

2003-2005

Agreement

between the

**University of Hawaii
Professional Assembly**

and the

Board of Regents

of the

University of Hawaii



TABLE OF CONTENTS

AGREEMENT	1
I. RECOGNITION	1
II. NON-DISCRIMINATION	1
III. CONDITIONS OF SERVICE	1
A. Maintenance of Rights and Benefits.....	1
B. Outside Employment.....	1
C. Exemption From Tuition.....	2
D. Legal Representation.....	2
E. Faculty Evaluation	3
F. Teaching Assignments and Equivalencies	3
G. Political Leave.....	3
H. Leave Sharing	3
IV. FACULTY PROFESSIONAL RESPONSIBILITIES AND WORKLOAD	3
V. DUTY PERIOD	4
VI. LEAVES OF ABSENCE WITH PAY	5
A. Sabbatical Leaves.....	5
B. Study Leaves	6
C. Vacation Leaves	7
D. Sick Leaves	9
E. Bereavement Leave	11
F. Family Leave.....	12
G. Holidays	12
H. Leave for Jury or Witness Duty	13
VII. LEAVES WITHOUT PAY	13
A. Leave Without Pay for Professional Improvement	13
B. Leave Without Pay for Personal Reasons.....	13
C. Substance Dependency Rehabilitation Leave.....	14
D. Applications	14
VIII. FACULTY TRAVEL	14
A. Professional Meetings	14
B. Per Diem	14
C. Reimbursement for Per Diem Related Expenses Exceeding the Per Diem Rate	15
D. Meal and Incidental Expenses	15
E. Travel Occurring on Same Island.....	15
F. Mileage Reimbursement	15
G. Subsidized Parking at University Campuses	16
IX. ACADEMIC FREEDOM	16
A. Academic Freedom	16
B. Procedure for Dealing With Alleged Infringements.....	16
C. Advisory Committee on Academic Freedom	17
D. Procedure for Dealing With Alleged Breach of Professional Ethics and/or Conflicts of Interest in Research or Scholarship	17
X. DEPARTMENT OR DIVISION PROCEDURES GOVERNING TENURE, PROMOTION, AND CONTRACT RENEWAL	17
A. Departmental Procedures	17
B. Minimum Requirements for Departmental Procedures	17

	C.	Review of Procedures	18
	D.	Amendments of Procedures	18
XI.		INTELLECTUAL PROPERTY, PATENTS, AND COPYRIGHTS	18
		General Scope	18
	A.	Classroom Lectures and the Recording of Presentations.....	18
	B.	Distance Learning and Multimedia Presentations	18
	C.	Patents and Copyrights.....	19
	D.	Review and Amendment	19
XII.		TENURE AND SERVICE	19
	A.	Definitions.....	19
	B.	Probationary Period.....	19
	C.	Effective Dates for Probation.....	21
	D.	Renewal of Contracts During the Probationary Period	21
	E.	Tenure Application, Review, and Notification.....	22
	F.	Tenure Evaluation Procedures.....	22
	G.	Negative Tenure Actions.....	24
	H.	Notice of Resignation.....	26
	I.	Appointment of Faculty Members to Administrative Duties and Administrators to Faculty Duties.....	26
	J.	Locus and Transfer of Tenure Within the University of Hawaii	26
XIII.		FACULTY APPOINTMENTS NOT ELIGIBLE FOR TENURE	27
	A.	General.....	27
	B.	Conversion of Temporary Appointments to Probationary Status.....	28
	C.	Limited Term Contracts	28
	D.	Research Grants or Other Non-State General Funded Contracts	28
XIV.		PROMOTION	28
	A.	General.....	28
	B.	Procedures for Recommending Promotion.....	29
	C.	Salary Upon Promotion.....	29
	D.	Negative Recommendation	29
	E.	Promotion Review Panel.....	30
	F.	Review by Promotion Review Panel Upon Request of Faculty Member	30
	G.	Review by Promotion Review Panel Upon Referral by the President.....	30
	H.	Function of Promotion Review Panel.....	30
	I.	Panel of Referees	31
	J.	Referee Review of Procedural Matters.....	31
	K.	Confidentiality of Proceedings.....	32
	L.	Conclusion of Process.....	32
XV.		FACULTY PERSONNEL PANEL	32
	A.	Function	32
	B.	Membership	32
	C.	Exclusion Option.....	32
	D.	Representation of Faculty Personnel Panel Members on Tenure and Promotion Review Committees	33
XVI.		RETRENCHMENT	33
	A.	General.....	33
	B.	Consultation on Retrenchment	33
	C.	Order of Retrenchment.....	33
	D.	Notice to Faculty	33
	E.	Placement of Retrenched Faculty.....	34
	F.	Employment Rights of Retrenched Tenured Faculty	34
	G.	Notice of Vacancies	34
	H.	Reappointment of Retrenched Faculty	34
	I.	Resolution of Disputes Regarding Qualifications	34

J.	Status of Reappointed Faculty.....	34
K.	Restrictions on Hiring New Faculty.....	35
L.	Exclusions.....	35
XVII.	REPRESENTATION RIGHTS	35
XVIII.	DISCIPLINARY ACTIONS	36
A.	General.....	36
B.	Suspension or Discharge.....	36
C.	Other Disciplinary Actions.....	36
XIX.	PERSONNEL FILES	37
XX.	ADEQUATE SECURITY, HEALTH, AND SAFETY	38
XXI.	SALARIES	38
XXII.	HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND	38
XXIII.	APPOINTMENT, DUTIES AND COMPENSATION FOR ACADEMIC CHAIRS	41
XXIV.	GRIEVANCE PROCEDURE	41
A.	Definition.....	41
B.	General.....	41
C.	Procedures.....	41
D.	Class Grievance.....	44
XXV.	RIGHTS OF THE EMPLOYER	44
XXVI.	SAVINGS CLAUSE AND OPERATION OF §89-10(a)	44
XXVII.	ENTIRETY AND MODIFICATION	44
XXVIII.	CONFLICT	45
XXIX.	NO STRIKE OR LOCKOUT	45
XXX.	DURATION	45
	AUTHORIZED SIGNATURES	46



REFERENCE SECTION

R-1	Appendix T, Temporary Disability	48
R-2	Board of Regents Policy 9-15, Evaluation of Board of Regents' Appointments	49
R-3	Board of Regents Policy 9-16, Teaching Assignments for Instructional Faculty	50
R-4	Chancellor for Community Colleges Memo (CCCM) #2250, Teaching Assignment Policy, July 2001	52
R-5	Board of Regents Policy 9-5, Political Activity	58
R-6	Administrative Procedure A9.470, Leave Sharing	59

R-7	Appendix S, Community College Sick Leave Policy and Procedures	66
R-8	Administrative Procedure A9.350, Application for Transfer of Vacation and Sick Leave Credit or Payment in Lieu of Vacation	73
R-9	UH Form 1, Application for Leave of Absence	77
R-10	H.R.S. Chapter 398, Volume 107 (Act 154), State of Hawaii Family Leave Law	78
R-11	Appendix 9-14, Board of Regents' By-Laws and Policies, University of Hawaii Patent and Copyright Policy	84
R-12	Executive Policy E5.500, Administration of the Patent and Copyright Policy	87
R-13	Administrative Procedure A5.500, Procedures for Invention Identification, Disclosure, and Reports Under State Funding	93
R-14	Administrative Procedure A5.501, Procedures for Copyrights of Work Produced for Hire	95
R-15	Administrative Procedure A5.502, Procedures for Invention Identification, Disclosure, and Reports Under Extramural Contract Patent Clauses	97
R-16	Administrative Procedure A9.075, Personnel Records	99
R-17	Memorandum of Understanding Regarding "Future Need"	102

AGREEMENT

This Agreement is made this 24th day of April, 2003 by and between the State of Hawaii and the Board of Regents of the University of Hawaii, hereinafter called the Employer or Public Employer, as defined in §89-2, Hawaii Revised Statutes, and the University of Hawaii Professional Assembly, hereinafter called the Union.

ARTICLE I, RECOGNITION

The Employer recognizes the Union as the exclusive representative of Collective Bargaining Unit 7, as certified by the Hawaii Labor Relations Board. The public employees composing the unit are hereinafter referred to as Faculty Members or Faculty.

ARTICLE II, NON-DISCRIMINATION

- A. Neither the Employer nor the Union shall discriminate against any Faculty Member on the basis of race, color, religion, national origin, sex, sexual orientation, age, disability, or for being a disabled veteran, a veteran of the Vietnam era, or for lawful political activity, except for bona fide occupational or legal requirements.
- B. Neither the Employer nor the Union shall discriminate against any Faculty Member on the basis of activity or lack of activity on behalf of the Union.

ARTICLE III, CONDITIONS OF SERVICE

A. MAINTENANCE OF RIGHTS AND BENEFITS

- 1. Except as modified by the terms of this Agreement, Faculty Members¹ shall retain all rights and benefits provided in the written rules, regulations, and policies formally adopted by the Board of Regents existing at the execution of this Agreement which pertain to wages, hours, and other terms and conditions of employment.

The minutes of the Board of Regents shall constitute the basis of the applicable rule, regulation, or policy.

- 2. Except as modified by the terms of this Agreement, the Faculty of the University of Hawaii at Manoa, University of Hawaii at Hilo, and University of Hawaii at West Oahu shall retain the rights and responsibilities set forth in Part 4: Conditions of Service of the Faculty Handbook for Manoa and Hilo Campus, 1977 Edition, provided that:
 - a. Amendments and modifications officially approved by the Board of Regents after the issuance of said Handbook and prior to the execution of this Agreement shall prevail; and
 - b. Only Appendix T (see R-1 of Reference Section) of said Handbook is incorporated herein.
- 3. Except as modified by the terms of this Agreement, the Faculty of the Community Colleges shall retain the rights and responsibilities provided in the officially approved rules, regulations, and policies of the Board of Regents which pertain to the same subject matter covered in Part 4 of the aforesaid Handbook.

B. OUTSIDE EMPLOYMENT

Faculty may engage in outside employment for additional compensation according to the following guidelines:

- 1. The additional employment is neither so extensive nor so demanding as to interfere with the Faculty Member's creditable performance of the primary obligation to the University.

¹ In accordance with Board of Regents' policy, the following definitions of Faculty are used in this Agreement: C (all Faculty at the Community Colleges), I (instructional), R (researcher), S (specialist), B (librarian), A (county extension agent), M (clinical medicine) and J (legal instruction).

2. Ethical considerations.
 - a. No Faculty Member shall accept pay to tutor students in the subject matter of the courses the Faculty Member teaches.
 - b. The results of research conducted by the University shall be published or otherwise made available to the public, and no researcher will sell the results of research conducted by and for the University, unless authorized by the President.
 - c. No Faculty Member shall accept any fee, gift, or payment of expenses over and above authorized compensation for services rendered in the post for which the Faculty Member has been appointed, except with specific approval of the President.
 - d. No Faculty Member shall use the University facilities, supplies, or equipment other than in the course of University duties, except with prior approval of the President.
 - e. No Faculty Member shall accept off-campus positions or appointments, whether or not paid, when such activities may impair the judgment of the Faculty Member in the discharge of University duties.
 - f. Although Faculty Members may not accept compensation for special information known to them by virtue of their employment with the University, they may charge a fee or accept a retainer for the utilization of their special competence, knowledge, and skill in consulting, design, or research directed toward the solution of specific problems for a specific employer or client.
3. Before undertaking compensated outside activity, Faculty Members shall file with the Department/Division Chair or other administrative supervisor a form provided for this purpose. An occasional lecture or similar one-time activity for which an honorarium is received shall not be considered outside employment for purposes of the filing requirement. If at any time the Department/Division Chair or other supervisory personnel considers that the project interferes with the performance of the official duties of the Faculty Member, this will be reported to the Dean/Director or Chancellor.
4. Faculty Members who engage in consulting, contract, or private employment during the duty period shall not exceed one (1) day or an accumulation of eight (8) hours per calendar week excluding Sundays and holidays.
5. Up to six (6) working days per academic year may be accumulated, from time not utilized for consulting, contract, or private employment during weeks within the duty period, for consecutive days of professional consultancy. Days not used during the academic year will not carry forward to the next academic year.

Plans for consecutive days of professional consulting shall be submitted in advance to the appropriate Dean/Director or Chancellor for prior written approval.

C. EXEMPTION FROM TUITION

Faculty Members and their spouses or domestic partners who register for credit courses offered through any unit of the University of Hawaii are exempt from the payment of tuition. Faculty Members and their spouses or domestic partners taking courses shall be subject to the following provisions: (1) the Faculty Member must be employed on a half-time basis or more; (2) each academic semester not more than six (6) credits may be carried exempt from tuition; (3) the Faculty Member's normal University duties must be carried out as usual; (4) the Faculty Member may enroll only after the regular students have had an opportunity to register; (5) a full-time Faculty Member shall not enroll at UH for more than six (6) credits per semester; and (6) the Faculty Member's enrollment shall place no undue or unusual burden on the instructor in the course. These provisions for tuition exemption do not apply to individual instruction in such fields as music or to special funded courses which have insufficient revenue to cover their costs.

D. LEGAL REPRESENTATION

1. The Employer shall provide legal counsel for a Faculty Member upon request to the Office of the Vice President for Legal Affairs and University General Counsel when:

- a. The Faculty Member is sued for actions taken by the Faculty Member in the course of the Faculty Member's employment and within the scope of the Faculty Member's duties and responsibilities;
 - b. The Faculty Member must appear as a defendant or is subpoenaed to appear in court when sued for actions taken in the course of employment and within the scope of the Faculty Member's duties and responsibilities;
 - c. The Faculty Member must appear as a witness or is subpoenaed to appear in court on a matter arising in the course of employment and within the scope of the Faculty Member's duties and responsibilities; and
 - d. The Faculty Member is required to give deposition or answer interrogatories on a matter arising in the course of employment and within the scope of the Faculty Member's duties and responsibilities.
2. If a judgment or court approved settlement is made against a Faculty Member in a civil suit for actions taken by the Faculty Member in the course of the Faculty Member's employment and within the scope of the Faculty Member's duties and responsibilities, the Employer agrees to no more than submit to the Legislature any judgment (or court approved settlement) against the Faculty Member, with the Employer retaining the discretion of recommending or not recommending legislative approval.

E. FACULTY EVALUATION

Faculty Members will be evaluated periodically in accordance with Section 9-15 (see R-2 of Reference Section) of the Board of Regents' Policies.

F. TEACHING ASSIGNMENTS AND EQUIVALENCIES

Standards for teaching assignments and equivalencies are determined in accordance with Board of Regents' Policy Section 9-16 (see R-3 of Reference Section), and Chancellor for Community Colleges Memorandum 2250 dated July 2001 with the amended Appendix 1 (see R-4 of Reference Section).

G. POLITICAL LEAVE

Faculty Members may request leave of absence without pay or use vacation leave while campaigning for elective political office. Faculty Members may continue working while campaigning for elective political office as long as the campaigning does not interfere with the duties and responsibilities of the Faculty Member, as determined by the Chancellor or Vice-President, and the Faculty Member complies with Board of Regents' Policy, Section 9-5 (see R-5 of Reference Section), Political Activity (and subsequent amendments) and other applicable rules of the University.

H. LEAVE SHARING

Except as modified by the terms of this Agreement, Faculty Members shall be allowed to participate in the Leave Sharing Program (see R-6 of Reference Section) of the State of Hawaii, under the provisions of administrative rules adopted by the University.

ARTICLE IV, FACULTY PROFESSIONAL RESPONSIBILITIES AND WORKLOAD

- A. Faculty Members are responsible for maintaining high professional standards of scholarship and instruction in their field of special competence. In giving instruction upon controversial matters, Faculty Members are expected to set forth justly and without suppression the differing opinions of other investigators, and in their conclusions provide factual or other scholarly sources for such conclusions. Faculty Members should be careful not to introduce into their teaching controversial matters that have no relation to their subject. In the conduct of research, Faculty Members shall adhere to legal and ethical standards and procedures. Faculty Members employed by an organized research unit or other organizational units with a research mission, or whose research is supported by an extramural contract or grant, have a responsibility to follow the directions of their supervisor or principal investigator in the conduct of research in support of the mission of the unit or in fulfillment of the terms of the contract or grant. The commitment to academic freedom in the conduct of research does not imply that a Faculty Member's research is not subject to critical review and judgment as to its quality and significance. When speaking and acting as citizens, Faculty Members shall take suitable precaution to assure that personal utterances or actions are not construed as representing the University.

- B. The primary professional responsibilities of Faculty Members are teaching, research, specialized educational services, and community service. Faculty Members also have professional responsibilities such as advising students; registration of students; participation in campus and University-System committees; keeping regularly posted office hours which are scheduled at times convenient for students; and participation in traditional functions which have unique academic significance. The performance of teaching duties, research, and service extends beyond classroom responsibilities and other direct student contact duties.

Instructional activities encompass more than just classroom teaching. Other aspects of instruction include, but are not limited to: academic and thesis advising, supervision of instructional activities such as cooperative work experiences, practica, internships, and practice; instructional management, tutoring; curriculum and course development; and creation of teaching and instructional materials, and supervision of laboratory activities. Also, included in the work associated with instruction are the implementation of instructional systems and strategies, distance learning technologies, and student evaluation and assessment.

Faculty workload is not limited to instruction. It may include disciplinary research, scholarly activities, or creative endeavors; service to the academic community, the government, the private sector, and other public interest groups; outreach programs; student advising and counseling; equipment and facilities development and maintenance; and information systems development and implementation, including professional librarian services, or serving as a program coordinator.

The Board of Regents recognizes Faculty Members are professional employees and experts in their fields. Faculty workload shall be based on the following principles.

1. Faculty Members when engaged in instruction and research find most of the work occurs outside of the classroom, in the same manner as most of the work of surgeons and attorneys is outside of the operating theater and courtroom, respectively. It is understood that Faculty Members are not hourly employees. Faculty workload will be scheduled according to the nature of the work, the preparation and training necessary to complete the work, the time of day that the instructional or other duties are performed, and the location of the worksite.
2. The elements of individual Faculty Member's workload may differ depending on: the professional duties of the Faculty Member; the objectives of the unit, division, or department; and the mission of the school or college. When making workload judgments about instructional and direct student contact, the unit, division, or department will give consideration to the total responsibilities borne by the Faculty Member within the context of the college mission and unit, division or department objectives.
3. Based upon the teaching demands placed upon the division or department by curriculum, the Chair, after consultation with division or department Faculty Members, will identify the total instructional workload requirements to be met for the academic year. Using the planned professional objectives and activities of the Faculty Member, and the objectives of the division or the department, the Chair and the Faculty Member will determine the Faculty Member's instructional workload in accordance with Board of Regents' Policy 9-16. In every case the assignment of credit hours shall take into account other aspects of the Faculty Member's responsibilities, e.g., research and service. In some cases, Faculty Members may not be assigned any course credit hour teaching.

ARTICLE V, DUTY PERIOD

- A. Faculty Members on nine-month (9-month) appointments in the I and C classifications are on duty for nine (9) consecutive months with salary paid over a twelve-month (12-month) period. During the nine-month (9-month) duty period, Faculty Members shall not be deemed to be on twenty-four (24) hour per day or seven (7) days per week continuous duty. The beginning and ending dates for the duty period for each campus will be determined by the Employer, provided that the beginning date shall be between August 14th and September 14th and run for nine (9) consecutive months thereafter, except that Faculty whose duties are other than classroom instruction may be assigned a duty period beginning two (2) weeks earlier than the calendar established for the campus; however, in such cases the Faculty Member's duty period shall end two (2) weeks earlier, or the Faculty Member shall receive compensatory release from assignments during the normal duty period at a mutually agreed upon time or proportional compensation.

Faculty Members with eleven (11) month appointments may have duty periods with beginning and ending dates different from those set by the campus, provided that these agreements are made in writing and have been accepted by the Faculty Member and the campus administration.

- B. Since the performance of teaching duties, research, and service extends beyond classroom responsibilities and includes such activities as preparation, student evaluation, syllabus revision, and review of current literature and research in the subject area, such duties cannot be restricted to a fixed amount of time or points in time.
- C. During the interval between semesters and during the spring recess, Faculty Members normally engage in professional activities. However, Faculty Members who do not have duties requiring their presence on campus may travel for personal reasons at their own expense, provided that upon return they report to the Employer the number of days of such travel and provide service for those days at times during the off-duty period.

ARTICLE VI, LEAVES OF ABSENCE WITH PAY

A. SABBATICAL LEAVES

1. The purpose of the sabbatical leave is to provide Faculty Members with an opportunity for further professional growth and development so that they may serve more effectively on their campuses and in their field of specialization.
2. Only tenured Faculty Members at Rank 2 or above may be eligible for a sabbatical leave after six (6) years or twelve (12) semesters of full-time creditable service with the University. Any leave of up to thirty (30) days will not constitute a break in service. Credit toward sabbatical leave is computed in units of not less than a full semester for I and C Faculty Members provided that I and C Faculty Members appointed effective on October 1 or February 1 of the respective semesters shall have such semester count as a full semester. All other classifications shall compute service from the most recent date of hire. Full-time creditable service refers to full-time active duty service at the University.
3. The term of a sabbatical leave shall be for a period of twelve (12) months (usually an academic year) at half the pay that would have been received had the leave not been taken or six (6) months (a semester) at the same pay that would have been received had the leave not been taken.

Tenured Faculty Members serving on eleven-month (11-month) appointments may alternatively be granted sabbatical leaves of shorter duration with full pay at proportionately more frequent intervals after the initial period of six (6) years of full-time creditable service at the University, provided that the total leave with pay taken within a sabbatical leave period does not exceed that provided for regular sabbatical leave.

4. Each Faculty Member who receives a sabbatical leave shall agree to return to the University System for service for a period of not less than the period of the sabbatical leave.
5. Each Faculty Member who applies for a sabbatical leave shall submit through the Chair to the Dean/Director or Chancellor at the Community Colleges, a description or narrative of the educational program, research, or other professional activity to which the Faculty Member proposes to devote the leave, along with the reasons for undertaking such a program while on leave. The Dean/Director shall note a recommendation on each application and shall forward each to the Chancellor at UH-Manoa, UH-Hilo, or UH-West Oahu.
6. Applications for sabbatical leaves shall be evaluated on the basis of:
 - a. The nature of the educational or professional program to be undertaken.
 - b. The effect of the applicant's absence on the work of the department or unit and on the operations of the University.

Applications that were previously approved as to item (a) above, but were denied because of item (b) or as a result of budget constraints, shall be given priority.

Previous leaves of absence credited in writing towards sabbatical leave eligibility or provided in other articles of this Agreement shall not prejudice the evaluation or approval of sabbatical leave applications.

7. All applications for sabbatical leave shall be received by the Dean/Director or Chancellor at least six (6) months before the effective date of the leave. The decision to deny the leave shall be rendered in writing, stating the reasons, within four (4) months after receipt of the application by the Dean/Director or Chancellor.
8. It is expected that a Faculty Member, whenever financially possible, on a sabbatical leave at full pay will not take employment for compensation during the leave, and that one on half pay will not take more than half-time employment, unless such employment is necessary for or enhances the attainment of the purposes for which the leave was granted. Faculty Members can argue the necessity of accepting pay as a means of accepting a sabbatical. In such cases, details of the compensated employment should be included in the outline of the proposal submitted to the Dean/Director or Chancellor. Included in this provision is the acceptance of fellowships and grants. Upon returning from sabbatical leave, the Faculty Member shall report to the Employer in writing, within one (1) semester, on activities during the leave, through the Dean/Director, to the appropriate Chancellor.
9. Faculty Members on sabbatical leave shall maintain and accrue all rights and benefits provided in this Agreement.

B. STUDY LEAVES

1. Study leave of one (1) semester with full pay or two (2) semesters at half pay may be granted by the Employer to full-time Faculty Members in the I-2 classification at the end of five (5) years' service with the provision that such leaves will be utilized in advanced study.
2. Study leave of three (3) months with full pay or six (6) months at half pay may be granted by the Employer to full-time Faculty Members in Rank 2 of the R, S, B, and A classifications at the end of five (5) years' service with the provision that such leaves will be utilized in advanced study.
3. If a study leave is taken, no time served in the lower Rank can be used to apply toward a future sabbatical leave. Also, the time actually spent on study leave cannot be applied toward a sabbatical leave.
4. Each Faculty Member who applies for a study leave shall submit through the Chair to the Dean/Director/Chancellor a description or narrative of the educational program to which the Faculty Member proposes to devote the leave along with the reasons for undertaking such a program while on leave. The Dean/Director shall note a recommendation on each application and shall forward each to the Chancellor.

All requests for study leave must be in the hands of the Dean/Director or Chancellor at least six (6) months (one (1) academic semester for instructional staff) before the effective date of the leave.

At UH-West Oahu, the Faculty Member shall submit the request for a study leave through the Chair of the Division or Program Director. The Chair of the Division or Program Director shall attach a recommendation and forward it to the Chancellor.

5. In evaluating applications for study leave, at least the following shall be considered:
 - a. That no additional positions will be necessary and that the work of the department or unit will be done satisfactorily;
 - b. That the purpose of the leave is mutually beneficial to the Faculty Member and the University;
 - c. The nature, length, and pertinency of the educational program which the Faculty Member plans to undertake;
 - d. That the Faculty Member's absence will not adversely affect the operations of the University; and
 - e. The Faculty Member's contribution to the University, demonstrated potential for growth and development, and seniority (continuous length of service with the University).

6. The Faculty Member must agree to return to the University of Hawaii for at least one (1) year thereafter.
7. In order to give non-instructional Faculty Members an opportunity to attend professional meetings, visit research centers, or observe field practices while away from the State on vacation leave, the Employer may grant leaves of absence with pay for the period actually devoted to these activities.

C. VACATION LEAVES

1. Faculty Members on the eleven (11) month salary schedules in the C, R, S, B, and A classifications are eligible to earn vacation leave at the rate of one and three-quarter (1-3/4) working days for each month of service.
2. If such Faculty Members render less than a month of service, their vacation allowance for such month shall be computed as follows:

Actual Days of Service	Working Days of Leave
1 to 3	0
4 to 6	1/2
7 to 9	3/4
10 to 12	1 full day
13 to 15	1-1/4 days
16 to 18	1-1/2 days
19 or more	1-3/4 days

3. Faculty Members on the nine (9) month salary schedule are not eligible to earn vacation leave.
4. Faculty Members on the eleven (11) month salary schedule in the I classification are not eligible to earn vacation leave.
5. Other Conditions.
 - a. Faculty Members who are appointed on a temporary, contractual, or substitute basis while on vacation from another position in the State government or any political subdivision of the State shall not earn vacation allowance for such appointment.
 - b. Vacation allowance shall accrue to a Faculty Member while on leave with pay unless specifically prohibited by this Agreement.
 - c. No vacation allowance shall accrue:
 - 1) During the period of any vacation leave or sick leave granted when the appointment terminates or is to terminate at the end of such leave.
 - 2) During the period the Faculty Member is on leave without pay (except for a period that a Faculty Member is on leave for disability and is being paid Worker's Compensation benefits).
 - 3) During any period of valid suspension.
 - 4) During any period of unauthorized leave.
 - 5) During any period the Faculty Member is on sabbatical leave or study leave.
6. Accumulation or Carry Over of Vacation Leave.
 - a. Faculty Members may accumulate up to twenty-one (21) days of vacation leave per calendar year until they accumulate their first forty-two (42) days. Subsequently, Faculty Members may accumulate not more than fifteen (15) days of vacation leave per calendar year, even if their total accumulated days fall below forty-two (42) days. However, vacation leave in excess of fifteen (15)

days per year may be accumulated for good cause when a request for such accumulation is approved by the Employer provided such request shall be accompanied by a stipulation that the Faculty Member shall take such excess vacation days at a specified time. If Faculty Members fail to take this vacation at the time specified, they shall forfeit the excess accumulation of vacation leave unless for good reason an extension of time is granted by the Employer.

- b. Vacation leave shall be administered on a calendar year basis and recorded at the end of each calendar year.
- c. Any Faculty Member who is entitled to an annual vacation may accumulate for the succeeding year or years such unused portion of vacation allowance as is permitted above, provided that the total accumulation shall not exceed ninety (90) working days at the end of the calendar year. If any recorded accumulation of vacation allowance at the end of any calendar year exceeds ninety (90) working days, the Faculty Member shall automatically forfeit the unused vacation allowance which is in excess of the allowable ninety (90) working days.
- d. Nothing contained in this Article shall be construed to prohibit the taking or to require the forfeiture of any vacation which is validly granted and the taking of which is commenced prior to the last working day of any calendar year, notwithstanding that the recording of the current accrued vacation allowance for such year on the last day thereof might result in an accumulation of more than ninety (90) working days including the working days of the vacation so granted and then being taken, but the period of such vacation shall be regarded for all purposes as if the same had been entirely taken prior to the last day of such calendar year.
- e. Nothing contained in this Article shall be construed to prohibit the lawful payment of pay in lieu of vacation.

7. Taking Vacation Leave Granted.

- a. When a vacation is requested on a form prescribed by the Employer, it shall be granted and taken at such time or times as the Employer may designate, provided that it shall be as close to the requested period as conditions in the unit will permit, and so as to prevent any forfeiture of vacation allowance.
- b. When a vacation is granted, it may include, in accordance with law and at the request of the Faculty Member, all vacation allowance accrued up to the end of the Faculty Member's last full month of service immediately preceding the commencement of the vacation.
- c. No vacation leave of less than one (1) hour may be granted. However, when payment in lieu of vacation is legally permissible, or when the Faculty Member's service will not continue at the expiration of the vacation, such payment may include a prorated amount for any fraction of a working day of vacation allowance to which the Faculty Member is entitled.

8. Vacation Charged Only for Working Days.

Faculty Members on vacation shall have charged against their vacations only University working days which occur during the period of their vacation.

9. Priority of Scheduling Vacation Leave.

Priority in scheduling annual leave shall be given to Faculty Members on the basis of length of service within the unit.

10. Emergency Advanced Vacation.

Emergency advanced vacation shall be granted to Faculty Members who have exhausted all earned vacation and for reasons which they establish to the satisfaction of the Employer. Faculty Members shall immediately communicate with the Employer and request such advanced vacations and, if the same is granted, it shall be considered as taken with the express understanding that if such leave is not later earned during the term of employment, the unearned portion of the vacation pay so advanced will be repaid, on demand of the

Employer, by the Faculty Members or, if they are deceased, by their executors and administrators out of their estates, or deductions may be made for such unearned portions from any salaries due them, or from any moneys credited to them in the annuity savings fund of the Retirement System of the Employer.

