

Academic Staff Personnel Rules

Chapter Fourteen - Layoff

ACS 14.0. Introduction.

In the following materials from UWS Chapter 12, references to indefinite appointments are applicable to fixed-term appointments.

ACS 14.1. Purpose.

Chapter UWS 12 {Layoff} of the Wisconsin Administrative Code, Rules of the Board of Regents details the procedure to follow in the event layoff becomes necessary at University of Wisconsin Oshkosh. It is presented here along with UW Oshkosh's campus-specific procedures. Chapter 12 sections are designated UWS 12#; Academic Staff Personnel Rules for Oshkosh are designated ACS 14#.

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, "layoff" 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.

ACS 14.2. Consideration and Consultation Prior to Layoff Decisions.

- (1) Prior to proceeding with a decision to lay off any academic staff member because of budget or program decisions requiring program discontinuance, curtailment, modification, or direction, the Chancellor shall prepare an analysis of the conditions which necessitate such action. In preparing the analysis the Chancellor will consult with groups or committees on campus as necessary.
- (2) The Chancellor, after such consultation, shall meet with the Senate of Academic Staff for discussion and advice. The Senate shall be provided with and consider information including:
 - (a) budget detail on proposed decisions showing the need to lay off a specific number of personnel;

- 1 (b) the criteria and/or rationale used in determining the operational unit(s) selected for reduction
2 in positions; and
- 3 (c) the criteria to be applied within the operational area in determining the individual(s) who will
4 be affected by the reduction.
- 5 (3) In the event that the Chancellor proposes that less notice-time be given before the effective date
6 of layoff than listed in section UWS 10.05, the Chancellor shall provide the Senate with his/her
7 compelling reasons.

8 **UWS 12.03 Individual layoff decision.**

9 When a reduction in program of a particular operational area is required, layoffs of academic staff mem-
10 bers with indefinite, fixed-term, or probationary appointments should normally follow seniority. This pre-
11 sumption in favor of seniority may be overcome where program needs dictate other considerations (e.g.,
12 the need to maintain specific expertise within the program or operational area). The standard notice pe-
13 riods specified in s. UWS 10.05 should be used, unless there are compelling reasons to the contrary (e.g.,
14 almost immediate cutoff of funds), for layoff of probationary and fixed-term appointments under this chap-
15 ter. Indefinite appointees shall have 12 months' notice of layoff for reasons of budget or program, unless
16 there are compelling reasons to the contrary.

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

18 **ACS 14.3. Seniority as Applied to Layoff.**

19 Seniority shall be determined by the number of years of continuous service at University of Wisconsin
20 Oshkosh. If no breaks in service have occurred, time served as a faculty member shall count toward se-
21 niority, as shall time served in a limited appointment if the staff member had an academic staff or faculty
22 appointment prior to accepting the limited appointment. Leaves of absence shall count toward seniority.

- 23 (1) If it is determined that layoff is necessary in an operational area, the least senior member shall be
24 laid off first. In the event two or more members of an operational area have the same seniority,
25 the date the original contract was signed by the employee shall be used to determine seniority.
26 The presumption in favor of seniority shall not operate where:
- 27 (a) program needs dictate other considerations such as the need to maintain specific expertise,
28 responsibility levels or productivity levels within a program or operational area; or
- 29 (b) the strict application of seniority would upset the implementation of affirmative action within
30 the program or operational area.

31 **UWS 12.04 Hearing body.**

32 The Chancellor of each institution shall provide for a hearing body for the purposes of this chapter.
33 Throughout this chapter the term "hearing body" is used to indicate either a hearing committee or a hear-
34 ing examiner as designated in the institutional procedures. This hearing body shall operate as the hearing
35 agent for the Chancellor pursuant to s. 227.12, Stats., and conduct the hearing, make a verbatim record of
36 the hearing, prepare a summary of the evidence and transmit such record and summary along with find-
37 ings of fact and decision to the Chancellor.

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

39 **UWS 12.05 Review and hearing for indefinite appointments.**

- 40 (1) An academic staff member with an indefinite appointment whose position is to be eliminated shall
41 be notified in writing and shall, upon request made within 20 days after such notification, be given
42 a written statement of the reasons for the decision within 15 days, including a statement of the
43 reasons for the determination that the budgetary or program needs should be met by curtailing or
44 discontinuing the program in which the individual concerned works. If the academic staff member
45 requests in writing within 20 days after receipt of said statement, he or she shall be entitled to a
46 hearing before the hearing body. However, such a request for hearing shall not forestall a layoff
47 under this section.
- 48 (a) The request for hearing shall specify the grounds to be used in establishing the impropriety of
49 the decision.

