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## AGREEMENT

This Agreement is made this 3<sup>rd</sup> day of August, 2017 by and between the Governor; the Board of Regents; and the President of the University of Hawaii, hereinafter called the Employer or Public Employer, as defined in §89-6(d)(4), Hawaii Revised Statutes, and the University of Hawaii Professional Assembly, hereinafter called the Union.

### ARTICLE I, RECOGNITION

The Employer recognizes the Union as the certified exclusive representative of Collective Bargaining Unit 7, as defined in §89-2, H.R.S. and 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, nationality, sex, sexual orientation, gender identity, age, disability, marital status, 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 Members<sup>1</sup> shall retain all rights and benefits provided in the written rules, regulations, policies and procedures 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 Executive Policy, rule, regulation, or Administrative Procedure.
  - 2. Except as modified by the terms of this Agreement, the Faculty of the University of Hawaii at Manoa (UH-Manoa), University of Hawaii at Hilo (UH-Hilo), and University of Hawaii-West Oahu (UH-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-01 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.

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<sup>1</sup> 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).

## 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.
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 Board of Regents Policy RP 9.213 (see R-02 of Reference Section).

#### F. TEACHING ASSIGNMENTS AND EQUIVALENCIES

Standards for teaching assignments and equivalencies are determined in accordance with Board of Regents Policy RP 9.214 (revised) (see R-03 of Reference Section).

Pursuant to the policy the standard teaching assignments for full-time instructional Faculty shall be 24 semester credit hours per academic year for UH-Manoa, UH-Hilo, and UH-West Oahu. The standard teaching assignments for full-time instructional Faculty at all Community Colleges within the University of Hawaii System shall be 27 semester credit hours per academic year.

#### 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 RP 9.205, Political Activity (and subsequent amendments) (see R-04 of Reference Section) 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-05 of Reference Section) of the State of Hawaii, under the provisions of administrative rules adopted by the University.

## I. LETTERS OF HIRE

Bargainable items contained in Unit 7 “letters of hire” (as below defined) are subject to the grievance procedure. This Section is not meant to expand the scope of bargaining; it is not meant to make letters of hire in general a bargainable subject; and it is not meant to make all items contained in letters of hire bargainable or subject to the grievance procedure. Items in letters of hire are grievable only to the extent that they are bargainable. The following shall be applicable to Unit 7 letters of hire:

1. No person shall be hired into Unit 7 without written documentation of initial terms and conditions of employment that will take effect upon hire. Such documentation shall be referred to herein as “letters of hire.”
2. The University shall preserve all letters of hire offered to potential Unit 7 members, whether they are accepted or not by the candidate, for at least three (3) years.
3. Accepted letters of hire shall be retained within the Faculty Member’s personnel folder. A copy of the accepted letter shall be sent to UHPA within twenty (20) working days of receipt from the incoming Faculty Member.
4. Letters of hire shall contain all terms and conditions of employment offered to and accepted by the incoming Unit 7 member. No undocumented promise shall be enforceable. The University agrees that bargainable items in the letter of hire may be enforced through the grievance procedure contained in this Agreement.
5. Letters of hire and the terms contained therein may not conflict with or modify this Agreement, unless UHPA agrees in writing to such a modification.
6. Letters of hire may be composed of more than one document, provided that the document bearing signatures shall reference all addenda, exhibits, specifications, diagrams, or correspondence containing the terms of hire; and each such item is attached.
7. The University, in its discretion, shall review and revise its policies and procedures on letters of hire to ensure that they are properly vetted by the appropriate authorities and that any and all commitments made therein can be honored. University shall consult with UHPA on the policies and procedures.
8. The University shall develop templates for letters of hire. University shall consult with UHPA in the development of such templates.
9. Letters of hire accepted by a new bargaining unit member shall establish the initial terms and conditions of employment for the new Unit member effective as of the date of hire.
10. Letters of hire that are grieved by UHPA and that violate this Agreement are subject to full arbitral authority to reject and cancel, or recast, the same, as may be just under the circumstances.

## **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 individuals, 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 RP 9.214. 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. On the day after Thanksgiving, during the interval between semesters and during the spring recess, Faculty Members on 9-month appointments are provided with professional development days. Faculty Members are not entitled to additional compensation to attend meetings or to carry out other University business during this 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 Vice Chancellor, 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 or Vice Chancellor shall note a recommendation on each application and shall forward each to their Chancellor.
- 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 appropriate Program Director, Department or Division Chair to the Dean or Director/Vice Chancellor a description or narrative of the educational or study 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.

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 appointments.
  - 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.
- d. When a Faculty Member who is retiring from service elects to participate in the Employer's early vacation payout program, the Faculty Member may receive a partial payment of the Faculty Member's accumulated vacation leave credits prior to the Faculty Member's retirement date for the sole purpose of deferring such amount into the Faculty Member's account in the Employer's 403(b) and/or 457 tax deferred plans. Such payout shall be in accordance with the Employer's written rules and procedures.

13. A Faculty Member whose employment is interrupted by a period of service in the uniformed services shall be permitted, upon request of that Faculty Member, to use during such period of service any vacation leave accrued as of the commencement of such service. The Faculty Member has the option to: 1) substitute any available paid vacation leave for otherwise unpaid military leave; or 2) be paid their available vacation leave allowance in a lump sum payment. The Faculty Member's choice of lump sum payment for vacation allowance will not of itself cause the forfeiture of accumulated 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 shall be provided sick leave as set forth below: (see R-07 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) 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. For absences that extend beyond thirty calendar (30) days, the Employer may require the Faculty Member to submit a licensed physician's certification stating that the Faculty Member is physically or mentally unable to return to work, and indicating approximately how long the Faculty Member's condition may keep them from being able to work. The Employer may also 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.
- 3) 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

Application for sick leave shall be filed via the online leave system (see R-08 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.

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, psychiatric, 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 Compliance Manual, as amended, for enactment of 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-07 of Reference Section for AP 9.350, Application for Transfer of Vacation and Sick Leave Credit or Payment in Lieu of Vacation)



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, domestic partner, children. Immediate family shall also include the spouse's or domestic partner's 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-09 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. MILITARY LEAVE

1. A Faculty Member whose appointment is expected to continue indefinitely or for a significant period of time shall be entitled to military leave without pay for the purpose of performing duties with the uniformed services.
2. Notwithstanding Paragraph E. below, applications for military leave may not be required if, pursuant to the Uniformed Services Employment and Reemployment Rights Act of 1994 38 U.S.C.

§§ 4301-4335 (USERRA), advance notice is precluded by military necessity or, under all of the relevant circumstances, the giving of such notice is otherwise impossible or unreasonable.

3. Faculty Members who are granted military leave without pay may elect to apply accrued vacation leave to the period of otherwise unpaid military leave, subject to the applicable vacation leave provisions of this Agreement.
4. Upon conclusion of the military leave without pay, eligible Faculty Members shall be entitled to reemployment rights in accordance with USERRA.
5. Administration and enforcement of military leaves shall be in accordance with applicable laws and regulations.

