vote, an equal number of replacements from the list established in Article I, Section 2(F) of the Hearing and Appeals Committee Bylaws.

110.08 Legal Counsel

The Chancellor shall provide legal counsel and other assistance for the hearing body as provided in UWS 12.05 (3) (b).

110.09 Hearing for Indefinite Academic Staff Appointments

The hearing shall proceed in accordance with UWS 12.05.
(AS Doc 60R1, 4/11)

110.10 Hearing for Probationary and Fixed-term Academic Staff Appointments

(1) An academic staff member with a probationary or fixed-term appointment whose position is to be eliminated shall be notified in writing and shall, upon request made within 20 days after such notification, be given a written statement of the reasons for the decision within 15 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 days after receipt of said statement, he or she shall be entitled to a hearing before the hearing body.

(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 days' notice of such hearing. Such hearing shall be held not later than 20 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 layoff or who is a material witness shall not serve on the hearing body.

(2) The academic staff member shall have access to the evidence on which the administration intends to rely to support the decision to layoff and shall be guaranteed the following minimal procedural safeguards at the hearing:

- (a) A right to be heard in his or her defense;
- (b) A right to counsel and/or other representatives, and to offer witnesses;
- (c) A right to confront and cross-examine adverse 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 WI Stats. s. 227.45 (1) to (4);
- (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 (see sub Ch. V of Ch. 19, Stats., Open Meeting Law);
- (h) Adjournments shall be granted to enable either party to investigate evidence as to which a valid claim of surprise is made.

(3) If the institutional policies and procedures provide that the review and hearing be conducted by a committee, the following requirements shall be observed:

(a) The committee may, on motion of either party, disqualify any one of its members for cause by a majority vote. If one or more of the committee members 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 committee requests, the chancellor shall provide legal counsel after consulting with the committee concerning its wishes in this regard. The function of legal counsel

shall be to advise the committee, consult with them on legal matters, and carry out such responsibilities as shall be determined by the committee within the policies and procedures adopted by the institution.

(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 layoff:

- (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 law; or
- (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 were not followed;
 - 2. Available data bearing materially on the quality of the staff member's actual or potential performance were not considered; or
 - 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 layoff. 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 that 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 administration officer for the operational area shall be entitled to present evidence to support the layoff decision, and, thereafter, the staff member may present evidence in rebuttal. Thereafter, on the basis of all the evidence presented, the hearing body shall make its determinations as follows:

- (a) The hearing body shall first consider whether one or more of the above specified factors improperly entered into the decision to layoff. 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 layoff, 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 layoff the particular academic staff member was in accordance with the provisions of s. UWS 12.02.

(7) In determining whether a bona fide budgetary or program reason existed for layoff of the appointment 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 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 member should be laid off, and notify the hearing body and academic staff member of the decision. This decision shall be deemed final unless the board, upon request of the academic staff member, grants review based on the record.

(AS Doc 60R1, 4/11)

110.11 Recommendations

The hearing body shall send to the Chancellor and to the academic staff member concerned, as soon as practicable after the conclusion of the hearing, a verbatim record of the testimony and a copy of its report, findings and recommendations. The Chancellor shall review the matter, decide whether the staff member should be laid off, and issue a written decision to the hearing body and academic staff member within 20 working days of receipt of the hearing body's recommendations. The Chancellor's decision is final unless the Board of Regents, upon request of an academic staff member with indefinite status, grants review based on the record per UWS 12.05 (8).

(AS Doc 60R1, 4/11)

110.12 Layoff Conditions

Conditions governing the status of laid off academic staff members will be in accordance with UWS 12.07.

(AS Doc 60R1, 4/11)

110.13 Alternative Employment and Financial Assistance

Alternative employment may be made available in accordance with UWS 12.08. University of Wisconsin–Milwaukee shall devote its best efforts to providing financial assistance for academic staff members who have indefinite appointments and who are to be laid off, per UWS 12.08. University of Wisconsin—Milwaukee will also help them to readapt to positions within the operational area or another operational area, if such adaptation is feasible within one year's time, per UWS 12.08.

(AS Doc 60R1, 4/11)

110.14 Reappointment Rights

A laid off academic staff member shall have reappointment rights pursuant to UWS 12.09. Within an operational area in which more than one academic staff member has been laid off, the order of recall shall be indefinite, probationary, and fixed-term appointees. The senior appointees within each type of appointment shall be recalled first in order of seniority.

(AS Doc 60R1, 4/11)

110.15 Retention of Salary

Academic staff members reappointed to a position with reasonably comparable duties (i.e. the same salary range of the UW System Academic Staff Title and Compensation Plan) shall be paid at least salary equal to that in effect at the time of layoff plus the annual across-the-board adjustment(s) for academic staff that have accrued during the staff member's layoff on the University of Wisconsin - Milwaukee campus.

(AS Doc 60R1, 4/11)

110.16 Rights of Academic Staff Members on Layoff

Laid off academic staff members have rights as defined in UWS 12.11. These rights include the same privileges accorded an employed academic staff member concerning the use of University of Wisconsin-Milwaukee facilities and office space if available.

(AS Doc 60R1, 4/11)