11. Effect of Transfer to Position in Which Vacation Allowance is Not Earnable.

When a Faculty Member is transferred from or otherwise relinquishes one position in which vacation allowance may be earned, and accepts employment in another position in the service of the University in which vacation allowance may not be earned, the Faculty Member may be deemed for purposes of receiving pay in lieu of vacation, to have terminated the Faculty Member's services. But in the event that the Faculty Member is not eligible under the circumstances to receive pay in lieu of vacation, the acceptance of such new employment shall not of itself have the effect of forfeiting any vacation allowance to which the Faculty Member is then entitled. Pay for lapsed vacation in excess of the maximum allowed may be granted only as permitted by law.

12. Pay for Vacation Allowance upon Termination.

- a. Whenever a termination of services takes place, the Faculty Member is to be paid, in accordance with law for vacation allowance either in lump sum or in the normal manner.
- b. When payment in lump sum is made, the sum payable for vacation allowance shall be equal to the amount of compensation to which the Faculty Member would be entitled or to which the Faculty Member would be allowed during the vacation period if the Faculty Member were permitted to take vacation in the normal manner.
- c. However, if the Faculty Member is immediately rehired by the Employer, and will continue to earn vacation allowance, such payment shall not be made.

13. A Faculty Member who, pursuant to Federal statutes, is called or ordered and reports either voluntarily or involuntarily for active military duty with a branch of the U.S. Armed Forces shall be deemed to have terminated service for the purposes of this Article. The Faculty Member's choice of lump sum payment for vacation allowance will not of itself cause the forfeiture of unused sick leave credits.

14. In the event that a vacation request is denied by the Employer, the Faculty Member may ask to be given the reasons in writing.

15. Faculty Members whose salaries are paid from other than the general revenues of the State of Hawaii or from funds deemed by the Employer to be assured for an indefinite period of time have vacation leave comparable to other C-11-month, R, S, B, and A Faculty.

D. SICK LEAVES

1. Faculty Members in the Community Colleges shall retain their sick leave benefits as set forth in the policies of the Board of Regents in effect October 10, 1978 (see R-7 of Reference Section).
2. Faculty Members at UH-Hilo, UH-Manoa, and UH-West Oahu shall be provided sick leave as set forth below: (see R-8 of Reference Section for AP 9.350, Application for Transfer of Vacation and Sick Leave Credit or Payment in Lieu of Vacation).

General Provisions.

- a. Deans/Directors shall have the responsibility to maintain the leave document (UH Form 1) and the monthly Leave Status Report for reference.
- b. Earning of Sick Leave
 - 1) Faculty Members earn sick leave at the rate of one and three-quarter (1-3/4) working days or 14 hours for each full month of full-time service.

- 2) Faculty Members on 9-month appointments shall earn 15.75 days or 126 hours of sick leave credit per academic year. The academic year begins in mid-August and ends in mid-May; therefore, for the purpose of calculating sick leave for the months of August and May, 9-month Faculty shall be credited seven (7) hours for the month of August and seven (7) hours for the month of May.
- 3) When a Faculty Member renders less than a full month of service, sick leave shall be earned in accordance with the table of earnings shown below:

<u>Actual Days of Service</u>	<u>Working Days of Leave</u>
For 1 to 3	0
For 4 to 6	1/2
For 7 to 9	3/4
For 10 to 12	1
For 13 to 15	1-1/4
For 16 to 18	1-1/2
For 19 or more	1-3/4

- 4) Sick leave for part-time Faculty will be prorated on the basis of the FTE percentage.
 - 5) Faculty employed on a temporary, contractual, or substitute basis while on vacation from another position in the State government or any political subdivision of the State shall not earn sick leave allowance for such employment.
 - 6) A Faculty Member shall not accrue sick leave allowance:
 - a) During the period of any sick leave granted when the employment terminates or is to terminate at the end of such leave;
 - b) During any period of valid suspension which is sustained in the event an appeal is made by the Faculty Member;
 - c) During any period of unauthorized leave;
 - d) During any period a Faculty Member is on sabbatical or study leave; or
 - e) During the period the Faculty Member is on leave without pay.
 - 7) A Faculty Member shall accrue sick leave allowance during leaves with pay or being paid wage loss replacement under workers' compensation.
- c. Accumulation of Sick Leave
- 1) A Faculty Member may accumulate earned sick leave. The unused sick leave accumulated shall be credited to the Faculty Member's account for subsequent use in the event of illness.
 - 2) Unused sick leave may be accumulated without limitation. Sick leave shall be administered on a calendar year basis and recorded at the end of each calendar year.
- d. Notification of Illness
- 1) Notification of absence because of illness shall be given as soon as possible to the Department Chair or other equivalent supervisor (hereinafter referred to as the Chair) on or before the first day of absence, or if impracticable, as soon thereafter as circumstances permit.

- 2) If in the opinion of the Chair, notification has not been given in accordance with this section, the Chair may recommend to the Dean/Director that such absence be charged to leave without pay.

e. Application for Sick Leave

- 1) Application for sick leave shall be filed on a UH Form 1 (see R-9 of Reference Section) within five (5) working days after return to duty; provided that in the event such Faculty Member dies before that time or before returning to duty, the executor or administrator of the Faculty Member's estate or the University, if it is deemed proper, may file such application within six (6) months after the occurrence of death.
- 2) The Faculty Member shall be required to submit a certificate from a licensed physician for absences of more than five (5) consecutive working days to substantiate the fact that the period of absence was due entirely to sickness and that the Faculty Member is now physically and mentally able to resume the duties of the position. The Employer may require the Faculty Member to be examined by a physician of the Employer's choice provided the Employer assumes the cost of the physician's services.

f. Sick Leave Charged Only for Regular On-Duty Days

- 1) Regular on-duty day is synonymous with regular State of Hawaii work day and does not include holidays and weekends. A regular on-duty day and a duty week for the purpose of determining sick leave pay shall not exceed eight (8) hours a day and forty (40) hours a week.
- 2) Faculty Members absent from work because of sickness, shall have charged against their sick leave allowance, only regular on-duty days which occur during such absence. For Faculty Members on 11-month appointments, this means any regular on-duty day exclusive of non-duty time.
- 3) For Faculty Members on 9-month appointments, this means any regular on-duty day during the period beginning with the first official day of the duty period in the Fall and ending with the Spring semester's commencement, including periods when classes are not scheduled.

g. Sick leave may be allowed for medical, dental, optical, and optometrical examination appointments which the Faculty Member cannot schedule during non-duty time.

h. Sick leave shall be allowed for temporary disabilities as defined under the Equal Employment Opportunity Commission Guideline, Title 29, Chapter 14, Section 1604, of the Code of Federal Regulations.

i. Time-off for physical examinations required by the Employer shall not be charged against a Faculty Member's sick leave.

j. Lump sum payment is not allowed for unused sick leave when a Faculty Member terminates; however, such sick leave credits shall be transferred to the Employees' Retirement System (ERS). (See R-8 of Reference Section for AP 9.350, "Application for Transfer of Vacation and Sick Leave Credit or Payment in Lieu of Vacation," September 21, 1990)

E. BEREAVEMENT LEAVE

1. Faculty Members covered by this Agreement shall be allowed three (3) working days as bereavement leave which shall not be deducted from any other leave to which the Faculty Member may be entitled. Bereavement leave shall be granted on such days as designated by the Faculty Member, provided they fall within a reasonable period of time after a death in the immediate family.
2. For the purposes of this Article, immediate family is defined as: parents, siblings, spouse, children, father-in-law, mother-in-law, grandparents, grandchildren or any individual who has become a member of an

immediate family through the Hawaii "Hanai" custom. Provided, however, individuals affected by the "Hanai" relationship shall be entitled to utilize funeral leave only for those members of the immediate family resulting from the "Hanai" relationship.

3. If the death or funeral occurs outside the State of Hawaii, a Faculty Member who earns accumulated vacation leave shall be granted, upon request, a reasonable number of additional days of vacation leave, or if such accumulation is exhausted, of leave without pay. If the Faculty Member does not earn accumulated vacation leave, the Faculty Member may take up to an additional two (2) days of leave, provided that upon return, the duty period is extended at the end of the academic year by that number.

F. FAMILY LEAVE

Faculty Members shall have the right to unpaid family leave of absence in connection with the birth, adoption, or care of a child, or for the care of a spouse, domestic partner, parent, father-in-law, or mother-in-law with a serious health condition, in accordance with the applicable state and federal laws and rules. (See R-10 of Reference Section)

1. Notice of Intent to Take Family Leave

The Faculty Member shall provide the Dean/Director, with a copy to the Department/Division, with at least one (1) month's notice before taking family leave in every case where it can be anticipated that a leave will be necessary.

In emergencies, Faculty Members are entitled to take family leave without prior notice, provided that the Faculty Member gives verbal notice to the Department/Division Chair so that arrangements can be made for covering the Faculty Member's professional duties. In such emergencies, the Faculty Member shall give written notice to the Dean/Director within five (5) days after the beginning of the leave. As soon as possible, the Faculty Member shall consult with the Department/Division Chair regarding the scheduling of the remaining leave.

2. Length of Family Leave

Faculty Members may take up to four (4) months of family leave during their duty period within any calendar year. Family leave may be broken into non-contiguous periods of as small as one (1) day.

3. Use of Sick Leave or Vacation

Faculty Members may use accumulated sick leave or vacation for family leave purposes. All other family leave, not credited to sick leave or vacation, shall be leave without pay.

4. Service Credit

Service credit and other employee benefits for periods of family leave shall be in accordance with other applicable provisions of this agreement relating to paid and unpaid leaves.

5. Non-Discrimination

The Employer shall not discriminate against any Faculty Member on the basis of their use of family leave.

G. HOLIDAYS

1. The following days of each year are established as holidays:

New Year's Day.....	First day of January
Martin Luther King, Jr. Day.....	Third Monday of January
President's Day.....	Third Monday in February
Kuhio Day.....	Twenty-sixth day of March
Good Friday.....	Friday preceding Easter Sunday
Memorial Day.....	Last Monday in May
Kamehameha Day.....	Eleventh day of June
Independence Day.....	Fourth day of July

Admission Day	Third Friday in August
Labor Day.....	First Monday in September
Veteran's Day	Eleventh day of November
Thanksgiving Day	Fourth Thursday in November
Christmas Day	Twenty-fifth day of December

All election days, except primary and special election days, in the county wherein the election is held.

Any day designated by proclamation by the President of the United States or by the Governor as a holiday.

2. If any of the holidays falls on Sunday, the following Monday shall be observed as a holiday. If such a day falls on a Saturday, the preceding Friday shall be observed as a holiday.
3. Holidays shall be credited toward the accrual of vacation and sick leave.

H. LEAVE FOR JURY OR WITNESS DUTY

1. Faculty Members covered by the terms of this Agreement, if summoned to serve as a witness or juror in any judicial proceedings, except those which may involve or arise out of the Faculty Member's outside employment or their personal business or private affairs, shall, if they serve, be entitled to leave of absence with pay.
2. Faculty Members who serve as a witness or as a juror, and who receive a fee and/or mileage allowance, shall be allowed to retain such payments and not have it offset against their salary.
3. Faculty Members called to serve as a witness in cases which may involve or arise out of their outside employment or personal business or private affairs shall not be entitled to leave of absence with pay as provided in Paragraph 1. above, provided that they shall be entitled to use annual vacation leave, leave without pay, or outside employment time as provided in Article III.B. of this contract.

ARTICLE VII, LEAVES WITHOUT PAY

A. LEAVE WITHOUT PAY FOR PROFESSIONAL IMPROVEMENT

1. Leaves of absence without pay for professional improvement may be granted where such leave is determined to be to the advantage of the University, provided a satisfactory temporary replacement can be secured. Such leaves will not be granted for periods longer than one (1) year at a time. Leaves without pay which exceed one (1) month are creditable toward sabbatical leave credit if there is a prior agreement in writing.
2. Professional improvement leaves are granted only in cases where the recipients will enhance their value to the University by deliberately seeking to improve their professional abilities. In these leaves, the improvement of the recipient's professional abilities must be primary and direct, and not a secondary or incidental consequence, such as may result from employment by an outside agency.
 - a. If the support for the leave is provided by the recipient, then the recipient's statement of purpose establishes whether the primary purpose is professional improvement.
 - b. If support is provided by an outside agency, then the agency's reason for providing support defines the primary reason of the leave.
 - c. Fellowships and foundation grants awarded to enable recipients to pursue the kind of research, scholarship, and creative work which improve their professional abilities and so enhance their value to the University are considered to be for professional improvement.

B. LEAVE WITHOUT PAY FOR PERSONAL REASONS

1. Leave without pay may be granted to a Faculty Member for the purpose of engaging in activities judged by the Employer to be to the advantage of the University, but which do not qualify for leave without pay for

professional improvement, provided that a temporary replacement satisfactory to the Employer can be secured. Such leaves shall normally not be granted for more than one (1) year at a time.

2. Personal leave may also be granted to a Faculty Member for compassionate reasons, provided that a temporary replacement satisfactory to the Employer can be secured. Such leaves shall not be granted for more than ninety (90) days at a time. When such leaves are of an emergency nature, approval shall not be unreasonably withheld.
3. Leaves without pay for personal reasons are not creditable toward sabbatical leave.

C. **SUBSTANCE DEPENDENCY REHABILITATION LEAVE**

1. Substance dependency rehabilitation leave for alcohol and/or drug abuse or dependency may be granted by the Employer in accordance with the following:
 - a. Substance dependency rehabilitation leave shall be leave without pay for personal reasons; however, a Faculty Member may elect to apply accrued sick leave to the period of the substance dependency rehabilitation leave, subject to the applicable sick leave provisions of this Agreement.
 - b. The Employer may reduce the Faculty Member's workload to accommodate the demands of the rehabilitation program, and thus facilitate recovery.
 - c. Substance dependency rehabilitation leave shall not be granted for more than six (6) months.
 - d. The Faculty Member is expected to meet all standard professional requirements for any work performed during the rehabilitation period.
 - e. Upon satisfactory completion of a qualified substance dependency rehabilitation program, any period of substance dependency rehabilitation leave shall not constitute a break in service.
2. Whenever a Faculty Member afflicted with alcohol and/or drug abuse or dependency participates in a rehabilitation program, the cost of the program, if any, shall be the responsibility of the Faculty Member.

D. **APPLICATIONS**

Applications for leave without pay must be submitted through the Chair to the Dean/Director or Chancellor with a statement of the reason for such leave. The Dean/Director or Chancellor shall note a recommendation on each application and shall forward each to the Chancellor or at UH-Manoa, the President or the President's designee. At UH-West Oahu, the Chair of the Division or Program Director shall send the application directly to the Chancellor.

When possible, applications other than for leaves without pay of an emergency nature should be initiated at least six (6) months in advance of the desired effective date.

ARTICLE VIII, FACULTY TRAVEL

A. **PROFESSIONAL MEETINGS**

In recognition of the value in Faculty Members attending professional meetings as part of their normal professional activity and their professional development, the Employer agrees to facilitate the travel of Faculty Members to professional meetings insofar as is possible without interfering with maintaining the efficiency of University operations within available funds.

B. **PER DIEM**

The Employer's present rules and regulations on Travel Policies and Procedures shall be amended to provide for the following:

1. Intra-State Travel

- a. When Faculty Members are required to travel on official business to other islands within the State of Hawaii for a duration of greater than twelve (12) hours or overnight, they shall be provided with a travel allowance consisting of: (1) a fixed sum defined as the Hawaii Meal and Incidental Expense (HM&IE) in the Employer's Travel Policies and Procedures that shall be greater than or equal to \$50 and less than or equal to the applicable federal allowance for meals and incidental expenses; plus (2) reimbursement of actual lodging expenses not to exceed the federal lodging allowance. For travel less than twelve (12) hours, the Employer will reimburse the Faculty Member for the actual expense of one (1) meal not to exceed \$20.00.
- b. In the case of official travel time involving a fraction of a day greater than twelve (12) hours, the allowable claim shall be in terms of quarter-day periods measured from midnight. For purposes of computing the travel allowance, the quarter-day shall commence in accordance with check-in requirements.

2. Out-of-State Travel

- a. When Faculty Members are required to travel on official business to areas outside the State of Hawaii, they shall be provided a travel allowance consisting of either the federal per diem rate or a mutually agreed upon flat dollar amount not to exceed the federal per diem rate.
- b. In the case of official travel time involving a fraction of a day, the allowable claim shall be in terms of quarter-day periods, with the quarter-day periods measured from midnight. Unless otherwise authorized by the Employer, allowable travel time is the time necessary to travel by the most direct route to and from the points specified in the approved travel plan or request, plus the time necessary to conduct the required official business.

3. Nothing in this Article shall be interpreted to restrict a more liberal per diem payment (or other reimbursement) if such payment is provided by an external source of funding.

C. REIMBURSEMENT FOR PER DIEM RELATED EXPENSES EXCEEDING THE PER DIEM RATE

Requests for excess lodging expenses in excess of the applicable federal rate shall be reasonable, and shall be approved in advance of the Faculty Member's trip. Requests for excess expenses shall require submittal of receipts prior to reimbursement.

D. MEAL AND INCIDENTAL EXPENSES

In order to provide freedom of choice in meal consumption, a Faculty Member shall not have the meal and incidental expense allowance reduced on the basis of meals included in conference programs.

E. TRAVEL OCCURRING ON SAME ISLAND

When Faculty Members with prior authorization from the Employer are required to work in locations which make it impracticable and undesirable to return home at the end of a workday, one (1) of the following shall apply:

1. If commercial lodging is utilized, the Faculty Member shall be paid a travel allowance at the rate provided in Paragraph B.1.; or
2. If the Employer provides lodging, an allowance consisting of the HM&IE as defined in Paragraph B.1.a shall be provided to the Faculty Member.

F. MILEAGE REIMBURSEMENT

The Employer's present rules and regulations for reimbursing Faculty Members for use of their private vehicles when required to use such vehicles in carrying out their duties shall provide for reimbursement at the applicable federal mileage rate per mile traveled on business.

G. **SUBSIDIZED PARKING AT UNIVERSITY CAMPUSES**

1. The provisions of this section shall apply to Faculty Members under the following conditions:
 - a. The Faculty Member is required to use a personal vehicle for work purposes as a condition of employment; and
 - b. The Faculty Member is required to use a personal vehicle a minimum of 20 times or 200 miles per month on an on-going basis.
2. Faculty who meet the conditions specified in Paragraph 1 of this section shall be offered a University parking permit from among those parking permits allocated to the appropriate Dean/Director or Chancellor for assignment to employees.
3. The University parking rates for Faculty who meet the conditions specified in Paragraph 1 of this section shall be thirty percent (30%) of the applicable University parking rates, if any, approved and as may be amended by the Board of Regents.

ARTICLE IX, ACADEMIC FREEDOM

A. **ACADEMIC FREEDOM**

Faculty Members are entitled to freedom in the classroom in discussing subjects of expertise, in the conduct of research in their field of special competence, and in the publication of the results of their research. The Employer recognizes that Faculty Members, in speaking and writing outside the University upon subjects beyond the scope of their own field of study, are entitled to precisely the same freedom and are subject to the same responsibility as attaches to all other citizens. When thus speaking as a citizen, they should be free from censorship or discipline.²

The commitment to academic freedom in the conduct of research does not imply that a Faculty Member's research is not subject to critical review and judgment as to its quality and significance.

B. **PROCEDURE FOR DEALING WITH ALLEGED INFRINGEMENTS**

1. When there is belief that a Faculty Member's academic freedom is threatened by the possible violation of Paragraph A above, the Faculty Member may discuss the matter with the Department Chair or the appropriate Administrative Officer.
2. Provided that a grievance alleging a violation of Paragraph A above has not been filed, if a satisfactory adjustment of the matter does not result, the Faculty Advisory Committee on Academic Freedom (FACAF) will be convened by the appropriate Administrative Officer within twenty (20) calendar days of the receipt of the written request from the Faculty Member. If such a grievance has been previously filed, the Faculty Member may not request that a FACAF be convened. The Faculty Member may present a case, confidentially and orally, to the FACAF, which will then informally inquire into the situation to determine whether there is a probable violation of the provision on academic freedom, and attempt to effect an adjustment.
3. If the committee concludes that academic freedom is in jeopardy by the probable violation of Paragraph A above, and that no adjustment can be effected, it will then request a written statement from the complaining Faculty Member and proceed to collect all factual materials available relating to the case.
4. After consideration of these materials, the FACAF will make a recommendation to the appropriate Administrative Officer within thirty (30) calendar days from the date in which the Committee was first convened. The Administrative Officer shall take action, based upon the recommendation of the FACAF, within twenty (20) calendar days after receiving the Committee's report. A copy of the Committee's report and recommendation and a written statement of the action taken by the Administrative Officer shall be sent by the Administrative Officer to the appropriate Chancellor or Vice President and the Faculty Member.

² *In the exercise of Academic Freedom, Faculty Members will be held to the Professional Responsibilities set forth in Article IV, Faculty Workload and Professional Responsibilities.*

5. If the Administrative Officer takes action which does not satisfy the Faculty Member, and the Faculty Member believes the action violates Paragraph A above, the Faculty Member may file a grievance at Step 1 of the Grievance Procedure (Article XXIV).

C. **ADVISORY COMMITTEE ON ACADEMIC FREEDOM**

The Faculty Advisory Committee on Academic Freedom shall consist of five (5) members appointed from the Faculty Personnel Panel, with exceptions made under the exclusion option pursuant to Article XV. A majority of the committee shall be from the campus in which the alleged infringement occurred. Additionally, at Manoa and the University of Hawaii at Hilo, at least two (2) members of the majority from the respective campus shall be from the school or college of the Faculty Member.

D. **PROCEDURE FOR DEALING WITH ALLEGED BREACH OF PROFESSIONAL ETHICS AND/OR CONFLICTS OF INTEREST IN RESEARCH OR SCHOLARSHIP**

Because the Faculty possess unique and expert qualifications to assess breaches of professional ethics, including conflicts of interest in research or in scholarship, the President or designee may, at his/her option, appoint not more than five (5) Faculty Members to investigate an allegation thereof, before imposing discipline, on the following conditions:

- the accused Faculty Member and the Union are informed in writing that such an investigation is about to be conducted, and are informed of the names of the appointed Faculty Members; and
- the Faculty Members who are appointed do consent to serve; that the appointed Faculty Members are disqualified from participation in any departmental personnel deliberation or decision whatsoever during the period of their appointment as investigators, and from any personnel deliberation or decision whatsoever involving the accused for a period of three (3) years following the termination of their appointment as investigators.

The investigators may render their opinion regarding whether a breach of professional ethics and/or a conflict of interest has occurred, and an opinion regarding the severity of the breach and any curative steps that ought to be taken in amelioration thereof. They may not, however, express an opinion regarding the appropriate discipline, if any, to be imposed by the Employer. Any disciplinary action arising out of the investigation shall be in accordance with Article XVIII.

ARTICLE X, DEPARTMENT OR DIVISION PROCEDURES GOVERNING TENURE, PROMOTION, AND CONTRACT RENEWAL

A. **DEPARTMENTAL PROCEDURES**

Each Department or Division, or comparable unit within the University, shall reduce its committee procedures on tenure, promotion, and contract renewal to writing. If such procedures have not been written and approved within six (6) months of the execution of this Agreement, the Employer shall develop such procedures for the Department or Division.

B. **MINIMUM REQUIREMENTS FOR DEPARTMENTAL PROCEDURES**

Written Department or Division Personnel Committee (DPC) procedures shall at a minimum provide for (a) secret ballot voting at all final votes; (b) strict exclusion from voting of any individual who is not a tenured bargaining unit 07 member over the tenure or contract renewal of another Faculty Member; and (c) allowing only Faculty Members of equal or higher rank to vote on applications for promotions; and (d) procedures for the orderly review of dossiers at the Department or Division level.

Non-tenure track bargaining unit members may participate in the establishment of DPC policies and procedures, and they may also take part in the discussions of the Personnel Committee if the Department or Division has voted to include these Faculty Members in such deliberations.

The DPC policies and procedures may include provisions for an individual candidate to exclude participation by other department members where the candidate believes that a conflict exists that would prevent the Faculty Member's fair evaluation of a tenure or promotion application made by the candidate.

Department or Division Chairs, and other bargaining unit members serving in similar capacities such as those with the title Director, shall not participate by voice, vote, presence, or in any other form of communication in the deliberations of the DPC over individual tenure and promotion applications.

C. REVIEW OF PROCEDURES

1. Written DPC procedures shall be submitted through the Dean or Director to the appropriate Chancellor and the union for approval, which shall not be unreasonably withheld.
2. These procedures shall comply with the terms of this Agreement, Board of Regents' policies, and administrative guidelines.
3. Copies of the approved DPC procedures will be filed with the Union. Copies shall also be retained in the office of the Dean/Director or Chancellor at UH-West Oahu.

D. AMENDMENTS OF PROCEDURES

1. Amendments to DPC procedures may be recommended from time to time at the discretion of the Department, Division, or comparable unit.
2. The proposed amendment shall be sent through the Dean or Director to the appropriate Chancellor and the union for review and approval, which shall not be unreasonably withheld. Approved amended procedures shall be filed with the Union and the Dean/Director or Chancellor at UH-West Oahu.

ARTICLE XI, INTELLECTUAL PROPERTY, PATENTS AND COPYRIGHTS

GENERAL SCOPE

Except in the case of works written or produced for hire, and subject to any restrictions imposed by outside sponsoring or funding organizations, a Faculty Member who writes or produces any work shall have exclusive rights thereto, including the ownership of copyright.

It is recognized that there are usually three (3) interests involved in connection with research work and invention performed with the resources of the University. These three (3) interests are the Faculty Member researcher or inventor, the University, and the general public whose taxes support the University. If the research is financed wholly or in part by an outside agency, there exists an additional interest. Rights, royalties, and other net profits shall be shared fairly amongst the parties. The Faculty Member will receive a share of the net profits from the sale or exploitation of patents according to the following schedule: (a) for total net profit up to \$100,000, the amount assigned to the Faculty Member shall be 2/3; (b) for total net profit above \$100,000 up to \$200,000, the amount assigned to the Faculty Member shall be 1/2; (c) for total net profit above \$200,000 up to \$300,000, the amount assigned to the Faculty Member shall be 5/12; and d) for total net profit above \$300,000, the amount assigned to the Faculty Member shall be 1/3.

A. CLASSROOM LECTURES AND THE RECORDING OF PRESENTATIONS

Faculty Members shall own all rights to materials prepared on their own initiative for classroom, educational or professional purposes, and shall be exclusively entitled to the benefit of any royalties derived therefrom.

For personal educational purposes, students may record classroom lectures or other presentations, using tape recorders or other electronic or mechanical devices, unless the Faculty Member denies permission for such recording. Permission shall not be denied when the student requires such devices as the result of a physical disability.

B. DISTANCE LEARNING AND MULTIMEDIA PRESENTATIONS

The Employer may transmit or record for transmission any classroom instruction, lecture or other instructional or performance event produced by Faculty as a part of a program of distance learning, e.g., HITS and SkyBridge, where

the Faculty Member has received either an equivalent reduction in other classroom assignments or overload compensation as set forth in Article XXI, Salaries. The Employer, however, may not sell or re-transmit in future semesters any such recording except under the terms of a written Agreement between the Employer and the Faculty Member providing each party with a fifty percent (50%) interest in the net profits from either the sale or rebroadcast.

Faculty Members engaged in technology mediated instruction or distance learning require adequate training, equipment and technical support. Where these are not available the Faculty Member may not be required to engage in technology mediated instruction or distance programs.

The class size (the total of all students at all sites) will not exceed the seat load of a comparable, traditionally taught class unless agreed to by the Faculty Member.

C. PATENTS AND COPYRIGHTS

The rights of Faculty Members relating to patents and copyrights shall be governed by the University of Hawaii Patent and Copyright Policy (effective 1/22/68, revised 6/22/81), the Executive Policy E5.500 Administration of the Patent and Copyright Policy, and the Administrative Procedures A5.500, A5.501, and A5.502 (as in effect on 3/85), which are incorporated herein by reference. (See R-11, R-12, R13, R-14, R-15 of Reference Section.)

D. REVIEW AND AMENDMENT

Immediately upon ratification of this Agreement, the parties will meet to prepare a Memorandum of Understanding to address the joint use rights and ownership of distributive instructional programs where both the Faculty Member and other UH material and human resources have contributed to the creative production of such programs.

The parties recognize that the issue of intellectual property is complex and that there may be a need to amend or modify the current University or Hawaii Patent and Copyright Policy. Therefore, a Joint Committee shall be established to periodically review the issue of intellectual property rights and the applicable policies and procedures. The Joint Committee shall be comprised of three (3) representatives appointed by the UH President and three (3) representatives appointed by UHPA. The Joint Committee shall meet at least once each academic year and report its deliberations, findings, and recommendations, if any, to the Employer and the Union.

ARTICLE XII, TENURE AND SERVICE

A. DEFINITIONS. As used in this Agreement, the term:

1. "Academic tenure" means the right of Faculty Members to permanent or continuous service in the University.
2. "Probationary period" means the period of assessment of eligible Faculty Members prior to the awarding of tenure.
3. "Temporary appointments" means Faculty Members on Limited Term Contracts, Visiting Faculty, and Lecturers who are not eligible for tenure.

B. PROBATIONARY PERIOD

1. Probationary Service.
 - a. The probationary period begins when the Faculty Member first holds a tenure track appointment effective on or after July 1 and prior to October 2 of full-time service.
 - b. The probationary period ends by the granting of tenure, the refusal of tenure by the Employer, or the non-renewal of appointment. During this period, probationers do not have a claim to their position and the Employer, through its officers, may exercise its prerogative of non-appointment without a statement of reasons.
 - c. "Full-time probationary service" eligible for credit toward academic tenure must consist of teaching and/or research and/or extension and/or specialized work in the University in Ranks 2, 3, 4, and 5 in the A, B, or S classification, or in Ranks 3, 4, and 5 in I or R classification, or in Ranks II, III,

IV, and V of the C classification in the Community Colleges. In absence of agreement to the contrary, service on a terminal year contract does not count as probationary service.

2. Duration of Probationary Period.

- a. The probationary period is five (5) probationary years while in salary classifications A-2, B-2, S-2, I-3, R-3, A-3, B-3, S-3, and C; three (3) years while in classifications I-4, R-4, A-4, B-4, and S-4; and two (2) years while in classifications I-5, R-5, A-5, B-5, and S-5.
- b. The probationary period for any Faculty Member may be lengthened, or shortened, or eliminated by specific action of the Employer either at the request of the Faculty Member, or upon the initiative of the Employer with the concurrence of the Faculty Member, but in no instance may the total full-time probationary service exceed seven (7) years. Service at other institutions, including other campuses of the University of Hawaii, may be credited to the probationary period. The Employer shall notify the Faculty Member, in writing, of the decision to lengthen, shorten, eliminate or in any way alter the normal probationary period. If tenure is denied, the Faculty Member will be given a terminal one-year (1-year) appointment.
- c. The probationary period may be interrupted during periods when the Faculty Member does not hold a full-time contract. If the Faculty Member signs a contract for a non-tenure track position, the probationary period may also be interrupted. If the Faculty Member agrees to be transferred by the administrative head to a non-tenure track position, the Faculty Member shall continue to accrue probationary credit. By specific agreement in writing in advance, the Faculty Member and the Employer may agree that periods when the Faculty Member is serving in a non-tenure track position will count toward the probationary period.