#### E. APPLICATIONS

Applications for leave without pay must be submitted through the Chair to the Dean/Director or Vice Chancellor with a statement of the reason for such leave. The Dean/Director or Vice Chancellor shall note a recommendation on each application and shall forward each 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. OVERNIGHT TRAVEL ON-ISLAND, INTER-ISLAND AND OUT-OF-STATE

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

1. When Faculty Members are required to travel on official business and such travel requires an overnight stay, they shall be provided with a travel allowance consisting of: (1) the applicable federal allowance for meals and incidental expenses (M&IE); plus (2) reimbursement of actual lodging expenses, which shall not exceed the federal lodging allowance. Lodging expenses in excess of the federal lodging allowance may be requested on an exception basis. Such requests for lodging expenses in excess of the applicable federal rate shall be reasonable, shall be approved in advance of the Faculty Member's trip, and shall require submittal of receipts prior to reimbursement.
2. Nothing in the paragraph shall preclude Faculty Members from accepting M&IE and reimbursement for actual lodging expenses which are less than the federal allowable rates.
3. In the case of official travel time involving a fraction of a day, the allowable claim for M&IE shall be prorated in terms of quarter-day periods of actual travel time. 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.
4. Nothing in this Article shall be interpreted to restrict a more liberal travel allowance payment (or other reimbursement) if such payment is provided by an external source of funding.
5. In order to provide freedom of choice in meal consumption, a Faculty Member shall not have the M&IE allowance reduced on the basis of meals included in conference programs.

#### C. INTER-ISLAND TRAVEL NOT INVOLVING AN OVERNIGHT STAY

For inter-island travel not including overnight stay, the Employer will provide the Faculty Member with an allowance of \$20.00.

D. 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.

E. 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 individuals. When thus speaking as an individual, they should be free from censorship or discipline.<sup>2</sup>

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. A Faculty Member may discuss possible violations of her or his academic freedom with the Department or Division Chair, or the appropriate Administrative Officer, in an attempt to resolve the issues.
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.

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

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.
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 UH-Manoa and the UH-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. **DEPARTMENT PROCEDURES**

Each Department or Division, or comparable unit within the University, shall put in writing, and approve through a majority vote of the bargaining unit Faculty Members, procedures or policies that will include, but are not limited to, tenure, promotion, and contract renewal evaluations and recommendations, and recommendation of the Department or Division Chair (DC). If such procedures have not been written and approved within six (6) months of the execution of this Agreement, the Employer and Union shall develop such procedures for the Department or Division.

B. **MINIMUM REQUIREMENTS FOR DEPARTMENT 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, (c) that only Faculty Members of equal or higher rank to which the applicant has applied can vote on applications for promotions, (d) procedures for the orderly review of dossiers at the Department or Division level, and (e) that

the determination of the Department's or Division's recommendation for DC to the Dean or Director, or other appropriate administrator, shall be based on a majority vote of all bargaining unit Faculty Members in the Department or Division.

For the John A. Burns School of Medicine Departments that have fewer than five (5) eligible tenured Faculty Members, the Union and the Employer agree to allow non-tenure track bargaining unit members to serve on the Department personnel committees and to vote on the promotion applications of non-tenure track faculty when their equivalent rank (Associate or Full Professor) is equal to or higher than the rank of that for which the applicant has applied.

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.

The Library Personnel Committee for the UH-Manoa Library Services shall operate under the policies and procedures approved on September 12, 1997 and function as a DPC. All tenured Librarians are eligible for election to the Library Personnel Committee, including tenure, promotion, and reappointment applications. Librarians holding the title of Department Head shall be eligible to serve on the Library Personnel Committee, provided that they will be excused from deliberation and voting in cases involving candidates for whom they serve as Intermediate Supervisor or Department Head.

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

Faculty engage in intellectual activities that may result in work products that are covered by patent(s) or copyright(s). This article establishes the rights of the Faculty Member and the Employer to these work products, subject to any restrictions imposed by outside sponsoring or funding organizations.

A. WORKS COVERED BY PATENTS

It is recognized that there are usually three (3) interests involved in connection with research work and invention performed with the resources of the Employer. These three (3) interests are the Faculty Member

researcher or inventor, the Employer, and the general public whose taxes support the Employer. 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.

## B. WORKS COVERED BY COPYRIGHTS

The term “copyright” means a bundle of rights that, under federal law, protect individual works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. Works that may be subject to copyright include, but are not limited to, computer programs, literary works, musical works, dramatic works (inclusive of accompanying music, pantomimes, and choreography), pictorial, graphic, and sculptural works (such as photographs, prints, diagrams, models, technical drawings, etc.), motion pictures, audio-visual works, sound recordings, and architectural works. “Tangible medium” includes books, periodicals, manuscripts, phonorecords, films, tapes, and disks. Examples in this paragraph are for the convenience of the reader; they are not intended to replace or restrict legal rights or definitions.

### 1. Works Not Considered Works for Hire

Subject to any restrictions imposed by outside sponsoring or funding organizations, a Faculty Member shall own all rights to textbooks or materials prepared on his or her own initiative for classroom, educational or professional purposes. Such works shall not be considered “works for hire” and the Faculty Member shall be exclusively entitled to the benefit of any royalties derived therefrom.

Class syllabi and instructional materials created by Faculty Members shall be treated as materials prepared on their own initiative for classroom and educational purposes, provided that the Employer may require, for the sole purpose of complying with accreditation requirements or program articulation, that Faculty Members provide copies of syllabi or instructional materials to designated managerial personnel. The Employer’s use of syllabi or instructional materials shall be used strictly for these purposes, and the release of these materials by Faculty Members does not entitle or allow the Employer or any other Faculty Member(s) to publish or reuse them without the Faculty Member’s written consent.

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 and/or language barriers.

### 2. Works Written or Produced for Hire

When the Employer assigns a Faculty Member to produce specific copyrightable materials, those materials shall be considered a “work for hire” in which both the Employer and the Faculty Member may have an interest, if:

- i) The assignment is in writing, and is acknowledged by the Faculty Member in writing;
- ii) The assignment is consistent with the Faculty Member’s terms of hire and will not significantly impede the Faculty Member’s pursuit of promotion or tenure under applicable guidelines;
- iii) The assignment defines the product, deadlines or milestones, and any compensation or support to be supplied by the Employer;
- iv) The assignment specifies whether or not the Employer intends to commercialize the work;
- v) The assignment does not place the Faculty Member in a conflict of interest or commitment with another publisher or contractor; and
- vi) The Exclusive Representative is copied when the assignment is made.



If the Employer does not commercialize the work for hire, the Employer shall retain a royalty-free right to use the work, including the right to develop derivative works for internal University purposes only; all other rights shall be held by the Faculty Member.

Unless otherwise agreed upon in writing between the Employer and the Faculty Member, if the Employer licenses works for hire for external use, such as by other academic institutions or commercial publishers, or in any respect markets the works for revenue, the Faculty Member will receive a share of the net profits from the sale or exploitation of works for hire 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.

The Employer and the Faculty Member may agree, either as a condition of hire, or during employment, to alternate or further terms and conditions associated with the copyrightable material. Such further terms and conditions may include, but are not limited to, the sharing of royalties or earnings, release time, overload pay, other special compensation, and whether significant support from instructional, media, or other personnel will be made available to facilitate production. Any such agreement must be written and signed by both parties, and copied to the Exclusive Representative.

The Employer shall develop templates to be used for these voluntary agreements and the Employer shall consult with the Union in the development of such templates.

The Faculty Member shall be notified of and may review any derivative works prepared by the Employer from the materials produced in a work for hire, and may, in the Faculty Member's sole discretion, require that the Employer either give the Faculty Member credit for authorship in such derivative works, or require that the Employer no longer associate the Faculty Member's name with such derivative works.

C. PATENTS AND COPYRIGHTS

The rights of Faculty Members relating to patents and copyrights shall be governed by the Board of Regents Policy RP 12.205, Patent and Copyright Policy; Executive Policy EP 12.205, Administration of the Patent and Copyright Policy; and the Administrative Procedures AP 5.500, AP 5.501, and AP 5.502 (as in effect on 3/85), which are incorporated herein by reference. (See R-10, R-11, R-12, R-13, R-14 of Reference Section.)

