

Fairmont State University Board of Governors
POLICY NO. 65

TITLE: Layoffs and Reductions in Force

EFFECTIVE DATE: Upon passage by the Board, February 15, 2018

GENERAL

Financial, legal or operational conditions may arise that require a reduction in the institution's labor budget and/or personnel complement.

Purpose

The purpose of this policy is to establish and define the layoff and reduction in force (RIF) procedures for regular (.53FTE and above) Fairmont State University employees, whether Faculty or Staff. Such actions may be taken in response to 1) loss of funding due to the end of a program or grant or other funding; 2) when the University has determined a position, program or function is no longer needed or viable; 3) when a financial condition or exigency (as determined by the Board of Governors upon the President's recommendation) necessitates a reduction in the labor budget.

Scope and Applicability

This policy shall apply to all regular full-time (.53 FTE and above) employees and positions, to include faculty, Faculty Equivalent/Academic Professional (FEAP) and staff employees.

For the purposes and intent of this policy, a mandated and equitably applied FTE and commensurate salary reduction for an employee and/or a position is not considered a reduction in force. The University may, at its sole discretion, opt to utilize an FTE/salary reduction in lieu of or in addition to a layoff or reduction in force.

This policy is intended to apply only to full-time regular employees, i.e., those at .53 FTE and above. Employees at less than .53 FTE, i.e., part-time regular ("1039") or temporary, casual or project employees are not included in this policy, as they are considered "at-will" employees whose positions may be abolished at any time if deemed necessary by the appropriate institutional authority.

Layoffs

Layoffs may occur in either faculty or staff positions/units. For layoffs due to lack of funds or work, abolishment of a position, material changes in duties in a position/positions or organization/work unit or the termination/abolishment of a program:

1. The University may lay off the incumbent in the position being eliminated.
2. The University may offer a laid-off employee another, vacant position but is legally under no obligation to do so. If another position is offered, it will be compensated at the classification and pay range appropriate to the duties of the offered position, taking into account the experience and skill set of the employee. Appropriate compensation will be determined by Human Resources. If the employee declines the offer, the layoff will continue; no further obligation to the employee accrues to the University in regard to layoff.
3. In the case of abolishment of some but not all of the positions of the same job title or in the same job unit, consideration shall be given to the following factors to determine whom to lay off: (a) an employee's documented quality of work performance as demonstrated in performance evaluations or records (including, but not limited to, disciplinary records and letters to the employee, documented counseling sessions, attendance, and behavior); (b) seniority at FSU; and (c) job suitability and the employee's skill set.
4. If after considering these factors the University elects to lay off a regular employee, the University may offer the employee, at the University's discretion, a monetary severance package of not less than two pay periods and not more than the employee's current base salary for one fiscal year. In no case is the University obligated to offer such a severance package.
5. An employee's acceptance of a severance package in any amount ends his/her employment; however, those employees so terminated may be considered for future employment with Fairmont State University if they have had good performance evaluations while employed with FSU and if they have the requisite skill sets, experience and competencies to do the job. Employees wishing to be reemployed must apply and participate in the standard competitive selection process, as there are no automatic recall rights following layoff.
6. For the purposes of this policy, seniority is the length of continuous service at Fairmont State University only and represents only one factor in decision-making regarding layoff. A more senior employee is one with longer service at the University than another employee in the same job title who is also subject to layoff.

Benefits

Employees laid off under this policy will be treated as terminated for purposes not involving misconduct on the part of the employee and will be treated as such under all applicable state and federal rules, laws and regulations.

Notice

A notice of intent to reduce the workforce will be sent to affected employees as soon as practical after a determination has been made that a reduction is necessary. The employee(s) so identified will be provided a written notice of layoff (including the reasons for the layoff), which will include the effective date of the layoff and separation paperwork to be completed. The University designee in charge of the layoff will schedule a meeting with affected employees to answer employee questions and concerns prior to the processing of an layoff actions.

The University will use its best efforts to provide at least a four-week notice of any layoff. The University may, at its sole discretion, choose to provide pay of up to four weeks in lieu of notice, but is under no obligation to do so.

REDUCTION IN FORCE—FACULTY

It shall be the policy of the Board of Governors to undertake reductions in the faculty workforce or personnel complement in a consistent and equitable manner. Following the decision that a financial or other condition necessitating a reduction exists, the President shall undertake program/curriculum reviews to consider pertinent program/curriculum or administrative information. The President may recommend to the Board of Governors the elimination or reduction of programs/curricula deemed appropriate, given financial and enrollment considerations, and in the best interest of the University in general. The primary consideration in any resulting decision to eliminate positions and to reassign or reduce the number of affected faculty positions and personnel will be the preservation of the quality and effectiveness of the University's programs and overall mission. A reasonable reduction in the number of hours an employee works (FTE) is NOT considered a reduction in force and may be utilized by the University as a cost-saving measure in lieu of layoffs or reduction in force.

