

## Changes to ASPP Chapters 3 and 5

### CHAPTER 3 NONRENEWAL OF FIXED-TERM RENEWABLE APPOINTMENTS

#### 3.04 Employer's Responsibility in Cases of Nonrenewal for Performance

An employer (e.g., immediate supervisor, principal investigator, department chair or unit head) is responsible for clearly communicating to each employee under his or her supervision what the employee's duties are and how the performance of those duties will be evaluated. Before ending an appointment for unsatisfactory performance, the employer must inform the employee in writing about areas of performance deficiency and must make efforts to work with the employee to improve performance to a satisfactory level (see ASPP 10, Performance Reviews). Some examples of unsatisfactory performance include insufficiently productive or timely output, insufficient creative effort, or failure to communicate effectively with individuals or groups important to the work processes.

Lapses in performance may also result from a disability or personal problem. If the employer knows, or has reason to believe, that either of these is or could be a factor affecting the employee's performance, the employer shall consult with campus resources such as the Office for Equity and Diversity, **the Office of Compliance**, the Employee Assistance Office, the Ombuds Office, and the ~~Academic Personnel~~ **Office of Human Resources** before proceeding.

#### 3.05 Notice

The employee shall be given a written notice of nonrenewal, including a statement of the reasons, notification of his or her right to appeal, and a copy of ASPP 3 and 9, in advance of the expiration of the current appointment in accordance with the table below. Prior to issuing the nonrenewal notice, the employing unit must obtain the approval of the dean, director, or designee. Copies of the nonrenewal notice shall be sent to the department chair or unit head, the dean or director, and the ~~Academic Personnel~~ **Office of Human Resources**. If necessary, the appointment shall be extended to provide the required minimum nonrenewal notice. If the minimum notice period cannot be provided, policies pertaining to layoff apply (see ASPP 5).

Minimum Notice Period for  
Nonrenewal of Fixed-Term Renewable Appointments

Years of UW-Madison Academic Staff Service*	Minimum Notice Period in Months
Fewer than 2	3
At least 2 but fewer than 6	6
At least 6 but fewer than 10	9
10 or more	12

NOTE: Rolling-horizon appointments require additional action and may require additional notice (see ASPP 2.01.A.2).

\*Academic staff service is defined as continuous years of paid UW-Madison academic staff employment without regard to percent of appointment. For purposes of determining the required notice periods, an appointment of one or both semesters of an academic year shall count as one year of service. A leave of absence of any length or a break in academic staff service of three years or less shall not result in loss of prior years' employment credit.

### 3.06 Referral Priority

Referral priority entitles a non-renewed academic staff member to be considered for academic staff positions for which he or she is qualified prior to open recruitment. Fixed-term academic staff members with six or more years of academic staff service at the University of Wisconsin-Madison who are non-renewed for funding loss or a budget or program decision shall be eligible for referral priority from notification of nonrenewal until the end of the appointment. An academic staff member with referral priority may be hired without open recruitment at the discretion of the department or unit responsible for the position.

To initiate and maintain referral priority, the non-renewed academic staff member must register with the ~~Academic Personnel Office~~ of Human Resources and notify that office of changes of address or employment status. Referral priority ends automatically when a staff member accepts an alternative appointment that is not temporary, fails to accept an appropriate alternative appointment with any employer, resigns, or fails to notify the ~~Academic Personnel Office~~ of Human Resources of changes of address or employment status. The primary test in the determination of appropriate alternative appointment is not salary level but the comparability of the qualifications necessary and skill level required.

### 3.08 Appeal Process

- A. *Review by the Dean or Director.* The academic staff member must submit a written request for review of the nonrenewal decision to the dean, director or designee, and send a copy to the Secretary of the Academic Staff office within 20 working days of receipt of the non-renewal notice. The request must include a statement of facts and circumstances supporting the request. The academic staff member is entitled to request a meeting with the dean, director or designee, who shall meet with the academic staff member if requested to do so. The dean, director or designee shall conduct an objective review of all pertinent facts and circumstances and shall notify the academic staff member, the department or unit, the Secretary of the Academic Staff office and the Academic Personnel Office of Human Resources of his or her decision in writing within 20 working days of receipt of the written request for review. If there is no response by the dean or director to the written request for a review within the designated time period, the employee can appeal to the Academic Staff Appeals Committee within 20 working days of the expiration of the designated period.
- B. *Appeal to the Academic Staff Appeals Committee.* The academic staff member shall have 20 working days from receipt of the dean or director's decision to file an appeal with the Secretary of the Academic Staff office, which will forward the files to the Academic Staff Appeals Committee and the dean or director, with a copy to the Academic Personnel Office of Human Resources, within five working days. The dean or director shall provide the employing department and employee's supervisor with a copy of the academic staff member's appeal. The Academic Staff Appeals Committee shall conduct a review in accordance with ASPP 9.
1. *Access to the Evidence.* The appellant shall have the right to review all evidence the employer used to make the nonrenewal decision. All additional information the employer uses or plans to use to support the decision shall also be provided to the appellant in a reasonable time prior to a review. Likewise, the employer shall have the right to review all materials to be presented by the appellant. The exchange shall take place within a reasonable time prior to a review.
  2. *Burden.* The employee has the burden to show by a preponderance of the evidence that there are no valid grounds for nonrenewal (see ASPP 3.01); or that another academic staff member should have been non-renewed instead; or that the nonrenewal is arbitrary, capricious, for reasons prohibited by law, or in violation of ASPP when the alleged violation is substantive enough to influence the decision under review.
  3. *Notification and Disposition.* The Academic Staff Appeals Committee shall forward its findings of fact with a recommendation to the chancellor or designee and shall send a copy to the employee, the department chair or unit head, the dean or director, and the Academic Personnel Office of Human Resources. Within 30 working days of receipt of the Committee's recommendation, the chancellor or designee shall