Faculty Members who have leaves of absences with or without pay during the probationary period must be aware that such leave will not necessarily be credited toward their probationary period. Leaves of absences of a duration not greater than thirty (30) days during probationary periods shall be credited toward the probationary period. Credit for periods of leaves of absences, with or without pay, which exceed thirty (30) days in duration shall be approved in writing by the Employer before such leaves are taken, and in the absence of such approval, the leave period will not be credited.

- d. A Faculty Member with full-time non-probationary service in one of the Ranks specified in Paragraph B.2.a. above who accepts a probationary appointment without a break in service at the same Rank and with the same duties shall, upon written request, be granted a reduction in probationary period. The Faculty Member's probationary period shall be as provided in Paragraph B.2.a. reduced by the number of full years of service in the prior non-probationary appointment as defined above; however, the probationary period shall not be less than one (1) full year or two (2) semesters.
- e. Faculty Members with service in a Rank which does not count as probationary service may, upon promotion to a Rank which is probationary, request a shortening of the normal probationary period by up to three (3) years, or the number of years of such non-probationary service, whichever is smaller.
- f. A Faculty Member in salary classification I-3 or R-3 shall be awarded promotion to Rank 4 without separate application if granted tenure. The decision to grant tenure shall include a determination that the Faculty Member qualifies for promotion to the Rank in which tenure is granted.
- g. A Faculty Member in salary classification C-2 shall be awarded promotion to Rank 3 without separate application if granted tenure. The decision to grant tenure shall include a determination that the Faculty Member qualifies for promotion to the Rank in which tenure is granted.

3. Contracts During Probationary Period.

Initial appointment to the Faculty, by contract, shall be for a two (2) year period. In the C and I classifications, the initial contract will usually be effective August 1 and continue through July 31 of the last year of the initial contract. If the Faculty Member is to be reappointed, a new contract will be offered which

becomes effective August 1. For Faculty Members at rank 2 or 3, this contract shall be for two (2) years and may be followed by one-year (1-year) contracts effective August 1, with the terminal year usually ending July 31. Faculty at all other ranks who are to be reappointed shall be given one-year (1-year) contracts effective August 1 with the terminal year ending July 31. Additional contract renewals shall be for one-year (1-year) terms not to exceed seven (7) years of full-time probationary service.

C. EFFECTIVE DATES FOR PROBATION

For the purposes of tenure, a full-time appointment which is effective on October 1, or prior to that will be considered as a full year of probationary service on July 31 next. Where the effective date of the initial appointment is later than October 1, the partial year will not count in the calculation of the probationary period. In such event, the probationary period will commence on August 1 following.

D. RENEWAL OF CONTRACTS DURING THE PROBATIONARY PERIOD

1. General

Recommendations for renewal shall require that the Faculty Member's performance has been assessed for strengths and weaknesses and has been rated as satisfactory, that there is a continuing need for the Faculty Member's services at the University, and that the Faculty Member has made the professional improvement or has demonstrated the professional and personal qualities needed by the department, or similar considerations. A positive assessment does not necessarily assure renewal of appointment.

2. Procedures

The reappointment recommendation form is initiated by the Department/Division Chair. The form will provide for the assessment by the Department/Division Chair and the Department/Division Personnel Committee of the Faculty Member's performance. The form is passed to the Department/Division Personnel Committee which will include its assessment and recommendation with the form and transmit the material to the Chair who will make an assessment and recommendation. The Chair will then show the assessments and recommendations to the Faculty Member concerned before forwarding same to the Dean/Director. The assessments and recommendations shall be forwarded to the Dean/Director no later than December 20.

Written notification of intent to terminate an appointment at the end of the initial contract shall be given by the Employer to a probationary Faculty Member by January 15 of the second year. If notification of termination is not given by January 15, the Faculty Member will be given a one-year (1-year) terminal contract commencing on the following August 1.

After two (2) or more full-time probationary years, at least twelve (12) calendar months notice of termination will be given.

3. Non-reappointment, Statement of Reasons

In a case in which the Employer has exercised its prerogative of non-reappointment, the Faculty Member may within twenty (20) calendar days of receipt of the written notification request a meeting with the Dean or other appropriate official.

Upon request, the Faculty Member will be advised orally of the reasons for the non-reappointment. Upon written request of the Faculty Member within ten (10) calendar days of the meeting, the reasons will be confirmed in writing.

4. Not Subject to the Grievance Procedure, except Paragraph D.2. of this Section.

Since the probationer does not have a claim to the position and the Employer may exercise its prerogative of non-reappointment, the requested statement of reasons is provided for purposes of information only; and the statement of reasons, the decision of the Employer, and the provisions of this Article, with the exception of Paragraph D.2., Procedures, shall not be subject to the grievance procedure.

E. TENURE APPLICATION, REVIEW AND NOTIFICATION

All eligible Faculty Members must apply for tenure by their final year of probationary service according to a timetable established and published by the Employer, provided previous years of probationary service have been rated as satisfactory. Following review of the application, the Employer through its officers shall notify the Faculty Member by June 30 following the date of application whether it will grant or refuse to grant tenure on the following July 1. If tenure is refused, the Faculty Member shall be offered a terminal year's contract commencing July 1. If notification of refusal of tenure is not given in writing by June 30 of the final year of probation, the Faculty Member shall receive a year's extension of probationary service with the option of reapplying for tenure during that year. Personal delivery of the notice in writing, or the mailing of the notice by certified or registered mail to the last recorded residence of the Faculty Member, on or before June 30, shall constitute an effective notification. A Faculty Member who fails to apply for tenure during the final year of probationary service shall be given a one-year (1-year) terminal contract commencing August 1.

F. TENURE EVALUATION PROCEDURES

1. Preparation of Tenure Applications

Guidelines for filling out and processing tenure applications shall be established by the Employer. Criteria shall be in writing and shall be distributed in the guidelines and procedures provided to the applicant along with the tenure application forms and shall be the basis on which judgment for consideration of tenure shall be made.

Tenure application forms shall be made available to eligible Faculty Members no less than six (6) weeks prior to the application deadline. Faculty Members applying in the final year of the normal probationary period (as set forth in B.2.a. of this Article) shall have the option of being considered under the criteria contained in the guidelines distributed in the year of application or those contained in the guidelines distributed two (2) years earlier.

At each campus, the administrative coordination for this process will be provided by the Office of the Chancellor.

2. Procedures for Evaluating Tenure Applications

- a. The application for tenure is prepared by the candidate in consultation with the Department/Division Chair (DC), if so requested by the candidate, in accordance with the established guidelines. No anonymous material shall be made a part of any dossier.
- b. The application is then reviewed for completeness by the DC and the Department/Division Personnel Committee (DPC). The DPC will consider the evidence, make one (1) written assessment of the strengths and weaknesses of each applicant, append a recommendation if they so desire, and transmit the dossier to the next higher level of review.
- c. The DC shall not participate in the deliberations of the DPC nor influence the DPC's written assessment. The DC shall make a separate and independent assessment and recommendation.
- d. In those academic units where the position comparable to that of DC is filled by a person who is not a member of the Bargaining Unit, that person will not participate in the selection, deliberations and recommendations of the DPC and DC provided in F.2.b. above. Faculty of such academic units shall determine the composition of their DPC upon being convened by the person in the position comparable to the DC. The person in the position comparable to the DC may make an independent assessment, which shall be appended to the recommendation of the Dean/Director, but which shall not constitute a separate recommendation.
- e. The application shall be assigned to one (1) of the Tenure and Promotion Review Committees (TPRC) appointed by the Employer in accordance with Article XV (applicants should note their right to the Exclusion Option in Section C of that Article). The Employer may seek the advice of the union before appointing Faculty Members to a TPRC. The TPRC shall issue one (1) written report which may include the minority view(s), if any.

- f. The dossier is forwarded by the DC to the Dean/Director³ who, after making an assessment and recommendation, shall refer it to the TPRC. The TPRC shall review the dossier and make a recommendation, after which the dossier is returned to the Dean/Director for transmission to the appropriate Chancellor.
- At UH-West Oahu, the dossier is forwarded to the Chancellor, who shall refer it to the TPRC. The TPRC shall review the dossier and make a recommendation, then return it to the Chancellor.
- g. When the Chancellor disagrees with the recommendation of the TPRC, the Chancellor shall discuss the case with the TPRC before making a recommendation.
- h. The Faculty Member shall be notified of the recommendation of the TPRC when it is reported.
- i. The Employer will notify the Faculty Member of its decision in accordance with Paragraph E. of this Article.
- j. In order to protect and enhance the integrity of the Faculty participation in this process, the DPC, DC, and TPRC shall proceed with the utmost discretion and in a confidential manner. The voting shall be done by secret ballot. The applicant shall not attempt to influence or communicate with the committees or their members. Faculty Members participating in all Personnel Committees have the responsibility for avoiding conflicts of roles by recusing themselves from the process when such conflicts exist.
- k. The internal procedures of the DPC shall not constitute the basis for a grievance. These procedures may be considered during the negative tenure review process.
- l. If a school or college, because of newness or size is not organized with departments or divisions, the DPC shall be dispensed with, and a Faculty Personnel Committee will be constituted for that school or college. If additional Faculty to supplement the committee are desired, the school or college Chancellor may appoint Faculty Members from other colleges or schools of the University to serve on an ad hoc basis.
- m. At UH-Manoa, if a department or program has fewer than five (5) eligible⁴ tenured Faculty Members, who are available (i.e., not on leave of absence) to serve on the DPC, then the Dean or Director may constitute a Faculty Personnel Committee in consultation with the department chair or program director. This ad hoc Faculty Personnel Committee will be made up of all UH-Manoa tenured Faculty with an appointment of .25 FTE or greater in the department or program, and additional tenured Faculty Members from related disciplines.
- n. For UH-Hilo departments that have six (6) or more full-time Faculty Members, the DPC referred to in Article X and this Article may be composed of personnel in that department. In the formation of the Personnel Committee, the department should avoid inclusion of personnel who are applicants for tenure or promotion, personnel under consideration for contract renewal, and personnel on terminal year appointments.
- The department may include other Faculty from within the Division in its Personnel Committee. For these departments, the term DC shall refer to Department Chair for purposes of personnel evaluations.
- Faculty in departments with less than six (6) full-time Faculty Members shall be served by a DPC composed of Faculty from the departments within their Division. For these departments the term DC shall refer to Division Chair for purposes of personnel evaluations.
- o. The procedures set forth in this section shall apply to the tenure review process beginning with the academic year 2003-2004.

³ The title of the official at this level of review may vary by campus.

⁴ Not eligible are Faculty Members serving as department chair or program director of the involved department or program, or those Faculty Members holding Executive/Managerial appointments.

G. NEGATIVE TENURE ACTIONS

1. In the tenure evaluation process, the Chancellors will notify each Faculty Member whose dossier contains a negative recommendation with respect to the tenure application.
2. When a Faculty Member receives such notice from the Office of the Chancellor, the Faculty Member may, within five (5) calendar days after receiving such notice, inform the Office of the Chancellor in writing of a desire to examine the dossier.
3. Upon receiving the request, the Office of the Chancellor shall provide the Faculty Member an opportunity to examine the dossier within ten (10) calendar days.
4. The Faculty Member may, within ten (10) calendar days after examining the dossier, submit written comments and additional material to the Office of the Chancellor for transmission to the Tenure and Promotion Review Committee. If the TPRC recommendation is positive, the Faculty Member may submit the additional material directly to the Chancellor. The Office of the Chancellor shall notify the TPRC that additional materials have been submitted.
5. The TPRC will consider the comments and additional material submitted by the Faculty Member and include them with its recommendation in the dossier. The Chancellor will, after reviewing the dossier and the recommendation of the TPRC, make a recommendation or decision. When the Chancellor disagrees with the recommendation of the TPRC, the Chancellor shall discuss the case with the TPRC before making a recommendation or decision.
6. When a Faculty Member receives written notification from the University, in accordance with Paragraph C of this Article, that the application for tenure has not been granted, the Faculty Member may, within ten (10) calendar days after receiving such notice, inform the Chancellor in writing of a desire to examine the dossier.
7. Upon receiving the request, the Office of the Chancellor shall provide the Faculty Member an opportunity to examine the dossier within ten (10) calendar days.
8. The Faculty Member may within ten (10) calendar days after examining the dossier, or within twenty (20) calendar days of receipt of the written notification if the Faculty Member does not examine the dossier, elect one (1) of two (2) alternative procedures by submitting a request in writing in accordance with the following:
 - a. If the Faculty Member believes that this Agreement or the supplemental guidelines and procedures established or approved by the Employer have been violated or misapplied and that such violation or misapplication has adversely prejudiced the application, the Faculty Member may make a written statement to the Union, which specifies the nature of the violation or misapplication, and may request that an appeal of the negative tenure decision be initiated. The appeal shall be filed according to the following procedures:
 - 1) The Employer and the Union shall select an individual with significant academic background to serve as a Hearing Officer to review the appeal of the Faculty Member. The Union may present on behalf of the Faculty Member any evidence in support of the claim that this Agreement or the supplemental guidelines and procedures established or approved by the Employer have been violated or misapplied and that such violation or misapplication has prejudiced the application.
 - 2) If the Hearing Officer does not find a violation or misapplication of this Agreement or the supplemental guidelines and procedures established or approved by the Employer, or, having found a violation or misapplication, does not find that such violation or misapplication has adversely prejudiced the tenure application and decision, the Hearing Officer shall so report.
 - 3) If the Hearing Officer determines that the provisions of this Agreement or the supplemental guidelines and procedures which form the basis of the appeal were violated in a significant manner, and further finds that there was a reasonable probability that such violation of procedure in the evaluation process adversely prejudiced the decision complained of, the Hearing Officer shall:

- a) direct that the application dossier be reconsidered; may direct that the reconsideration process commence at any of the levels of review, or that any intervening level of review up to the Chancellor or appropriate Vice President be omitted; and may also direct that any improper material which has prejudiced the decision be expunged from the dossier; and/or
 - b) direct that a new TPRC be appointed in accordance with the provisions of this Agreement; or
 - c) direct that the probationary period be extended for an additional year, notwithstanding the limitations in this Article and the Faculty Member be permitted to submit a new application for tenure.
- 4) In extreme cases, where the Hearing Officer finds that the provision of the Agreement or the supplemental guidelines and procedures which form the basis of the appeal were grossly violated, and such violation seriously prejudiced the decision, the Hearing Officer may submit findings in a report to the Employer and the Union. The report may include a recommendation that tenure be granted.
 - 5) The Hearing Officer shall report findings of fact, conclusion, and recommendations to the Employer and Union within thirty (30) days of the close of the hearing.
 - 6) Upon the receipt of the report of findings, the Employer shall, after a review of the report, make a decision within a reasonable time whether to award tenure or remand the matter for reconsideration as directed by the Hearing Officer. The Employer shall notify the Union of its decision, and if requested, a statement of reasons will be provided should the Employer not grant tenure pursuant to the recommendation of the Hearing Officer.
 - 7) In the event that the President disagrees with the conclusions of the Hearing Officer, the President will complete a full review of the procedural and substantive issues involved at each stage of the process. The President will provide a full accounting of the basis for the decision rendered, prior to forwarding any recommendation to the Board of Regents. The rationale for the decision must be transmitted by the President to the applicant. Upon the completion of the reconsideration as directed by the Hearing Officer, the decision of the Employer shall be final and binding on all parties.
 - 8) The fees of the Hearing Officer and other costs related to the hearing shall be shared equally by the Employer and the Union.
- b. In the alternative, the Faculty Member may request a meeting with the Administrator who notified the Faculty Member of the negative decision. In such event, the Administrator shall meet with the Faculty Member.
 - 1) If the Faculty Member then wishes to appeal the decision and request a reconsideration on the substance of the application, the Faculty Member may submit the request together with any additional materials within ten (10) calendar days after such meeting.
 - 2) If the recommendation of the TPRC in the review process has been positive, the Employer shall, at the request of the Faculty Member, appoint a special committee to review the case and make recommendations on any specific, substantive aspects of the application referred to it. In the review process the special committee shall be free to meet with the Faculty Member and the Administrator as it deems necessary. It shall act with discretion and due consideration for the confidentiality of the matter involved. The special committee shall be made up of four (4) members selected by the Employer after consultation with the Chair of the TPRC, if available, and the Chair of the Faculty Member's department, division, or equivalent unit.
 - 3) At the conclusion of the reconsideration process, the Employer will notify the Faculty Member of its decision. If the decision remains negative, and if the Faculty Member so

requests, the Employer will provide the Faculty Member with a statement of reasons for the decision. The decision of the Employer shall be final.

- c. Neither the procedures nor the decisions arising out of G.8.a. and b. of this Article shall be subject to further review under Article XXIV, Grievance Procedure.

H. NOTICE OF RESIGNATION

Because it is especially difficult for the Employer to replace Faculty Members on short notice, good professional practice requires that a Faculty Member who expects to resign should give notice of the intention well in advance.

I. APPOINTMENT OF FACULTY MEMBERS TO ADMINISTRATIVE DUTIES AND ADMINISTRATORS TO FACULTY DUTIES

1. University of Hawaii Faculty Members holding tenure who are appointed to administrative positions will retain their academic title and full right to return, not to exceed seven (7) continuous years, at the termination of the administrative appointment to their academic position on a full-time basis, with the same tenure rights as others holding a similar rank. The Employer may assign Faculty Members holding tenure who have served more than seven (7) continuous years in an administrative position to vacant Faculty positions on a full-time basis, with the same tenure rights as others holding a similar rank.
2. Faculty Members who assume administrative duties prior to the award of tenure shall retain their academic title. While serving in administrative positions, Faculty Members will not automatically continue to accumulate probationary credit toward tenure, but will retain the right to return in probationary status to their academic position at the termination of the administrative appointment.
3. Upon return to the academic position from an administrative position, a Faculty Member's salary in Rank will be that which most closely corresponds with that which would have been received had the Faculty Member not assumed administrative duties (taking into account such increases as would have been received in the interim) with such adjustments as may be equitable under the circumstances.
4. Administrators shall not be appointed to positions traditionally filled by Faculty Members, except by written consent of the Union, which consent shall not be unreasonably withheld in case of bona fide emergency appointments to last no more than one (1) month.
5. When participating as members of the Faculty, including temporary duty as department chairs or equivalent positions, administrators shall recuse themselves from any meeting, action, appointment, or deliberation, whether convened or caused by the Employer, this Agreement, or the department, which involves hiring, tenure, promotion, or discipline.

J. LOCUS AND TRANSFER OF TENURE WITHIN THE UNIVERSITY OF HAWAII

1. Locus of Tenure

Tenure is granted at one (1) of the campuses of the University System. At the UH-Manoa Campus, tenure is further limited to a given college, school, or organized research or service unit. At the other campuses, similar distinctions shall be made with tenure granted at a college or major service or program unit.

While UH-West Oahu shares the campus with Leeward Community College, tenure will continue to be awarded at the respective colleges.

2. Tenure on One (1) Campus

Although a Faculty Member can hold joint appointments on two (2) campuses, tenure at only one (1) campus shall be held at any given time. (Note: For the rules below, the University of Hawaii campus a person leaves is called Campus 1 and the campus to which the Faculty Member goes is called Campus 2. These terms are general and so apply as stated if a Faculty Member returns to the original base, which then becomes Campus 2.)

3. Immediate Tenure

The Employer may grant a tenured Faculty Member transferring from Campus 1 to Campus 2 immediate tenure at Campus 2. Accepting tenure at Campus 2 automatically voids tenure at Campus 1.

4. Transfer of Tenured Faculty

Tenured Faculty may be transferred from one (1) locus of tenure on a campus to another, or from Campus 1 to Campus 2 within the UH system. The transfer of tenured Faculty may be initiated for the following reasons:

- a. at the request of the individual Faculty;
- b. at the request of the Employer; or
- c. as the result of the transfer of a program from Campus 1 to Campus 2.

If the individual Faculty Member requests transfer from Campus 1 to Campus 2, the Employer may transfer tenure to the Faculty Member on Campus 2. Accepting tenure at Campus 2 automatically voids the Faculty Member's tenure at Campus 1.

If tenure is not transferred to Campus 2, the Faculty Member will be granted a leave of absence from the tenured position at Campus 1 for one (1) year; the leave may be extended for one (1) additional year. The Faculty Member will lose tenure at Campus 1 if he/she does not return after two (2) consecutive years encompassed by that leave.

Faculty Members may be transferred from one (1) campus to another at the request of the Employer with the transfer of tenure to Campus 2.

A Faculty Member appointed to an administrative position on another campus shall be granted a leave of absence from the tenured position at Campus 1 for up to two (2) years. The Faculty Member will lose tenure at Campus 1 if he/she does not return after two (2) consecutive years on leave.

5. Transfer of Programs

If a program of the University System is transferred from one (1) campus to another, Faculty Members engaged in the program shall have the right of first refusal to appointment in the program at Campus 2. Faculty Members who elect to transfer retain their rank and their tenure status or probationary service credit toward tenure. If they do not wish to transfer from Campus 1, every effort shall be made to find an appropriate appointment on Campus 1 or at another campus in the University System.

The conditions of all transfers shall be set forth in writing and signed by the Faculty Member, the administration, and the Union.

ARTICLE XIII, FACULTY APPOINTMENTS NOT ELIGIBLE FOR TENURE

A. GENERAL

A significant number of individuals in the bargaining unit are not eligible to receive tenure. Such positions are funded through state general appropriations, special funds, revolving funds, and external government and private grants or contracts, or a combination thereof. These include the following:

1. Faculty Members being paid on the Lecturer Fee Schedule;
2. Part-time appointments;
3. "Visiting Faculty;"
4. Appointments that fill vacancies where a Faculty Member has return rights to the position;

5. Positions not designated as permanent by the funding agency; and
6. Positions that are a part of a program that has only probationary approval by the Board of Regents.

B. CONVERSION OF TEMPORARY APPOINTMENTS TO PROBATIONARY STATUS

The Employer shall make every effort to convert temporary positions to tenure track status where:

1. The position has a permanent designation and is fully funded through state general funds; or
2. Where evidence of continuing need has been demonstrated by consistent funding of the position for seven (7) consecutive years that includes an average of at least seventy-five percent (75%) state general funding.

C. LIMITED TERM CONTRACTS

No later than July 1, 2004, Faculty Members both on full and part-time appointments not eligible for tenure will be offered multi-year contracts under the following conditions:

1. The Faculty Member has been appointed to the same bargaining unit position for five (5) consecutive years; or
2. Where a multi-year Limited Term Contract would serve the mutual needs of the Employer and the Faculty Member.

Limited Term Contracts shall be for three (3) years, with the expiration term of the contract rolling forward one (1) year at the end of each year of the three (3) year term.⁵

A Limited Term Contract may be terminated prior to its expiration, provided that the Faculty Member is given at least four (4) months notice, and all other temporary contracts of shorter duration in the individual's program, division, or department have been given prior notice of termination.

Limited Term Contracts for a period of one (1) year up to three (3) years shall be offered to Lecturers who have taught for at least eight (8) semesters over a seven (7) year period in the same unit.

D. RESEARCH GRANTS OR OTHER NON-STATE GENERAL FUNDED CONTRACTS

Faculty Members hired specifically on a research or training grant, or through an external contract with the University, may be appointed to a Limited Term Contract of up to three (3) years. The renewal of the Limited Term Contract shall be subject to the needs of the grant or contract and the availability of funding. The beginning and ending dates for these Limited Term Contracts shall coincide with the dates of the grants or contracts.

ARTICLE XIV, PROMOTION

A. GENERAL

Any Faculty Member shall upon application be considered for promotion in any year in accordance with guidelines established by the Employer. Criteria shall be in writing and shall be distributed in the guidelines and procedures provided to the applicant along with the promotion application forms and shall be the basis on which judgment for consideration of promotion shall be made.

⁵ The term "rolling contract" refers to the renewal of the contract at the end of each year of its term. Therefore, each year a three-year rolling contract would automatically be renewed for an additional three (3) years if notice of termination of the contract were not made by the end of that first year.

B. PROCEDURES FOR RECOMMENDING PROMOTION

1. The application for promotion is prepared by the candidate in consultation with the Department/Division Chair, if so requested by the candidate, in accordance with the established guidelines. No anonymous material shall be made a part of any dossier.
2. Should there be a substantial change in the promotion criteria in the year of application, the candidate shall have the option of being considered under the criteria contained in the guidelines distributed in the preceding year.
3. Procedures and provisions described in Article XII, F.2., Paragraphs a through o, shall apply for promotion as well as tenure, except as otherwise provided in this Article.
4. The Employer will notify the Faculty Member of its decision in writing normally no later than June 30. The promotion, if granted, will be effective as of August 1, even if the decision and notification are made after June 30.

C. SALARY UPON PROMOTION

Faculty Members promoted in accordance with this Article shall have their salary increased by eight percent (8%).

D. NEGATIVE RECOMMENDATION

1. In the promotion evaluation process, the Chancellors will, after receipt of the Tenure and Promotion Review Committee (TPRC) report, notify each Faculty Member whose dossier contains a negative recommendation with respect to the promotion application.
2. When a Faculty Member receives such notice from the Office of the Chancellor, the Faculty Member may, within ten (10) calendar days after receiving such notice, inform the Office of the Chancellor in writing of a desire to examine the dossier.
3. Upon receiving the request, the Office of the Chancellor shall provide the Faculty Member an opportunity to examine the dossier within ten (10) calendar days.
4. The Faculty Member may, within ten (10) calendar days after examining the dossier, submit written comments and additional material to the Office of the Chancellor for transmission to the TPRC. If the TPRC recommendation is positive, the Faculty Member may submit the additional material directly to the Chancellor. The Office of the Chancellor shall notify the TPRC that additional materials have been submitted.
5. The TPRC will consider the comments and additional material submitted by the Faculty Member and incorporate these together with its recommendation in the dossier. When the Chancellor disagrees with the recommendation of the TPRC, the Chancellor shall discuss the case with the TPRC before making a recommendation or decision. The Chancellor will, after reviewing the dossier and the recommendation of the TPRC, make a recommendation or decision.
6. When a Faculty Member receives written notification from the Employer in accordance with Section B, that the application for promotion has not been granted, the Faculty Member may, within ten (10) calendar days after receiving such notice, inform the Office of the Chancellor in writing of a desire to examine the dossier.
7. Upon receiving the request, the Office of the Chancellor shall provide the Faculty Member an opportunity to examine the dossier within ten (10) calendar days.
8. The Faculty Member may, within ten (10) calendar days after examining the dossier, or within twenty (20) calendar days of receipt of the written notification if the Faculty Member does not examine the dossier, request a meeting with the Chancellor. In such event the Chancellor shall schedule a meeting with the Faculty Member within ten (10) calendar days.

E. PROMOTION REVIEW PANEL (PRP)

1. For the purpose of providing assistance and advice on certain cases that come before the President in accordance with the provisions of this Article, Promotion Review Panels (PRP) to be made up of senior, experienced, and knowledgeable persons in the University shall be established.
2. Promotion Review Panels of three (3) to five (5) members shall be appointed by the President of the University or the President's designee, with the concurrence of the President of the Union or a senior Faculty Member duly designated by the Union's President. In making their selections, they shall abide by exclusions of persons made by the Faculty Member as set forth in Article XV, C., Exclusion Option.

Separate Promotion Review Panels shall be established for the University of Hawaii at Manoa, University of Hawaii at Hilo and University of Hawaii at West Oahu, and the Community Colleges. More than one (1) Panel may be established for each of these constituencies.

3. A PRP may be convened in the following situations, upon compliance with the procedures set forth in this Article:
 - a. When the TPRC has recommended in favor of promotion and the Chancellor has decided against promotion;
 - b. When the Chancellor has recommended in favor of promotion (irrespective of the recommendation of the TPRC), and the President has reservations about acting favorably upon the recommendation to promote; or
 - c. When the TPRC has recommended against promotion and the Chancellor has decided against promotion, but the Referee, as provided in Section J below, has found that there was a significant procedural violation that probably contributed in a material way to the negative decision.

F. REVIEW BY PROMOTION REVIEW PANEL UPON REQUEST OF FACULTY MEMBER

The applicant may request a review of the case by a Promotion Review Panel in situations in which the TPRC had recommended in favor of promotion and the Chancellor had decided against promotion. Such request must be made in writing, within five (5) calendar days after the meeting with the Chancellor.

The Faculty Member may, in connection with the request, submit additional materials not duplicative of materials in the dossier or previously submitted. The Chancellor shall transmit the dossier and such additional materials to the PRP.

G. REVIEW BY PROMOTION REVIEW PANEL UPON REFERRAL BY THE PRESIDENT

In those situations in which the TPRC and the Chancellor have both recommended in favor of promotion, or in which the TPRC has recommended against promotion and the Chancellor has recommended in favor of promotion, and the President has reservations about acting favorably on the recommendation to promote, the President shall refer the application dossier to the PRP for its review and report before rendering a decision.

H. FUNCTION OF PROMOTION REVIEW PANEL

The PRP shall consider the application dossier, and where applicable, the Referee's report, as well as such additional materials as may be submitted in accordance with the provisions of this Article. It will make a finding on the substantive aspects of the application in the context of the Collective Bargaining Agreement and the Promotion Guidelines, and respond to the question: "Has the Applicant made a persuasive case for promotion?"

The PRP may request additional information from both the Faculty Member and from the Chancellor in those cases in which the Chancellor had rendered a negative decision, or from the President or the President's designee in those cases referred to it by the President. Such information may be requested in the form of written or oral statements, provided that both the Faculty Member and the Administrator are given equal opportunity to respond and that they use the same form of communication to present their cases. The PRP may also meet with the President or the President's designee before submitting its report. Other than for these meetings the PRP will review the case on the basis of the written record, in the context of the provisions of this Article and the Promotion Guidelines. The PRP will consider each case according to its own merits, without comparison or contrast with any other case.

The PRP will submit its report within thirty (30) calendar days after meeting with the Chancellor or the President to the Office of the President for inclusion in the dossier. Any member of the PRP may submit an individual report that the PRP shall incorporate with its report.

The Employer will notify the Applicant of the report of the PRP, if negative, and of the decision of the President, if negative. Within ten (10) calendar days after receiving such notice, the Applicant may submit a request in writing to the Office of the President for an opportunity to examine the dossier, and arrangements will be made to provide such opportunity. Additionally, if the Applicant so requests, the Employer will provide the Applicant with a statement of reasons for the decision.

In the event that the President disagrees with the conclusions of the PRP, such a decision must include a full review of procedural and substantive issues at each stage of the process. The rationale for the decision will be transmitted to the applicant.

