

Involuntary Leave Without Pay / Reduction in Force

I. POLICY STATEMENT

The College President may terminate employment or may require any employee or class of employees to take involuntary leave without pay at any time because of: 1) a financial exigency; or 2) a program change for institutional reasons.

II. DEFINITIONS

1. *Employee* means full-time and permanent part-time employees, employees possessing at least one year of full-time or permanent part-time continuous service or employees who are actively employed or on authorized leave of absence.
2. *Financial Exigency* means any decrease in the College's financial resources that are brought about by decrease in enrollment, decrease in funding from any source (federal, state, local, institutional, etc.) or by other action or events requiring the immediate expenditure or diversion of College resources that prevent or inhibit the College's ability to continue the employment or level or the employee's compensation or a class of employees and cause a need for reduction in force and/or involuntary leave without pay.
3. *Involuntary Leave without Pay* means a period of mandatory separation from work during which an employee may not take or use any form of paid leave. All state-mandated benefits shall continue to accrue during any period of leave without pay.
4. *Program Change* means any elimination, curtailment or reorganization of an educational offering or support department which may or may not be related to a financial exigency.
5. *Reduction in Force* means the termination of an employee during a contract period as a result of financial exigency or program change. A non-renewal is not considered a reduction in force under this policy; see Employee Demotion, Dismissal and Non-Renewal Policy.
6. *Termination* means the cessation of employment during the employment contract period due to a reduction in force. The College does not issue continuing contracts; therefore, the non-reappointment of an employee on a specified term appointment (i.e., annual, semester, etc.) is not a termination and no objection to the non-reappointment may be filed under this Policy. A non-renewal is not considered a termination under this policy; see Employee Demotion, Dismissal and Non-Renewal Policy.

III. INVOLUNTARY LEAVE WITHOUT PAY/REDUCTION IN FORCE

1. **General Criteria for the President's Decision**

All decisions made under this Policy will take into consideration the needs of the population being served with respect to the College's mission and goals while attempting to minimize the level of impact and quality of services provided. Responsibility will rest with the President working collaboratively with senior level administrators to determine the employee(s) affected by involuntary leave without pay or reduction in force based on recommendations from deans, departments heads and/or other management personnel associated with the departments where proposed actions will be implemented.

Further, the President will consider relevant factors when considering a reduction in force or, if applicable, involuntary leave without pay, which may include, but are not limited to:

- Written recommendations regarding staffing needs from supervisors;
- Specific and overall program enrollment history and needs;
- Source of available funds and applicable restrictions;
- Other beneficial service by an employee to the College;
- Length of service in the North Carolina Community College System with a higher priority being given to the length of service for the College; and
- Employee performance evaluations.

These factors are not listed in any particular order or rank.

2. President's Decision and Notice to Affected Employees

Once the President makes his/her decision, he/she shall give written notice of termination and/or involuntary leave without pay to each affected employee. The written notice will be given as soon as practicable, and in any event, no less than thirty (30) days prior to the effective date of termination and no less than fourteen (14) days prior to a period of involuntary leave without pay. The written notice shall include: 1) a statement of condition requiring termination and/or involuntary leave without pay; 2) a general description of the procedures followed in making the decision; and 3) a copy of this Policy or directions on how an employee may find this policy on the College's intranet site. The President shall also send a copy of the notice to the Chair of the Board ("Chair").

3. Request for an Appeal Following Termination or Involuntary Leave Without Pay

Within five (5) business days after receiving a notice of termination from the President, an affected employee may request an appeal to the Board. Such appeals may be held solely to determine whether the decision to terminate through a reduction in force or place the employee on involuntary leave without pay was arbitrary, capricious, discriminatory or otherwise a violation of this policy.

The employee's request must be in writing and delivered to the Director of Human Resources who will forward the request to the Chair and copy the President. The written notice must specify the grounds on which it is contended that the decision was arbitrary, capricious, discriminatory or a violation of this policy and must include a short, plain statement of the facts that the employee believes supports the contention.

It is the Chair's discretion whether the entire Board or the Board's Personnel Committee ("Committee") shall hear the employee's appeal. If the Personnel Committee is appointed to hear the matter, the Committee shall follow the same procedures as the Board.

Unless the employee agrees otherwise, the appeal shall be held within twenty (20) business days after the request is received by the Chair. The employee will receive notice of the date, time and location for the appeal.

4. Appeal Hearing Procedure

The appeal hearing shall be conducted informally and privately with only the members of the Board or Personnel Committee, the employee, the President and/or other College administrators as determined by the President, and relevant witnesses. The employee, the Board/Committee and the President may also be represented by legal counsel. The Board's legal counsel shall act as a procedural officer during the hearing and give advice to the Board regarding necessary rulings

and matters of due process. A quorum for purposes of the hearing is a simple majority of the Board or Committee's total membership. A Board member who has a significant conflict of interest or bias should disqualify himself/herself or be excused by the Board's adoption of a motion to disqualify him/her. If the employee asks for a transcript of the proceeding and the Chair approves the request, the transcript shall be made and given to the employee with a bill for the cost of preparing it.

Strict rules of evidence or procedure do not apply to appeal hearings before the Board. The Board or Committee may consider any and all evidence that it determines to be fair and reliable. All witnesses may be questioned by the Board members, the employee, and the President and/or other College administrators as determined by the President. The Board will be the sole judge of the weight given to specific evidence and the credibility of all witnesses. Except as herein provided, the conduct of the hearing shall be under the Chair's control, or in the case that the appeal is being heard by the Committee, the Committee's chair.

The hearing shall begin with the employee's presentation of contentions, limited to those grounds specified in the request for the appeal and supported by such proof the employee desires to offer. When this presentation is concluded, the President or his/her designee may then present, in rebuttal of the employee's contention or in general support of the decision to terminate, such testimonial or documentary evidence as he/she desires to offer including his/her own testimony. The burden is on the employee to satisfy the Board by clear and convincing evidence that the decision to terminate was arbitrary or capricious or discriminatory.

After the President and/or other College administrators as determined by the President complete his/her presentation, the Board shall consider the matter in closed session.

In cases where the Personnel Committee presides, the Committee Chair shall submit a recommendation and findings to the Board. The recommendation shall be to uphold, reverse or modify the President's decision. The Board may determine to rehear the matter, accept additional evidence from the employee or President with the opportunity for the opposing side to respond, or it may decide to make its final decision based solely on the written recommendation and findings of the Committee. The Board may accept, reject or modify the Committee's decision. In all cases, if the Board determines that the employee's contention has not been established, it shall by a simple, unelaborated written statement so notify the employee and the President. If the Board determines that the employee's contention has been established, it shall notify him/her and the President by a written notice that states what corrective action must be taken.

5. Exclusive Remedy

The rights and remedies set forth herein constitute the sole and exclusive procedure in the event of a termination by reduction in force or involuntary leave without pay. No other personnel action or grievance may be asserted or considered under this Policy.

Employees classified as permanent part-time prior to May 12, 2009 who currently work at least twenty hours or up to twenty-eight hours per week shall earn annual and sick leave on a pro-rated basis. No new assignments will be made under this classification after May 12, 2009.

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