- 1 (b) The staff member shall be given at least 10 days notice of such hearing. Such hearing shall
2 be held not later than 20 days after the request except that this time limit may be extended by
3 order of the hearing body. Anyone who participated in the decision to layoff or who is a ma-
4 terial witness shall not serve on the hearing body.
- 5 (2) The academic staff member shall have access to the evidence on which the administration in-
6 tends to rely to support the decision to layoff and shall be guaranteed the following minimal pro-
7 cedural safeguards at the hearing:
- 8 (a) A right to be heard in his or her defense;
- 9 (b) A right to counsel and/or other representatives, and to offer witnesses;
- 10 (c) A right to confront and cross-examine adverse witnesses;
- 11 (d) A verbatim record of all hearings, which might be a sound recording, provided at no cost;
- 12 (e) Written findings of fact and decision based on the hearing record;
- 13 (f) Admissibility of evidence governed by s. 227.10, Stats.;
- 14 (g) The hearing shall be closed unless the staff member whose position is to be eliminated re-
15 quests an open hearing, in which case it shall be open (see s. 66.77, Stats., Open Meeting
16 Law);
- 17 (h) Adjournments shall be granted to enable either party to investigate evidence as to which a
18 valid claim of surprise is made.
- 19 (3) If the institutional policies and procedures provide that the review and hearing be conducted by a
20 committee, the following requirements shall be observed:
- 21 (a) The committee may, on motion of either party, disqualify any one of its members for cause by
22 a majority vote. If one or more of the committee members disqualify themselves or are disqu-
23 alified, the remaining members may select a number of other replacements equal to the
24 number who have been disqualified to serve;
- 25 (b) If the committee requests, the Chancellor shall provide legal counsel after consulting with the
26 committee concerning its wishes in this regard. The function of legal counsel shall be to ad-
27 vise the committee, consult with them on legal matters, and carry out such responsibilities as
28 shall be determined by the committee within the policies and procedures adopted by the insti-
29 tution.
- 30 (4) The first question to be considered in the review is whether one or more of the following factors
31 improperly entered into the decision to layoff:
- 32 (a) Conduct, expressions, or beliefs on the staff member's part which are constitutionally pro-
33 tected or actions which are consistent with an appropriate professional code of ethics;
- 34 (b) Employment practices prescribed by applicable state or federal law; or
- 35 (c) Improper consideration of the qualifications of the staff member. For the purposes of this sec-
36 tion, "improper consideration" occurs if material prejudice resulted from any of the following:
- 37 1. The procedures required by the Chancellor or board were not followed;
- 38 2. Available data bearing materially on the quality of the staff member's actual or potential
39 performance were not considered; or
- 40 3. Unfounded, arbitrary, or irrelevant assumptions of fact were made about work or conduct.
- 41 (5) The staff member shall present evidence on whether one or more of the factors specified above
42 improperly entered into the decision to layoff. The hearing body shall then consider whether the
43 evidence presented establishes a prima facie case that such factor or factors did enter significant-
44 ly into the layoff decision. If the hearing body finds that a prima facie case has not been estab-
45 lished, the layoff decision shall be found to have been proper and the hearing shall be ended.
- 46 (6) If the hearing body finds that a prima facie case has been established, the appropriate administra-
47 tion officer for the operational area shall be entitled to present evidence to support the layoff deci-

1 sion, and, thereafter, the staff member may present evidence in rebuttal. Thereafter, on the basis
2 of all the evidence presented, the hearing body shall make its determinations as follows:

3 (a) The hearing body shall first consider whether one or more of the above specified factors im-
4 properly entered into the decision to layoff. Unless the body is convinced that such factor or
5 factors did improperly enter into that decision, the body shall find the decision to have been
6 proper;

7 (b) If the hearing body is convinced that such factor or factors entered into the decision to layoff,
8 then the body shall find that decision to be improper, unless the body is also convinced 1)
9 that there was a bona fide program or budgetary reason(s), and that the determination of
10 such reason(s) was made in the manner prescribed by, and in accordance with, the stan-
11 dards established by the institution; and 2) that the decision to layoff the particular academic
12 staff member was in accordance with the provisions of s. UWS 12.02.

