

## Chapter UWS 12

### LAYOFF OF ACADEMIC STAFF FOR REASONS OF BUDGET OR PROGRAM

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**UWS 12.01 General.** Notwithstanding s. 36.15, Stats., and chs. UWS 10 and 11, the chancellor of each institution or designee may layoff a member of the academic staff holding an indefinite appointment, or may layoff 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 program decision requiring program discontinuance, curtailment, modification, or redirection. Consistent with the limitation of academic staff appointments to an operational area, each institution shall establish policies and procedures which will ensure careful consideration of layoff decisions for reasons of budget or program. The institutional policies and procedures should recognize the constraints imposed on institutional response to an unanticipated cancellation of a contract or grant or to an unanticipated decline in an income account supporting a particular activity. The institution should take such constraints into account in designing the nature and timing of the consultation appropriate to such circumstances. The institution's policies and procedures may provide as needed the alternative forms of consultation appropriate to differences in the sources of funds for various programs or activities, or differences in the timing of information concerning a decline in resources for particular programs or activities. Program decisions made pursuant to a change in the level of resources available for a particular project shall be discussed by the chancellor or designee with such committee, committees, or committee representatives as may be specified by institutional policies and procedures as appropriate for such purposes. Decisions affecting individuals shall be communicated to the affected persons by the chancellor or designee together with a description of the change in available resources which has required the layoff decision. Nonrenewal of a probationary academic staff appointment under s. UWS 10.04, or a fixed term appointment, even if for financial reasons, is not a layoff for reasons of program or budget.

**History:** Cr. Register, October, 1975, No. 238, eff. 11-1-75.

**UWS 12.02 Layoff.** For the purpose of this chapter, "lay-off" is the suspension of an academic staff member's employment by the University of Wisconsin System during the appointment period, for reasons of budget or program. A laid-off academic staff member retains the rights specified in ss. UWS 12.07 through 12.11, inclusive. For the purposes of s. 36.21, Stats., termination occurs at the time of layoff.

**History:** Cr. Register, October, 1975, No. 238, eff. 11-1-75; 2015 Wis. Act 330 s. 20: am. Register April 2016 No. 724, eff. 5-1-16.

**UWS 12.03 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. 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 s. UWS 10.05 should be used, unless there are compelling reasons to the contrary (e.g., almost immediate cutoff of funds), for layoff of probationary and fixed term appointments under this chapter. Indefinite appointees shall have 12 months' notice of layoff for reasons of budget or program, unless there are compelling reasons to the contrary.

**History:** Cr. Register, October, 1975, No. 238, eff. 11-1-75.

**UWS 12.04 Hearing body.** The chancellor of each institution shall provide for a hearing body for the purposes of this chapter. Throughout this chapter the term "hearing body" is used to indicate either a hearing committee or a hearing examiner as designated in the institutional procedures. This hearing body shall operate as the hearing agent for the chancellor pursuant to s. 227.46 (4), Stats., 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 findings of fact and decision to the chancellor.

**History:** Cr. Register, October, 1975, No. 238, eff. 11-1-75; correction made under s. 13.93 (2m) (b) 7., Stats., Register, June, 1995, No. 474; correction made under s. 13.93 (2m) (b) 7., Stats., Register May 2007 No. 617.

**UWS 12.05 Review and hearing for indefinite 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 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. 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 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 s. 227.45 (1) to (4), Stats.;

(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 subch. 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 evi-

dence 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.

**History:** Cr. Register, October, 1975, No. 238, eff. 11-1-75, correction in (2) (f), made under s. 13.93 (2m) (b) 7., Stats., Register, June, 1995, No. 474; correction in (2) (g) made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2001, No. 544; correction in (1) (f) made under s. 13.93 (2m) (b) 7., Stats., Register May 2007 No. 617.

**UWS 12.06 Review for fixed term and probationary academic staff members.** Each institution shall establish procedures for an impartial review of the layoffs for reasons of budget or program of academic staff members with fixed term and probationary appointments. Nonrenewal is not a layoff under this section.

**History:** Cr. Register, October, 1975, No. 238, eff. 11-1-75.

**UWS 12.07 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 appointee, 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 3 years lapses.

**History:** Cr. Register, October, 1975, No. 238, eff. 11-1-75.

**UWS 12.08 Alternative employment.** Each institution 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. Each institution should seek to provide financial assistance for academic staff members who have indefinite appointments and who are to be laid off to readapt within the operational area or within another operational area of the institution where such readaptation is feasible within one year's time. Further, the University of Wisconsin System shall devote its best efforts to insure that such staff members laid off in any institution shall be made aware of openings within the system.

**History:** Cr. Register, October, 1975, No. 238, eff. 11-1-75; 2015 Wis. Act 330 s. 20: am. Register April 2016 No. 724, eff. 5-1-16.

**UWS 12.09 Reappointment rights.** Each institution shall establish administrative procedures and policies to insure compliance with s. 36.21, Stats., in providing that where layoffs occur for reasons of budget or program, no person may be employed in that operational area at that institution within 3 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 addi-

tion, an institution shall continue for 3 years from 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 notified 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.

**History:** Cr. Register, October, 1975, No. 238, eff. 11-1-75.

**UWS 12.10 Retention of salary.** Any academic staff member reappointed within 3 years after layoff to reasonably comparable duties within the operational area shall be reappointed with a salary rate at least equivalent to the salary rate when laid off, together with such other rights and privileges which may have accrued at that time.

**History:** Cr. Register, October, 1975, No. 238, eff. 11-1-75.

**UWS 12.11 Rights of academic staff members on layoff.** An academic staff member on layoff status in accord with the provisions of this chapter has the reemployment rights guaranteed by s. UWS 12.09 or 12.10, and has the following minimal rights:

- (1) Such voluntary participation in fringe benefit programs as is permitted by institutional policies;
- (2) Such continued use of campus facilities as is allowed by policies and procedures established by the institution; and
- (3) Such participation in institutional activities as is allowed by the policies and procedures established by the institution.

**History:** Cr. Register, October, 1975, No. 238, eff. 11-1-75.