Basis for Elimination of Faculty Positions: Recommendations by the President to the Board of Governors concerning the elimination of any faculty position will be made on the basis of need within each discipline, as defined by the President after consultation with the Chief Academic Officer/Provost, the Deans and department chairs. For purposes of a reduction in force, FEAPs (Faculty-Equivalent Academic Professionals) will be considered faculty.

Elimination of Positions with Equal Rank in Same Discipline/Department: In the event all other factors are considered to be equal and a choice must be made concerning the elimination of the position of one of two or more faculty members holding the same rank and teaching the same discipline, the faculty member with the greater seniority will be retained. Also, in the event of a conflict between rank and seniority, such as when an assistant professor has substantially more seniority than his or her equally qualified counterpart who is an associate professor, the department chair, dean and the chief academic officer will jointly review the annual evaluations of both faculty members for the previous three years, as well as any other

relevant data, and make a recommendation to the President concerning which of the positions better serves the vital interests of the University.

Order for Elimination of Faculty Positions: Non-tenured faculty members within the discipline to be reduced will be terminated prior to the termination of the employment of tenured faculty members. Employment terminations of faculty members will generally follow the order specified below unless there is an identified need to retain faculty members who are deemed to be of key importance to a particular program:

Non-Tenured:

1. Adjunct Faculty
2. Lecturer and Temporary Faculty
3. Instructor
4. Assistant Professor
5. Associate Professor
6. Associate Professor/Senior
7. Professor
8. Professor/Senior

Tenured:

9. Assistant Professor
10. Associate Professor
11. Associate Professor/Senior
12. Professor
13. Professor/Senior

President's Recommendation: In addition to recommendations made in response to a financial condition necessitating a reduction in force, the President may recommend the termination of the employment of faculty members to the Board of Governors at any time for reason of lack of funds, lack of work, reduction in enrollment or abolition of position. Recommendations of the President to the Board of Governors relative to the termination of the employment of faculty members shall not be made until affected faculty members have been afforded a hearing as provided herein.

Notice and Hearing for Tenured Faculty Members: The President shall provide written notice to any full-time tenured faculty member of the intent to recommend termination of employment based upon a reduction in force. The notice shall contain a description of the reasons for the intended recommendation. The President must make every effort to give as much notice as is practical in light of a financial condition necessitating the reduction in force to each affected faculty member in advance of the effective date of the layoff. However, the

legislative appropriation process or the recognition of a reduction in revenues and the subsequent analysis needed before a decision that a financial condition necessitating a reduction in the institution's labor budget exists may allow little time for formal notice to the employees who are to be laid off. Upon receipt of such notice, the affected faculty member may request a hearing to be conducted by the President or his/her designee. A request for a hearing must be made within five (5) working days (excluding holidays) of a notice of recommended termination.

Among the issues to be considered by the President or designee are:

- a. Ensuring that reductions-in-force do not arbitrarily violate the principles of academic freedom or established law on the basis of individual qualifications such as race, color, gender, sex, sexual orientation, gender identity, gender expression/association, national origin, age, height, weight, religion, creed, genetic information, disability or veteran's status, as identified and defined by relevant and appropriate employment law.
- b. The burden of proof in position or employee termination proceedings rests with the faculty member. The decision that a financial condition necessitating a reduction in the institution's labor budget rests solely within the President's authority and discretion, with the approval of the Board, and is not subject to contest by any faculty member.
- c. The hearing shall be recorded by mechanical means and a written transcript provided to all participating and appropriate parties to be included with the final response as described in (e) below. The strict rules of evidence shall not, however, be applied during the hearing.
- d. Following the hearing, the President or designee shall prepare a written decision upon any matters raised by the faculty member who requested the hearing. The decision shall contain a description of the concerns raised by the faculty member and a response to each thereto. A copy of the decision and transcript shall accompany any subsequent recommendation made by the President to the Board of Governors. These actions will all be completed within ten (10) working days (excluding observed holidays) of the appeal meeting, unless an extension is mutually agreed upon by the faculty member and an approved designee of the University.
- e. Use of the appeal procedure does not commensurately delay the effective date of employment termination of the faculty member.