implement the recommendation or give the appellant and the Committee written reasons for any decision to modify the recommendation. The employee, ~~the department chair or unit head~~, the dean or director, and the Committee shall be notified of the decision of the chancellor or designee, which is final. If the decision of the chancellor or designee has not been issued within 30 working days, the recommendation of the Academic Staff Appeals Committee becomes final.

- C. *Time Limits.* Steps in the appeal process must be initiated and completed within the designated time periods except when modified by mutual consent. If the employee fails to initiate the next step in the appeal process within the designated time period, the appeal will be considered resolved by the decision at the last completed step.
- D. *Representation.* The presence of a representative or other third party designated by the employee is permitted at any stage during the appeal process.

## **CHAPTER 5 LAYOFF FOR REASONS OF BUDGET OR PROGRAM**

### **5.03 Approval of a Layoff Decision**

A layoff decision requires prior approval. The supervisor must submit a written statement describing the facts and circumstances justifying the layoff. This statement must be approved by the employing unit and dean, director, or designee and the ~~Academic Personnel Office~~ of Human Resources. Upon receipt of this approval, the employing unit shall notify the employee in writing of the layoff (see ASPP 5.04.A).

If a proposed layoff is based on a substantial redirection of program activity without significant funding loss, the chancellor or designee may establish, at his or her discretion, an ad hoc committee to review the layoff proposal. Affected employees will be notified whether or not there will be a review. The ad hoc committee shall include academic staff employed within the program or activity that will be affected by the layoff decision. This committee will make a recommendation to the chancellor or designee, who must approve the recommendation before the layoff notice can be issued.

## 5.04 Notice

- A. *Written Notice.* An academic staff member with a fixed-term or probationary appointment shall be given written notice of layoff by the immediate supervisor, principal investigator, department chair or unit head only after approval of the layoff decision by the dean, director, or designee and the ~~Academic Personnel Office~~ of Human Resources. At the same time, copies of this notice shall be sent to the department chair or unit head, the dean or director, and the ~~Academic Personnel Office~~ of Human Resources. An academic staff member with an indefinite appointment shall be given written notice by the dean or director. The written notice shall inform the employee of the reasons for the layoff, the effective date of the layoff, and his or her appeal rights, and shall include a copy of ASPP 5 and 9.
- B. *Minimum Notice Period.*

### Minimum Notice Period for Layoff of Fixed-Term Renewable and Probationary Appointees

Years of Academic Staff Service	Minimum Layoff Notice Period in Months For Funding Loss	Minimum Layoff Notice Period in Months For Budget or Program Decision
Fewer than 2	1	2
At least 2 but fewer than 6	2	3
At least 6 but fewer than 10	3	5
10 or more	4	6

### Minimum Notice Period for Layoff of Rolling-Horizon and Indefinite Appointees

Type of Appointment	Minimum Layoff Notice Period in Months For Funding Loss	Minimum Layoff Notice Period in Months For Budget or Program Decision
Rolling-Horizon	6	12
Indefinite	24	24

In the case of a financial emergency as defined in UWS 5.02, which can be declared only by the Board of Regents, the minimum layoff notice period for indefinite appointees may be reduced to 12 months and the minimum layoff notice period for fixed-term rolling-horizon appointees being laid off for budget or program reasons may be reduced to six months.

When two or more rolling-horizon appointees in the same operational area will be laid off, and if more than the minimum required layoff notice periods can be given, employees holding longer-term rolling-horizon appointments shall receive notice periods equal to or longer than those given to employees with shorter-term rolling-horizon appointments.