13 (7) In determining whether a bona fide budgetary or program reason existed for layoff of the ap-
14 pointment of the academic staff member concerned, the hearing body shall presume that the de-
15 cision to curtail the program was made in good faith and for proper reasons. The hearing body
16 shall not substitute its judgment or priorities for that of the administration.

17 (8) If the hearing body finds that the layoff was improper, it shall report this decision and its recom-
18 mendation to the Chancellor and to the staff member. The Chancellor shall review the matter, de-
19 cide whether the staff member should be laid off, and notify the hearing body and academic staff
20 member of the decision. This decision shall be deemed final unless the board, upon request of
21 the academic staff member, grants review based on the record.

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

23 **UWS 12.06 Review for fixed-term and probationary academic staff members.**

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

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

28 **ACS 14.4. Hearing Body (Refer to UWS 12.04).**

29 (1) Request for Reasons and Hearing. Under UWS 12.05, academic staff notified of layoff are entitled
30 to reasons for the decision and a hearing, if requested within the time limit prescribed.

31 (a) Reasons shall be requested of and supplied by the Chancellor.

32 (b) Requests for a hearing shall be sent to the Chancellor, who shall inform the President of the
33 Senate of Academic Staff, who shall form a hearing committee.

34 (c) The hearing committee shall follow the guidelines in GOV 4.3C as well as the guidelines in
35 UWS 12.05. While 12.05 refers to indefinite appointments, those guidelines shall be used for
36 all academic staff.

37 (2) Chancellor's Decision. Within 20 calendar days of receipt of materials from the academic staff
38 hearing committee, the Chancellor shall decide if the layoff should be rescinded or remain in ef-
39 fect. This decision shall be deemed final unless the Board of Regents, upon written request by the
40 academic staff member, grants a review based on the record.

41 **UWS 12.07 Layoff status.**

42 (1) An academic staff member whose position has been eliminated according to the provisions of this
43 chapter may, at the end of the appropriate notice period, be placed on layoff status, unless the
44 layoff notice has been rescinded prior to that time. The academic staff member whose notice pe-
45 riod has expired, and who is placed on layoff status shall remain on layoff status until,

46 (a) For fixed-term and probationary appointee, one of the following occurs:

47 1. The appointment expires under its own terms;

48 2. The staff member fails to accept an alternate appointment.

1 (c) For academic staff on indefinite appointment one of the following occurs:

- 2 1. The staff member is reappointed to the position from which laid off. Failure to accept
3 such reappointment would terminate the academic staff member's association with the
4 institution;
- 5 2. The staff member accepts an alternative continuing position in the institution. Failure to
6 accept an alternate appointment would not terminate the academic staff member's asso-
7 ciation with the institution;
- 8 3. The staff member resigns;
- 9 4. The staff member fails to notify the Chancellor or his/her designee not later than Decem-
10 ber 1, of each year while on layoff status, as to his/her location, employment status, and
11 desire to remain on layoff status. Failure to provide such notice of desire to remain on
12 layoff status shall terminate the academic staff member's association with the institution;
- 13 5. A period of 3 years lapses.

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

15 **UWS 12.08 Alternative employment.**

16 Each institution shall devote its best efforts to securing alternative appointments within the institution in
17 positions for which staff laid off under this chapter are qualified under existing criteria. Each institution
18 should seek to provide financial assistance for academic staff members who have indefinite appointments
19 and who are to be laid off to readapt within the operational area or within another operational area of the
20 institution where such readaptation is feasible within one year's time. Further, the University of Wisconsin
21 System shall devote its best efforts to insure that such staff members laid off in any institution shall be
22 made aware of openings within the system.

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

24 **ACS 14.5. Alternate Employment.**

- 25 (1) The University of Wisconsin Oshkosh shall make good-faith efforts to reassign or reemploy laid-
26 off academic staff in another operational area within the University.
- 27 (2) If a position is open in an operational area different from the one in which an academic staff
28 member was laid off, the Provost and Vice Chancellor is responsible for:
 - 29 (a) notifying academic staff members on layoff of the opening and qualifications for the opening;
 - 30 (b) reviewing credentials submitted by the academic staff member; and
 - 31 (c) arranging for an interview if the academic staff member has an interest in the position and if
32 the review of credentials warrants.
- 33 (3) The supervisor either shall provide reasons to the Provost and Vice Chancellor why the individual
34 does not qualify for the position or shall recommend the individual be offered the position. If the
35 individual is offered the position, either:
 - 36 (a) the layoff can be rescinded with the academic staff member retaining all rights acquired prior
37 to layoff, including seniority, in the new position (time spent on layoff shall count as years of
38 service); or
 - 39 (b) the academic staff member may be offered a new fixed-term appointment in the new opera-
40 tional area with rights and privileges beginning with the effective date of the new appointment.
41 Seniority starts accumulating on the effective date of the new appointment.
- 42 (4) The Provost and Vice Chancellor shall determine which option shall be offered the individual after
43 consultation with the appropriate supervisors.