Non-Tenured Faculty Members: In most instances, a reduction in force of faculty members under fixed-term appointments will be accomplished by non-reappointment rather than by layoff during the term of employment. Non-renewal under these circumstances does not entitle a faculty member to notice and hearing under the terms of this policy. In the event a faculty member serving under a fixed-term appointment is recommended for employment termination during the term of employment because of a reduction in force resulting from a decision that a financial condition necessitating a

reduction in the institution's labor budget, that faculty member shall be entitled to use the appeal procedure described following.

Action by the Board of Governors: Upon receipt of a recommendation by the President, the Board of Governors may approve the termination of employment of a faculty member. No separate hearing shall be afforded to affected faculty members by the Board of Governors. The affected faculty member shall be provided with written notice of the action taken by the Board of Governors and shall also be provided with a copy of the instructions and form for filing an appeal with the West Virginia Public Employees Grievance Board.

Transfers/Refusals to Transfer: In some cases, the President may decide (as a result of the above-described review process), to abolish or combine certain programs or curricula, or to close certain physical campuses or locations, whether for purposes of a financial condition necessitating a reduction in the institution's labor budget or for reorganization or reallocation of resources. In such a case, an employee may be reassigned to a new program, school or physical location. If a faculty member refuses the reassignment to a program, school or physical location, the President may then terminate that faculty member's employment because an equitable offer has been made and refused. The University is then under no further obligation to maintain the employee's job or employment.

New Faculty Positions: New positions will not be created while a financial condition necessitating a reduction in the institution's labor budget is in effect unless a serious disruption in the functioning of the University or a loss of grant funds would otherwise result, as determined within the sole discretion of the President. New academic programs or faculty positions may be created only when it can be demonstrated that these programs or positions will help the University extricate itself from the financial conditions necessitating the reduction in force. Priority for filling these positions will be given to existing, qualified faculty whose positions are slated for abolishment.

Re-employment Following Financially Based or Other Termination: Notwithstanding any other recall rights contained in the policy, in the case of the termination of the employment of a tenured faculty member occupying a permanent faculty position, the position concerned may not be filled by replacement within a period of two (2) years from the effective date of the termination of employment, unless the faculty member has been offered a return to employment in that position and has not accepted the offer within 30 calendar days after the offer is extended.

Termination of Exigency: The conclusion of a financial condition necessitating a reduction in the institution's labor budget will not imply that employment terminations that were made during that period are automatically withdrawn, revoked or otherwise invalid.

Process for Re-employment of Affected Personnel: The following process shall be observed for determination of recall and reassignment of affected faculty members following their termination during a financial condition necessitating a reduction in the institution's labor budget: When filling academic positions, the highest ranking qualified tenured faculty member whose employment has been terminated as part of a financial condition necessitating a reduction in force (and who has not been employed in an academic position elsewhere) shall be offered the position. If the position is refused, it shall be offered to other similarly affected faculty members in rank order. Any refusal of employment by a faculty member shall terminate any further rights to recall. However, a refusal to accept a position shall not preclude a faculty member from making application for other posted position openings. The Office of Human Resources shall notify faculty members whose employment has been terminated of position openings in accordance with the terms of this policy. The notice shall be sent by certified mail to the last known address of the employee. It is the responsibility of the employee on the recall list to notify the Office of Human Resources of any change in address in order to retain recall status.

Assumption of Responsibilities: The duties of a faculty member terminated under the provisions of this policy will be assumed by his/her remaining colleagues in so far as is feasible.

Rights of Returning Tenured Faculty Members: A tenured faculty member who has been terminated and who accepts re-employment with the University under the terms of this policy will resume tenure and the rank held at the time of employment termination, be paid a salary commensurate with the rank and length of previous service and, if applicable, be credited with any sick leave accrued as of the date of employment termination and be credited with any annual leave accrued as of the date of employment termination for which payment has not been made. Annual increment service time earned to the date of termination will be restored and new service time will begin accruing again upon reinstatement; no annual increment or other service time accrues during the period of reduction in force.

REDUCTION IN FORCE—STAFF

It shall be the policy of the Board of Governors to undertake reductions in the staff workforce or personnel complement in a consistent and equitable manner and in compliance with applicable law in force at the time of the reduction in force. Following the decision that a financial or other condition necessitating a reduction exists, the President shall undertake program/curriculum reviews to consider pertinent program/curriculum or administrative information. The President may recommend to the Board of Governors the elimination or reduction of programs/curricula deemed appropriate, given financial and enrollment considerations, and in the best interest of the University in general. The primary consideration in any resulting decision to eliminate positions and to reassign or reduce the number of affected

staff positions and personnel will be the preservation of the quality and effectiveness of the University's programs, operational needs and overall mission.