I. PANEL OF REFEREES

Referees shall be utilized to assist in expediting the consideration of allegations of procedural violations in situations in which the TPRC has recommended against promotion and the Chancellor has decided against promotion.

A panel shall consist of five (5) referees to be jointly selected by the President of the University or the President's designee and the President of the Union or a senior Faculty Member designated by the Union's President, for each of the four (4) years of this Agreement. The referees shall be selected from among persons with experience in and knowledge of the University. These persons may be from within or without the University.

Assignment of a referee to review a given case shall be by rotation, and the next available referee shall be requested by the Chancellor to review the case.

J. REFEREE REVIEW OF PROCEDURAL MATTERS

1. Request for Referee.

In situations in which the TPRC had recommended against promotion and the Chancellor has decided against promotion, the Applicant may, within five (5) calendar days after meeting with the Chancellor, submit a written request to the Chancellor that the case be reviewed by a referee, if the Faculty Member believes that a procedural error occurred which may have affected the case in a negative manner. The request shall include a statement of the particular procedural provision in this Article of the Collective Bargaining Agreement or the Promotion Guidelines which has been violated, and the manner in which the violation has contributed to the negative decision.

2. Report of the Referee.

The Chancellor shall forward the request to the next available referee who shall, within ten (10) calendar days of receipt of the request, submit a written report to the Chancellor. The Chancellor shall provide the Applicant with a copy of the Referee's report.

If the Referee's report is in the negative as to either aspect of the question set forth below to be answered by the Referee, the case shall be terminated.

If the Referee's report is in the affirmative as to both aspects of the question addressed, the case shall be submitted to the Promotion Review Panel (PRP), if the Applicant so requests in writing to the Chancellor within five (5) calendar days of receipt of the Referee's report. The Applicant may submit additional materials to the Chancellor for transmission to the PRP, not duplicative of materials already in the dossier or previously submitted.

3. Function of the Referee.

The Referee, in reviewing the case, shall consider the Collective Bargaining Agreement and the Promotion Guidelines for the year in question as well as the application dossier and the additional materials submitted

by the Applicant. The Referee shall not conduct a formal hearing but may have discretion to interview the Applicant and any person who had an official role in the evaluation process.

The Referee's report shall respond to the following question:

"Has there been a significant violation of the particular provision of the Collective Bargaining Agreement or Promotion Guidelines as alleged, and if so, is there a reasonable probability that the violation of procedure contributed in a material way to the negative decision?"

The Referee shall not otherwise add to, subtract from, disregard, alter, or modify any of the terms of the Agreement or the Guidelines. The Referee's report must be consistent with the terms of the Agreement and the Guidelines. The Referee shall consider each case according to its own circumstances, without comparison or contrast with any other case.

K. CONFIDENTIALITY OF PROCEEDINGS

The integrity and confidential nature of the promotion evaluation process shall be maintained. Other than for the personal examination of the dossier, meetings as provided for in this Article, and the submission of materials as provided for in this Article, the Applicant shall not otherwise attempt to influence or communicate with persons engaged in the evaluation and review process.

L. CONCLUSION OF PROCESS

A principal purpose of the promotion evaluation process set forth in this Article is to provide the Applicant with a final decision reached in a careful yet expeditious manner. Such decisions and the provisions of this Article shall not be subject to the formal grievance procedure.

ARTICLE XV, FACULTY PERSONNEL PANEL

A. FUNCTION

A University-wide Faculty Personnel Panel (FPP) shall provide a resource of experienced Faculty to which the President of the University may look for assistance and advice with respect to personnel matters involving Faculty Members.

B. MEMBERSHIP

All tenured I and R Faculty at Ranks 4 and 5 and all tenured S, B, and A Faculty at Ranks 3, 4, and 5 at UH-Manoa, and UH-Hilo, and UH-West Oahu, and all tenured Faculty at Ranks 3, 4, and 5 at the Community Colleges shall be on the Panel.

C. EXCLUSION OPTION

A Faculty Member who shall have a case considered by a committee composed of FPP members regarding Article IX, XII, XIV, or XVIII, may exclude up to ten (10) Faculty Members from serving on any such committee. For purposes of tenure and/or promotion, each applicant shall receive from the Employer an explanation of the exclusion option and a form to file to exercise that option. Each applicant will be notified of the campus locations of complete listings of Faculty who comprise the Faculty Personnel Panel (FPP). A copy of the FPP will be filed with UHPA. The exclusion process will be completed prior to the formation of the Tenure and Promotion Review Committees.

For purposes of academic freedom and disciplinary actions, the exclusion process, as specified above, will be completed prior to the formation of the respective committees. Faculty Members serving on committees reviewing academic freedom or disciplinary action have the responsibility for recusing themselves from service on a TPRC reviewing the candidate's application for promotion or tenure. In the case of UH-West Oahu, if the exercise of the exclusion option leaves fewer than six (6) members on the FPP, the committee shall include at least 50% of the members remaining on the FPP from UH-West Oahu.

D. REPRESENTATION OF FPP MEMBERS ON TPRC'S

The appointment of Tenure and Promotion Review Committees (TPRC's) provided for in Articles XII and XIV shall be made from the FPP. At least fifty percent (50%) of the membership of each TPRC shall be from the campus of the applicant. FPP Members appointed from campuses other than that of the applicant shall be from the discipline of the applicant or from related disciplines.

ARTICLE XVI, RETRENCHMENT

A. GENERAL

Retrenchment refers to the termination of the employment of any Faculty Member during any appointment as a result of lack of work or other legitimate reason in accordance with §89-9(d), H.R.S., such as fiscal exigency; reallocation of resources; reorganization of degree or curriculum requirements; reorganization of academic or administrative structures or programs; curtailment of one (1) or more programs.

B. CONSULTATION ON RETRENCHMENT

When the Board of Regents determines that retrenchment may occur, it will so inform the Union and will provide whatever information that is available, including a list of Faculty Members expected to be retrenched, and a list of vacancies for which active recruitment is occurring throughout the UH System. The Union may submit its assessment and/or recommendation within thirty (30) days of such notification. The Board of Regents will not proceed with its retrenchment action until forty-five (45) days after its notification to the Union.

C. ORDER OF RETRENCHMENT

After determination by the Board of Regents of the need to retrench and its assessment of institutional needs, the following order of layoffs shall be followed within the program, department, division, or comparable unit to be retrenched:

1. Part-time Faculty, including lecturers
2. Non-tenured Faculty
3. Tenured Faculty

Within each of these groups of Faculty Members, more senior Faculty shall be accorded priority over less senior Faculty. For the purposes of this section, seniority is defined as the total period of full-time continuous service since the date of initial appointment, with the understanding that of two (2) Faculty Members having the same length of service, the one with the higher rank, or placed on the higher step with the same rank, shall be regarded as the more senior. Approved leaves with or without pay do not count as breaks in continuous service.

No retrenchment shall be effectuated with respect to full-time personnel in a department, division, or comparable unit or program while other persons are teaching overload in the same subject in that unit.

D. NOTICE TO FACULTY

The administration shall notify persons affected by retrenchment as soon as practicable and, barring circumstances beyond its control, shall provide the following notice of termination:

1. For those holding a term appointment, at least four (4) calendar months.
2. For those holding tenured appointments, at least twelve (12) calendar months. Following notice of termination, the University may, at the Faculty Member's request, agree to release the Faculty Member from regular duties up to half time to facilitate the pursuit of opportunities for retraining.

E. PLACEMENT OF RETRENCHED FACULTY

At the time of retrenchment, the administration shall give special consideration for placement within the University to a Faculty Member whose services might be terminated as a result of retrenchment provided that a suitable position vacancy is available in a classification appropriate to the bargaining unit for which the Faculty Member is otherwise qualified.

F. EMPLOYMENT RIGHTS OF RETRENCHED TENURED FACULTY

A tenured Faculty Member who is retrenched according to the provisions of this Article shall have employment rights to any position within the locus of tenure for which the Faculty Member is qualified and which is occupied by the Faculty Member with the least seniority, provided that the provisions of this paragraph shall not be applicable to the Faculty Member who is displaced.

G. NOTICE OF VACANCIES

Faculty Members having reemployment rights shall upon their written request, be provided notices of vacancies which occur within the University of Hawaii System. Such requests shall include the address to which the notices shall be mailed. The Faculty Member is responsible for informing the Employer of changes in this address. Notices of vacancies shall be provided until the Faculty Member is reemployed, or has exhausted reemployment rights or refused an offer of reemployment as provided in this Article.

H. REAPPOINTMENT OF RETRENCHED FACULTY

For a period of thirty-eight (38) months following retrenchment, a tenured Faculty Member who is not otherwise employed in the University in a position comparable to the one held prior to retrenchment shall be offered reemployment in the same or similar position at the campus at which the Faculty Member was employed at the time of retrenchment, should an opportunity for such reemployment arise. For the purposes of this provision, the Community Colleges shall be treated as a single campus. Offers of reemployment shall be in inverse order of layoff. An offer of reemployment must be accepted within thirty (30) days after acknowledged receipt of the offer or forty-five (45) days after dispatch by registered or certified mail to the last recorded address of the Faculty Member - whichever shall sooner occur. In the event such offer of reemployment is not accepted, the Faculty Member shall receive no further consideration. The offer of reemployment shall be made by personal delivery or by registered or certified mail to the last address of the Faculty Member recorded at the University. It is the Faculty Member's responsibility to keep the Employer informed of changes of address. The Faculty Member thus recalled shall be recalled with full tenure.

I. RESOLUTION OF DISPUTES REGARDING QUALIFICATIONS

If a dispute arises as to whether or not a retrenched Faculty Member is qualified for the purposes of Sections E., F., and H. above, the recommendation of the department, division or comparable unit affected will be given substantial weight by the Employer.

J. STATUS OF REAPPOINTED FACULTY

1. A retrenched Faculty Member reappointed to a position in the same organizational unit from which the Faculty Member was retrenched shall carry full credit for all years which would be applicable to tenure and/or promotion in rank. In addition, all other benefits which have accrued in the organizational unit from which the Faculty Member was retrenched shall adhere to the Faculty Member.
2. A retrenched tenured Faculty Member reappointed to a position other than the one from which the Faculty Member was retrenched may be granted immediate tenure. If the Faculty Member is not granted immediate tenure, then the Faculty Member shall serve a probationary period of not more than two (2) years.
3. A retrenched non-tenured Faculty Member reappointed to a position in an organizational unit other than the one from which the Faculty Member was retrenched, may be credited with service applicable to tenure and/or promotion in rank. A written request for such credit must be approved by the appropriate Chancellor.

K. RESTRICTIONS ON HIRING NEW FACULTY

The Employer shall not employ new part-time or full-time Faculty Members in any organizational unit in which a layoff is effective until such time as all qualified retrenched persons eligible for recall in the organizational unit have been offered such recall.

L. EXCLUSIONS

Non-renewal of appointment under Article XII or Disciplinary Actions under Article XVIII shall not be considered retrenchment.

ARTICLE XVII. REPRESENTATION RIGHTS

A. Duly certified staff representatives of the Union shall be permitted on University premises at all reasonable hours for the purpose of conducting official Union business such as investigating complaints and grievances that have arisen and to ascertain whether or not the Agreement is being properly administered. The Union agrees that such visitation rights shall be exercised reasonably and also shall not interfere with the normal operations of the University.

The Union shall provide the Employer with a list of duly certified Union representatives and maintain that list currently.

B. The Union may use the University's meeting facilities for Union meetings upon request to the Employer, subject to the Employer's policies and procedures.

C. The Union shall be permitted to use the University mail services for the purposes of intra-campus distribution, subject to the Employer's policies and procedures.

D. The Union may use audio-visual equipment in connection with official Union meetings, provided that the equipment requested is not otherwise in use, and provided that the Union shall reimburse the University the normal charges for the use and services connected with the use of such equipment.

E. The Union may use duplicating machines of the University on the following basis:

1. The Union shall be assigned at least one (1) auditor to be designated by the Employer. The Union shall reimburse the Employer for the normal charges connected therewith.
2. On those campuses where the machines are not equipped for operations with auditors, the Union may make reasonable use of a comparable machine to be designated by the Employer, upon request and when the machine is not otherwise in use. The Union shall reimburse the University for the use of such machine at the same rate as the Union would for the use of the auditor-equipped machine on the Manoa Campus.
3. The use by the Union of the machines authorized herein shall not interfere with or interrupt normal University operations.

F. The Union may post bulletins and notices on official bulletin boards pertaining to official Union business. All such postings shall be made over the signature of a certified Union representative, who shall furnish copies of all postings to the Employer at the time of posting, for the information of the Employer.

G. Upon written request of the Union, the Employer shall provide information which is necessary to represent its membership adequately, provided the information is available and is not confidential.

H. Any Faculty Member elected or appointed to a Union office will, if such office requires a full or half-time service in the exercise and discharge of its duties, be given a leave of absence, either full or half-time, without pay pursuant to Article VII, A., not to exceed one (1) year at a time.

I. All matters affecting employee relations, including those that are, or may be, the subject of a policy promulgated by the Employer are subject to consultation with the Union. The Employer shall make every reasonable effort to consult with the Union prior to effecting changes in any major policy affecting employee relations.

ARTICLE XVIII, DISCIPLINARY ACTIONS

A. GENERAL

The Employer shall not discharge, suspend, or reduce the compensation of any Faculty Member for disciplinary reasons, or take other actions of a disciplinary nature, except for proper cause and in accordance with the procedures set forth in this Article. All matters under this Article, including investigations, shall be considered confidential. Information pertaining to disciplinary actions may be subject to disclosure under the provisions of Section 92F, Hawaii Revised Statutes.

B. SUSPENSION OR DISCHARGE

1. If an Administrative Official believes that there is probable cause for the suspension or discharge of a Faculty Member, the Administrative Official shall make a statement in writing of the grounds and the discipline proposed and have such statement served upon the Faculty Member in person or by registered or certified mail to the Faculty Member's address of record. Once the charges in the written statement have been made they shall not be subject to additional charges unless the new charges are based on the discovery of new evidence. A copy of such statement shall also be sent to the Union.
2. The Faculty Member may file an answer to the statement with the Chancellor, or the appropriate Vice President at UH-Manoa (hereinafter referred to as Chancellor in this Article), within fifteen (15) calendar days. If the Faculty Member fails to answer within fifteen (15) calendar days, the Employer may proceed with the suspension or discharge, and such action shall be final and binding.
3. If the Faculty Member files an answer and disagrees with the statement, then the Chancellor may appoint a Disciplinary Advisory Committee to be composed in the manner described below. The purpose of the committee is to provide the Chancellor with an evaluation of the substance of the allegations through a review of the evidence presented to the Committee by the Chancellor, but they are not charged with prosecuting the complaint or holding hearings. If a committee is not formed, the Faculty Member shall have an opportunity to meet with the Chancellor.

If a committee is formed, the Chancellor shall appoint a committee of five (5) members from the Faculty Personnel Panel established pursuant to Article XIV of this Agreement. If the subject Faculty Member is from the Faculty of a Community College, a majority of the committee shall be from the Community Colleges. If the Faculty Member is from a four-year (4-year) campus, a majority of the committee shall be from the campus. At least two (2) committee members shall be from the school or college of the Faculty Member. The Chancellor shall also appoint two (2) administrative personnel to work with the committee. The Union shall be notified of the appointment and composition of the committee.

The deliberations shall be conducted with the utmost discretion. The committee shall, with due regard for the sensitive nature of its proceedings, provide the Faculty Member with written materials in its possession. If, during the course of the deliberations, additional grounds are considered by the committee, written materials relevant to the new grounds shall be provided to the Faculty Member. The committee shall proceed in an expeditious manner and conclude its deliberations and file a report with the Chancellor within thirty (30) calendar days after the matter has been referred to it. Additionally, members of the committee may file individual reports with the Chancellor. The Chancellor shall provide a copy of the committee report(s) to the union and the Faculty Member either by personal delivery or by registered or certified mail. The Faculty Member may provide a response to the Chancellor within twenty (20) calendar days of the delivery or mailing of the report. The Chancellor shall render a decision on the matter after receiving the Faculty Member's response, if any.

4. If the Chancellor decides to proceed with the suspension or discharge of the Faculty Member, the Chancellor shall so notify the Faculty Member in writing and have such notice served upon the Faculty Member in person or by registered or certified mail.
5. The Faculty Member or the Union may then file a grievance at the level of the President or the President's designee (Step 2 of the Grievance Procedure) within fifteen (15) calendar days of the service of the decision of the Chancellor. If a grievance is not filed within fifteen (15) calendar days, the Chancellor may proceed with the suspension or discharge, and such action shall be final and binding.

6. The Faculty Member shall not be suspended or discharged during the foregoing procedures, including the grievance procedure, except as provided in Paragraphs B.7. and B.8. below. However, the Chancellor may temporarily reassign the Faculty Member, or place the Faculty Member on administrative leave with pay, if the Chancellor believes that the Faculty Member's continuance may disrupt the operations of the University.
7. The Faculty Member may be suspended without pay during the foregoing procedures where the Faculty Member has willfully failed to report for duty during the duty period as defined in Article V, Duty Period.
8. However, if a Faculty Member pleads guilty or no contest to, or is convicted of, a felony in a competent federal, state, or local court of law within the United States, the Employer may suspend without pay or discharge the Faculty Member if there is an adverse impact on the University or its operations. If the Employer proceeds to suspend or discharge the Faculty Member, the Employer shall make a statement in writing of the grounds and have such a statement served upon the Faculty Member. The Faculty Member may file an answer to the statement with the Chancellor within seven (7) calendar days after receipt of the notification. If the Faculty Member fails to answer within seven (7) calendar days, the Employer may proceed with the suspension without pay or the discharge.

If the Faculty Member files an answer and disagrees with the statement, the Chancellor shall consider the statement and meet with the Faculty Member if so requested. The Chancellor shall notify the Faculty Member, with a copy to the Union, of his or her decision within seven (7) calendar days after receipt of the Faculty Member's answer to the statement. Should the Chancellor decide to proceed with discharge, the Faculty Member shall be suspended without pay until the grievance and arbitration procedures of Article XXIV have been exhausted.

The Faculty Member may file a grievance at Step 2 of Grievance Procedures, set forth in Article XXIV, within fifteen (15) calendar days following receipt of the notification of the Chancellor's decision. Should the Faculty Member not file a grievance within the fifteen (15) calendar days, the decision of the Chancellor shall become final and binding.

If a Faculty Member's felony conviction is overturned on appeal, or the grievance is upheld, the Faculty Member shall be reinstated to the position which the Faculty Member held prior to the suspension or discharge action retroactively with full compensation, rights, and benefits as if the Faculty Member was never suspended or discharged.

C. OTHER DISCIPLINARY ACTIONS

Other disciplinary actions which do not involve suspension or discharge may be the subject of a grievance at the level of the Chancellor, appropriate Vice President, their successors in office, or their respective designee (Step 1 of the Grievance Procedure).

ARTICLE XIX, PERSONNEL FILES

- A. Official personnel files shall be maintained for each Faculty Member. Personnel files will be kept and maintained in accordance with Administrative Procedures A9.075 (see R-16 of Reference Section) Personnel Records.

Official personnel files shall be maintained in the following places:

1. For the University of Hawaii at Manoa, in the Offices of the Deans/Directors;
2. For the University of Hawaii at Hilo, in the Offices of the Deans, and the Office of the Director of Libraries;
3. For UH-West Oahu, in the Office of the Dean of Faculty; and
4. For the Community Colleges, in the Offices of the Chancellors.

The Employer shall inform the Union of the location and name of the custodian of the official Faculty personnel files. The Employer shall also notify the Union whenever the Faculty Member's file is moved to another location.

- B. The Faculty Member, upon request, shall be permitted to examine the official personnel files referred to in this Article during normal business hours, in the presence of a representative of the Employer, provided, however, any letters of recommendation solicited in connection with the initial employment, and subsequent statements of reference marked confidential, shall not be available to that Faculty Member.
- C. A Faculty Member shall have the right to submit written additions or responses to the material contained in the official personnel files. The Faculty Member may submit information relating to academic and professional accomplishments for inclusion in the Faculty Member's official personnel files. No anonymous material shall be placed in the official personnel files.
- D. Derogatory material in the official personnel files concerning a Faculty Member shall be destroyed five (5) years after being placed therein. Materials relating to professional performance and employment status shall not be destroyed.
- E. Upon request, the Faculty Member shall be provided copies of any material in the Faculty Member's official personnel files intended for use in connection with a grievance involving the Faculty Member.
- F. The Employer shall provide a Faculty Member with material from another Faculty Member's personnel file if it deems that such material would be relevant to the processing of a Faculty Member's grievance and the provision of such material would not impair the confidentiality of the personnel file. A Faculty Member requesting material from such other personnel file shall identify each item with specificity. The Employer shall also require the written approval of the other Faculty Member as to each item requested prior to releasing copies of same.
- G. A Faculty Member who is furnished material requested from the Employer shall reimburse the Employer at the rate of \$.50 for the first five (5) sheets and \$.05 per sheet thereafter.

ARTICLE XX, ADEQUATE SECURITY, HEALTH AND SAFETY

The Employer shall provide a safe, clean and healthy working environment as prescribed by the applicable provisions of the Hawaii Occupational Safety and Health Law, Act 57, et seq., the State Department of Health, the State Department of Labor, or any other governmental body. This shall include, but not be limited to, adequate natural or mechanical ventilation, proper lighting, security and protection at all University facilities or places of instruction, and properly maintained buildings, offices, and classrooms.

When required to meet work related safety standards while performing assigned duties, the Employer shall provide the Faculty Member with safety clothing, safety shoes, goggles, safety glasses (including corrective lenses when necessary), gloves and other protective gear. Whenever such safety devices or personal protective equipment are provided, the Faculty Member shall be required to use them when required to meet work related safety standards.

ARTICLE XXI, SALARIES

Negotiations continue pursuant to Articles XXVII and XXIX.

ARTICLE XXII, HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND

- A. Subject to the applicable provisions of §87A and §89, Hawaii Revised Statutes, the Employer shall pay monthly contributions which include the cost of the Hawaii Employer-Union Health Benefits Trust Fund (Trust Fund) administrative fees to the Trust Fund effective July 1, 2003, not to exceed the monthly contribution amounts as specified below:

1. For each Employee-Beneficiary with no dependent-beneficiaries enrolled in the following Trust Fund health benefit plans:

<u>BENEFIT PLAN</u>	<u>MONTHLY CONTRIBUTION</u>
a. Medical (PPO or HMO)	\$141.32
b. Dental	\$14.80
c. Vision	\$3.60
d. Dual coverage medical	\$84.20
e. Dual coverage dental	\$8.82
f. Dual coverage vision	\$2.06

The Employer shall pay the same monthly contribution for each member enrolled in a self only medical plan (PPO or HMO), regardless of which plan is chosen.

2. For each Employee-Beneficiary with one (1) or more dependent-beneficiaries enrolled in the following Trust Fund health benefit plans:

<u>BENEFIT PLAN</u>	<u>MONTHLY CONTRIBUTION</u>
a. Medical (PPO or HMO)	\$419.78
b. Dental	\$50.02
c. Vision	\$7.68
d. Dual coverage medical	\$251.28
e. Dual coverage dental	\$24.94
f. Dual coverage vision	\$4.38

The Employer shall pay the same monthly contribution for each member enrolled in a family medical plan (PPO or HMO), regardless of which plan is chosen.

3. For each Employee-Beneficiary enrolled in the Trust Fund group life insurance plan, the Employer shall pay \$4.16 per month which reflects one hundred percent (100%) of the premium and administrative fee.

- B. Effective July 1, 2004, for plan year 2004 – 2005, with the exception of subparagraph 2b. below, the Employer shall pay an amount equivalent to sixty percent (60%) of the final premium rates established by the Trust Fund for the respective health benefit plan plus one hundred percent (100%) of all administrative fees. Such monthly contribution shall not exceed the amounts specified in subparagraphs 1 and 2a. below.

“Health Benefit Plan” shall mean the medical PPO, dental, vision, dual coverage medical, dual coverage dental, and dual coverage vision plans.

The amounts paid by the Employer in subparagraphs 2b. and 3. below shall be based on the plan year 2004 – 2005 final monthly premium rates established by the Trust Fund.

1. For each Employee-Beneficiary with no dependent-beneficiaries enrolled in the following Trust Fund health plans, the amount shall not exceed:

<u>BENEFIT PLANS</u>	<u>MAXIMUM MONTHLY CONTRIBUTION</u>
a. Medical (PPO or HMO)	\$161.34
b. Dental	\$15.60
c. Vision	\$3.58
d. Dual coverage medical	\$96.30
e. Dual coverage dental	\$9.30
f. Dual coverage vision	\$2.06

The Employer shall pay the same monthly contribution for each member enrolled in a self only medical plan (PPO or HMO), regardless of which plan is chosen.

- 2a. For each Employee-Beneficiary with one (1) or more dependent-beneficiaries enrolled in the following Trust Fund health benefit plans, the amount shall not exceed:

<u>BENEFIT PLANS</u>	<u>MAXIMUM MONTHLY CONTRIBUTION</u>
a. Medical (PPO or HMO)	\$481.12
b. Vision	\$7.66
c. Dual coverage medical	\$288.16
d. Dual coverage dental	\$26.36
e. Dual coverage vision	\$4.36

The Employer shall pay the same monthly contribution for each member enrolled in a family medical plan (PPO or HMO), regardless of which plan is chosen.

- 2.b. For each Employee-Beneficiary with one (1) or more dependent-beneficiaries enrolled in the Trust Fund's dental plan, the Employer shall pay an amount equivalent to the Trust Fund's second year dental plan final premium rate adjusted as described in B., but no more than \$52.80 per month.
3. For each Employee-Beneficiary enrolled in the Trust Fund group life insurance plan, the Employer shall pay no more than \$4.16 per month which reflects one hundred percent (100%) of the premium and administrative fee.
- C. Whenever the Employer's monthly contribution to the Hawaii Employer-Union Health Benefits Trust Fund is less than one hundred percent (100%) of the monthly premium amount, such monthly contribution shall be rounded to the nearest cent as provided below:
1. When rounding to the nearest cent results in an even amount, such even amount shall be the Employer's monthly contribution. For example:
 - $\$11.397 = \$11.40 = \$11.40$ (Employer's monthly contribution)
 - $\$11.382 = \$11.38 = \$11.38$ (Employer's monthly contribution)
 2. When rounding to the nearest cent results in an odd amount, round to the lower even cent, and such even amount shall be the Employer's monthly contribution. For example:
 - $\$11.392 = \$11.39 = \$11.38$ (Employer's monthly contribution)
 - $\$11.386 = \$11.39 = \$11.38$ (Employer's monthly contribution)
- D. Calculation of the Employer's share of family dental cost for FY04-05 shall be determined as follows:
1. Determine the family dental rate without the administrative fee. Determine the single dental rate without the administrative fee.
 2. Multiply the single dental rate by two (2) and subtract from the family dental rate. This results in the attributable children dental cost.

The Employer will pay 100% of the attributable children dental cost.
 3. The Employer will pay 60% of the product of two (2) times the single dental rate (2 x single dental rate) plus 100% of the administrative fee, rounded to the lower even cent.
 4. In summary, the Employer will pay (rounded as provided above):
 - 100% of the attributable children dental cost
 - 60% of the product of two (2) times the single dental rate (2 x single dental rate), rounded to the lower even cent
 - 100% of administrative fee

ARTICLE XXIII, APPOINTMENT, DUTIES, AND COMPENSATION FOR ACADEMIC CHAIRS

- A. Only Faculty Members with the Rank of 4 or 5 shall be eligible to serve as the Department, Division, or Program Chair. If no one in these ranks is available, then a Faculty Member from the unit holding a lower rank may be appointed as Acting Chair.
- B. The chancellor of a Community College, the Chancellor of UH-West Oahu, and the Dean/Director at UH-Hilo and UH-Manoa⁶ shall appoint Department, Division, or Program Chairs for periods up to three (3) years. The appointments are renewed annually. Acting Chairs shall not be appointed for a term to exceed two (2) consecutive years.
- C. Faculty Members in the various Departments, Divisions, or Programs shall meet to consider the recommendation of a Bargaining Unit Member to serve as Chair. Prior to the appointment or reappointment, the chancellor of a Community College, the Chancellor of UH-West Oahu, and the Dean/Director at UH-Hilo and UH-Manoa shall consult with the all the Faculty Members wishing to participate to receive their recommendation. If there is no consensus among the Faculty, the Chancellor, Dean/Director shall consider both the majority and minority views before making an appointment. Should there be a consensus among the Faculty Members as to who should serve as the Chair, and the recommendation is rejected, the Chancellor, Dean/Director shall meet with the Faculty Members and provide a written statement setting forth the reasons for selecting another Faculty Member.
- D. Academic Chairs are appointed by the appropriate administrative authority, but they are not managerial or supervisory employees. The duties of academic Chairs will be set forth in a revised UH-System Faculty Handbook.
- E. Monthly compensation for department or division chairs, associate chairs, or assistant chairs shall not be less than \$100 per month. The size and complexity of the department, division, or program and the nature of the quasi-administrative functions being performed shall determine the specific amount of the stipend. In addition, eleven (11) month appointments and workload equivalencies will be given where appropriate to the duties and responsibilities of the assignment.

ARTICLE XXIV, GRIEVANCE PROCEDURE

A. DEFINITION

A grievance is a complaint by a Faculty Member or the Union concerning the interpretation and application of the express terms of this Agreement. All matters under this Article, including investigations, shall be considered confidential. Information pertaining to the decision of an arbitrator may be subject to disclosure under the provisions of Section 92F, Hawaii Revised Statutes.

B. GENERAL

- 1. Faculty are encouraged to work out grievances with their immediate superiors on an informal basis, including voluntary mediation, without resort to the formal grievance procedure, whenever possible. If it is not possible to resolve the grievance informally, and the Faculty Member desires to pursue the matter, the procedures under Paragraph C. below shall apply.
- 2. Any information pertaining to the grievance in the possession of the Employer needed by the grievant or the Union in behalf of the grievant to investigate and process a grievance shall be provided to them on request within seven (7) working days.

C. PROCEDURES

- 1. Requirements for Filing a Formal Grievance.

A grievance must be submitted in writing and shall contain (1) a statement of the facts concerning the grievance, (2) the specific provision of this Agreement alleged to have been violated, (3) the relief requested, and (4) whether the Faculty Member attempted an informal adjustment of the grievance and, if so, with whom.

⁶The specific administrative appointing official may be subject to the process of BOR reorganization or administrative redelegation.

The Faculty Member may request the assistance and representation of the Union in the grievance procedure. Alternatively, the Faculty Member may file a grievance and have the grievance heard without intervention of the Union provided the Union is afforded an opportunity to be present at the conference(s) with the grievant, in which case a copy of the grievance shall be furnished to the Union. Any adjustment made shall not be inconsistent with the terms of this Agreement.