44 **UWS 12.09 Reappointment rights.**

45 Each institution shall establish administrative procedures and policies to insure compliance with s. 36.21,
46 Stats., in providing that where layoffs occur for reasons of budget or program, no person may be em-
47 ployed in that operational area at that institution within 3 years to perform reasonably comparable duties to

1 those of the staff member laid off without first offering the laid off staff member on layoff status reappoint-
2 ment without loss of rights or status. In addition, an institution shall continue for 3 years from date of layoff
3 to offer the reappointment rights stated in this section to a laid off fixed-term appointee whose appointment
4 has expired under its own terms if such appointee notified the Chancellor or his/her designee by Decem-
5 ber 1 of each year, or more frequently if institutional policies and procedures require, as to his/her location,
6 employment status, and desire to pursue reappointment rights. Failure to provide such notification shall
7 terminate the academic staff member's reappointment rights under this section.

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

9 **ACS 14.6. Reappointment Rights of Academic Staff on Layoff.**

- 10 (1) Reappointment rights shall continue for three years from date of layoff, even if the appointment
11 expires during the three years or alternate employment is accepted, providing the academic staff
12 member notifies the Provost and Vice Chancellor in writing by December 1 of each year of his/her
13 location, employment status, and desire to pursue reappointment rights. Failure to provide such
14 notification shall terminate the academic staff member's reappointment rights.
- 15 (2) In the event a position becomes available in an operational area where layoffs have occurred, all
16 academic staff who had been laid off shall be informed of the opening and provided with a posi-
17 tion description. Such information to be sent to their last known address.
- 18 (a) If an academic staff member on layoff is interested in the position, he/she shall so inform the
19 Provost and Vice Chancellor within the time period stipulated in the letter announcing the
20 opening (a minimum of ten calendar days).
- 21 (b) The supervisor will then arrange for an interview with the academic staff member if review of
22 credentials warrants it. If the job duties are reasonably comparable to those performed by the
23 academic staff member prior to layoff, the job shall be offered to the laid-off staff member.
- 24 (3) In the event two or more laid-off academic staff members are involved, the decision on who shall
25 be offered the position shall be based on seniority, with the most senior member offered the posi-
26 tion first except when operational needs, including affirmative action, are such that a less senior
27 person is preferred. Such needs must be documented to the satisfaction of the Chancellor.
- 28 (4) If it is expected that the position will continue, the layoff will be rescinded. If it is expected that the
29 position will not continue, this will be made clear when the job description is initially sent to the
30 academic staff member and the position shall be offered for a fixed time period (normally one
31 year).
- 32 (5) If an appointment has not expired under its own terms (see UWS 12.07 (1) (a) 1.), the time served
33 in the appointment after layoff shall count toward completion of the time remaining on the existing
34 contract. The time served after layoff shall count toward the three-year period of reappointment
35 rights.

36 **UWS 12.10 Retention of salary.**

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

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

41 **UWS 12.11 Rights of academic staff members on layoff.**

42 An academic staff member on layoff status in accord with the provisions of this chapter has the reem-
43 ployment rights guaranteed by s. UWS 12.09 or 12.10, and has the following minimal rights:

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

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

1 **ACS 14.7. Rights of Academic Staff on Layoff.**

- 2 (1) Academic staff on layoff may voluntarily participate in all fringe benefit programs at University of
3 Wisconsin Oshkosh as permitted by state law.
- 4 (2) Academic staff on layoff who have faculty status will retain their governance rights after layoff,
5 consistent with the Faculty Constitution.
- 6 (3) Academic staff on layoff will retain library and mail delivery privileges (through both University
7 postal services and the individual's existing e-mail account at the time of layoff) while on layoff
8 status.
- 9 (4) Academic staff on layoff may participate in institutional activities as allowed by established poli-
10 cies and procedures

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