## 5.06 Appeal Process

- A. *Request for Review by the Dean or Director.* The academic staff member must submit a written request for review of a layoff decision to the dean or director **and send a copy to the Secretary of the Academic Staff office** within 20 working days of receipt of the written notice of layoff. The request must include a statement of facts and circumstances supporting the request.
- B. *Review by the Dean or Director.* When a review is requested, the dean, director, or designee shall meet with the academic staff member, who shall have an opportunity to present facts and circumstances concerning the layoff. The dean, director, or designee shall conduct an objective review of all pertinent facts and circumstances and notify the employee, the department chair or unit head, ~~and~~ the Secretary of the Academic Staff, and **the Office of Human Resources** of his or her decision in writing within 20 working days following the meeting. If there is no decision by the dean, director, or designee regarding the written request for review within the designated time period, the employee can appeal to the Academic Staff Appeals Committee within 20 working days of the expiration of the designated period.
- C. *Appeal to the Academic Staff Appeals Committee.* The academic staff member shall have 20 working days from receipt of the dean, director, or designee's decision to file **the a** written appeal with the Secretary of the Academic Staff, which will forward the files to the Academic Staff Appeals Committee, the ~~Academic Personnel~~ **Office of Human Resources**, and the dean, director, or designee within five working days. The dean, director, or designee shall provide the employing department and employee's supervisor with a copy of the academic staff member's appeal. The Academic Staff Appeals Committee shall conduct a hearing in accordance with ASPP 9.
- D. *Access to the Evidence.* The appellant shall have the right to review all evidence the employer used to make the layoff decision. All additional information the employer uses or plans to use to support the decision shall also be provided to the appellant in a reasonable time prior to a hearing. Likewise, the employer shall have the right to review all materials to be presented by the appellant. The exchange shall take place within a reasonable time prior to a hearing.
- E. *Burden.*
1. *Fixed-Term Appointments.* For layoffs of fixed-term appointees, the employer's burden shall be to show by a preponderance of the evidence (i) that the layoff is in fact the result of funding loss or a budget or program decision requiring program discontinuance, curtailment, modification, or redirection, (ii) that another academic staff member should not have been laid off instead, and (iii) that the layoff is not arbitrary, capricious, for reasons prohibited by law, or in violation of ASPP.
  2. *Indefinite Appointments.* For layoffs of indefinite appointees, refer to UWS 12.05(5) for details about the requirement to establish a prima facie case.

- F. *Notification and Disposition.* The Academic Staff Appeals Committee shall forward its findings of fact with a recommendation to the chancellor or designee and shall send a copy to the ~~Academic Personnel Office~~ of Human Resources, dean or director, ~~department chair or unit head~~, and employee. Within 30 working days of receipt of the Committee's recommendation, the chancellor or designee shall implement the recommendation or give the appellant and the Committee written reasons for any decision to modify the recommendation. The employee, ~~department chair or unit head~~, dean or director, ~~Academic Personnel Office~~ of Human Resources, and the Committee shall be notified of the decision of the chancellor or designee, which is final. If the decision of the chancellor or designee has not been issued within 30 working days, the recommendation of the Academic Staff Appeals Committee becomes final, except that an indefinite appointee may request a review by the Board of Regents under UWS 12.05(8).
- G. *Time Limits.* Steps in the appeal process must be initiated and completed within the designated time periods except when modified by mutual consent. If the employee fails to initiate the next step in the appeal process within the designated time period, the appeal will be considered resolved by the decision at the last completed step.
- H. *Representation.* The presence of a representative or other third party designated by the employee is permitted at any stage during the appeal process.

### **5.08 Layoff Status Defined**

Layoff status shall be defined as the three-year period starting with the effective date of layoff. To initiate layoff status, the individual must register with the ~~Academic Personnel Office~~ of Human Resources. To maintain layoff status, the individual shall notify that office at least quarterly regarding employment status, or whenever a change of address or employment status occurs. Layoff status ends automatically when an individual accepts an alternative appointment that is not temporary, fails to accept an appropriate alternative appointment, resigns, or fails to notify the ~~Academic Personnel Office~~ of Human Resources of changes of address or employment status. The primary test in the determination of appropriate alternative appointment is not salary level but comparability of the qualifications necessary and skill level required.

### **5.09 Reappointment Rights and Referral Priority**

Pursuant to Wis. Stats. 36.21 and UWS 12.09, 12.10 and 12.11, in an operational area where layoffs have occurred in the past three years, no person may be employed to perform reasonably comparable duties to those of the staff member laid off without first offering an appointment to the staff member on layoff status without loss of rights or status including salary rate. The head of each operational area is responsible for notifying laid-off academic staff members of their right to reappointment within that operational area. To ensure compliance, a record of laid-off academic staff members by operational area shall be kept in the ~~Academic Personnel Office~~ of Human Resources.

The UW-Madison shall devote its best efforts to securing alternative appointments in positions for which staff laid off under this chapter are qualified. The head of the operational area responsible for the layoff is encouraged to identify and inform the employee of any comparable positions in related operational areas. An academic staff member on layoff status may be hired without open recruitment into an academic staff position in another unit at the discretion of that department or unit. Units are encouraged to provide released time to academic staff members being laid off for such purposes as retraining, job interviews, career counseling, or job searches. Members of the academic staff on layoff status or on notice of layoff shall have referral priority rights to all academic staff vacancies for which they may reasonably qualify. Such referrals shall be made by the ~~Academic Personnel Office~~ **of Human Resources** prior to posting of position vacancies. Prospective employers must consider these persons before consideration of other referrals, if any, and before the commencement of open recruiting, and upon request must give written reasons to any referred academic staff member on layoff status to whom employment is refused.