A grievance must be filed within twenty (20) calendar days or within forty-five (45) calendar days in the case of a class grievance, of the date following the alleged violation giving rise thereto, or the date on which the Faculty Member or the Union first knew or reasonably should have known of such alleged violation, or the date on which either party informs the other that informal attempts to resolve the grievance are concluded, whichever date is later.

There shall be no obligation by the Employer to consider any grievance not filed within the specified time limit and in accordance with the specific procedure stated in each step.

2. Formal Grievance Procedure.

The Employer and the Union may, by mutual agreement, waive any or all of the steps and proceed directly to Step 3.

- a. **Step 1.** A grievance shall be filed with the Chancellor, or the respective designee (herein all referred to as Chancellor). The Chancellor shall schedule a grievance meeting with the grievant and/or the grievant's designated representative within fifteen (15) calendar days after receipt of the grievance and shall issue a decision in writing to the grievant within fifteen (15) calendar days after the close of the meeting.
- b. **Step 2.** If the response at Step 1 does not resolve the grievance, the grievant may appeal the Step 1 response by filing an appeal with the President of the University or the President's designee within fifteen (15) calendar days after receipt of the Step 1 response. Such appeal shall be in writing and shall specify the reason why the Step 1 decision is unsatisfactory. The President need not consider any grievance in Step 2 which encompasses different alleged violations or charges than those presented in Step 1. The President or the President's designee shall schedule a grievance meeting with the grievant and/or the grievant's designated representative within fifteen (15) calendar days after receipt of the appeal or grievance is filed and shall render a response in writing to the grievant within twenty (20) calendar days after the close of the meeting.
- c. **Step 3. Arbitration.** If the grievance has not been settled at Step 2, then within thirty (30) calendar days after the receipt of the written decision of the President or the President's designee, the Union may request arbitration by giving written notice to that effect, in person or by registered or certified mail, directed to the President or the President's designee.

Representatives of the parties shall attempt to select an Arbitrator immediately thereafter.

If agreement on an Arbitrator is not reached within fifteen (15) calendar days after the request for arbitration is submitted, either party may request the Hawaii Labor Relations Board to submit a list of five (5) Arbitrators. Selection of an Arbitrator shall be made by each party alternately deleting one (1) name at a time from the list. The first party to delete a name shall be determined by lot. The person whose name remains on the list shall be designated the Arbitrator.

No grievance may be arbitrated unless it involves an alleged violation of a specific term or provision of the Agreement. The Arbitrator shall not consider any new alleged violations or charges than those presented initially.

- 1) If the Employer disputes the arbitrability of any grievance, the Arbitrator shall first determine whether the Arbitrator has jurisdiction to act; and if the Arbitrator finds no such power, the grievance shall be referred back to the parties without decision or recommendation on its merits. The Arbitrator shall render an award in writing, no later than thirty (30) calendar days after the conclusion of the hearings or, if oral hearings are waived, then thirty (30) calendar days from the date statements and proofs were submitted to the Arbitrator.

- 2) The decision of the Arbitrator shall be final and binding upon the Union, its members, the Faculty Member(s) involved in the grievance, and the Employer. There shall be no appeal from the Arbitrator's decision by either party, if such decision is within the scope of the Arbitrator's authority as described below.
 - a) The Arbitrator shall not have the power to add to, subtract from, disregard, alter, or modify any of the terms of this Agreement. The Arbitrator's award must be consistent with the terms of this Agreement.
 - b) When the Arbitrator finds that any disciplinary action under Article XVIII was improper, the Arbitrator may set aside, reduce, or otherwise modify the action, and may award back pay to compensate, wholly or partially, for any salary lost.

The fees of the Arbitrator, the cost of transcription, and other necessary general costs, shall be shared equally by the Employer and the Union. Each party will pay the cost of presenting its own case and the cost of any transcript that it requests.

- d. **Step 3A. Performance Judge.** If the grievance involves the termination of a tenured Faculty Member or the termination of a non-tenured Faculty Member's employment agreement prior to the expiration of its term on the stated grounds that he or she has failed to meet the performance requirements of his or her position and the grievance has not been settled at Step 2, then within thirty (30) calendar days after the receipt of the written decision of the President or the President's designee, the Union may request a Performance Judge by giving written notice to that effect, in person or by registered or certified mail, directed to the President or the President's designee.

The Performance Judge shall be a neutral third party selected by representatives of the parties from a list of persons whom the parties have mutually agreed are eligible to serve as Performance Judges for the duration of this Agreement. The parties, by mutual agreement, may add or delete individuals from the list of Performance Judges. Selection of a Performance Judge for a grievance shall be by mutual agreement. If the parties are unable to agree, selection of a Performance Judge shall be made by each party alternately deleting one (1) name at a time from the list of Performance Judges. The first party to delete a name shall be determined by lot. The person whose name remains on the list shall be designated the Performance Judge. The Performance Judge shall use the following conditions as tests in reaching a decision on whether the Employer's action against the Faculty Member for failure to meet the performance requirements of his or her position was with or without merit:

- 1) The evaluation process and its consequences were discussed with the Faculty Member;
- 2) The Faculty Member was made aware of his or her current job description and job related performance requirements;
- 3) The evaluation procedures were observed, including providing the Faculty Member the opportunity to meet, discuss, and rebut the performance evaluation and apprising the Faculty Member of the consequences of failing to meet performance requirements;
- 4) The evaluation was fair and objective;
- 5) The Faculty Member was provided feedback during the evaluation period and, as appropriate, the Faculty Member was offered assistance in order to improve and meet performance requirements;
- 6) The evaluation was done without discrimination; and
- 7) Prior to any termination, the feasibility of transferring the Faculty Member to another position for which the Faculty Member qualifies was considered.

If it is alleged that the termination was not due to a failure to meet performance requirements but for disciplinary reasons without just and proper cause, the Performance Judge shall first proceed with a determination on the merits of the Employer's action under the conditions above. If the Performance Judge determines that the termination may be based on reasons other than a failure to meet performance requirements, the Performance Judge shall then determine, based on appropriate standards of review, whether the disciplinary action was with or without proper cause and render a final and binding decision.

A Performance Judge is subject to the other requirements imposed on Arbitrators in Step 3 of these Procedures.

D. CLASS GRIEVANCE

The Union may file a Class Grievance if it affects two (2) or more Faculty Members whose complaints involve the same questions of fact and contract provision(s) so that a decision as to one (1) grievant shall be decisive as to all members of the Class.

In filing a Class Grievance, the Union shall set forth, in addition to the requirements for filing a formal grievance, (1) the questions of fact which are common to all members of the Class, (2) the identification of all members of the Class known to the Union, (3) a statement as to whether or not the members of the Class have been notified and given opportunity to be included or excluded from the Class, and (4) the name of the Faculty Member who shall serve as representative of the Class for the purpose of determining the questions of fact and alleged contract violation.

In matters of contract interpretation affecting the entire Bargaining Unit, the Union may file a Class Grievance on its own initiative. Such a grievance shall identify the sections of the Agreement being violated through the policies or the actions of the Employer. The Union shall represent the entire Bargaining Unit in the Class Grievance, there shall be no exclusion procedure or required notification of the Bargaining Unit, and the resolution of the grievance shall apply to the entire Bargaining Unit.

If a Class Grievance involves more than one (1) component of the University, i.e., the University of Hawaii at Manoa, the University of Hawaii at Hilo and the University of Hawaii-West Oahu, or the Community Colleges, the grievance may be filed initially at Step 2.

ARTICLE XXV, RIGHTS OF THE EMPLOYER

The Employer reserves and retains, solely and exclusively, all management rights, powers, and authority, including the right of management to manage, control, and direct its personnel and operations except those as may be modified under this Agreement.

ARTICLE XXVI, SAVINGS CLAUSE AND OPERATION OF §89-10(a)

Should any part of this Agreement be rendered or declared invalid by a court of competent jurisdiction, such invalidation of such part or portion of this Agreement shall not invalidate the remaining portions thereof, and they shall remain in full force and effect. The parties will meet not later than thirty (30) days after any such holding for the purpose of renegotiating the provisions affected.

All non-cost items in this Agreement have been "tied to or bargained against" cost items in this Agreement, within the meaning of §89-10(a), H.R.S.

ARTICLE XXVII, ENTIRETY AND MODIFICATION

This document contains the entire agreement of the parties except for the provision in Article XXI. No provision or term of this Agreement may be amended, modified, changed, altered, or waived except by written document executed by the parties hereto. The parties agree that as of the settlement of this collective bargaining agreement, §78-13, H.R.S. prevents the parties from bargaining over pay dates, and the parties have not done so. Should §78-13, H.R.S. be determined to be invalid in such a manner as to permit bargaining, the parties recognize that the matter has not yet been bargained and are free to do so.

ARTICLE XXVIII, CONFLICT

If there is any conflict between the provisions of this Agreement and any rules, regulations, and policies of the Employer, the terms of this Agreement shall prevail.

ARTICLE XXIX, NO STRIKE OR LOCKOUT

- A. The Union, its representatives, and Faculty Members will not authorize, instigate, incite, aid, or engage in any work stoppage, slowdown, sick-out, picketing, or strike against the Employer during the life of this Agreement, except on the matter of wages, and, as to wages, only as provided in this Article.
- B. The Employer agrees that during the life of this Agreement there will be no lockout.
- C. The parties shall continue to meet from time to time, each on the call of the other, to bargain in good faith on the matter of wages; but in no event shall the parties fail to meet by January 2, 2004. Should the matter of wages remain at impasse after January 2, 2004, then either the Union or the Employer may, from and after January 3, 2004, engage in any activity, including strike or lockout, to resolve the impasse, provided that the Union or the Employer has provided ten-day (10-day) written notice thereof to the other and to the Hawaii Labor Relations Board.
- D. This Article does not apply to lawful picketing on issues of public interest unrelated to the University and on premises that are not under the control or jurisdiction of the University.

ARTICLE XXX, DURATION

- A. This Agreement shall be effective as of July 1, 2003, and shall remain in effect to and including June 30, 2005.
- B. Negotiations for renewal shall be as provided by law.

This Agreement was executed by the following authorized representatives of the parties listed herein.

State of Hawaii/UH Board of Regents

University of Hawaii Professional Assembly

By: _____
Its Governor, Linda Lingle

By: _____
Its President, Mary E. Tiles

Its Chief Negotiator, Ted H. S. Hong

Its Chief Negotiator, J. N. Musto

Bert A. Kobayashi, UH Board of Regents

Marcia Armstrong, Co-Chair, CBC

Patricia Y. Lee, UH Board of Regents

James N. Heasley, Co-Chair, CBC

Ah Quon McElrath, UH Board of Regents

Linda J. Currivan, Negotiating Team

Edward D. L. Yuen, UH Spokesman

Ronald D. Gordon, Negotiating Team

Deane Neubauer, UH Negotiating Team

Michael Kirk-Kuwaye, Negotiating Team

James R.W. Sloane, UH Negotiating Team

REFERENCE SECTION

R-1

[Duplicated text of APPENDIX T]

TEMPORARY DISABILITY*

Sick Leave Policy for Faculty Members of the University of Hawaii

August 1977

Every eligible Faculty member of the University of Hawaii, including Community College Faculty, not covered by an approved sick leave plan shall be entitled to receive in the aggregate, a minimum of three (3) calendar weeks of sick leave. Should a Faculty member be entitled to earn and accumulate sick leave by any other policy, he shall be entitled to the number of days necessary to aggregate a minimum of three (3) calendar weeks by this policy.

Coverage under this policy shall extend 14 days beyond the termination of the appointment period and shall include leave required due to complications arising from pregnancy or its termination thereof of any eligible appointee unless equal coverage is provided by any other sick leave plan or Temporary Disability Insurance Plan.

Approved by Board of Regents
September 16, 1971

*NOTE: This policy was approved by the Board of Regents for all eligible Faculty members of the University of Hawaii to comply with the requirements of the State's Temporary Disability Insurance Law.

[Duplicated text of Board of Regents Policy Chapter 9, Section 15]

SECTION 9-15, EVALUATION OF BOARD OF REGENTS' APPOINTEES

Section 9-15 Evaluation of Board of Regents' Appointees

- a. Board of Regents' appointees will be evaluated periodically in accordance with the guidelines below and the specific procedures developed by the appropriate administrative offices to implement this policy. These performance evaluations shall be conducted in order:
 - (1) to provide assurance to the University and its constituents that professional staff resources and particular areas of expertise are being used to the best advantage;
 - (2) to provide for the systematic recognition of excellence and develop incentives for superior performance; and
 - (3) to provide means for the improvement of performance in furtherance of the University's mission.
- b. In recognition of the special role of the Faculty in the academic mission of the University, procedures for periodic review of Faculty performance must provide safeguards for academic freedom and shall provide the opportunity for participation of Faculty peers in the review process. Accordingly, each Chancellor, in consultation with appropriate Faculty governance organizations, shall develop procedures for such review which incorporate these principles. The procedure shall include a requirement for evaluation of every Faculty member at least once every five (5) years, and may provide for exempting Faculty who have undergone a review for reappointment, tenure, or promotion, or who have received a merit salary increase during this period. Faculty review procedures shall be submitted by the Chancellor for approval by the President.
- c. Administrative, Professional, and Technical (APT) employees shall be evaluated at least once every three years according to procedures approved by the President.
- d. Employees in the Executive and Administrative/Managerial classification shall be evaluated annually as specified in Section 9-14.
- e. For any campus which does not have an approved Faculty review procedure development in accordance with Section b. for implementation in academic year 1981-82, Faculty shall be evaluated according to procedures approved by the President. These procedures shall remain in effect until procedures developed in accordance with Section b. are approved and implemented. (Oct. 16, 1981)

[Duplicated text of Board of Regents Policy, Chapter 9, Section 16]

SECTION 9-16, TEACHING ASSIGNMENTS FOR INSTRUCTIONAL FACULTY

Section 9-16 Teaching Assignments for Instructional Faculty. The instructional Faculty of the University of Hawaii has duties and responsibilities that encompass a number of professional activities in addition to teaching. The nature and scope of these additional duties depend on the particular mission of the unit and program and the relationship of that mission to the Faculty member's professional qualifications. As instruction is the University's highest priority, however, teaching remains the most important duty of its Faculty. This policy sets standards for the assignment of the instructional component of Faculty responsibilities.

- a. Except as otherwise provided herein, the standard teaching assignments for full-time instructional Faculty shall be as follows:
 - (1) 24 semester credit hours per academic year at the University of Hawaii at Manoa,
 - (2) 24 semester credit hours per academic year at the University of Hawaii at Hilo, excepting Hawaii Community College,
 - (3) 24 semester credit hours per academic year at the University of Hawaii at West Oahu, and
 - (4) 30 semester credit hours per academic year in the University of Hawaii Community Colleges, and at Hawaii Community College.
- b. The teaching assignments in Section a. refer to classroom lecture instruction. For other modes of instruction (clinical practice, laboratory, thesis supervision, etc.), each Chancellor shall develop and recommend:
 - (1) an appropriate measure of the instructional activity (contact hours, number of students supervised, etc.), and
 - (2) an equivalence relating the designated measure to semester credit hours.

It is expected that the development of appropriate equivalents will involve consultation of the appropriate Faculty, department chairpersons, and academic deans.

Such equivalents shall be reviewed and approved by the President and reported to the Board of Regents upon their establishment or subsequent revision consistent with Board policy.

- c. In recognition of the diverse responsibilities of the University and its Faculty, each Chancellor shall develop and recommend equivalents for specific non-instructional activities that are consistent with and in furtherance of the mission of the University unit and program.

It is expected that the development of appropriate equivalents will involve consultation of the appropriate Faculty, department chairpersons, and academic deans.

The definitions of these equivalents shall include:

- (1) a description of the professional activities for which they may be granted,
- (2) an explanation of the relationship of these activities to institutional and program mission and priorities, and
- (3) guidelines for determining the circumstances which warrant granting them.

Such equivalents shall be reviewed and approved by the President and reported to the Board of Regents upon their establishment or subsequent revision consistent with Board policy.

The implementation of this policy shall be the responsibility of the Chancellors of the respective units.

- d. Teaching assignments for part-time instructional Faculty or for Faculty paid less than full time from instructional funds shall be as in Section a. pro-rated by their fractional full-time equivalent in instruction.
- e. Each unit shall ensure against discriminatory teaching assignments. In addition, Chancellors shall establish procedures to monitor the effectiveness of teaching reductions for non-instructional duties.
- f. During the spring semester of academic year 1981-82, equivalencies shall be developed by April 30, 1982, in accordance with this policy, and teaching assignments beginning in fall semester 1982-83 shall be determined as set forth herein. (Jan. 22, 1982)

R-4

[Duplicated text of CCCM#2250 on Teaching Assignment Policy]

UNIVERSITY OF HAWAII

Office of the Chancellor for Community Colleges

MEMORANDUM

July 2, 2001

TO: Chancellor Peggy Cha
 Angela Meixell, Interim
 John Morton
 Ramsey Pedersen, Interim
 Sandra Sakaguchi
 Flo Wiger, Acting
 Mark Silliman, Interim
 Director Kathy Jaycox, Interim

SUBJECT: **CCCM#2250 Teaching Assignment Policy**

The attached CCCM#2250 represents the culmination of discussions concerning standard teaching assignments for community college Faculty.

Please note that the Board of Regents established standard remains as 30 semester credit hours per year. The attached policy clarifies equivalencies to be used when courses being taught are not standard lecture format, and includes details of standard teaching assignment reductions (Appendix 1) to be used for a variety of non-classroom activities.

Also noted that Appendices 3 and 4 contain the necessary forms for Faculty to request assigned time, and to provide their assigned time completion reports.

Please feel free to have people contact Vice Chancellor Rota at 956-7471 or mrota@hawaii.edu if they have any questions.

Joyce S. Tsunoda
Chancellor

c: Vice Chancellors
 Faculty Senate Chairs

Attachment

CHANCELLOR FOR COMMUNITY COLLEGES MEMO

CCCM# 2250 July 2001

SUBJECT: Teaching Assignment Policy

A. REFERENCES:

1. University of Hawaii Board of Regents Policy 9.16 - *Teaching Assignments for Instructional Faculty*.
2. University of Hawaii Administrative Policy on *Teaching Assignments for Instructional Faculty*, Office of the President, September 1990.
3. Board of Regents Policy Chapter 9-1a, *Appointments*.
4. Administrative Procedure, A9.235, *Administrative Stipends for Department Chairs, Special Program Directors and Chairs of Academic Subdivisions*.

B. PURPOSE:

This CCCM addresses the Community Colleges' implementation of the University of Hawaii Administrative Policy relating to the Board of Regents policy on Teaching Assignments for Instructional Faculty, to delineate the general duties and responsibilities of division/department chairs, to provide for the general criteria by which chairs are to be compensated, and to provide for the general criteria by which assigned time will be determined for chairs to perform their duties and responsibilities.

C. DEFINITION:

The University of Hawaii Board of Regents has established a standard teaching assignment for full-time Faculty in the Community Colleges as 30 semester credit hours per year (30 SCH/Yr), or equivalent.

The special mission of the Community Colleges has resulted in the establishment of a diverse group of educational programs which, in turn, has resulted in the establishment of equivalencies to the established BOR policy, expressed in terms of weekly class contact hours and student registrations. Class contact hours are defined as 50-minute periods during which Faculty members instruct or supervise groups of students.

At the present time, the following equivalencies to this 30 SCH/Yr standard teaching assignment are being utilized:

For Faculty members teaching science, business and/or basic academic skills classes which require a combination of lectures and laboratory exercises, 18 weekly class contact hours per academic year is equivalent to the standard teaching assignment.

For Faculty members teaching classes in technical/occupational programs, studio art and health and physical education, and/or basic academic skills classes, which require a different combination of lectures and laboratory or shop activities, 23-25 weekly class contact hours per academic year is equivalent to the standard teaching assignment.

For Faculty members teaching classes in Cooperative Education or Work Practicum where students are learning by working in business or industry, following a prearranged sequence of learning activities, 150 student registrations each academic year is equivalent to the standard teaching assignment.

For Faculty teaching under uniquely special circumstances, other equivalencies are defined on a case-by-case basis.

D. POLICY:

Faculty Responsibilities. The responsibilities of Faculty generally involve two (2) distinct categories of activities, assigned instructional activities, and non-instructional activities.

1. Instructional Activities

This category refers to teaching and teaching-related activities such as curriculum development; preparing for and conducting class meetings, including: laboratory, studio, clinical, practicum, or shop practice; developing instructional materials; preparing and grading assignments and examinations; conferring with students about course work; non-credit and community services instructional offerings; engaging in other teaching-related activities; academic advising and career counseling of students; recruiting students; evaluating student transcripts and life experience equivalencies; assisting students in planning their programs of study; advising student groups; serving as a mentor to individual students; other related student life and student support activities; and other "hours arranged" such as credit by examination and independent study.

2. Non-Instructional Activities

a. Professional Development.

This category refers to those activities that contribute to the continued development of the professional competence of a Faculty member. It includes reading that is related to the individual's discipline and the profession; keeping current with industry standards and technologies; proposal and grant application writing; attending conferences, conventions, seminars, professional meetings, and workshops; significant scholarly activities including taking credit and non-credit courses; engaging in professional discussions with colleagues; participating in staff development activities; etc.

b. Institutional Service.

This category refers to a broad spectrum of activities, including: library and academic support service; general administration (serving as department or division head or Faculty senate/council chair, writing correspondence, keeping records, preparing budgets, ordering supplies, materials, and equipment, etc.); attending meetings and functions common to University campuses; serving on University committees; systemwide special project coordination; acting as a campus public relations liaison; technical systems designer; holding office or serving on committees of Faculty senate/councils and other recognized Faculty organizations; acting as special project leader or conference coordinator; engaging in major curriculum revision, new program development, institutional assessment, and proposal or grant application writing; assignment as student activities coordinator, student development coordinator, or managing a laboratory, studio, or shop; coordinating with outside agencies; and other academic duties that are part of the assigned responsibilities.

c. Scholarly Endeavors.

This category refers to a broad range of intellectual and creative activities related to the Faculty member's professional expertise. These activities typically result in some type of publication, performance, or display that is judged by peers at the state, national, or international levels. Activities in this category include: conducting institutional and/or pedagogical research; writing text books; writing articles or reviews; development of new instructional methods, procedures or techniques; etc.

d. Professional Service.

This category includes uncompensated service to a state, national, or international organization, related to the Faculty member's professional status, as an officer, board member, journal editor, etc.; serving as a mentor to junior Faculty members and lecturers.

e. Public Service.

This category refers to uncompensated activities which normally occur outside of the college and are related to the Faculty member's professional status. These activities include consulting; making speeches to public groups; playing a leadership role in public organizations; conducting on-campus conferences and workshops for the benefit of the community at large; writing for non-academic

publications; providing expert testimony; providing expert technical assistance to federal, state, and/or county agencies; and other related activities that serve the public.

Allocation of the Standard Teaching Assignment. The duties and responsibilities of full-time Faculty members consist of a combination of instructional and non-instructional activities designed to conform with established Board of Regents policy. The "mix" of these activities may vary from individual to individual.

When the combination of these activities exceed that which is normally expected of an individual Faculty member, the standard teaching or service assignment (30 SCH/Yr, or equivalent) may be reduced.

Appendix 1 details the normal range of semester credit hour equivalencies on a per semester basis which may be assigned to Faculty members for selected non-instructional activities. If special circumstances arise, the Chancellor may request approval from the Chancellor to make modifications to the established range of semester hour equivalencies.

The reduction in the Standard Teaching Assignment is to provide Faculty who have assumed responsibilities beyond the normal expectation the time necessary to meet both their remaining teaching obligations, and the demands of their additional responsibility. Therefore, except for unusual circumstances, an overload payment will not be made in lieu of the teaching assignment reduction.

The amount of teaching assignment reductions may result in less than a full class reduction. The excess credits may be banked for future teaching assignment reductions. The total of banked teaching assignment reductions may not exceed six SCH during any semester. However, at the request of the Faculty member, any banked credits remaining at the end of the academic year may be paid in overload rather than carried over to the following year.

The list of non-instructional activities identified in Appendix 1 and the range of credit hours to be assigned to each may be modified by the Chancellor.

E. PROCEDURES:

In implementing reductions to the standard teaching assignment, the following will occur:

1. In those instances where the reduction is made as a consequence of appointment to department or division chair or other to quasi-administrative positions, selection as committee chair, or other assignments described in the categories indicated above, appropriate Community College Policies and Procedures will be invoked to accomplish the reduction. Appendix 2 details the roles, responsibilities and teaching assignment procedures for department/division chairs and discipline coordinators.
2. In those instances where the reduction is to be made at the request of the Faculty member:
 - a. Prior to the semester in which a teaching assignment reduction is to occur, the Faculty member will submit a request for a reduction in the BOR standard assignment for the coming semester through their division chair to the Dean of Instruction or the Dean of Student Services (depending upon the locus of their assignment). Each campus shall establish internal deadlines for the submission of those requests. The form for submitting the request is contained in Appendix 3.
 - b. Written department/division standards of performance for Faculty activity, and the above listed equivalencies, as may be modified, will be consulted to determine the teaching assignment.
 - c. At the end of the year, each Faculty member who has received a reduction of teaching assignment will submit a report via the department/division chair to the Dean of Instruction or the Dean of Student Services (depending upon the locus of their assignment) in which the contributions in the prior year, as they relate to the time assigned, are described. The form for submitting that report is contained in Appendix 4.
 - d. The Chancellor, or designee, will oversee the assignment reduction policies and procedures which are used in their respective college. Appeals for review of an individual Faculty member's teaching assignment may be made to the Chancellor.
3. At the end of each year, the Chancellor shall send to the Chancellor a listing of all Faculty who have received assigned time using the form in Appendix 5.

F. RECISIONS

CCCM 2250 Teaching Assignment Policy, July, 1991
CCCM 2500 Department/Division Chairs, January, 1999

Joyce S. Tsunoda
Chancellor for Community Colleges

APPENDIX 1
STANDARD TEACHING ASSIGNMENT REDUCTIONS

The following list shall serve as a general guide to the normal range of credit hour equivalencies on a per year basis which may be assigned to Faculty members for selected activities.

I. Division or Department Chair (6-24 SCH*)

The division or department chair is an official position providing mid-level management as designated on the various campus organizational charts. The amount of teaching load reduction provided to the department chair is based on a number of factors, including: the number of personnel in the department, the number of programs administered, and the size of the departmental budget.

II. Program Coordinator (2-6 SCH)

A program coordinator has responsibility for managing various aspects of a program or its equivalent. Programs include all A.S. degree programs (unless managed by the department chair) and those special areas of emphasis within the non-A.S. programs as designated by the campus. Programs may also include major support activities or program initiatives such as service learning or freshman year experience which are not assigned as regular duties to a Faculty member.

The duties of the program coordinator may include development and maintenance of relationships with business and industry, liaison with program accreditation or other external certification organizations, maintenance of laboratory facilities, shops and equipment, and overall coordination of the students, curriculum, and personnel associated with the program. For all designated campus programs, the amount of teaching load reduction provided to the program coordinator is based on the specific duties assigned to the coordinator and the size and scope of the program.

III. Discipline Coordinator (1-6 SCH)

A discipline coordinator has responsibility for overall coordination of courses within the discipline, e.g., selection of textbooks, updating and developing course curriculum, maintenance of laboratory facilities, shops and equipment, and overall coordination of the students, and personnel associated with the discipline. The amount of teaching load reduction provided to the discipline coordinator is based on the specific duties assigned to the coordinator.

IV. Faculty Governance Leadership (1-6 SCH)

Faculty governance positions include those leadership positions within the campus Faculty Senate. Not all members of the Faculty governance organization shall necessarily receive teaching load reductions. The following positions shall be granted a teaching load reduction:

Faculty Senate Chair (3-6 SCH)
Curriculum Committee Chair (2-6 SCH)

Other governance positions as designated by the campus may receive a teaching load reduction of 1-3 SCH.

V. Other Teaching Load Reductions

A Faculty Member who teaches 15 or more SCH* in the Fall 2003 semester and any semester thereafter shall be granted a minimum three SCH teaching assignment reduction in the following semester for activities such as, but not limited to, the following:

1. curriculum development
2. curriculum revisions
3. program development
4. program revisions
5. research and development in teaching pedagogy
6. development of grant or contract proposals
7. institutional service
8. providing expert technical assistance to federal, state, county, and other agencies that serve the public and benefit the college or UH system
9. community service
10. student mentoring
11. professional development
12. mentoring junior Faculty members

In the semester immediately preceding that in which the course reduction will take place, the eligible Faculty Members shall consult with their department or division chair about the nature of the activity they intend to pursue. The purpose of this consultation is to seek alignment between the proposed activity and college or system needs. Following the meeting, a brief form shall be filed with the department or division chair documenting the agreed-upon activities.

The amount of teaching assignment reductions may result in less than a full class reduction. The excess credits may be banked for future teaching assignment reductions. The total of banked teaching assignment reductions may not exceed six SCH (Semester Credit Hours*) during any semester.

*SCH = Semester Credit Hours or equivalent contact hours. Equivalent contact hours are used for Faculty whose teaching assignments are calculated by student contact hours or a combination of both credit and contact hours, e.g., food service, nursing, laboratory, and other vocational programs.

R-5

[Duplicated text of Board of Regents Policy Chapter 9, Section 5]

SECTION 9-5, POLITICAL ACTIVITY

Section 9-5 Political Activity. The Regents believe that it is the right of employees as citizens to engage in politics so long as these activities do not interfere with their University duties or violate established rules of the University. Furthermore, the Regents have expressed the belief that political activities by employees, in accordance with the following statement, should result in no embarrassment to the University nor detrimentally affect these policies.

It is expected that University employees will use appropriate discretion in the exercise of the political rights which they share in common with other citizens; that they will be careful always to emphasize that their utterances and actions in political matters are theirs as individuals and in no manner represent the University; that they will always recognize that their first obligation is to the University; that they will accord the University administration the courtesy of prior notice of any political commitment which is likely to bring them into prominence.

Because of a conflict in interest and/or an appearance of impropriety in campaigning for and holding a partisan public elective office and being employed at the University, the Board of Regents has established the following policy in regard to campaigning for and holding such an office.

All employees under the jurisdiction of the Board of Regents seeking a partisan public elective office shall, without exception:

1. Request, or in absence of such request be placed on a leave of absence without pay in accordance with University policy upon actively seeking political office, but in no event later than the filing of nomination papers or the announcement of candidacy for such office;
2. Be subject to the general University policies governing appearances and activities of political candidates on campus;
3. Insure that they do not give the appearance that their views, utterances and/or actions are representative of the University; and
4. Be separated from University service through either resignation, or termination upon assumption of the elective office. (Aug. 30, 1966; Feb. 19, 1982)

[Duplicated text of UH Systemwide Administrative Procedures, A9.350 LEAVES]

A9.470 LEAVE SHARING

February 1996

This replaces Administrative Procedure No. A9.470 dated March 1995.