Effective July 1, 2019.

**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. TENURE UPON INITIAL APPOINTMENT

The President may grant tenure upon the initial appointment to Faculty Members who have previously held tenure at a comparable institution, pursuant to BOR Policy and Executive Policy.

C. 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.

Once a Faculty Member has submitted a tenure application in a timely manner, probationary credit for that year shall be applied even if a leave of absence occurs due as a result of being on sick leave or family leave. The period of the leave, paid or unpaid, shall be credited to the probationary period.

- d. A Faculty Member with full-time non-probationary service in one of the Ranks specified in Paragraph C.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 C.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-year (2) 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.

D. 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.

E. 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 30 of the second year. If notification of termination is not given by January 30, 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 E.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 E.2., Procedures, shall not be subject to the Grievance Procedure.

F. 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 August 1. If tenure is refused, the Faculty Member shall be offered a terminal year's contract commencing August 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.

Foreign Nationals who have not yet applied for or received permanent resident status who have been hired into a tenure track faculty position shall undergo the tenure review process following the procedure provided in Paragraph 1 for tenure application and review process provided for all faculty. Foreign national faculty who have successfully undergone tenure review shall be notified that they will be granted tenure upon receiving permanent resident status. Pending receipt of such status, the Faculty Member shall be accorded the normal rights and benefits of tenured faculty, e.g., automatic promotion, if applicable; membership on the Faculty Personnel Panel; etc. If permanent resident status is denied, the Faculty Member shall be terminated from the University at the end of the current academic year or when the Faculty Member can no longer legally work at the University, whichever occurs sooner. Termination for failure to obtain permanent resident status shall not be grievable. If the Faculty Member is denied tenure, but is still eligible to work legally for the University of Hawai'i for the next academic year, the Faculty Member shall be offered a terminal year's contract commencing August 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. Notification shall be made as provided in paragraph 1. A Faculty Member who fails to apply for tenure during the final year of probationary service shall be given a one-year terminal contract commencing August 1.

G. 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 C.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.

Prior to the DPC review, Departments, Department Chairs, TPRCs, or UH administrators shall not accept unsolicited information for inclusion in a tenure dossier without providing the information to the candidate and then giving the candidate the opportunity to provide a written response. Once the DPC has begun its review, no unsolicited information will be included in the dossier. This does not apply to solicited external reviewers, including those agreed upon by the applicant, per the DPC procedures.

- 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 G.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 (TPRCs) 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/Director<sup>3</sup> 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 appropriate Chancellor.

At UH-West Oahu, until such time as UH-West Oahu has Deans or Directors, the dossier is forwarded to the Vice Chancellor for Academic Affairs 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 Vice Chancellor for Academic Affairs, for transmission to the Chancellor.

At UH-Manoa, the TPRC shall review the dossier and make a recommendation, then return it to the Dean/Director for consideration and transmission to the Chancellor.

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<sup>3</sup> The title of the official at this level of review may vary by campus.

- 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 F. 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 Members are needed to supplement the committee to reach the preferred size of five members, 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) eligible<sup>4</sup> 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 Members with an appointment of .25 FTE or greater in the department or program, and additional tenured Faculty Members from related disciplines. For Faculty Members who are submitting an application for either promotion or tenure and promotion, the DPC or the Faculty Personnel Committee must be comprised of Faculty Members of equal rank or higher than the rank sought for promotion. This may require UH-Manoa departments or programs to have more than one DPC or Faculty Personnel Committee.
- 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 2017-2018.

#### H. 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.

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<sup>4</sup> 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.

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 F 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.
      - a. The Chancellor or designee shall provide the Hearing Officer with a copy of the Faculty Member's dossier, a copy of the relevant campus' supplemental guidelines and procedures, the relevant Executive Policies, and a copy of the relevant Unit 7 Agreement.
      - b. The Union and/or the Faculty Member shall submit a written statement setting forth the specific reasons and respective positions, issues, facts, and arguments of the alleged violation or misapplication of the Unit 7 Agreement and/or the supplemental guidelines and procedures established or approved by the Employer and how such violation or misapplication have adversely prejudiced the Faculty Member's application.
      - c. The written statement shall:

1. Be considered as the formal statement of the Union and/or the Faculty Member for the Hearing Officer's due consideration before the hearing of oral testimony; and
  2. Be submitted to the Hearing Officer and the Employer no later than fourteen (14) calendar days prior to the scheduled hearing date.
- d. The Employer shall have the opportunity to provide an oral response to the Union and/or to the Faculty Member's written statement at the hearing.
  - e. The hearing shall be convened on a mutually agreeable date, place, and time. There shall be no court reporter or transcripts of the hearing.
  - f. The Employer and the Union agree that the preferred method is to adhere to an oral presentation format without the use of witnesses. If the Employer and/or the Union determines that witnesses are necessary, the Employer and the Union shall engage in discussions and deliberations as to whether other alternative methods or measures can be used in lieu of witnesses. If no alternatives are agreed upon, both the Employer and the Union will have the ability to utilize witnesses during their presentation under the following rules:
    1. The witnesses shall be sworn in by the Hearing Officer;
    2. The Employer and the Union may cross examine witnesses; and
    3. The Employer and/or the Union may impose the witness exclusionary rule.
  - g. The Hearing Officer may ask questions during the hearing pertinent to the written and oral testimonies of both the Employer and the Union.
  - h. At the conclusion of the hearing, the Employer and/or the Union may provide the Hearing Officer with hearing summaries within thirty (30) calendar days after the conclusion of the hearing, unless otherwise stipulated by the Employer and the Union. The receipt of the hearing summaries by the Hearing Officer shall constitute the formal closing of the hearing and the Hearing Officer shall issue a report pursuant to paragraph H. Negative Tenure Actions, 8.a.5).
  - i. If neither the Employer nor Union elects to submit a hearing summary, the Hearing Officer shall formally close the hearing and issue a report pursuant to paragraph H. Negative Tenure Actions, 8.a.5).
  - j. The Hearing Officer's report shall be based on the review of the Faculty Member's dossier and application, as well as, any testimony and information provided at the hearing to determine whether a violation or misapplication of the Agreement or the supplemental guidelines and procedures occurred that adversely prejudiced the Faculty Member's application. No new information which was not considered in rendering the decision shall be made available or used by the Hearing Officer in the report.
- 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 President 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 President and Union within thirty (30) days of the close of the hearing.
  - 6) Upon the receipt of the report of findings, the President 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 President 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. 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 President 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 H.8.a. and b. of this Article shall be subject to further review under Article XXIV, Grievance Procedure.

I. 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.

J. 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.

K. 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.

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

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.<sup>5</sup>

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.

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<sup>5</sup> 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.

## 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.

### 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.

Prior to the DPC review, Departments, Department Chairs, TPRCs, or UH administrators shall not accept unsolicited information for inclusion in a promotion dossier without providing the information to the candidate and then giving the candidate the opportunity to provide a written response. Once the DPC has begun its review, no unsolicited information will be included in the dossier. This does not apply to solicited external reviewers, including those agreed upon by the applicant, per the DPC procedures.

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, G.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 to Ranks 3, 4 and 5 in accordance with this Article shall have their salary increased by eight percent (8%).

Faculty Members at UH-Manoa, UH-Hilo and UH-West Oahu, in the I-2 rank may seek an in-rank promotion within the classification of Instructor. The process will follow that articulated in Article XII, G.2. and Article XV, D.2. Faculty Members receiving this in-rank promotion shall have their salary increased by five percent (5%). Additionally, the Faculty Member shall receive a rolling three year contract.