Basis for Elimination of Staff Positions: It shall be the policy of the Board of Governors to undertake reductions in the workforce of staff personnel in a consistent and fair manner, and in accordance with applicable law at the time of the reduction, insofar as the needs of the institution, its mission and its students are met first. Following a reduction in workforce in the ranks of staff personnel, the continuation of services and programs with appropriately trained and qualified personnel shall be afforded primary consideration in all decisions related to elimination of positions and any reassignment of affected staff personnel.

- 1.) Part-time regular ("1039's"), casual, project and/or temporary staff positions/employees are not covered under the provisions of this policy, and such positions may be abolished at any time deemed necessary. Typically, such positions are to be abolished first, before any regular positions.
- 2.) A reasonable reduction in the number of hours an employee works (FTE) is NOT considered a reduction in force and may be utilized by the University as a cost-saving measure in lieu of layoffs or reduction in force.
- 3.) In the case of abolishment of some but not all of the positions of the same job title or in the same job unit, consideration shall be given to the following factors to determine whom to lay off: (a) an employee's documented quality of work performance as demonstrated in performance evaluations of records (including, but not limited to, disciplinary records, attendance, and behavior), (b) seniority at FSU, (c) years of service in the current position, and (d) job suitability and the employee's skill set. Human Resources is assigned the responsibility for assessing employees' skills sets and competencies.
- 4.) Seniority is only one of many factors the University may employ to determine reductions in force; in no case will it be the determining or primary factor in reduction in force decisions.
- 5.) An employee who is subject to a reduction in force shall, if re-employed by the University, receive credit for previously accumulated service for increment purposes, but shall not accumulate seniority during the period of absence prior to reemployment. The University may but is not required to re-employ an employee terminated under a reduction in force, once circumstances or finances change.

President's Authority and/or Recommendation: The President may eliminate staff positions without prior recommendation to the Board of Governors for reasons other than financial conditions necessitating a reduction in the institution's labor budget. These reasons may include, but are not limited to, lack of funds; expirations of special grants or revenue streams; lack of work; material changes in duties,; the employee's own work patterns and leave history that have affected the viability or need for the position (as documented by leave records, performance evaluations and/or employee counseling and disciplinary notices/letters); or changes in the organization of units, functions or operations. In the event of a decision that a financial condition necessitating a reduction in the institution's labor budget exists, the

President shall, where possible, eliminate filled or vacant part-time (“1039”), casual, project or temporary and non-critical vacant positions prior to recommending the elimination of positions held by regular full-time staff personnel.

Affected Personnel: Staff personnel who are serving in positions that have been designated for elimination shall be considered for reassignment based upon their classification and any relevant specific qualifications, skills, competencies or training they may possess. Seniority may be considered in such decisions, but the University is under no obligation to make reassignments based on seniority, either in whole or in part. Once positions have been designated for elimination, the affected employees must update their record of credentials and specific qualifications and training within a reasonable timeframe as determined by the Office of Human Resources, if they wish to be considered for reassignment.

Consideration of FTE Status: – FTE status shall be considered in evaluating the suitability of positions for reassignment. Notwithstanding the fact that employees with FTE’s between .53 and 1.0 are considered full-time, vacancies and other potential positions for an employee’s reassignment must not vary more than .20 of the affected employees’ FTE status to be considered suitable. However, if there are no suitable vacancies or other available suitable positions held by employees with less seniority, an employee may be reassigned to a position that would otherwise be considered non-suitable for reason of FTE disparity. If the employee refuses such a reassignment, the termination per reduction in force will proceed.

Process for Reassignment of Affected Personnel: The process for determining eligibility for reassignment will be the responsibility of Human Resources.

RESPONSIBILITIES AND PROCEDURES

Faculty: The President and Chief Academic Officer/Provost shall have primary responsibility for making recommendations to the Board of Governors regarding elimination of faculty positions. Human Resources will be guided in process and implementation by the decisions provided by the President and Chief Academic Officer.

Staff Employees: The Office of Human Resources shall have primary responsibility for the implementation of the provisions of this policy.

It is the responsibility of the Chief Human Resources Officer to oversee implementation of a workforce reduction consistent with this policy statement and corresponding State code. The final authority for interpretation of this policy rests with the Chief Human Resources Officer.

REFERENCE / AUTHORITY

HEPC Title 133, Series 9 (Sections 13 and 14) and WV Code 18B-7-3