A9.470 LEAVE SHARING

1. **Purpose**

To administer the Leave Sharing Program for University employees under the authority of Title 14, Subtitle 1, Chapter 8.1, Hawai'i Administrative Rules.

The Leave Sharing Program is intended to allow employees to help ease the burdens of fellow employees who would otherwise need to take time off from work without pay to recover from a serious injury or illness. Such a program shall ensure:

- a. fair treatment and freedom from coercion of employees,
- b. that there will be no undue hardship on the department's operations, and
- c. that an employee shall not directly or indirectly intimidate, threaten or coerce any other employee for the purpose of interfering with any right such employee may have with respect to donating, receiving or using shared leave under this program.

This Leave Sharing Program shall remain in effect until June 30, 1996.

2. **Definitions**

- a. **Direct Share Option:** A Leave Sharing Program option whereby an eligible employee specifies the eligible co-worker to whom they wish to donate shared leave.
- b. **Donation:** Vacation or sick leave credits donated by eligible employees. Donations must be made in increments of no less than one (1) hour.
- c. **Leave Bank Option:** A Leave Sharing Program option under which eligible employees donate shared leave credits to the University's Central Leave Bank without designating a specific eligible co-worker.
- d. **Serious personal injury or illness:** An acute, traumatic, or life threatening illness, injury or impairment, such as cancer, heart attack or disabling accident:
 - 1) which may be a physical or mental condition;
 - 2) which is certified by a physician, as defined under Chapter 386-1, H.R.S., Hawai'i Workers' Compensation Law, as being totally incapacitating and the cause of the employee's inability to work for at least thirty (30) consecutive calendar days, and
 - 3) which is not covered under Chapter 386, Hawai'i Workers' Compensation Law.

3. **Objective**

- a. To allow eligible employees the opportunity to apply for or donate to the Leave Sharing Program.
- b. To prescribe the procedures to be followed in applying for or donating to the Leave Sharing Program.

4. Applicability

- a. These procedures shall apply to all University employees who are entitled to earn sick and/or vacation leave.
- b. Employees who are federally funded may donate vacation leave credits, but may not receive shared leave credits under this program due to federal work certification requirements.
- c. Employees of the University of Hawai'i shall not donate or receive leave credits with employees of other state departments.

5. References

ACT 157, S.L.H. 1993, Relating to public officers and employees.

Section 14-8.1-1 through Section 14.8.1-11, Title 14, Chapter 8.1, Hawai'i Administrative Rules.

Article III (H), Leave Sharing, Unit 07 Collective Bargaining Agreement.

6. Responsibilities

- a. The Director of Human and Material Resources or designee shall appoint a Leave Sharing Review Committee to administer the Central Leave Bank. The committee shall be comprised of at least three members, one of which shall be a representative from the Personnel Management Office, who shall chair the committee.
- b. The Leave Sharing Review Committee shall be responsible for overall management of the Leave Sharing Program, and shall:
 - 1) Define the general framework for promoting, understanding, and knowledge of the Leave Sharing Program.
 - 2) Respond to questions related to leave sharing as they affect employees and this program.
 - 3) Review all matters relating to appeals under Section 8(e) of this procedure.
 - 4) Assist the departments/units in conducting periodic publicity campaigns informing employees of the Leave Sharing Program.
 - 5) Monitor all donations into the Central Leave Bank and determine the distribution of leave credits from the Central Leave Bank.
 - 6) Consult with the Department of Human Resource Development concerning unusual situations and/or circumstances.
- c. The Employee Benefits and Training Section within the Personnel Management Office shall coordinate, as necessary, the activities of the Leave Sharing Review Committee.
- d. Personnel/Administrative Officers within their respective units shall implement this procedure. The Personnel/Administrative Officer shall:
 - 1) Inform their employees that they may donate vacation leave credits or request leave credits under this program. For employees who do not earn vacation leave, but earn sick leave credits, inform such employees that they may donate sick leave credits or request leave credits under this program.
 - 2) Assure that a leave bank option and a direct share option shall both be available to employees to encourage maximum participation in the program.
 - 3) Ensure that an employee is not directly or indirectly intimidated, threatened or coerced with respect to donating or receiving shared leave under this program.

- 4) Review for eligibility and correctness all donations and requests for shared leave.
- 5) Ensure that all official leave and attendance records are properly maintained with respect to donated leave and shared leave received by recipients.
- 6) Monitor leave sharing recipient's medical condition on a monthly basis to ensure that their condition continues to be due to a serious injury or illness.
- 7) Forward appeal requests to the Leave Sharing Review Committee for review and action.

7. Guidelines

a. Conditions for Donating Shared Leave

- 1) An employee must meet all of the following conditions to be eligible to donate shared leave credits:
 - a) Employees who earn and use sick and vacation leave shall only donate vacation leave credits, provided that the employee's vacation leave balance is not less than ten (10) days of vacation after the donation is made. Employees who do not earn vacation leave shall donate their sick leave credits, provided that the employee's sick leave balance is not less than thirty (30) days after the donation is made.
 - b) An employee must not have asked for nor accepted anything of value in exchange for the donation of leave credits.
- 2) All donated vacation or sick leave credits are irrevocable.
 - a) A vacation leave or sick leave donation shall not be refunded to the donor once it is transferred to the leave recipient or to the Central Leave Bank.
 - b) Any donated leave credits that are transferred to but not used by the eligible leave recipient shall revert to the Central Leave Bank to be available for use by other eligible recipients.
- 3) Leave shall be donated in increments of no less than one (1) hour.

b. Conditions for Receiving Shared Leave

- 1) An employee must meet all of the following conditions to be eligible to receive shared leave credits:
 - a) Has been employed at the University in a Board of Regents or Civil Service position for at least six (6) continuous months at a minimum of 0.5 (one-half) FTE.
 - b) Has exhausted or is about to exhaust all vacation leave, sick leave and compensatory time credits.
 - c) Is suffering from an acute, traumatic or life threatening personal injury or illness which caused the employee to be absent from work for at least thirty (30) consecutive calendar days within the past twelve (12) months.
 - d) Has a personal injury or illness not covered under Chapter 386, H.R.S., Hawai'i Workers' Compensation Law, or if covered, has exhausted all benefits.
 - e) Is determined to be ineligible for temporary disability benefits or, if eligible, has exhausted all benefits.
 - f) Has no disciplinary record of sick leave abuse within the past two (2) years.

- 2) An eligible employee can receive no more than a combined cumulative total of 240 days of shared leave credits for the duration that the employee is employed with the University. Nine-month employees can receive no more than 180 days of shared leave credits.
- 3) An employee need not have donated leave to be eligible to receive shared leave.
- 4) If an employee is incapable of applying for shared leave credits, an authorized representative may apply on the recipient's behalf.
- 5) While using shared leave credits, an eligible recipient shall continue to earn sick and/or vacation leave credits, consistent with applicable leave provisions. Such earned sick and/or vacation leave credits shall be used prior to receiving shared leave credits in accordance with current leave accounting practices.
- 6) In the event that a leave recipient is found to be entitled to benefits under Chapter 386, H.R.S., after shared leave has been granted, all approved shared leave credits transferred to the leave recipient shall be rescinded. The employee shall reimburse any salary amount previously paid under this Leave Sharing Program.

8. Procedures

a. Donating Shared Leave Credits

- 1) An employee may donate leave directly to another employee via the direct share option. The steps in the donation process are as follows:
 - a) The employee shall complete and submit a UH Form 68 (PERS), Leave Sharing Donation Form (Attachment 1).
 - b) The supervisor shall review the UH Form 68 (PERS), Leave Sharing Donation Form (Attachment 1) for correctness and forward to their respective Personnel/Administrative Officer within their unit.
 - c) The Personnel/Administrative Officer shall review the donation request in accordance with the eligibility guidelines set forth in Section 7(a) of this procedure.
 - d) If approved, the Personnel/Administrative Officer shall follow the appropriate instructions on Attachment 4 in processing the donation request. A copy of the UH Form 68 (PERS), Leave Sharing Donation Form (Attachment 1) shall be provided to the employee, the employee's supervisor and the Leave Sharing Review Committee once the donation request has been processed.
 - e) If the donation is to an employee of another department/college, the Personnel/Administrative Officer shall contact the employee's Personnel/Administrative Officer to verify whether or not the employee has been deemed eligible to receive shared leave credits under the Leave Sharing Program. If approved, the donating employee's Personnel/Administrative Officer shall process the donation request as indicated in the instructions in Attachment 4. A copy of the UH Form 68 (PERS), Leave Sharing Donation Form (Attachment 1) shall be forwarded to the donor employee, donor employee's supervisor, recipient's Personnel/Administrative Officer and the Leave Sharing Review Committee.
 - f) If the leave donation request is disapproved, the Personnel/Administrative Officer shall return the original UH Form 68 (PERS), Leave Sharing Donation Form (Attachment 1) to the employee's immediate supervisor along with a reason for the denial. The immediate supervisor shall return the leave donation request to the employee.
- 2) An employee may donate leave to the Central Leave Bank. The steps in the donation process are as follows:

- a) The employee shall complete and submit a UH Form 68 (PERS), Leave Sharing Donation Form (Attachment 1), to their immediate supervisor.
- b) The supervisor shall review the form for correctness and forward to their Personnel/Administrative Officer within their respective unit.
- c) The Personnel/Administrative Officer shall review the donation request in accordance with the eligibility guidelines set forth in Section 7 a. of this procedure.
- d) If approved, the Personnel/Administrative Officer shall process the donation request in accordance with the instructions on Attachment 5. A copy of the approved UH Form 68 (PERS), Leave Sharing Donation Form (Attachment 1) shall be submitted to the Leave Sharing Review Committee and the donor once the leave donation is processed.
- e) If the leave donation request is disapproved, the Personnel/Administrative Officer shall return the original UH Form 68 (PERS), Leave Sharing Donation Form (Attachment 1) to the respective donor's immediate supervisor along with a reason for the denial. The immediate supervisor shall return the leave donation request to the employee.

b. Receiving Shared Leave Credits

- 1) An employee requesting shared leave may receive shared leave directly via the Direct Share Option and/or the Central Leave Bank Option. The steps which involve receiving shared leave are as follows:
 - a) The employee shall complete and submit a UH Form 69 (PERS), Leave Sharing Request Form (Attachment 2), along with a UH Form 49 (PERS), Certificate of Physician or Practitioner (Attachment 3) to their immediate supervisor.
 - b) The immediate supervisor shall review the forms for correctness and forward the request to their respective Personnel/Administrative Officer within their unit.
 - c) The Personnel/Administrative Officer shall review the forms in accordance with eligibility guidelines set forth under Section 7 b. of this procedure.
 - d) If the employee is eligible to receive shared leave, the Personnel/Administrative Officer shall follow the appropriate instructions on Attachment 6 in processing the shared leave request. A copy of the UH Form 69 (PERS), Leave Sharing Request Form (Attachment 2), along with the UH Form 49 (PERS), Certificate of Physician or Practitioner (Attachment 3), shall be sent to the employee, the employee's immediate supervisor and the Leave Sharing Review Committee within ten (10) working days after the receipt of request.
 - e) The Personnel/Administrative Officer shall monitor the number of shared leave credits used by the employee along with the number of shared leave credits available. The employee receiving shared leave credits shall continue to receive his or her current salary.
 - f) If the employee was on leave without pay status at the time the shared leave request was filed and has since been found eligible to receive shared leave credits, the Personnel/Administrative Officer shall generate a Payroll Notification Form to return the employee on paid leave status. For civil service employees, the Personnel/Administrative Officer shall notify the Personnel Management Office, Civil Service Section, in writing, to generate the State Form 5, Notification of Personnel Action, to return the employee on paid leave status. The period that the employee remains on paid status shall be dependent on the number of shared leave credits that were donated to the employee.
 - g) The number of shared leave credits received by the employee shall be dependent on the availability of leave donated and shall not be approved and processed for more than a month at a time. The recipient's sick or vacation leave balance shall not be affected as a result of receiving shared leave.

- h) The Personnel/Administrative Officer shall retain the original of all approved UH Form 69 (PERS), Leave Sharing Request Form (Attachment 2), along with the UH Form 49 (PERS), Certificate of Physician or Practitioner (Attachment 3), submitted under the Direct Share Option. Copies of the forms shall be submitted to the Leave Sharing Review Committee for monitoring purposes.
 - i) If the employee is not eligible to receive shared leave, the Personnel/Administrative Officer shall return the original UH Form 69 (PERS), Leave Sharing Request Form (Attachment 2), along with the UH Form 49 (PERS), Certificate of Physician or Practitioner (Attachment 3), to the employee along with a reason for the denial.
- c. The Leave Sharing Review Committee shall have overall responsibility of the Central Leave Bank, which shall include, but not limited to:
 - 1) Recording all donations into the Central Leave Bank.
 - 2) Processing leave credits from the Central Leave Bank in accordance with the procedures set forth in Attachment 7. If there are more than one (1) recipient approved to receive shared leave, the available leave credits shall be equally distributed to the leave recipients.
 - 3) Maintaining records of all copies of UH Form 68 (PERS), Leave Sharing Donation Form (Attachment 1), UH Form 69 (PERS), Leave Sharing Request Form (Attachment 2), and UH Form 49 (PERS), Certificate of Physician or Practitioner (Attachment 3).
 - 4) Reviewing all appeals under Section 10 of this procedure.
 - 5) Monitoring all leave sharing activities within the University.
- d. Termination of Shared Leave
 - 1) Approved shared leave shall be discontinued under the following situations:
 - a) The leave recipient separates or is separated from service.
 - b) The leave recipient no longer suffers from the illness or injury for which the shared leave was approved.
 - c) The leave recipient is found to be entitled to benefits under Chapter 386, H.R.S., or temporary disability benefits,
 - d) The leave recipient did not meet all of the conditions for eligibility under Section 7 b. of this procedure.
 - 2) The Personnel/Administrative Officer shall notify the recipient in writing whenever the approved shared leave shall be or has been terminated or rescinded.
 - 3) Adjustments shall be made to the recipient's compensation and leave records, as appropriate, for any period during which the shared leave has been terminated or rescinded.
 - 4) All unused shared leave credits by the recipient shall be returned to the Central Leave Bank.
- e. Appeal Procedures
 - 1) Any employee or the duly authorized representative of such employee whose application for shared leave is denied, in whole or in part, may appeal for a review of the decision by submitting a UH Form 76 (PERS), Appeal and/or Complaint Form (Attachment 8) within ten (10) days after receiving written notice of the denial or a notice of termination of shared leave benefits. The written request shall be addressed to the Leave Sharing Review Committee, Personnel Management Office, Employee Benefits and Training Section, and shall include the following information:

- a) A request to review the application for shared leave and the specific reasons for the reconsideration of the application,
 - b) The facts in support of the reconsideration; and
 - c) The remedy which the employee is seeking.
- 2) The Leave Sharing Review Committee shall convene within fifteen (15) days after receipt of the employee's request for review. A meeting with the employee or duly authorized representative at which time any materials, additional facts, documents or other evidence may be presented by the employee or their duly authorized representative.
 - 3) After considering the additional information, the Leave Sharing Review Committee shall render a decision. The Leave Sharing Review Committee shall be final and conclusive. Written notice of the decision to the employee shall be given within ten (10) working days from the date of the appeal meeting or at a mutually agreed later date based upon receipt of additional documentation, whichever is later.

f. Termination of Leave Sharing Program

- 1) The Leave Sharing Program shall terminate on June 30, 1996 unless extended by the State Director of Personnel Services or repealed by law.
- 2) If the Leave Sharing Program terminates before the end of the recipient's serious personal illness or injury, any shared leave granted to the recipient before the program's end shall remain available for use by the recipient until the termination of the serious personal illness or injury.
- 3) Upon termination of the Leave Sharing Program, any shared leave remaining in the Central Leave Bank shall be considered forfeited and the leave bank dissolved.

[Duplicated text of Appendix S of the 1977 Faculty Handbook]

COMMUNITY COLLEGE SICK LEAVE POLICY & PROCEDURES

October 10, 1978

1. When Sick Leave Granted

Sick leave is granted when an employee is ill and unable to discharge his duties, or his presence at work is a health hazard to students or employees. (BOR 10/21/71)

2. Sick Leave Entitlement for Academic Year Faculty

- a. Personnel classified as "C" in the Community Colleges who are nine-month personnel for the full academic year shall be entitled to 18 days of sick leave. (BOR 10/21/71)
- b. Faculty members appointed after August 31 shall have entitlement prorated as follows: (BOR 10/21/71, Revised by UH BMI No. 2073)

First Semester

August	18 days
September	17 days
October	15 days
November	13 days
December to end of Semester	11 days

Second Semester

Start of 2nd Semester through January	9 days
February	7 days
March	5 days
April	3 days
May	1 day

3. Sick Leave Entitlement for Faculty on Calendar-Year Appointment

- a. Eleven-month personnel earn sick leave entitlement at the rate of 1-3/4 days per month (14 hours). Employees working less than 19 days in a calendar month shall receive less than 1-3/4 days as provided for in the following schedule: (BOR 10/21/71)

For	1	to	3	cal. days of service	0	working day of leave	
	4	to	7	cal. days of service	1/4	working day of leave	(2 hours)
	8	to	11	cal. days of service	1/2	working day of leave	(4 hours)
	12	to	15	cal. days of service	3/4	working day of leave	(6 hours)
	16	to	19	cal. days of service	1	working day of leave	(8 hours)
	20	to	23	cal. days of service	1-1/4	working days of leave	(10 hours)
	24	to	27	cal. days of service	1-1/2	working days of leave	(12 hours)
	28	or	more	cal. days of service	1-3/4	working days of leave	(14 hours)

- b. Such leave allowance shall be recorded and administered on a calendar-year basis, the allowance accruing during each calendar year being credited to the employee as of December 31 of each year. (BOR 10/21/71)
- c. For nine-month "C" employees, refer to page 9 on Sick Leave entitlement.

4. Accumulation of Sick Leave Days

- a. Sick leave available is equal to the number of days of cumulative sick leave which has been earned by the Faculty member plus the number of days of current annual sick leave to which he is entitled. Current annual sick leave entitlement will start the month an employee begins work. (BOR 10/21/71)
- b. Sick leave which is not used during the year for which it accrues shall accumulate and be available for succeeding years. (BOR 10/21/71)
- c. Accumulation of sick leave days shall have no limitation. (BOR 10/21/71)
- d. Personnel on the nine-month salary schedule receive their annual sick leave entitlement at the beginning of the year, or a prorated amount if appointed late. Under the present academic calendar, the entitlement should be recorded during the month of August, or later if a late appointment in accordance with the prorated schedule in item #1 herein. (BMI No. 2073)
- e. Should a nine-month Faculty member terminate prior to completion of an academic year, the entitlement must be reduced by 16 hours for each month of service not completed. (BMI No. 2073)
- f. A Faculty member leaving the community college shall retain his accumulated sick leave for a period of five years, after which time, should he return to service, his sick leave status will be that of a new employee. (BOR 10/21/71)
- g. Faculty members who were transferred or were recruited from the State Department of Education retain their accumulated sick leave when they join the community colleges. (BOR 10/21/71)
- h. Faculty members who were entitled to earn and accumulate sick leave on the Manoa and Hilo campuses of the University of Hawaii retain their accumulation when they transfer to the community colleges. (BOR 10/21/71)
- i. Instructional personnel at the Manoa and Hilo campuses of the University of Hawaii do not earn formal sick leave and consequently bring no accumulation when they transfer to the community colleges. (BOR 10/21/71)
- j. When a Faculty member is granted leave of absence without pay, the sick leave accumulation up to the time of leave will be registered and credited to him/her upon return to service. (BOR 10/21/71)

5. Illness at the Opening of the Academic Year

- a. A Faculty member who is ill and under the care of a licensed physician at the opening of the academic year will be allowed full pay sick leave from the beginning of the academic year up to the limit of his full pay accumulated sick leave available. (BOR 10/21/71)
 - b. Upon return to work, Faculty member will be granted annual sick leave to which he/she is entitled for the balance of the year which may be applied retroactively to cover illness during the first days of the academic year. (BOR 10/21/71)
6. Leave for Physical Check-Up. Sick leave shall not be granted for a physical check-up unless it is illness-connected and required by a licensed physician in connection with treatment. (BOR 10/21/71)
7. Working Days Only to be Charged. In all cases of sick leave with pay, only actual school days will be charged against the amount of sick leave available. (BOR 10/21/71)
8. Absence During Part of the School Day. A Faculty member who leaves the campus because of illness may be considered present for the day after being on regular duty for three hours. (BOR 10/21/71)
9. Employees absent from work on account of sickness shall have charged against their sick leave allowance all working days which occur during the absence.

- a. For "C" personnel on 11-month appointments, this means any regular University work day exclusive of non-duty time during the summer period.
 - b. For "C" personnel on 9-month appointments, this means any regular University work day during the period beginning one week before registration for the first semester and ending with the second semester's commencement, including periods when classes are not scheduled.
 - c. "Regular University work day" is synonymous with regular State of Hawaii work day and does not include holidays and weekends.
10. When a Faculty member has been on sick leave for one month, a Leave of Absence form should be submitted even though he/she has not returned to work. Thereafter, to avoid exceeding the member's sick leave credit, a Leave of Absence form should be submitted on a monthly basis if the Faculty member continues to be on sick leave. (BMI No. 2071)
 11. Any sick leave taken in excess of the earned allowance which has not been approved by special exception will be considered as leave without pay. In this regard, the policies, rules or contracts governing the type of sick leave concerned must be followed. (BMI No. 2071)
 12. Faculty filling Executive and Administrative/Managerial positions on an acting basis are entitled to the sick leave rules for their regular classification. Should an acting appointment for a non-accumulating Faculty be confirmed as a regular appointment without a break, retroactive credit will be given for the acting period. (BMI No. 2071)
 13. There is no lump sum payment allowed for unused sick leave when a Faculty member terminates from his/her position; however, such sick leave credit will be transferred to the Employees' Retirement System. (BMI No. 2071)
 14. Sick Leave for Persons on Research Grant/Contract. In accordance with BOR policy adopted October 10, 1966, sick leave will not be granted for any period extending beyond the expiration date of the grant or contract providing the funds from which the employee is paid. The practical effect of this policy is that any sick leave which is not used by BOR appointees on the contract or grant is subject to forfeiture except as provided under collective bargaining contracts. Refer to paragraph 4, BMI No. 2071, for a summary of the forfeiture rules. In such cases, the administrator or manager of the grant or contract must notify the employee and the University Personnel Office of the forfeiture using the UH Form 3 (PERS), Attachment C. (BOR 10/10/61 and BMI No. 2071)
 15. When to Prepare G2. The Department of Accounting and General Services will not audit the G2 more than five working days in advance of termination date. Therefore, the G2 and the DPS 7 should be prepared by the University of Hawaii Personnel Office as appropriate and/or certified and returned to the University Personnel Office approximately ten days before the termination date. (BMI No. 2073)
 16. Preparing G2 and DPS 7 Forms. The UH Personnel Office will prepare the Form G2, Rev. 7/74, Application for Transfer of Sick Leave Credit in those cases where the sick leave record is maintained on the computerized system.
 - a. The G2 together with the current year detail record on the DPS Form 7 will be sent to the employee's organization for verification and signatures. (BMI No. 2073)
 - b. Organizational personnel should check the balance on the G2 as well as the DPS Form 7 entries to ensure that all sick leaves are indicated. When preparing the DPS Form 7, the 1-3/4 days per month (14 hours) must be recorded for each month. Special attention should be given to the period immediately prior to the termination date to be sure that recent or planned absences are recorded. If a discrepancy is noted, call the Employee Benefits Section of the University Personnel Office, ext. 8643, to effect the necessary correction. After review and/or correction, the employee and the organizational administrative representative must sign the G2 in the spaces provided. The organizational representative must sign in the space identified for signature of Department Head. Return the G2 and the DPS Form 7 to the University Personnel Office. (BMI No. 2073)
 17. Procedures in Taking Sick Leave. Sick leaves taken by Faculty on the accrual system are to be reported in accordance with procedures outlined in BMI No. 2071.
 - a. A Faculty member requesting sick leave must submit one set of the multi-carbon leave form, Application for Leave of Absence, UH Form 1 (PERS), 3/70 (See Attachment B), to his/her departmental chairperson or a designated college official for approval. The form must be completed within five (5) working days after

return from sick leave. (BMI No. 2071) For absence of more than five consecutive working days, the form must be accompanied by a statement from a licensed physician or accredited Christian Science practitioner. For absence of five consecutive days or less, the signature of a physician is not required. (BOR 10/21/71)

- b. Departmental Office or Designated College Official: After approval by the Departmental Chairperson or Designated College Official, the multi-carbon leave form should be distributed as follows: original to the UH Personnel Office, Employee Benefits Section, 1st copy to employee and 2nd copy to be maintained by the department or designated college office. The departmental/or designated college official's copy of the Leave of Absence form should be checked against the monthly machine roster, which is provided by the UH Personnel Office, to insure that the original Leave of Absence form has been processed and entered into the leave accounting system. (BMI No. 2071)
- c. UH Personnel Office: The UH Personnel Office will process all Application for Leave of Absence forms for all employees in the sick leave accrual system. The UH Personnel Office will also provide each department with a monthly machine roster reflecting all sick leave taken plus current credit balances for each Faculty member. (BMI No. 2071)

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SICK LEAVE ENTITLEMENT FOR FACULTY ON 9-MONTH ACADEMIC YEAR APPOINTMENT

(Page 9 of original text of the Community College Sick Leave Policy & Procedures)

Nine-month "C" employees earn sick leave entitlement at the rate of two (2) days per month (16 hours). Employees working less than a full month shall receive the following prorated sick leave credits:

			<u>Hours</u>
1	to	2	calendar days.....0
3	to	6	calendar days.....2
7	to	9	calendar days.....4
10	to	13	calendar days.....6
14	to	16	calendar days.....8
17	to	20	calendar days.....10
21	to	23	calendar days.....12
24	to	27	calendar days.....14
28	or	more	calendar days.....16

(Schedule was prepared by UH Personnel Office)

SPECIAL INSTRUCTIONS IN HANDLING COMPUTERIZED SICK LEAVE RECORDKEEPING FOR COMMUNITY COLLEGE "C" EMPLOYEES

1. A 9-month "C" employee who terminates his/her job (for reasons other than death or a transfer) before the end of a calendar month is not to be credited with any sick leave earned for that month.
2. A "C" employee who transfers or changes to an 11-month contract or to a 9-month contract will have his/her sick leave credit earned prorated as of the date of the transfer according to the 9-month or 11-month pro rata schedule.
3. The 9-month "C" employee who terminates by reason of death during a given month will receive a prorated sick leave credit earned for that month up to the date of his/her death.
4. The 9-month "C" employee who starts the new year's employment in the month of July will not receive his/her 18 days of sick leave credits for the coming year until the month of August, when all other regular 9-month "C" personnel will have their 18 days for the year recorded into the computer files.
5. "C" employees going on Leave Without Pay status during the academic year will stop earning sick leave credits as of the date of the LWOP. Upon return to duty from LWOP, sick leave credits for the remainder of the year will be recalculated according to the 9-month or 11-month pro rata schedule.
6. A first year "C" employee who cannot report to work on the first duty day due to illness will be required to take a

Leave Without Pay for the period of the illness. An SF-5B must be initiated to place the person on LWOP status. When the employee returns to duty, an adjustment of the remaining year's sick leave credit will be made into the computer files using the 9-month pro rata schedule.

7. "School Days" for "C" employees are defined by BOR policy as "9 months of continuous service within the period beginning one week before registration for the first semester and ending with the second semester's Commencement exercise." Therefore, a "C" employee who teaches a regularly scheduled weekend class and who is absent from it due to illness is to charge such absence to sick leave.
8. Due to the different sick leave credit schedules per year between 9-month and 11-month "C" personnel, it is conceivable and possible for a "C" person to earn more than 21 sick leave days per year if such person transfers or changes from a contract to another during the year.
9. No sick leave credits are earned during the period that "C" employees are on sabbatical leave or study leave.
10. Changes in FTE during the academic year should be reflected by appropriate adjustments to the employee's sick leave accumulation total in the computer files.
11. A "C" employee who is terminated from the job, grieves, and then is reinstated will be credited with sick leave earned during the period of the termination.
12. "C" employees hired under a G-3 position control (State, Federal or other funds) will have sick leave accumulation rights.
13. "C" personnel hired on extramural Research Grant/Contract cannot accumulate sick leave credits beyond the grant/contract period. (Refer to paragraph 4, BMI No. 2071—for summary of the forfeiture rules.)

KINDS OF NATURE OF ACTIONS ON SF-5B THAT WILL AFFECT SICK LEAVE PROGRAM FOR COMMUNITY COLLEGE INSTRUCTIONAL PERSONNEL

New Appointments

Exempt appointments of Instructors

Change in Appointments

Exempt appointment to different position
Change in FTE
Change in Title

Leave With Pay

Sabbatical Leave—less than 1 year
Sabbatical Leave—a year
Change(s) during Sabbatical Leave
Sabbatical Leave—less than a year—following LWOP
Sabbatical Leave—a year—following LWOP

Study Leave
Change(s) during Study Leave
Study Leave—following LWOP

Return from Leave With Pay

Return to duty from Sabbatical Leave—less than a year
Return to duty from Sabbatical Leave—a year

Return to duty from Study Leave

Leave Without Pay - Going and Returning

- General Improvement
- Illness
- Death in the Family
- Industrial Injury
- Extended Annual Vacation for Travel
- Military Services
- Seek Political Office
- Personal Business of Emergency Nature
- Temporary Cessation of Normal Operations
- Render Services at State Legislature
- Serving on Constitutional Convention
- Professional Improvement
- Authorized Leave without Compensation
- Unauthorized Absence without Compensation
- No Prorated Summer Pay
- Changes during LWOP - (type of LWOP)
- LWOP - (type of LWOP) following Sabbatical Leave
- LWOP - (type of LWOP) following Study Leave
- Depletion of Funds

Separations

- Resignation
- Death
- Termination
- Retirement (age 64 and under)
- Retirement (age 65 and over)
- Dismissal
- Layoff

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COMMUNITY COLLEGE FACULTY (9-MONTH) SICK LEAVE SCHEDULE
(Corrected copy as of 12/12/78)

	<u>Amount to be Credited or Subtracted</u>			
August (08)	18	days	144	hours
September (09)	17	days	136	hours
October (10)	15	days	120	hours
November (11)	13	days	104	hours
December (12)	11	days	88	hours
January (01)	9	days	72	hours
February (02)	7	days	56	hours
March (03)	5	days	40	hours
April (04)	3	days	24	hours
May (05)	1	day	8	hours
June (06)	--		--	
July (07)	--		--	

MONTHLY SCHEDULE

A. 11-Month Faculty

1	to	3	cal. days	0	days	
4	to	7	cal. days	¼	day	(2 hrs.)
8	to	11	cal. days	½	day	(4 hrs.)
12	to	15	cal. days	¾	day	(6 hrs.)
16	to	19	cal. days	1	day	(8 hrs.)
20	to	23	cal. days	1-1/4	day	(10 hrs.)
24	to	27	cal. days	1-1/2	day	(12 hrs.)
28	or	more	cal. days	1-3/4	day	(14 hrs.)