Faculty Members in the Instructor rank who meet the criteria for promotion to Assistant Professor (I-3) may apply for promotion to that rank provided that the Faculty Member has satisfied the requirement for time in their current rank prior to applying to Assistant Professor (I-3). The classification and criteria for the in-rank promotion for the Instructor rank will be developed in consultation with the union with the intent that eligible Faculty Members will be able to apply in Fall semester 2018.

### 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 UH-Manoa, UH-Hilo and UH-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 President 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 President 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 two (2) 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, 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 MEMBER(S) ON TPRC

1. The appointment of Tenure and Promotion Review Committees (TPRCs) 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.
2. In addition to 1. above, at UH-Manoa, UH-Hilo, and UH-West Oahu the TPRC for I-2 in-rank promotions shall be drawn from I and C Faculty Members.

## **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) auditron 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 auditrons, 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 auditron-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.
- J. The Employer and the Union agree to adhere to the Roles and Consultation Protocols Involving UH Administration, UH Professional Assembly, and UH Faculty Senates (see R-20 of Reference Section).

## **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, 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 XV 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.

The Chancellor, or designee, shall not reassign or place a Faculty Member on administrative leave on grounds of disruption of operations for more than thirty (30) days without either written consent of the Union, or having delivered a statement in writing of the grounds therefore to the Faculty Member and the Union.

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 the 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 the 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 AP 9.075 (see R-15 of Reference Section) Personnel Records.

Official personnel files shall be maintained in the following places:

1. For the UH-Manoa, in the Offices of the Deans/Directors;
2. For the UH-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 Vice Chancellor for Academic Affairs; 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**

A. MINIMUM SALARIES

Effective July 1, 2017 through June 30, 2021, the minimum annual salaries of 9-month Faculty Members shall be:

|        |          |
|--------|----------|
| Rank 2 | \$54,084 |
| Rank 3 | \$64,896 |
| Rank 4 | \$75,720 |
| Rank 5 | \$86,532 |

Effective July 1, 2017 through June 30, 2021, the minimum annual salaries of 11-month Faculty Members shall be:

|        |           |
|--------|-----------|
| Rank 2 | \$63,276  |
| Rank 3 | \$75,924  |
| Rank 4 | \$88,596  |
| Rank 5 | \$101,244 |

Adjustment to the minimum salary rates above shall occur after all salary adjustments are made, including the salary increase provided for in B. below, if applicable.

B. SALARY ADJUSTMENTS

1. Effective July 1, 2017 all Faculty Members shall have their base salaries increased by a percentage equal to 2.13% of the base salary plus \$500 that will be added to the Faculty Member's base salary. The \$500 annual adjustment shall be pro-rated for each Faculty Member employed at less than 1.00 FTE.
2. Effective July 1, 2018 all Faculty Members shall have their base salaries increased by a percentage equal to 2.82% of the base salary plus \$500 that will be added to the Faculty Member's base salary. The \$500 annual adjustment shall be pro-rated for each Faculty Member employed at less than 1.00 FTE.
3. Effective the close of the work day on June 30, 2019 the base pay for all faculty shall be reconstructed to an amount equal to increasing their base pay equivalent to 6.89% (i.e. increases of 2% on July 1, 2017, 1.2% on January 1, 2018, 2.25% on July 1, 2018, and 1.27% on January 1, 2019 compounded), plus any interim adjustments resulting from promotions or special salary adjustments between July 1, 2017 and June 30, 2019. Faculty Members employed after June 30, 2017 shall have their base pay adjusted based on reconstructing their salary to include adjustments from the base pay as of the date of hire subject to increases of 1.2% on January 1, 2018, 2.25% on

July 1, 2018, and 1.27% on January 1, 2019, as appropriate, plus any interim adjustments resulting from promotions or special salary adjustments between the date of hire and June 30, 2019.

4. Effective July 1, 2019 all Faculty Members shall have their base pay increased by 2%.
5. Effective July 1, 2020 all Faculty Members shall have their base pay increased by 2%.
6. In situations where multiple salary adjustments occur on the same date the following order shall apply:
  - 1) Special Salary Adjustment
  - 2) Promotion
  - 3) Other contract adjustment
  - 4) Change from 9 to 11-month appointment or 11 to 9-month appointment
  - 5) Increase to minimum on appropriate 9/11 month Salary Minima Schedule

C. ENTITLEMENT (RESIGNATION, TERMINATION, RETIREMENT)

Faculty Members whose effective date of resignation, termination or retirement, falls before July 1 of the year in which a salary increase is to go into effect shall not be entitled to the salary increases set forth in this Article. Faculty Members who remain on the payroll solely for the purpose of vacation or pro rata summer pay shall not be entitled to receive the salary increases provided in this Article.

D. LECTURER FEE SCHEDULE

Lecturers who do not carry a University classification or academic rank and who teach in the Continuing Education and Summer Session programs and the Community Colleges or in other programs traditionally paid on a credit hour basis shall be paid in accordance with the following rates. Determination of the step assignment shall be based on the policies in effect on the campus where the course is taught. Policies shall be based upon the individual's prior teaching experience, academic credentials, or other equivalencies appropriate to the assignment.

The Employer reserves the right to exercise its judgment in hiring the best qualified applicant for a lectureship; however, where applicants have comparable qualifications, first priority shall be given to Lecturers at level "C" on the fee schedule and second priority shall be given to Lecturers at level "B" of the fee schedule. This priority shall apply only at the institution where the lecturer is home based and only for a total of nine (9) credit hours, if available. Classes assigned to a priority lecturer which are cancelled may be replaced at the option of the Employer. Faculty Members shall be compensated according to the following schedule:

RATE PER CREDIT HOUR OF INSTRUCTION OR EQUIVALENCY

| <b>Effective Date</b>       | <b>Step A</b> | <b>Step B</b> | <b>Step C</b> |
|-----------------------------|---------------|---------------|---------------|
| Start of Fall 2017 Semester | \$1525        | \$1833        | \$2140        |
| Start of Fall 2018 Semester | \$1569        | \$1885        | \$2201        |
| Start of Fall 2019 Semester | \$1600        | \$1923        | \$2245        |
| Start of Fall 2020 Semester | \$1632        | \$1961        | \$2290        |

Faculty Members of the Community Colleges applicable rate per credit hour of instruction or equivalency shall be governed by UHCCP #9.237 Teaching Equivalencies (see R-06 of Reference Section).

E. NON-CREDIT FEE SCHEDULE

Faculty Members engaged in non-credit instruction shall be paid not less than the following rates per contact hour:



| <b>Effective Date</b>       | <b>Hourly Rate</b> |
|-----------------------------|--------------------|
| Start of Fall 2017 Semester | \$41.10            |
| Start of Fall 2018 Semester | \$42.28            |
| Start of Fall 2019 Semester | \$43.13            |
| Start of Fall 2020 Semester | \$43.99            |

F. ADDITIONAL COMPENSATION

Faculty Members may receive additional compensation both during the duty period and during the non-duty period in accordance with the provisions of this paragraph F. Prior authorization must be obtained before undertaking additional University services for additional compensation. Such additional services are not to interfere with the Faculty Member's regularly assigned responsibilities. Faculty Members teaching credit courses shall be compensated according to the following schedule:

RATE PER CREDIT HOUR OF INSTRUCTION OR EQUIVALENCY

| <b>Rank</b> | <b>Start of Fall 2017 Semester<br/>Rate Per Credit Hour</b> | <b>Start of Fall 2018 Semester<br/>Rate Per Credit Hour</b> |
|-------------|-------------------------------------------------------------|-------------------------------------------------------------|
| 2           | \$1612                                                      | \$1658                                                      |
| 3           | \$1860                                                      | \$1913                                                      |
| 4           | \$2023                                                      | \$2081                                                      |
| 5           | \$2269                                                      | \$2334                                                      |
| <b>Rank</b> | <b>Start of Fall 2019 Semester<br/>Rate Per Credit Hour</b> | <b>Start of Fall 2020 Semester<br/>Rate Per Credit Hour</b> |
| 2           | \$1691                                                      | \$1725                                                      |
| 3           | \$1951                                                      | \$1990                                                      |
| 4           | \$2123                                                      | \$2165                                                      |
| 5           | \$2381                                                      | \$2429                                                      |

1. Faculty Members employed less than full-time may be compensated for other activities at any time. This compensation is not deemed overload for the purposes of this Agreement until the Faculty Member's employment is considered full-time. At that point, the overload regulations described herein become applicable.
2. Compensation During the Non-Duty Period
  - a. Faculty Members may receive compensation from their contracts and grants during the non-duty period in accordance with the terms of the contract or grant and federal regulations, if applicable.
  - b. Faculty Members on nine-month (9-month) appointments may not teach for additional compensation in the summer session at the same time that they are receiving a summer research salary or other compensation for services to the University.
  - c. Faculty Members who accrue vacation leave may teach only if they are on vacation, or on leave without pay and are not receiving a summer research salary or other compensation for services to the University. Faculty Members on eleven-month (11-month) appointments who do not accrue vacation leave may teach only if they are off-duty or on leave without pay and are not receiving a summer research salary or other compensation for services to the University.
3. Compensation During the Duty Period (Overload).
  - a. During the academic year, Faculty Members shall be authorized overload teaching when the course(s) to be taught cannot be assigned to another Faculty Member and the hiring of a lecturer is not possible or is impractical. This limitation does not apply to teaching in the Outreach College and other continuing education programs.
  - b. During the academic year, Faculty Members may teach Outreach College and continuing education classes as follows:

- 1) Faculty Members on 9-month appointments shall be limited to two courses or six credit hours or equivalent, whichever is the greater, of overload teaching during the academic year.
  - 2) Faculty Members on 11-month appointments shall be limited to three courses or nine credit hours or equivalent, whichever is the greater, of overload teaching per calendar year.
- c. Faculty Members in the Community Colleges may teach classes on an overload basis as follows:
- 1) Faculty Members on 9-month appointments shall be limited to six teaching equivalencies of overload during the academic year.
  - 2) Faculty Members on 11-month appointments shall be limited to six teaching equivalencies of overload during the academic year and three teaching equivalencies of overload during the summer.
  - 3) Teaching equivalencies shall be governed by UHCCP #9.237 Teaching Equivalencies (see R-06 of Reference Section).
- d. Faculty Members may not receive extra compensation from University grants or contracts during the academic year other than for duly authorized per diem allowances or travel reimbursements.

G. SPECIAL SALARY ADJUSTMENTS

The provisions governing special salary adjustments related to retention, market, equity, and merit shall be governed by the Memorandum of Understanding incorporated as part of this Agreement as Reference Section 17. Merit awards shall be made on the basis of teaching excellence, outstanding service, or other meritorious service.

H. PAY PERIOD

Faculty Members on the Employer's payroll system shall be paid on a semi-monthly pay schedule on the 5th and 20th day of each month. If a pay day falls on a holiday or weekend, the pay day becomes the immediate preceding work day.

I. ROUNDING OF MONTHLY SALARIES

Any change to the Faculty Member's salary shall be based on the current monthly rate and the resulting salary shall be rounded to the nearest whole dollar as follows:

1. If the salary adjustment computation results in a decimal amount equal to 50 cents or more (based on rounding to the nearest cent), the resulting monthly salary shall be rounded up to the next whole dollar (e.g.  $\$8655.25 \times 1.08 = \$9347.67$  rounded to  $\$9348.00$ ).
2. If the salary adjustment computation results in a decimal amount equal to 49 cents or less (based on rounding to the nearest cent), the resulting monthly salary shall be rounded down to the lower whole dollar (e.g.  $\$5678.86 \times 1.08 = \$6133.28$  rounded to  $\$6133.00$ ).
3. If multiple salary adjustments occur on the same day, the rounding shall occur at the end of the calculation.

**ARTICLE XXII, HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND (EUTF)**

- A. "Health Benefit Plan" shall mean the medical PPO, HMO, prescription drug, dental, vision and dual coverage medical plans.

B. Effective July 1, 2017

Subject to the applicable provisions of Chapter 87A and 89, Hawaii Revised Statutes, the Employer shall pay monthly contributions which include the cost of any Hawaii Employer-Union Health Benefits Trust Fund (Trust Fund) administrative fees to the Trust Fund effective July 1, 2017, 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 benefits plans:

| BENEFIT PLAN                                    | TOTAL EMPLOYER MONTHLY CONTRIBUTION |
|-------------------------------------------------|-------------------------------------|
| a. Medical (PPO or HMO) (medical, drug & chiro) | \$335.00                            |
| b. Dental                                       | \$ 19.44                            |
| c. Vision                                       | \$ 3.90                             |
| d. Dual coverage (medical, drug & chiro)        | \$ 25.54                            |

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; provided that the dollar amount contributed by the Employer shall not cause the employer share to exceed 84.3% of the total premium.

2. For each Employee-Beneficiary with one dependent-beneficiary enrolled in the following Trust Fund health benefit plans:

| BENEFIT PLAN                                    | TOTAL EMPLOYER MONTHLY CONTRIBUTION |
|-------------------------------------------------|-------------------------------------|
| a. Medical (PPO or HMO) (medical, drug & chiro) | \$812.48                            |
| b. Dental                                       | \$ 38.88                            |
| c. Vision                                       | \$ 7.20                             |
| d. Dual coverage (medical, drug & chiro)        | \$ 63.42                            |

The Employer shall pay the same monthly contribution for each member enrolled in a two-party medical plan (PPO or HMO), regardless of which plan is chosen; provided that the dollar amount contributed by the Employer shall not cause the employer share to exceed 84.3% of the total premium.

3. For each Employee-Beneficiary with two or more dependent-beneficiaries enrolled in the following Trust Fund health benefit plans:

| BENEFIT PLAN                                    | TOTAL EMPLOYER MONTHLY CONTRIBUTION |
|-------------------------------------------------|-------------------------------------|
| a. Medical (PPO or HMO) (medical, drug & chiro) | \$1,033.06                          |
| b. Dental                                       | \$ 63.96                            |
| c. Vision                                       | \$ 9.42                             |
| d. Dual coverage (medical, drug & chiro)        | \$ 70.50                            |

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; provided that the dollar amount contributed by the Employer shall not cause the employer share to exceed 84.3% of the total premium.

4. For each Employee-Beneficiary enrolled in the Trust Fund group life insurance plan, the Employer shall pay \$4.12 per month which reflects one hundred percent (100%) of the monthly premium and any administrative fees.

C. Effective July 1, 2018

Subject to the applicable provisions of Chapter 87A and 89, Hawaii Revised Statutes, effective July 1, 2018 for plan year 2018-2019, with the exception of items C.1.a., C.2.a., C.3.a., and C.4., which shall be the dollar

amounts noted, the Employer shall pay a specific dollar amount equivalent to sixty percent (60%) of the final premium rates established by the Trust Fund Board for the respective health benefit plan, plus sixty percent (60%) of any administrative fees.