B. 9-Month Faculty Prorated by Days

1	to	2	cal. days	0	days	
3	to	6	cal. days	¼	day	(2 hrs.)
7	to	9	cal. days	½	day	(4 hrs.)
10	to	13	cal. days	¾	day	(6 hrs.)
14	to	16	cal. days	1	day	(8 hrs.)
17	to	20	cal. days	1-1/4	day	(10 hrs.)
21	to	23	cal. days	1-1/2	day	(12 hrs.)
24	to	27	cal. days	1-3/4	day	(14 hrs.)
28	or	more	cal. days	2	days	(16 hrs.)

R-8

[Duplicated text of UH Systemwide Administrative Procedures, A9.350 LEAVES]

A9.350 APPLICATION FOR TRANSFER OF VACATION AND SICK LEAVE CREDIT OR PAYMENT IN LIEU OF VACATION

September 1990

This replaces Administrative Procedure A9.350 dated July 1982.

1. Purpose.

To comply with Section 79-5 HRS, Transfer of Vacation Credits and also Title 14, Administrative Rules, Department of Personnel Services Section 8-11(d) concerning "General provisions affecting vacation and sick leaves" and other appropriate collective bargaining agreements.

2. References.

- a. Administrative Procedure A9.380, Vacation and Sick Leave System.
- b. Administrative Procedure A9.390, Vacation Credit Fund Transfer.
- c. Section 88-63 HRS, Credit for Unused Sick Leave.

3. Objective.

To prescribe the procedure to be followed in preparing and certifying the application for transfer of vacation and sick leave credit or payment in lieu of vacation.

4. Applicability/Responsibility.

- a. This procedure is applicable to all University personnel who are on the accrual system.
- b. Vice Presidents, Chancellors, Manoa Deans and Directors or their designees are responsible for processing the necessary documentation for transfer of vacation and sick leave credits or payment in lieu of vacation.

5. Transfer, Lump-Sum Payments and Separations

- a. The employee transfers to another state or county agency and vacation and/or sick leave credits are to be transferred to the gaining organization, or
- b. The employee is eligible for and requests lump sum payment for unused vacation, or
- c. The employee transfers to a position within the University which is paid from a different fund and vacation credits (including dollar amounts) are to be transferred, or
- d. The employee terminates and has some unused sick leave credit.

6. Procedures

- a. Employees on the Vacation and Sick Leave Accrual System.
 - 1) Employees on the vacation and sick leave accrual system include civil service personnel and BOR appointees in the R, S, B, A, APT and E/M classifications.
 - 2) Transfers of vacation and sick leave and payment for accumulated vacation upon termination require the designee to prepare the Application for Transfer of Vacation and Sick Leave Credit of Payment in Lieu of Vacation, Form G-2 and Instructions (Attachment A and B), which must be signed by the employee and the Administrative Officer or fiscal officers and the Attendance and

Leave Record, DPS Form 7 and Instruction (Attachments C and D) for the current calendar year and attach original copies of the Vacation and Sick Leave Annual Leave Status Report in the following manner:

- a) Original Leave Status Reports are needed for the four (4) calendar years immediately preceding the year of transfer or termination.

(Note: Special attention should be given to the period immediately prior to the termination date to be sure that recent or planned absences before such date are recorded.)

- b) Faculty (except Community Colleges)

- (1) Effective December 1, 1989, 9-month and 11-month Faculty in the instructional classifications at UH at Manoa, UH at Hilo and UH at West Oahu shall be granted sick leave benefits as provided in the Employer's policy.

- (2) Effective December 1, 1989, Faculty Members in the instructional classifications at UH at Manoa, UH at Hilo and UH at West Oahu who were employed prior to July 1, 1989 and not eligible to earn and accumulate sick leave credits shall, beginning with their most recent date of hire, be credited with ten (10) days for sick leave for each full academic year of service prior to July 1, 1989. Time spent on sabbatical leave, study leave or leaves of absence without pay shall not be creditable towards prior sick leave credit.

- (3) Faculty Members in R, S, B and A classification shall retain their sick leave benefits in accordance with existing practices, except that effective January 1, 1990, sick leave benefits for such Faculty Members shall be in accordance with the Employer's policy applicable to the instructional Faculty at UH at Manoa, UH at Hilo and UH at West Oahu.

- b. Executive/Managerial Appointee Returning to Instructional Faculty Position.

When an Executive/Managerial appointee returns to an instructional Faculty position, lump-sum vacation payment shall be made.

- c. Community Colleges

- 1) Faculty Members in the Community Colleges shall retain their sick leave benefits as set forth in Appendix S of the 1977 Faculty Handbook.

Personnel classified as "C" in the Community Colleges have their sick leave record maintained at each campus. The Director of Administrative Services is responsible for preparing the Form G2 and the DPS 7's as provided in Attachments A, B, C and D.

- 2) The DPS Form 7 should be prepared using the following guidelines for "C" personnel:

- a) Personnel on the nine-month salary schedule receive their annual sick leave entitlement at the beginning of the academic year, or a prorated amount if appointed late. Under the present academic calendar, the entitlement should be recorded during the month of August, or later if a late appointment in accordance with paragraph b below. Should a Faculty member terminate prior to completion of an academic year, the entitlement must be reduced by 16 hours for each month of service not completed. Eleven-month personnel earn sick leave entitlement at the rate of 1 ¾ days per month (14 hours). When preparing the DPS Form 7, this must be recorded for each month.

- b) Nine-month personnel in service for the full academic year are entitled to 18 days of sick leave. Those appointed after August 31 shall have entitlement prorated as follows:

<u>First Semester</u>	<u>Days Earned</u>	<u>Second Semester</u>	<u>Days Earned</u>
August	18	Start of 2nd semester through January	9
September	17	February	7
October	15	March	5
November	13	April	3
December to end of semester	11	May	1

Note: The months have been changed from those shown in Appendix S of the Manoa/Hilo Handbook to conform to the present academic year.

- c) Employees absent from work on account of sickness shall have charged against their sick leave allowance all working days which occur during the absence. For "C" personnel on 11-month appointments, this means any regular University work day exclusive of non-duty time during the summer period. For "C" personnel on 9-month appointments, this means any regular University work day during the period beginning one week before registration for the first semester ending with the second semester's commencement, including periods when classes are not scheduled. As used in this paragraph "regular University work day" is synonymous with regular State of Hawaii work day and does not include holidays and weekends.

- d) Form G2, Application for Transfer of Vacation and Sick Leave Credit or Payment in Lieu of Vacation.

- 1) The G2 and the supporting documents should be prepared, audited and certified by the respective division as appropriate.
- 2) Prior to distribution of G2 copies, a final check to insure for accuracy shall be made. In event of an error, prepare an amended G2 and attach the incorrect copies to the amended G2 and distribute accordingly.
- 3) The respective division is to distribute documents in the following manner:

For Lump Sum Payment

- 1st copy to Payroll Office
- 2nd copy to ERS
- 3rd copy retained by division level (if civil service to the Civil Service Section, if E/M to the Personnel Management Office, Director's Office)
- 4th copy to employee
- 5th copy (extra)

For Sick Leave Only

- 1st retained by Division
- 2nd copy to ERS
- 3rd copy retained by division level (if civil service to the Civil Service Section, if E/M to the Personnel Management Office, Director's Office)
- 4th copy to employee
- 5th copy extra

For Transfer to Another State or County Agency

—1st*, 2nd, 4th and 5th copy to the department gaining the employee

—3rd copy retained by division level (if civil service to the Civil Service Section, if E/M to the Personnel Management Office, Director's Office)

*1st copy attached to Authorization for Payment only if monies need to be transferred.

[appended forms not included]

R-9

[Duplicated text of UH Form 1 & enlarged]

APPLICATION FOR LEAVE OF ABSENCE

DOC. NO. Item 00: Enter unique 6 digit UNIVERSITY OF HAWAI'I - APPLICATION FOR LEAVE OF ABSENCE

PLEASE PRINT OR TYPE

01. SOCIAL SECURITY		NO. 02. NAME (LAST, FIRST, MI)		
_____		_____ ↑ START WITH FIRST THREE LETTERS OF LAST NAME		
03. LEAVE CODE	04. TYPE OF LEAVE	01 Vacation	05 Bereavement (See Note 2)	09 LWOP-Prof Imp Leave
		02 Sick (See Note 1)	06 Military	10 LWOP-Other (See Note 3)
		03 Sick-Industrial Injury	07 LWOP-Maternity	11 Compensatory Time Off
		04 Sabbatical/Prof Imp Leave with Pay	08 LWOP-Health	12 Jury/Witness Duty
05. INCLUSIVE DATES OF LEAVE		06. USE FOR CORRECTION ONLY		
FROM ____/____/____ THRU ____/____/____		THIS	REPLACES	DOC. NO.
MONTH DAY YEAR MONTH DAY YEAR		REMARKS:		
07. WORKING HOURS TAKEN		08. EMPLOYEE'S SIGNATURE	09. REQ DATE	
____/____/____				
MM DD YY				
10. DEPARTMENT		11. SUPERVISOR'S SIGNATURE	12. DATE	

Instructions for Completing the UH Form 1 (PERS), Application for Leave of Absence. Complete the following items:

- Item 1 Enter social security number of recipient.
- Item 2 Enter full name of recipient (start with first three letters of last name).
- Item 3 Enter 02 for "Sick Leave."
- Item 4 Enter "Sick Leave."
- Item 5 Enter appropriate dates to reflect the number of hours of sick leave received.
- Item 7 Enter the number of sick leave hours to be charged.
- Item 8-11 Self-explanatory.

R-10

[Duplicated text of Hawaii Revised Statutes, Chapter 398, Volume 107, FAMILY LEAVE]

FAMILY LEAVE LAW

PART I. GENERAL PROVISIONS

§398-1 Definitions.

As used in this chapter, unless the context clearly requires otherwise:

"Child" means an individual who is a biological, adopted, or foster son or daughter; a stepchild; or a legal ward of an employee.

"Department" means the department of labor and industrial relations.

"Director" means the director of labor and industrial relations.

"Employee" means a person who performs services for hire for not fewer than six consecutive months for the employer from whom benefits are sought under this chapter.

"Employer" means any individual or organization, including the State, any of its political subdivisions, any instrumentality of the State or its political subdivisions, any partnership, association, trust, estate, joint stock company, insurance company, or corporation, whether domestic or foreign, or receiver or trustee in bankruptcy, or the legal representative of a deceased person, who employs one hundred or more employees for each working day during each of twenty or more calendar weeks in the current or preceding calendar year.

"Employment" or "employed" means service, including service in interstate commerce, performed for wages under any contract of hire, written or oral, express or implied, with an employer.

"Employment benefits" means all benefits (other than salary or wages) provided or made available to employees by an employer, and includes group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, and pensions, regardless of whether the benefits are provided by a policy or practice of an employer or by an employee benefit plan as defined in section 3(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(1)).

"Health care provider" means a physician as defined under section 386-1.

"Parent" means a biological, foster, or adoptive parent, a parent-in-law, a stepparent, a legal guardian, a grandparent, or a grandparent-in-law.

"Serious health condition" means a physical or mental condition that warrants the participation of the employee to provide care during the period of treatment or supervision by a health care provider, and:

- (1) Involves inpatient care in a hospital, hospice, or residential health care facility; or
- (2) Requires continuing treatment or continuing supervision by a health care provider.

[L 1991, c 328, pt of §1; am L 1995, c 154, §4]

[§398-2] Inapplicability.

The rights provided under this chapter shall not apply to employees of an employer with fewer than one hundred employees.

[L 1991, c 328, pt of §1]

§398-3 Family leave requirement.

- (a) An employee shall be entitled to a total of four weeks of family leave during any calendar year upon the birth of a child of the employee or the adoption of a child, or to care for the employee's child, spouse or reciprocal beneficiary, or parent with a serious health condition.
- (b) During each calendar year, the leave may be taken intermittently.
- (c) Leave shall not be cumulative.
- (d) If unpaid leave under this chapter conflicts with the unreduced compensation requirement for exempt employees under the federal Fair Labor Standards Act, an employer may require the employee to make up the leave within the same pay period.
- (e) Nothing in this chapter shall entitle an employee to more than a total of four weeks of leave in any twelve-month period.

[L 1991, c 328, pt of §1; am L 1992, c 87, §6; am L 1997, c 383, §57]

§398-4 Unpaid leave permitted; relationship to paid leave.

- (a) Pursuant to section 398-3, an employee shall be entitled to four weeks of family leave. The family leave shall consist of unpaid leave, paid leave, or a combination of paid and unpaid leave. If an employer provides paid family leave for fewer than four weeks, the additional period of leave added to attain the four-week total may be unpaid.
- (b) An employee or employer may elect to substitute any of the employee's accrued paid leaves such as sick, vacation, personal, or family leave for any part of the four-week period in subsection (a); provided that an employer or employee may not substitute an employee's accrued sick leave in any situation under this chapter unless:
 - (1) Sick leave is normally granted for such purposes by an employer's policy or practice; or
 - (2) Upon mutual agreement by the employer and the employee.

[L 1991, c 328, pt of §1; am L 1995, c 154, §5]

[§398-5] Notice.

In any case in which the necessity for family leave is foreseeable, the employee shall provide the employer with prior notice of the expected birth or adoption or serious health condition in a manner that is reasonable and practicable.

[L 1991, c 328, pt of §1]

§398-6 Certification.

- (a) An employer may require that a claim for family leave be supported by written certification.
- (b) For the birth of a child, certification shall be issued by a health care provider or the family court. For the placement of a child for adoption with the employee, certification shall be issued by a recognized adoption agency, the attorney handling the adoption, or by the individual officially designated by the birth parent to select and approve the adoptive family.
- (c) When leave is to care for a child, spouse, or parent who has a serious health condition, certification shall be issued by the health care provider of the individual requiring care. Certification shall be considered sufficient if it provides information as required by the director.

[L 1991, c 328, pt of §1; am L 1995, c 154, §6]

[§398-7] Employment and benefits protection.

- (a) Upon return from family leave, the employee shall be entitled to be restored by the employer to the position of employment held by the employee when the leave commenced, or restored to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment. If, however, during a leave, the employer experiences a layoff or workforce reduction and the employee would have lost a position had the employee not been on family leave, the employee is not entitled to reinstatement in the former or equivalent position. In such circumstances, the employee retains all rights, including seniority rights, pursuant to the good faith operation of a bona fide layoff and recall system.
- (b) The taking of family leave shall not result in the loss of any employment benefit accrued before the date on which the leave commenced, except for any paid leave that may have been expended in conjunction with the family leave.
- (c) Nothing in this chapter shall be construed to entitle or deny any employee to the accrual of any seniority or employment benefits during any period of leave, or any right, employment benefit, or position to which the employee would have been entitled had the employee not taken the leave.

[L 1991, c 328, pt of §1]

[§398-8] Prohibited acts.

- (a) It shall be unlawful for any employer to interfere with, restrain, or deny the exercise of or the attempt to exercise, any right provided under this chapter.
- (b) It shall be unlawful for any employer to discharge or in any other manner discriminate against any individual for opposing any practice made unlawful by this chapter.
- (c) It shall be unlawful for any person to discharge or in any other manner discriminate against any individual because the individual has:
 - (1) Filed any charge, or instituted or caused to be instituted any proceeding, under or related to this chapter;
 - (2) Given or is about to give any information in connection with any inquiry or proceeding relating to any right provided under this chapter; or
 - (3) Testified or is about to testify in any inquiry or proceeding relating to any right provided under this chapter.

[L 1991, c 328, pt of §1]

§398-9 Administration.

- (a) The director shall have jurisdiction over those prohibited acts made unlawful by this chapter.
- (b) The department shall assist employers in the placement of temporary help to perform the work of those employees on family leave.
- (c) The director also may hire, subject to chapters 76 and 77, investigators, hearings officers, clerical, stenographic, and other staff as may be necessary to administer and enforce this chapter.

[L 1991, c 328, pt of §1; am L 1995, c 154, §7]

[§398-10] Applicability.

- (a) Section 398-3 shall set a minimum standard that is not intended to replace family leave policies that exist as of the effective date of this Act and that provide for equal or greater employment benefits than those benefits afforded under this chapter.
- (b) Nothing in this chapter shall be construed to modify, eliminate, or otherwise abrogate any existing family leave policies, employment benefits, or protections that employees may have pursuant to any employment contracts or

collective bargaining agreements, to the extent that the contracts and agreements provide greater protections than those afforded under this chapter.

- (c) To the extent the provisions of this chapter contradict or otherwise conflict with any contract rights or collective bargaining agreements in existence as of the date of this Act, the provisions that provide greater benefits to the employees shall control.

[L 1991, c 328, pt of §1]

[§398-11] Rules.

Subject to chapter 91, the director may adopt rules necessary for the enforcement and administration of this chapter. The rules shall have the force and effect of law.

[L 1993, c 152, §1]

[PART II.] ENFORCEMENT

[§398-21] Filing of complaint.

- (a) Any individual claiming to be aggrieved by an alleged unlawful act may file with the department a verified complaint in writing.
- (b) The attorney general or the department, in like manner, may file a complaint on behalf of an individual.
- (c) A complaint may be filed on behalf of a class by the attorney general or the department.
- (d) No complaint shall be filed after the expiration of ninety days after the:
 - (1) Date of the alleged unlawful act; or
 - (2) Date of discovery by the employee of the alleged unlawful act; however, in no event shall such a complaint be filed after the expiration of one hundred eighty days of the alleged unlawful act.
- (e) After the filing of any complaint, the attorney general or the department, as applicable, shall serve a copy of the complaint upon the employer.

[L 1995, c 154, pt of §3]

[§398-22] Predetermination settlement.

At any time after the filing of a complaint, but prior to a determination by the department that this chapter has been violated, the parties may agree to resolve the complaint through a predetermination settlement.

[L 1995, c 154, pt of §3]

[§398-23] Investigation and conciliation.

- (a) The department may investigate and conciliate any complaint filed under this chapter.
- (b) Every employer shall furnish or provide to the department access to records, documents, and other material to determine compliance with this chapter. The department shall have the right to examine, photograph, or copy the material and interview witnesses at the place of employment or business during regular working hours with respect to any matter under this chapter.
- (c) The department may require by subpoena the attendance and testimony of witnesses and the production of all records, payrolls, correspondence, documents, and other material relative to any matter under investigation.

- (d) If the department determines after investigation that this chapter has been violated, the department shall inform the employer and endeavor to remedy the violation by informal methods, such as conference or conciliation.
- (e) If the department finds that methods in subsection (d) will not resolve the complaint, the department shall issue an order and a demand for compliance.
- (f) If the department issues an order that finds that an employer has violated the requirements of this chapter, the department may prescribe relief as provided under this chapter.

[L 1995, c 154, pt of §3]

[§398-24] Appeal and hearing.

- (a) Upon appeal by the employer, the order issued by the department shall be subject to a de novo review by a hearings officer appointed by the director.
- (b) The hearings officer shall schedule a contested case hearing that shall be heard in accordance with chapter 91.
- (c) At any time after the filing of an appeal under subsection (a), but prior to the hearing, the hearings officer may hold a prehearing conference with the parties or their representatives.
- (d) If a hearing is held as provided under subsection (b), the hearings officer shall issue a decision and grant relief as provided under this chapter.
- (e) Any person aggrieved by the decision of the hearings officer shall be entitled to judicial review as provided by section 91-14.
- (f) The hearings officer may administer oaths, take or cause to be taken depositions of witnesses, and may issue subpoenas to compel the attendance and testimony of witnesses or the production of records, payrolls, correspondence, documents, or other material relating to any matter to be heard.

[L 1995, c 154, pt of §3]

[§398-25] Civil action.

- (a) If an employer fails or neglects to comply with the:
 - (1) Final order of the department from which no appeal has been taken as provided by this chapter; or
 - (2) Final decision of the hearings officer, the department or the affected employee may apply to any court of competent jurisdiction to enforce the provisions of the final order or decision and for any other appropriate relief. In any proceeding to enforce the provisions of the final order or decision, the department or the affected employee need only file with the court proof that a certified copy of the final order or decision was served. In the case of the final decision, proof that the notice of hearing was given also must be filed with the court.
- (b) Any action to enforce this chapter, or to recover damages or equitable relief prescribed by this chapter, may be maintained in any court of competent jurisdiction by any one or more employees for and on behalf of the employee or employees, or the employee or employees may designate an agent or representative to maintain the action.
- (c) In any action brought under this chapter, the court shall allow, in addition to any judgment awarded to the plaintiff, costs of action, including fees of any nature, and reasonable attorney's fees to be paid by the defendant.

[L 1995, c 154, pt of §3]

[§398-26] Remedies.

- (a) In addition to all employment terms and benefits provided under section 398-7, remedies prescribed and ordered by the department or the court under this chapter may include any legal, equitable, and other relief the department or court deems appropriate.

- (b) Relief under this section may include:
 - (1) The amount of any wages, salary, employment benefits, or other compensation denied or lost to the employee by reason of the violation; or
 - (2) In a case in which wages, salary, employment benefits, or other compensation have not been denied or lost to the employee, any actual monetary losses sustained by the employee as a direct result of the violation, such as the cost of providing care, up to a sum equal to four weeks of wages or salary for the employee.
- (c) An employer may be liable for an additional amount as liquidated damages equal to the sum of the applicable amount in subsection (b)(1) and (2); provided that if an employer who has violated this chapter proves to the satisfaction of the department or the court that the act or omission that violated this chapter was in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation of this chapter, the department or the court may reduce the amount of the liability to the applicable amount determined under subsection (b)(1) or (2).

[L 1995, c 154, pt of §3]

[§398-27] Notice of right to sue and employee remedies.

- (a) The department may issue a notice of right to sue. Within ninety days after the receipt of a notice of right to sue, the complainant may bring a civil action under this chapter. The department may intervene in a civil action brought pursuant to this chapter if the case is of general importance.
- (b) An action by an employee to enforce the provisions of this chapter may be maintained in any court of competent jurisdiction by any one or more employees for and in behalf of oneself or themselves, or the employee or employees may designate an agent or representative to maintain the action.
- (c) The court in any action brought under this section, in addition to any judgment awarded to the plaintiff or plaintiffs, shall allow costs of action, including costs of fees of any nature, and reasonable attorney's fees, to be paid by the defendant.
- (d) The court also may provide injunctive relief in appropriate circumstances.

[L 1995, c 154, pt of §3]

[§398-28] Compliance review.

The department may investigate whether the terms of an agreement, settlement, order, or decision are being complied with by the employer. If the employer is not in compliance, the department shall take appropriate action as provided under this chapter.

[L 1995, c 154, pt of §3]

[§398-29] Penalty.

Any employer who intentionally resists, prevents, impedes, or interferes with the department in the performance of duties pursuant to this chapter, or who in any manner intentionally violates this chapter, shall be guilty of a petty misdemeanor.

[L 1995, c 154, pt of §3]

R-11

[Duplicated text from Appendix 9-14 of the UH Board of Regents By-Laws & Policies]

UNIVERSITY OF HAWAII PATENT AND COPYRIGHT POLICY

TITLE 20, UNIVERSITY OF HAWAI'I

CHAPTER 3, UNIVERSITY OF HAWAI'I PATENT AND COPYRIGHT POLICY

Historical Note: This chapter is based substantially upon "University of Hawai'i Patent & Copyright Policy" of the University of Hawai'i Board of Regents' Rules and Regulations.

[Eff. 1/22/68; R JUN 22 1981]

§20-3-1 Equities.

The principle is hereby recognized that there are usually three interests involved in connection with research work and invention performed in the University by or under the direction of the research and teaching staffs of the University. These three interests are represented by the research worker or inventor; the University; and the general public whose taxes and gifts support the University. If the research is financed wholly or in part by an outside agency there exists an additional interest.

In general these interests are best served by immediate publication and dissemination of the results of the research. In some cases, however, the interests of all are best protected and furthered by patenting the discoveries and inventions resulting from the research. In still others, specific agreements with a federal or other agency sponsoring or funding the research prescribe certain procedures and inhibitions.

[Eff. JUN 22 1981] (Auth: HRS §304-4) (Imp: HRS §304-4)

§20-3-2 Procedures and Timing of Action.

- (a) All persons employed by the University shall submit their ideas for patentable inventions through their immediate supervisor to a University President. In submitting a patentable invention to a superior, the originator shall attach thereto a written statement or justification stating whether the patentable invention was the result of personal or private research, or research supported by State funds, or research supported by an outside agency. Such statement shall be reviewed by the immediate supervisor, who shall attach thereto a written opinion stating:
 - (1) Whether the patentable invention was the result of personal or private research, or research supported by state funds, or research supported by an outside agency; and
 - (2) The reasons for his judgment.

Such statements by the supervisor, together with the statement of the inventor, shall be submitted within thirty days after receipt by the supervisor to the President. The committee, within ninety days after such submission, shall notify the President, the person submitting the invention and the immediate supervisor of its decision as to whether such patentable invention was the result of personal or private research, or research supported by State funds, or research supported by an outside agency. The President may overrule, in writing, the decision of the President shall be binding on all parties, unless appealed.

- (b) Within one hundred and fifty days after the submission of the invention by the inventor to the immediate supervisor, the University shall notify the inventor of its final decision on whether it deems the invention to be the result of personal or private research, or of research supported by State funds or of research supported by outside agencies.
- (c) The University shall relinquish all of its rights to the inventor in the following cases:
 - (1) If the invention is judged by the President to be the result of personal or private research; or

- (2) If the University decides not to secure a patent for an invention which is a result of personal or private research but has been submitted to the President voluntarily by the inventor for possible development and patent under University auspices as hereafter noted.
- (d) In all cases of waiver of rights, the University shall relinquish its rights to the inventor by written waiver signed by the President of the University or by a designated agent. If the final unappealed decision of the committee is that such invention was the result of personal or private research, such decision may be used by the inventor as evidence in establishing the priority of the invention. Any person aggrieved by the decision of the President, may appeal to the President of the University. The decision by the President shall be final within the University administrative framework.

[Eff. JUN 22 1981] (Auth: HRS §304-4) (Imp: HRS §304-4)

§20-3-3 Inventions Resulting from Personal or Private Research.

The University shall have no vested interest in inventions clearly resulting from personal or private research and developed by an inventor on personal time, without cost or expense to the University. Such inventions may be voluntarily offered by the Faculty member to the President for the possible securing of a patent and for subsequent developing, processing and exploitation under University aegis. If such offer is accepted by the President, the inventor shall assign his rights to the University of Hawai'i Research Corporation and shall thereafter receive seventy-five percent of the net profits if any (amount received by the corporation, less costs) derived from any exploitation of the patent.

[Eff. JUN 22 1981] (Auth: HRS §304-4) (Imp: HRS §304-4)

§20-3-4 Inventions Resulting from Research Supported by State Funds.

Inventions resulting from research wholly supported by State funds shall become the property of the University of Hawai'i. Staff members shall assign their rights to the University of Hawai'i Research Corporation and shall be entitled to receive fifty percent of the net profits (amount received by the corporation, less costs) derived from any exploitation of the patent.

[Eff. JUN 22 1981] (Auth: HRS §304-4) (Imp: HRS §304-4)

§20-3-5 Inventions Resulting from Research Supported by an Outside Agency.

Inventions resulting from research supported by an outside agency, either wholly or in part, shall be governed by the provisions of the agreement covering the work. In the absence of such provisions, the invention shall be regarded as deriving from the category of State or University supported research.

[Eff. JUN 22 1981] (Auth: HRS §304-4) (Imp: HRS §304-4)

§20-3-6 Copyrights.

This policy is designed to cover copyright of books or other similar materials, and of materials in all forms copyrightable under the laws of the United States or international copyright agreements.

Except for works produced or written for hire, any publishable material produced by a member of the Faculty or staff of the University shall be the exclusive literary property of the author. The author may obtain copyright or dedicate his work to the public as he chooses, subject to any restrictions imposed by sponsoring or funding agencies not under University control.

Works produced or written "for hire" are defined as manuscripts or materials produced by persons who are engaged by the University specifically to produce such manuscripts or works, or released from other work to produce such materials. The University shall be the sole proprietor of any work done "for hire," and may make such disposition of resultant manuscripts as it may choose. Borderline determinations should be documented, when desired, in accordance with the foregoing patent policy. Should any controversy concerning this policy committee of the University which will make a recommendation for action to the President.

[Eff. JUN 22 1981] (Auth: HRS §304-4) (Imp: HRS §304-4)

§20-3-7 Financial Agreements.

The President, after consulting with the President, may enter into such financial agreements as the President deems equitable whenever a staff member at personal expense desires to patent an invention or copyright written works which resulted from research supported by State funds or works produced or written "for hire" by the University, only in instances when the committee disclaims interest in patenting or copyrighting the work produced by the staff member.

[Eff. JUN 22 1981] (Auth: HRS §304-4) (Imp: HRS §304-4)

[Duplicated text from UH Systemwide Executive Policies, Executive Policy – Administration]

E5.500 ADMINISTRATION OF THE PATENT AND COPYRIGHT POLICY

March 1985

A. **INTRODUCTION**

Section 5-3(f) of the University of Hawai'i Board of Regents Bylaws and Policies establishes the University Patent and Copyright Policy.

Because it is desirable and expedient for the University of Hawai'i to provide uniform rules and procedures for the regulation and administration of intellectual property rights generated by the activities of its Faculty, employees and others associated with the University, the following objectives, policies and procedures are established for the University's administration of the Patent and Copyright Policy.

B. **OBJECTIVES**

1. To define, clarify and protect the rights and equities of inventors and authors, the University, the Research Corporation of the University of Hawai'i, any governmental or private sponsor of research, and the public, with respect to inventions and original works, by providing for just and equitable recognition of the legitimate interests of each of the above in such inventions and works.
2. To encourage broad utilization of the results of University research and to provide a vehicle for the transfer of new technology and ideas from the University to the community at large, by permitting exploitation (both commercial and otherwise) in the public interest and for the public benefit, in a manner consistent with the integrity and objectives of the academic process, including the goal of public dissemination of the results of research.
3. To stimulate innovative and creative scholarship, research and writing and its recognition, by facilitating where appropriate the receipt of fair economic rewards there for in the form of royalty payments to inventors and authors from licensees (in the case of inventions) and publishers (in the case of written or similar works).
4. To protect and benefit scholars and researchers in the University by promoting recourse to the patenting and copyright process and by providing information, support and liaison concerning the procedures and problems involved therein.
5. To encourage and assist scholars and researchers in identifying potentially patentable discoveries, to require prompt and early reporting thereof to the President and to promote scholarly publication concerning such discoveries in a manner that does not prejudice the obtaining of a patent.
6. To devise and promulgate clear and practicable regulations, procedures and forms for the reporting and disclosure of original works that may be copyrightable, discoveries that may prove patentable and the timely prosecution of patent applications in appropriate cases.
7. To provide for the patenting or licensing or both of any invention or the copyrighting and licensing or both of any work, where appropriate, through the President or a patent management organization or publishing entity designated by that Committee.
8. To protect the rights, as agreed, of any government or private sponsor of research in any invention or work that may be generated by such research, and to ensure compliance with the other terms of any such research grant.
9. To protect the rights of the University in inventions or other original works which result from the use of University funds or facilities by Faculty, employees, students or trainees.