1. The amounts paid by the Employer shall be based on the plan year 2018-2019 final monthly premium rates established by the Trust Fund for each Employee-Beneficiary with no dependent-beneficiaries enrolled in the following Trust Fund health plans:

|    |                                              |          |
|----|----------------------------------------------|----------|
| a. | Medical (PPO or HMO) (medical, drug & chiro) | \$368.50 |
| b. | Dental                                       |          |
| c. | Vision                                       |          |
| d. | Dual coverage (medical, drug & chiro)        |          |

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; provided that the dollar amount contributed by the Employer shall not cause the employer share to exceed 84.3% of the total premium.

2. The amounts paid by the Employer shall be based on the plan year 2018-2019 final monthly premium rates established by the Trust Fund for each Employee-Beneficiary with one dependent-beneficiary enrolled in the following Trust Fund health plans:

|    |                                              |          |
|----|----------------------------------------------|----------|
| a. | Medical (PPO or HMO) (medical, drug & chiro) | \$893.72 |
| b. | Dental                                       |          |
| c. | Vision                                       |          |
| d. | Dual coverage (medical, drug & chiro)        |          |

The Employer shall pay the same monthly contribution for each member enrolled in a two-party medical plan (PPO or HMO), regardless of which plan is chosen; provided that the dollar amount contributed by the Employer shall not cause the employer share to exceed 84.3% of the total premium.

3. The amounts paid by the Employer shall be based on the plan year 2018-2019 final monthly premium rates established by the Trust Fund for each Employee-Beneficiary with two or more dependent-beneficiaries enrolled in the following Trust Fund health plans:

|    |                                              |            |
|----|----------------------------------------------|------------|
| a. | Medical (PPO or HMO) (medical, drug & chiro) | \$1,136.36 |
| b. | Dental                                       |            |
| c. | Vision                                       |            |
| d. | Dual coverage (medical, drug & chiro)        |            |

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; provided that the dollar amount contributed by the Employer shall not cause the employer share to exceed 84.3% of the total premium.

4. For each Employee-Beneficiary enrolled in the Trust Fund group life insurance plan, the Employer shall pay \$4.12 per month which reflects one hundred percent (100%) of the monthly premium and any administrative fees.

D. No later than three (3) weeks after the Trust Fund Board formally establishes and adopts the final premium rates for Fiscal Year 2018-2019, the Office of Collective Bargaining shall distribute the final calculation of the Employers' monthly contribution amounts for each health benefit plan.

E. Payment For Plans Eliminated or Abolished. The Employer shall make no payments for any and all premiums for any portion or part of a Trust Fund health benefit plan that the Trust Fund Board eliminates or abolishes.

F. Rounding Employer's Monthly Contribution. Whenever the Employer's monthly contribution (premium plus administrative fee) to the 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:
  - (a) \$11.397 = \$11.40 = \$11.40 (Employer's monthly contribution)
  - (b) \$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:
  - (a) \$11.392 = \$11.39 = \$11.38 (Employer's monthly contribution)
  - (b) \$11.386 = \$11.39 = \$11.38 (Employer's monthly contribution)

All employer contributions effective July 1, 2017 and contributions for items C.1.a., C.2.a., and C.3.a., effective July 1, 2018 reflect the rounding described in item F. Employer contributions effective July 1, 2018 for items C.1.b., c., d.; C.2.b., c., d.; and C.3.b., c., d. shall be rounded as described in item F. after the Trust Fund Board formally establishes and adopts the final premium rates for Fiscal Year 2018-2019.

- G. If an agreement covering periods beyond the term of this Agreement is not executed by June 30, 2019, Employer contributions to the Trust Fund shall be the same monthly contribution amounts paid in plan year 2018-2019 for the Health Benefit Plan approved by the Trust Fund including any monthly administrative fees.

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

- A. Department or Division Chairs shall be tenured at Rank 3 or higher for the Community Colleges. Department or Division Chairs for UH-Manoa, UH-Hilo, and UH-West Oahu, shall be tenured at Rank 4 or higher or if not tenured, shall be at Rank 4 or 5.
- B. The Chancellor of a Community College, the Chancellor of UH-West Oahu, and the Dean/Director at UH-Hilo and UH-Manoa shall appoint Department, Division, or Program Chairs for periods up to three (3) years. The appointments are renewed annually.
- 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<sup>6</sup> shall consult with 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. If a qualified Faculty Member, as defined by section A, is not available within the Department/Division, or the Employer or its designee believes the eligible Faculty Members cannot effectively serve as Department/Division Chair, qualified Faculty Members from outside the Department/Division may be appointed as Department/Division Chair. In extraordinary circumstances where no eligible Faculty Members are available to serve as Department/Division Chair, the Employer or its designee shall meet with the Union to discuss alternative appointments prior to making a decision.
- E. 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 written Memorandum of Understanding agreed to by the parties.
- F. Monthly compensation for Department or Division Chairs, Associate Chairs, or Assistant Chairs, shall not be less than \$300 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.

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

## 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 Members 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.

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.

Any Arbitrator duly selected by the parties shall have jurisdiction to consolidate arbitrations of overlapping or related matters that may be economically tried together, upon motion of a party and for good cause shown.

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) The parties may by mutual agreement request the Arbitrator to conduct an informal hearing. Informal hearings shall be conducted without reporters or transcriptions. There shall be no briefs filed by either party. The Arbitrator shall issue a decision within twenty-one (21) calendar days from the adjournment of the hearing. The decision of the Arbitrator shall be limited to a written statement of the Arbitrator's conclusion setting forth briefly the factual basis for the decision, and shall be within the scope set forth below in 3).
- 2) 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.
- 3) 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 UH-Manoa, the UH-Hilo and the UH-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. No provision or term of this Agreement may be amended, modified, changed, altered, or waived except by written document executed by the parties hereto.

**ARTICLE XXVIII, CONFLICT**

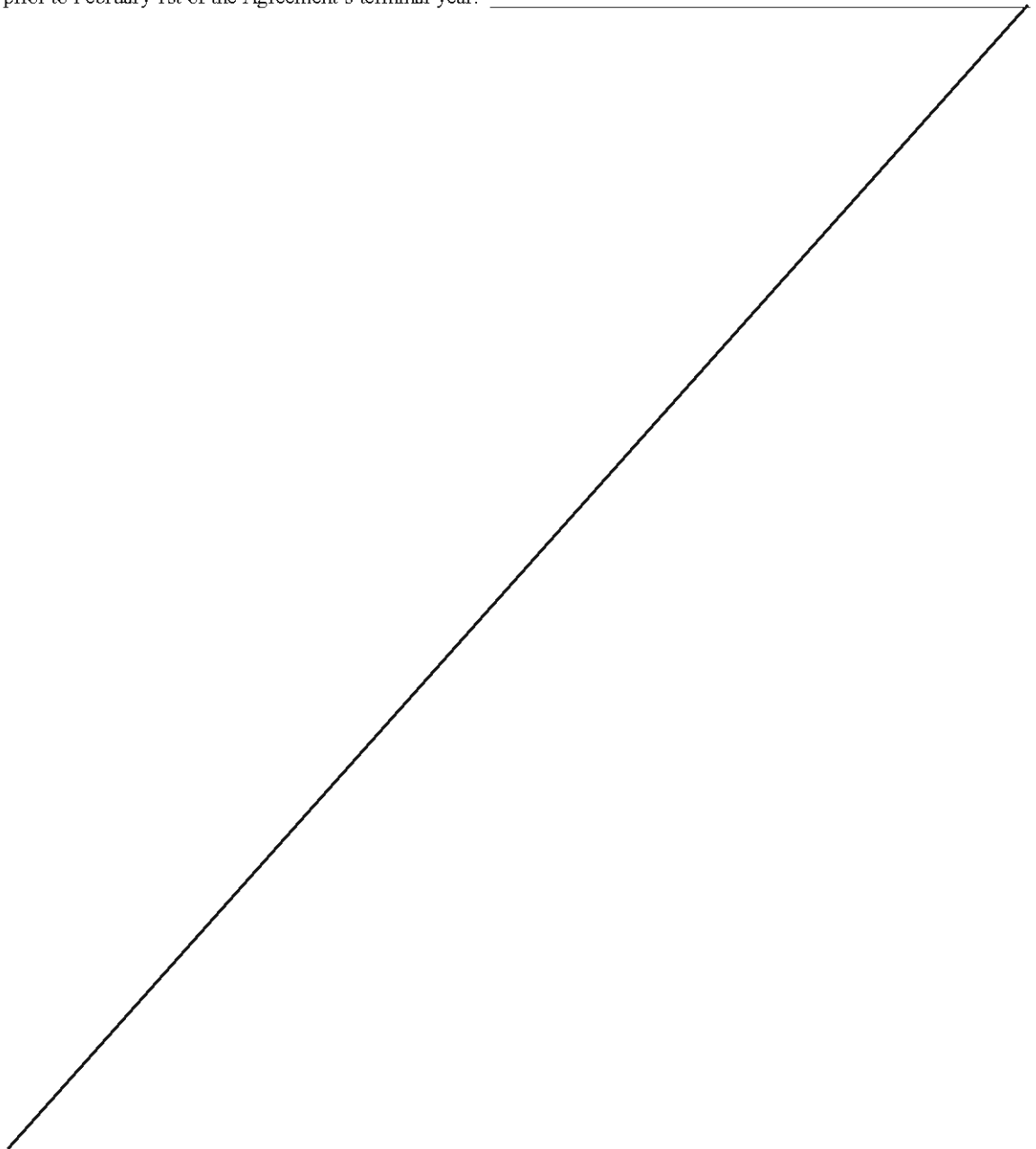
If there is any conflict between the provisions of this Agreement and any rules, regulations, and policies of the Employer, the terms of this Agreement shall prevail.

**ARTICLE XXIX, NO STRIKE OR LOCKOUT**

- A. This Union, its representatives, and its bargaining unit 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.
- B. The Employer agrees that during the life of this Agreement there will be no lockout.
- C. 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**

This Agreement shall be effective as of July 1, 2017 and shall remain in effect to and including June 30, 2021. Not less than ninety (90) days before the beginning of the 2019 legislative session, the parties shall meet to bargain in good faith on a salary enhancement to be effective on January 2, 2020, and a salary enhancement to be effective on January 1, 2021, equivalent to the average negotiated step movement plans in other bargaining units or 1.2%, whichever is higher. The parties shall also renegotiate contributions to the Hawai'i Employer-Union Health Benefits Trust Fund, to be effective as of July 1, 2019, and thereafter. Should agreement not be reached on a reopener matter, either party, by written notice to the other, may terminate Article XXIX, and thereafter may resort to any options or procedures available, as if the collective bargaining agreement and any extension of it had expired, and any applicable impasse procedures had been exhausted. Negotiations over a successor agreement shall begin no later than ninety (90) days prior to February 1st of the Agreement's terminal year.



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

**STATE OF HAWAII/UH BOARD OF REGENTS**

By: \_\_\_\_\_  
Its Governor, David Y. Ige

\_\_\_\_\_  
Jan Sullivan, UH Board of Regents

\_\_\_\_\_  
Its Chief Negotiator, James K. Nishimoto

\_\_\_\_\_  
David Lassner, Ph.D., UH President

\_\_\_\_\_  
John F. Morton, Ph.D., UH Spokesperson

**UNIVERSITY OF HAWAII PROFESSIONAL ASSEMBLY**

By: \_\_\_\_\_  
Its President, Lynne Wilkens, Ph.D.

By: \_\_\_\_\_  
Its Executive Director, Kristeen Hanselman

# **REFERENCE SECTION**

*[Duplicated text of APPENDIX T]*

**R-01, 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 RP 9.213, Evaluation of Board of Regents' Appointees]*

## **R-02, BOR Policy RP 9.213, Evaluation of Board of Regents' Appointees**

Regents Policy RP 9.213 Evaluation of Board of Regents' Appointees

### I. Purpose

To set forth policy on evaluations of Board of Regents' appointees.

### II. Definitions

No policy specific or unique definitions apply.

### III. Board of Regents Policy

- A. Board 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 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 managerial classifications shall be evaluated annually as specified in RP 9.212.
- E. For any campus which does not have an approved faculty review procedure development in accordance with paragraph b. above 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.

### IV. Delegation of Authority

There is no policy specific delegation of authority.

### V. Contact Information

Office of the Vice President for Administration, 956-6405, [jgouveia@hawaii.edu](mailto:jgouveia@hawaii.edu)

### VI. References

- A. <http://www.hawaii.edu/offices/bor>
- B. EP 9.202

### VII. Exhibits and Appendices

**R-03, BOR Policy RP 9.214, Teaching Assignments for Instructional Faculty**

RP 9.214 Teaching Assignments for Instructional Faculty

I. Purpose

To set forth policy regarding teaching assignments for instructional faculty.

II. Definitions

No policy specific or unique definitions apply.

III. Policy

A. The instructional faculty of the University of Hawai'i 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.

1. Except as otherwise provided herein, the standard teaching assignments for full-time instructional faculty shall be as follows:

- a. 24 semester credit hours per academic year at the University of Hawai'i at Mānoa,
- b. 24 semester credit hours per academic year at the University of Hawai'i at Hilo,
- c. 24 semester credit hours per academic year at University of Hawai'i - West O'ahu, and
- d. 27 semester credit hours per academic year in the community colleges.

2. The teaching assignments in section A1. above refer to classroom lecture instruction. For other modes of instruction (clinical practice, laboratory, online, thesis supervision, etc.), each chancellor shall develop and recommend:

- a. An appropriate measure of the instructional activity (contact hours, number of students supervised, etc.), and
- b. 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 upon their establishment or subsequent revision consistent with board policy.

3. Teaching assignments for part-time instructional faculty or for faculty paid less than full-time from instructional funds shall be as set forth in section A1. above pro-rated by their fractional full-time equivalent in instruction.

4. In recognition of the diverse responsibilities of the university and its faculty, each chancellor shall develop and recommend equivalents for specific noninstructional 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:

- a. A description of the professional activities for which they may be granted,
- b. An explanation of the relationship of these activities to institutional and program mission and priorities, and
- c. Guidelines for determining the circumstances which warrant granting them.

Such equivalents shall be reviewed and approved by the president and reported to the board 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.

5. The teaching equivalencies for every unit shall be publicly posted online and readily available directly from a single point on each campus.

6. 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.

B. Each tenured and tenure-track faculty member will make available to the public a curriculum vitae. This will be posted electronically.

#### IV. Delegation of Authority

There is no policy specific delegation of authority.