C. ADMINISTRATION OF PATENT AND COPYRIGHT POLICY

1. The University's President (PCC) shall be vested with authority to administer this Policy throughout the University system and all matters appertaining to patents and copyrights which may emanate from any of the University's constituent campuses shall be referred to the PCC for disposition in accordance with such policy.
2. Membership of PCC: The PCC shall consist of the following ten persons:
 - 2.1 The incumbent Director of Research of the University of Hawai'i or his or her designated representative, who shall serve as the Chairman and Convener of the PCC.
 - 2.2 Two representatives of the Research Corporation of the University of Hawai'i (RCUH) may be appointed by the Executive Director of the RCUH for three-year terms.
 - 2.3 Director of Procurement and Property Management.
 - 2.4 The Legal Consultant to the PCC, who shall be an ex officio non-voting member.
 - 2.5 Five persons selected from among the faculties and administration of the University and appointed by the President of the University or his designee for a period of three years.
3. Meetings of PCC:

The PCC shall meet as often as the Chairman and Convener deems necessary, save that there shall be at least one meeting per academic semester.
4. Powers and Duties of PCC:

The PCC shall have the following powers and duties:

 - 4.1 To interpret and apply the Patent and Copyright Policy.
 - 4.2 To evaluate inventions for patentability, scientific merit and economic feasibility, and where desirable to seek expert advice to assist it in making such determinations.
 - 4.3 To decide on the category into which an invention or original work falls for the purposes of determining who has or shares the equity therein.
 - 4.4 To determine the patent or related rights or equities of the University and other interested parties in an invention and to decide on the appropriate division of royalties.
 - 4.5 To assign inventions to the RCUH for the evaluation, patenting and licensing of inventions, and to procure the receipt of royalties or other benefits by the University, provided that, notwithstanding the above, any royalty agreement may in the discretion of the PCC provides for payment of royalties into a special fund maintained by RCUH and administered in accordance with the wishes of the University of Hawai'i solely for research, development and other educational purposes.
 - 4.6 To release patent rights to the inventor in the absence of overriding obligations to outside sponsors of research, in cases where it is deemed equitable or appropriate to do so, subject to the written approval of the President or a person designated by the President.
 - 4.7 To submit its decisions on patent and copyright matters to the President of the University, or to a person designated by the President for such purposes.
 - 4.8 To provide assistance and advice to Faculty and other research personnel concerning all aspects related to the patenting of inventions and the copyright in original works.
 - 4.9 To ensure an effective system of patent and copyright administration by means of an ongoing review of applicable policies and procedures and to make reports and recommendations to the President thereon.

4.10 To do all things necessary to achieve the objects of the Patent and Copyright Policy, without being limited by the specific powers and duties enumerated above.

5. Appeals from Decisions of PCC:

Any person aggrieved by any decision of the PCC may appeal to the President of the University or his designated representative. Such appeal shall be in writing, shall state the grounds of appeal and shall be submitted to the President or such representative within THIRTY (30) days after notification of the ruling of the Committee. The decision of the President or his designee shall be final and binding.

D. PATENTS

1. When University has Exclusive Patent Rights:

Subject to the provisions of the Policy with respect to relinquishment of rights and royalty sharing, the University shall have exclusive patent rights and title in and to any invention or discovery which emerges from any research, development or other program funded by the University, or is conceived or developed wholly or partially at the expense of the University or with the aid of its equipment, facilities or personnel.

2. When Inventor has Exclusive Patent Rights:

The University shall relinquish all rights to the inventor in the following cases:

- 2.1 If the invention or discovery is adjudged by the PCC to have been made by the inventor independently of any contractual obligations to the University and without using University equipment, facilities or funds provided by the University or an outside sponsor.
- 2.2 If the invention or discovery is a result of permissible consulting activities without any use of University facilities or of funds derived from the University or an outside research sponsor.
- 2.3 If the invention or discovery was made with the aid of University facilities or funds, but the PCC, with the written approval of the President or his designated agent decides to waive the University's rights or equity therein.

3. Procedure for Reporting Inventions:

All employees of the University, nonemployees who use University research facilities and those who receive grant or contract funds through the University shall promptly report and fully disclose any ideas for and/or reduction to practice of a potentially patentable invention or discovery to the PCC. The following procedure shall apply to such report and disclosure:

- 3.1 The report and disclosure shall be submitted in writing at the earliest opportunity to the departmental head or immediate supervisor and shall include a written statement certifying whether the potentially patentable invention or discovery was the result of private research done independently of any contractual obligations to the University and without using University equipment, facilities or funds, or whether it was the product of research done with the benefit of such assistance or with the aid of any outside research sponsor.
- 3.2 The departmental head or immediate supervisor to whom the report and disclosure are submitted shall review them and shall forward them to the PCC within THIRTY (30) days after receipt, together with a written opinion regarding the accuracy of the originator's statement submitted pursuant to Paragraph 3.1 and the reasons for such opinion.
- 3.3 The Chairman of the PCC may in his discretion authorize an originator to submit the report, disclosure and required statement directly to the PCC without referring it to the departmental head or supervisor, if he is satisfied that good grounds exist for dispensing with such reference.
- 3.4 The Chairman and members of the PCC shall take adequate steps to assure and preserve the confidentiality of all invention disclosure documents.

- 3.5 The originator shall be notified of meetings of the PCC and may attend the meetings at which his report and disclosure will be considered.
- 3.6 The PCC shall within NINETY (90) days of the submission of the report, disclosure and required statement notify the President of the University, or his designated agent, the originator and the departmental head or immediate supervisor of its decision with respect to the disposition of the matter and the respective rights or equities of any interested parties.
- 3.7 The President or his designated agent may overrule in writing the decision of the PCC, but failing such action within THIRTY (30) days of submission of the decision to the President or such agent the decision of the PCC shall be binding on all parties, unless appealed within that time.
- 3.8 The originator shall be notified in writing of the final decision of the University.

4. Duty of Inventor to Execute All Necessary Documents:

In cases where the University or an outside sponsor has an interest or equity in an invention or discovery, the inventor shall execute all such declarations, assignments or other documents as may be necessary in the course of invention evaluation, patent prosecution, or protection of patent rights in order to assure the title of the University or the RCUH or the University's ability to meet its overriding patent obligations arising from grants, contracts or other agreements of any kind with outside organizations, as the case may be.

5. Inventor's Share of Royalties:

Except as otherwise agreed and subject to any contrary obligations arising from grants, contracts or other agreements with outside sponsoring organizations, the inventor's share of royalties derived from the exploitation of any patent shall be as follows:

- 5.1 The inventor shall be entitled to receive FIFTY PERCENT (50%) of the net royalties received, "net royalties" being defined as gross royalty receipts less all costs incurred in connection with the patent.
- 5.2 If there are two or more inventors, each inventor shall share equally in the said FIFTY PERCENT (50%) share, unless all inventors have previously agreed in writing to a different distribution and have notified the University in writing thereof.
- 5.3 Distribution of the inventor's share shall be made annually in February from the amount of net royalties if any, received during the previous calendar year.
- 5.4 In the event of any litigation, actual or imminent, or any other action to protect patent rights, distribution of royalties may be withheld until resolution of the dispute.

6. Voluntary Transfer of Private Invention to University and Royalty Sharing:

A purely private invention, developed by a University employee independently of any contractual obligations and without any cost to the University or an outside sponsoring organization, may be voluntarily offered to the PCC for the purposes of patenting, development and exploitation as if it were an invention in which the University had an interest. If such offer is accepted by the PCC, the inventor shall assign his rights to the University or the RCUH and shall receive SEVENTY-FIVE PERCENT (75%) of the net royalties (being gross receipts less costs), if any, derived from the exploitation of the patent.

7. Procedure with Respect to Outside Employment and Avoiding Conflict of Interest:

Subject to any other approval that may be required pursuant to University or departmental regulations, Collective Bargaining Agreement, or Faculty Handbook and in order to avoid any conflict of interest, before any member of the University's Faculty or research personnel enters into an agreement with an outside employer which provides for or contemplates the grant or any patent rights to the outside employer arising from the outside employment, the following procedure must be adopted:

- 7.1 Such members shall notify his Dean or Director in writing of the nature of the outside employment and the extent of the patent rights to be granted to the outside employer.
 - 7.2 The Dean shall forthwith submit the notification to the Chairman of the PCC, together with his written recommendation thereon.
 - 7.3 Unless the Chairman of the PCC notifies the member to the contrary in writing within THIRTY (30) days of the submission of the request, the University shall be deemed to have waived its rights to any invention or discovery made during the outside employment described in the request to the extent necessary to give effect to the grant of the patent rights therein described.
 - 7.4 If the Chairman of the PCC objects in writing within the aforementioned period of THIRTY (30) days, the member shall not enter into the proposed employment agreement insofar as it provides for or contemplates the grant of patent rights to the outside employer with respect to any invention or discovery made by the member while in the employ of the University and in which the University has any rights under this Policy.
8. Criteria Governing Outside Commercial Sponsorship of Research:
- Contracts and other arrangements between the University and outside commercial sponsors of research must comply with the following criteria:
- 8.1 Research investigators and the University shall be free to disseminate and publish the results of sponsored research, provided that in order not to jeopardize applications for patents the University may agree that any proposed publication will be submitted to the sponsor with notice of intent to submit for publication and that unless the sponsor in writing requests a delay within TWO (2) months from the date of such notice, the investigators or the University shall be free to proceed with immediate publication. However, if the sponsor requests a delay, the submission of the manuscript will be withheld for the period requested, but in no event for longer than SIX (6) months from the date of the notice of intent to submit for publication and only in order to permit the sponsor to prepare and file the necessary application.
 - 8.2 The University shall retain the right to take title to any patentable inventions or discoveries arising from the undertaking of sponsored research, except that the University may grant an exclusive license to the sponsor for a period not exceeding EIGHT (8) years and bearing a royalty to be agreed upon, or may grant a royalty-free license if the University has incurred no substantial expense and such a license is deemed appropriate.
 - 8.3 Any agreement or arrangement with the commercial sponsor shall not impose any restrictions upon the University in conflict with its established policies and practices, but shall permit performance of the research or other investigation in the same manner and subject to the same administrative requirements applicable to research financed with the University's own funds.

E. COPYRIGHTS

1. Scope:

The Policy covers books or other written materials, as well as other original works of authorship in the various forms copyrightable under the copyright laws of the United States and international copyright conventions.

2. Rights of Faculty and Staff:

Except in the case of works written or produced for hire, and subject to any restrictions imposed by outside sponsoring or funding organizations, a member of the Faculty or staff of the University who writes or produces any work shall have exclusive rights thereto, including the ownership of copyright therein.

3. Rights to Classroom, Educational and Professional Materials:

Faculty and staff members shall own all rights to materials prepared on their own initiative for classroom, educational or professional purposes, and shall be exclusively entitled to the benefit of any royalties derived therefrom.

4. Works for Hire:

A work written or produced for hire is defined as:

- 4.1 A work commissioned by the University and prepared by an employee who is hired or assigned by the University specifically to produce such work.
- 4.2 A work prepared by a person who is not a regular employee of the University but who is specifically commissioned by the University to produce it pursuant to a signed written agreement which provides that the work shall be considered a work for hire.

5. Rights in Works for Hire:

With respect to works for hire, the University shall have exclusive rights, including the copyright, but subject to any contrary terms of the employee's employment agreement and any restrictions contained in any contract with or grant from an outside sponsor, the Faculty or staff member who prepared or produced the work shall be entitled to receive such proportions, as the PCC in its discretion may determine, of the net royalties (gross receipts less all costs), if any, which may be derived from the sale or licensing of such work. However, such sale or licensing shall be within the sole discretion of the University, which shall be under no obligation to develop royalties therefrom.

6. Notification to PCC of Intent to Publish Works:

A Faculty or staff member who writes or produces a work which he or she intends to publish or exploit commercially shall notify the PCC in writing through the departmental head or immediate supervisor of such intention, providing appropriate details of the work and the circumstances of its preparation and seeking a determination from the PCC as to whether the work is or is not a work for hire.

R-13

[Duplicated text of the UH Systemwide Administrative Procedures, A5.500, ACADEMIC AFFAIRS]

A5.500 PROCEDURES FOR INVENTION IDENTIFICATION, DISCLOSURE, AND REPORTS UNDER STATE FUNDING

March 1985

1. Purpose.

The University Patent and Copyright Policy contains clauses relating to the respective rights of the University with respect to inventions developed under research projects funded by the State. It is essential that the Principal Investigator be thoroughly familiar therewith, and comply promptly with the procedural requirements relating to invention identification, timely disclosure and reporting.

2. Objective.

The general procedures outlined below should be followed to assure uniformity and responsiveness in the handling of such inventions.

3. Applicability.

These procedures apply to all inventions conceived and/or developed under State funding.

4. Procedure.

The Principal Investigator (P.I.) shall maintain laboratory notebooks or equipment records as are reasonably necessary to document the conception and/or the first actual reduction to practice of inventions, and to show that the procedures for identifying and disclosing inventions are followed. These records shall be available upon request of the University and its duly appointed representatives.

- a. The P. I. shall furnish the Office of Research Administration with an invention disclosure. The disclosure shall be submitted in writing at the earliest opportunity to the departmental head or immediate supervisor and shall include a written statement certifying whether the potentially patentable invention or discovery was the result of private research done independently of any contractual obligations to the University and without using University equipment, facilities or funds, or whether it was the product of research done with the benefit of such assistance or with the aid of any outside research sponsor.
- b. The departmental head or immediate supervisor to whom the disclosure is submitted shall review it and shall forward it to the PCC within THIRTY (30) days after receipt, together with a written opinion regarding the accuracy of the originator's statement submitted pursuant to Paragraph (1) and the reasons for such opinion.
- c. The Chairman of the PCC may at his discretion authorize the originator to submit the disclosure and required statement directly to the PCC without referring it to the departmental head or supervisor if he is satisfied that good grounds exist for dispensing with such reference.
- d. The Chairman and members of the PCC shall take adequate steps to assure and preserve the confidentiality of all invention disclosure documents.
- e. The originator shall be notified of meetings of the PCC and may attend the meetings at which his disclosure will be considered.
- f. The PCC shall within NINETY (90) days of the submission of the disclosure and required statement notify the President of the University, or his designated agent, the originator and the departmental head or immediate supervisor of its decision with respect to the disposition of the matter and the respective rights or equities of any interested parties.

- g. The President or his designated agent may overrule in writing the decision of the PCC, but failing such action within THIRTY (30) days of submission of the decision to the President or such agent the decision of the PCC shall be binding on all parties, unless appealed within that time.
 - h. The originator shall be notified in writing of the final decision of the University.
 - i. In cases where the University or an outside sponsor has an interest or equity in an invention or discovery, the inventor shall execute all such declarations, assignments or other documents as may be necessary in the course of invention evaluation, patent prosecution, or protection of patent rights in order to assure the title of the University or the RCUH or the University's ability to meet its overriding patent obligations arising from grants, contracts or other agreements of any kind with outside organizations, as the case may be.
5. A guide to Faculty on Inventions and Patents is available in the Office of Research Administration.

[Duplicated text of UH Systemwide Administrative Procedures, A5.500, ACADEMIC AFFAIRS]

A5.501 PROCEDURES FOR COPYRIGHTS OF WORK PRODUCED FOR HIRE

March 1985

1. Purpose.

The University Patent and Copyright Policy contains provisions in respect to the ownership of any copyright on materials produced as a result of work for hire. It is essential that all employees of the University and non-employees who have been specifically commissioned by with and comply promptly with the procedural requirements described below.

2. Objective.

The general procedure outlined below should be followed to assure uniformity and responsiveness in the handling of such material.

3. Applicability.

The Policy covers books or other written materials, as well as other original works of authorship in the various forms copyrightable under the copyright laws of the United States and international copyright conventions.

4. Definition.

A work written or produced for hire is defined as:

- a. A work commissioned by the University and prepared by an employee who is hired or assigned by the University specifically to produce such work.
- b. A work prepared by a person who is not a regular employee of the University but who is specifically commissioned by the University to produce it pursuant to a signed written agreement which provides that the work shall be considered a work for hire.

5. Rights in Works for Hire.

With respect to works for hire, the University shall have exclusive rights, including the copyright, but subject to any contrary terms of the employee's employment agreement and any restrictions contained in any contract with or grant from an outside sponsor, the Faculty or staff member who prepared or produced the work shall be entitled to receive such proportions, as the PCC in its discretion may determine, of the net royalties (gross receipts less all costs), if any, which may be derived from the sale or licensing of such work. However, such sale or licensing shall be within the sole discretion of the University, which shall be under no obligation to develop royalties therefrom.

6. Procedure.

- a. A Faculty or staff member who writes or produces a work which he or she intends to publish or exploit commercially shall notify the PCC in writing through the departmental head or immediate supervisor of such intention, providing appropriate details of the work and the circumstances of its preparation and seeking a determination from the PCC as to whether the work is or is not a work for hire.
- b. The departmental head or immediate supervisor to whom the report is submitted shall review it and shall forward it to the PCC within THIRTY (30) days after receipt, together with a written opinion regarding the accuracy of the originator's statement submitted pursuant to Paragraph (1) and the reasons for such opinion.
- c. The originator shall be notified of meetings of the PCC and may attend the meetings at which his report will be considered.

- d. The PCC shall within NINETY (90) days of the submission of the report and required statement notify the President of the University, or his designated agent, the originator and the departmental head or immediate supervisor of its decision with respect to the disposition of the matter and the respective rights or equities of any interested parties.
 - e. The President or his designated agent may overrule in writing the decision of the PCC, but failing such action within THIRTY (30) days of submission of the decision to the President or such agent the decision of the PCC shall be binding on all parties, unless appealed within that time.
 - f. The originator shall be notified in writing of the final decision of the University.
 - g. In cases where the University or an outside sponsor has an interest or equity in the work, the author shall execute all such declarations, assignments or other documents as may be necessary in order to assure the title of the University.
7. A guide to Faculty on Inventions and Patents is available in the Office of Research Administration.

[Duplicated text of UH Systemwide Administrative Procedures, A5.500, ACADEMIC AFFAIRS]

**A5.502 PROCEDURES FOR INVENTION IDENTIFICATION, DISCLOSURE AND REPORTS UNDER
EXTRAMURAL CONTRACT PATENT CLAUSES**

March 1985

1. Purpose.

Extramural contracts and grants usually contain patent clauses relating to the respective rights or options available to the parties in respect to inventions developed thereunder. If a contract or grant contains such a clause, it is essential that the Principal Investigator be thoroughly familiar therewith, and comply promptly with the procedural requirements relating to invention identification, timely disclosure and reporting; otherwise the patent rights available to the University, and the continuing contract or grant relationship between the contracting agency and the University may be placed in jeopardy.

2. Objective.

The general procedures outlined below should be followed to assure uniformity and responsiveness in the handling of such inventions. As used herein the words "contract" also refers to "grant".

3. Applicability.

These procedures apply to all inventions conceived and/or developed under extramural funding.

4. Procedure.

The Principal Investigator (P.I.) shall maintain laboratory notebooks or equipment records as are reasonably necessary to document the conception and/or the first actual reduction to practice of inventions, and to show that the procedures for identifying and disclosing inventions are followed. These records shall be available upon request of the funding agency, or the University and their duly appointed representatives.

a. The P. I. shall furnish the funding agency through the Office of Research Administration:

- (1) A complete technical disclosure for such invention within the period specified in the contract, usually within six (6) months after conception or first actual reduction to practice, whichever occurs first in the course of the contract but in any event prior to any sale, public use, or publication of such invention. The disclosure shall identify the contract and inventor(s), and be sufficiently complete in technical detail, and appropriately illustrated by diagram to convey a clear understanding of the purpose, and physical, chemical, biological, or electrical characteristics of the invention.
- (2) Interim reports, as required in the contract [usually at least every twelve (12) months from date of contract]; a form similar to the attached Exhibit A, or the appropriate form specified by the funding agency, may be used for this purpose. It should list inventions during that period and certify that all inventions have been disclosed, or that there are no inventions.
- (3) A final report, as required in the contract [usually within three (3) months after completion of the work]; Exhibit A, or the appropriate agency form, may be used for this purpose.
- (4) As required by OMB-Circular A-124, the Office of Research Administration will disclose each subject invention to the Federal agency (when the project is federally funded) within two months after the inventor discloses it in writing to the President.
- (5) The President will recommend to the Chancellor who will elect in writing whether or not to retain title to any such invention by notifying the Federal agency funding the project within twelve (12) months of disclosure to the Committee.

- (6) The University will file its initial patent application within the time limits specified in OMB-Circular A-124.
- b. In every subcontract initiated by the P. I. under a prime contract containing a patent rights clause, the University shall include the prime contract patent clause in order to notify the subcontractor of the rights retained by the prime contracting agency in inventions resulting from the conduct of experimental, developmental, or research work by the subcontractor, and that the subcontractor is bound thereby. (The University Procurement and Property Management Office has appropriate general conditions for this purpose, and routinely attaches them to all subcontracts under extramurally funded contracts.)
- (1) The University is required under most prime contracts containing a patent rights clause to notify the prime contractor promptly in writing of the award of each subcontract. The P. I. shall identify the subcontractor, the prime contract and the applicable patent rights clause, the nature of the work to be performed, date of award, and estimated completion and submit the same via the Office of Research Administration to the prime contractor on Exhibit A, or the appropriate agency form. Upon completion of the subcontract, a report thereof shall be submitted on the final report required by a.(3), supra.
- (2) All invention disclosures, reports, and other information required of subcontractor under the patent rights clause may be submitted to the University for transmission by the P. I. through the Office of Research Administration to the prime contractor.
- (3) In the event of a refusal by a subcontractor to accept such clause, the University and the P. I. shall promptly notify the prime contracting agency setting forth the reasons for subcontractor's refusal and shall await written authorization before proceeding with the subcontract.
- (4) The funding agency is a third party beneficiary of any subcontract clause granting rights to the funding agency in inventions; the University under such clause usually automatically assigns to the agency all rights University would have to enforce the subcontractor's obligations for the benefit of the agency with respect to such inventions. Therefore, University would not normally be obligated to enforce the subcontractor's agreement relating to its obligations to the funding agency.
- c. All books (including laboratory notebooks), records, documents, and other supporting data relating to the invention(s) shall be retained for the period specified in the contract [usually three (3) years following final payment], to permit the funding agency to examine such records, and to determine compliance with the requirements of the contract.
- d. All rights in an invention may be forfeited to the funding agency if the above requirements are not complied with; however, such forfeiture shall not apply if it can be established that the failure to disclose did not result from the fault or negligence of the University.
- e. Final payment under a contract may be withheld for failure of the University to maintain appropriate records, and deliver to the funding agency all of the required disclosures and final reports.
- f. Each Faculty and staff member engaged in research is subject to and bound by the above reporting requirements, as well as conditions relating to determination of the rights of the funding agency, and the University in inventions or publishable materials vis-à-vis the Inventor or Author which are specified in Board of Regents Bylaws and Policies, Section 5-3(f), which also appear in Appendix H of the Faculty Handbook.
- g. A guide to Faculty on Inventions and Patents is available in the Office of Research Administration.

R-16

[Duplicated text of UH Systemwide Administrative Procedures, A.9000, GENERAL]

A9.075 PERSONNEL RECORDS

July 1998

This replaces Administrative Procedure No. A9.075 dated June 1990.

GENERAL

A9.075 PERSONNEL RECORDS - BOR APPOINTEES

1. Purpose

To implement a uniform system for the maintenance of the official personnel records for BOR appointees. In accordance with the 1986 delegation of authority to approve certain personnel actions, the official personnel files of BOR appointees, with the exception of BOR appointees in undelegated organizational units and Executive and Managerial BOR appointees, were transferred from the Office of Human and Material Resources (formerly known as Personnel Management Office) to the respective administrative units.

2. Objectives

To establish procedures for the maintenance of official personnel files and to identify the documents to be included therein.

3. Applicability/Responsibility

This instruction applies to personal records of all BOR employees appointed pursuant to Chapter 304, H.R.S., which includes but is not limited to Faculty, lecturers, casual hires, Administrative, Professional and Technical (APT), Executive and Managerial employees. This instruction does not apply to personal records of student employees or civil service employees.

4. Procedures

a. The Chief Executive Campus Officer or official designee shall designate custodians of the official personnel records who shall be responsible for keeping these files accurate, complete, up-to-date, and in accordance with applicable provisions of the appropriate collective bargaining agreements.

b. The personnel files shall contain the following documents:

- 1) Letter of hire/offer and acceptance of employment.
- 2) Curriculum vitae, APT application (UH Form 64), and letters of recommendations.
- 3) Personnel action documents (i.e., PNF, UH Form 6).
- 4) Approval documents of appointments, changes in appointments, approval of tenure (e.g., notice of renewal, approval of appointment/reappointment).
- 5) Documents relating to benefits:
 - a) Tax Deferred Annuity (optional) Considerations

▪If placed in the personnel file, access to personnel file is governed by Chapter 92-F, HRS (e.g., do not provide TDA agents with access to the folders; separate TDA agreements for disclosure to TDA agent).

▪If placed in the personnel file and employee transfers to another State department, remove all TDA materials from the file before transferring file. The University retains fiduciary liability and responsibility for the employee's TDA participation in the University program.

▪Separate maintenance provides for ease of program administration and audit.

- b) Health Fund
 - c) State Deferred Compensation
 - d) State Part-time, Casual & Seasonal (PTCS) Deferred Compensation
 - e) Annual Leave Status Reports
 - f) Employees' Retirement System
 - g) G-2, Application For Transfer of Vacation and Sick Leave Credit or Payment in Lieu of Vacation
- 6) Credit for Prior Service (UH Form 12)
 - 7) Self-Identified Ethnic Background (UH Form 27)
 - 8) Salary Assignment Forms (e.g., U.S. Savings Bond)
 - 9) Performance Evaluation Reports, including Notice of Renewal, Promotion and Tenure or APT Performance Evaluation - UH Form 70
 - 10) Notice of Disciplinary Actions (e.g., Written Reprimand, Letter of Suspensions or Discharge)
 - 11) Letters of Commendation, Recognition
 - 12) Request for Position Action (UH Form SF-1) (optional)
- c. The following should be kept in separate secured files:
- 1) I-9, Employment Eligibility Certification
 - 2) Workers' Compensation Claims and related documents
 - 3) Temporary Disability Benefit Claims and related documents
 - 4) Leave Sharing Requests and related medical certification documents
 - 5) Family Leave Requests and related medical certification documents
 - 6) Other Medical Information such as pre-employment medical information or ADA medical information
 - 7) Immigration/Visa
 - 8) Investigative Reports and related documents (e.g., witnesses statements) involving alleged or proven employee misconduct and/or complaints against the employee and final disposition thereof
 - 9) Grievance Materials
 - 10) Recruitment Materials (e.g., Form 17, applications, resumes, interview notes)
 - 11) Promotion and Tenure Application and Dossiers

Ensure that any of the above records are transferred to an employee's new administrative unit if necessary (e.g., leave share records as the maximum amount of leave share received is monitored for the duration of employment with the University).

- d. The personnel documents described in subsection b should be contained in the folder in reverse chronological order (i.e., most current on top).
- e. Personnel files should be maintained in locked filing cabinets in areas/rooms which are accessible to only authorized individuals. All employees should be instructed on the confidentiality of personnel files by their respective Chief Executive Campus Officer or official designee.
- f. The following shall be implemented where applicable in the usage and maintenance of personnel files:
 - 1) Applicable provisions in the various collective bargaining agreements relating to access to and maintenance of personnel files.
 - 2) Chapter 92-F, H.R.S., relating to confidentiality, access and disclosure of personal records. Refer also to the Uniform Information Practices Act (UIPA) Reference Manual and to the Office of Information Practices' (OIP) Guidelines on the Disclosure of Personnel Records.
 - 3) The process of responding to a subpoena of personnel records.
 - 4) Records retention rules and policies specified by EEO/AA guidelines, the University Records Manager, and collective bargaining agreements.
 - 5) The State's Procedures for Transfer of Records to the State Records Center and University Administrative Procedure A8.555, "Records Management."
- g. Transfer within UH System. When an employee moves to another administrative unit, the official custodian of personnel records of the former unit will send the employee's personnel file to the new unit. The file will be transferred as follows:
 - 1) Letter of transmittal and acknowledgment of receipt (Attachment A).
 - 2) File will be enclosed in sealed envelope labeled "CONFIDENTIAL" and addressed to the official custodian of personnel records in the receiving unit, and sent via U.S. mail or personal delivery.
- h. Resignation/Retirement/Termination. Three years after an employee resigns, retires, or is terminated from employment, the official custodian of personnel records of the administrative unit will transfer the personnel file to the State Records Center for storage in accordance with the State's Procedures for Transfer of Records to the State Records Center and University's Administrative Procedure A8.555, "Records Management."
- i. Return to UH Employment. When a former employee returns to employment, the employee's personnel records shall be recalled from the State Records Center pursuant to the State's Procedures for Recall or Request for Records and the University's Administrative Procedure A8.555, "Records Management."

MEMORANDUM OF UNDERSTANDING

Regarding "Future Need"

DEFINITIONS:

1. The Parties recognize that there should be a "future need" for a position each time an applicant is renewed.
2. The Parties recognize that there should be a "future need" for a position before an applicant may be tenured in it.
3. "Future need" in a particular Faculty Member's case is a need for services, consistent with the position description, the Faculty Member's academic qualifications, and academic programs approved by the Board of Regents.

Application of "future need" in the evaluation of tenure applications:

1. "Future need" shall be established as follows:
 - a. Where a Faculty Member has been renewed during the probationary process and hence accorded either the presumption or the explicit determination of future need, that the Faculty Member's application for tenure may not be rejected on the basis of lack of future need absent a clear and convincing demonstration by the Employer that there is no future need for the position, and that the Employer's needs have materially changed since the last renewal.
 - b. The Employer's determination of future need shall be in good faith and neither arbitrary nor capricious.
 - c. It shall be improper for the Employer to non-renew a probationer for lack of future need and immediately thereafter hire another Faculty Member to provide substantially the same services.
 - d. Nothing herein shall restrict or alter the Employer's right to retrench under the collective bargaining agreement.