#### V. Contact Information

Office of the Vice President for Administration, 956-8862, [jgouveia@hawaii.edu](mailto:jgouveia@hawaii.edu)

#### VI. References

- <http://www.hawaii.edu/offices/bor/>
- EP 9.203



*[Duplicated text of Board of Regents Policy RP 9.205, Political Activity]*

## **R-04, BOR Policy RP 9.205, Political Activity**

### RP 9.205 Political Activity

#### I. Purpose

This Regents Policy affirms the right of University Employees to participate in political activities so long as such political activities do not interfere or are not incompatible with the discharge of the duties and responsibilities owed by the employee to the University of Hawai‘i.

#### II. Definitions

“University Employees” for purposes of this policy only is defined as employees receiving a recurring salary, stipend or hourly wage as monetary compensation for work performed in a regular, ongoing appointment of one week or more, subject to the following exclusions:

- (1) Non-compensated employees;
- (2) Students who may be employed as student employees and/or graduate assistants; and
- (3) Individuals who are provided an honorarium to provide a single nonrecurring service, and who do not qualify for employment benefits.

“Public Elective Office” will include all offices of the State of Hawai‘i or any of its counties or any of its agencies to which election is held on a Statewide or district basis, or at the federal level which election is held on statewide or national level. For the purpose of this policy, “Public Elective Office” shall not include unpaid, part-time State or county elective offices that operate outside normal business hours, such as elected neighborhood boards, or which occur outside the standard hours of the University Employee.

“Political Activities” is defined as campaigning for and/or being elected to a Public Elective office, endorsing, supporting or opposing a candidate for Public Elective Office, advocating regarding a voter referendum issue, or participating in partisan activities that should be done on personal time and outside of the workplace.

#### III. Policy

- A. Pursuant to Chapter 84, Hawai‘i Revised Statutes, the university and state employees must not use public resources including funds, equipment, and time to engage in Political Activities.
- B. The holding of Public Elective Office is generally incompatible with serving as a University Employee. Issues include conflicts of commitment between multiple employers as well as conflicts of interest. For these reasons, a University Employee who is elected to Public Elective Office will resign or be separated from university employment immediately upon being sworn into office. Similarly, individuals who hold Public Elective Office will not be hired as a University Employee.
- C. The board believes that it is the right of University Employees as individual citizens to engage in political activities so long as these activities do not interfere with the university’s mission and the performance of university duties and responsibilities, or violate established rules of the university or state law.
  1. It is expected that all University Employees will use appropriate discretion and judgment in the exercise of the political rights which such employees share in common with other citizens; that employees will be careful always to recognize and emphasize that their utterances and actions in political matters are theirs as individuals acting in their personal capacity and employees must clearly state and explain that they are not stating a university position or acting as representatives of the university; that employees will always recognize that their first obligation is to the university as their employer; and that employees will accord the university administration the courtesy of prior notice of any political commitment which is likely to bring them into prominence or perceived conflict of interest. Should a University Employee choose to endorse a candidate or engage in similar Political Activity, that employee may not allow use of his/her work title or position, work resources or university affiliation in any way.

2. Before officially announcing as a candidate for or accepting any Public Elective Office, a University Employee must notify his/her official supervisor and administrator, and the Vice President for Administration promptly in writing and in no event later than the filing of nomination papers or the announcement of candidacy for such office.
  3. As a candidate for Public Elective Office, the University Employee shall:
    - a. Be subject to general university policies and state laws governing conflicts of interest and appearances and activities of political candidates on university property which includes campus or off-campus locations that are deemed leased or owned by the university. Candidates must ensure that no real or perceived campaign activities or statements are made on any university property, in university meetings or classes, in or on university documents, or through any UH communication media including university phone, campus mail and electronic mail systems.
    - b. Scrupulously receive prior approval, sign out in advance for vacation or unpaid leave, and ensure approval by his/her official supervisor, to account for any time spent on Political Activities during the employee's normal working hours.
    - c. Ensure that he/she does not give the appearance or state that the University Employee's views, positions, utterances and/or actions are representative of the university or any university administrator or employee.
- D. Any University Employee shall notify his/her supervisor and Vice President for Administration of his/her appointment to a federal, State, or county board or commission.

#### IV. Delegation of Authority

There is no policy specific delegation of authority.

#### V. Contact Information

Office of the Vice President for Administration, 956-8862, [jgouveia@hawaii.edu](mailto:jgouveia@hawaii.edu)

#### VI. References

- <http://www.hawaii.edu/offices/bor/>

*[Duplicated text of UH Systemwide Administrative Procedure, AP 9.470 Leave Sharing Program]*

**R-05, UH Systemwide Administrative Procedures AP 9.470, Leave Sharing (August 2011)**

This replaces Administrative Procedure No. A9.470 dated February 1996.

A9.470 Leave Sharing Program

1. Purpose

- a. To administer the Leave Sharing Program for University employees under the authority of Chapter 78-26, Hawai'i Revised Statutes (HRS).
- b. The Leave Sharing Program is intended to allow employees to help ease the financial burdens of fellow employees who have exhausted all paid leave and who would otherwise need to take time off from work without pay to recover from a serious personal illness or injury or to care for a family member who has a serious personal illness or injury and is incapable of self-care. Such a program shall ensure:
  - 1) Fair treatment and freedom from coercion of employees,
  - 2) That there will be no undue hardship on the operations of the campus/school/program, and
  - 3) 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.

2. Definitions

- a. Approving Authority: University administrators, such as Vice Presidents, Chancellors, Vice Chancellors, Associate/Assistant Vice Chancellors, and Deans and Directors, who are authorized to approve leave sharing requests.
- b. Central Leave Bank Option: A Leave Sharing Program option whereby an eligible employee donates shared leave credits to the University's Central Leave Bank without designating a specific eligible co-worker.
- c. Designee: An employee appointed by the approving authority who is authorized to approve leave sharing requests.
- d. Direct Share Option: A Leave Sharing Program option whereby an eligible employee specifies the eligible co-worker to whom he/she wishes to donate shared leave.
- e. Donation: Vacation leave or sick leave credits donated by eligible employees.
- f. Family Member: An employee's spouse, parent, civil union partner<sup>1</sup>, unmarried child in a blood or legal relationship or a "hanai" relationship through the Hawaiian custom, provided the employee is the primary caregiver.
- g. Serious personal illness or injury: An illness, injury, or impairment which is certified by a doctor of medicine, a dentist, a chiropractor, an osteopath, a naturopath, a psychologist, an optometrist, and/or a podiatrist that meets the conditions below:
  - 1) Is life threatening, or

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<sup>1</sup>Civil Union law effective January 1, 2012

- 2) Is a critical, severe, and debilitating illness, injury or impairment that is catastrophic in nature, such as cancer, heart attack or a disabling accident, which may be a physical or mental condition. It does not include minor surgeries, routine pregnancies, illness due to colds or flus, broken limbs, or other non-critical medical conditions, and
- 3) Is totally incapacitating and the cause of the employee's inability to work for at least thirty (30) consecutive calendar days.

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 vacation leave and/or sick leave credits.
- b. Employees who are federally funded may donate 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 shared leave credits from employees of other State departments.

5. References

Chapter 78-26, HRS, Leave Sharing Program

Title 14, Chapter 8.1, Section 1 – 11, Hawai'i Administrative Rules

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

6. Responsibilities

- a. The System Director of Human 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 (3) members, one (1) of which shall be a representative from the Office of Human Resources (OHR), who shall chair the committee.
- b. The Leave Sharing Review Committee shall be responsible for the oversight of the Leave Sharing Program, and shall:
  - 1) Enforce the rules of the Leave Sharing Program,
  - 2) Respond to questions related to the Leave Sharing Program as they affect employees and this program,
  - 3) Review all matters relating to appeals under Section 8.e., of this procedure,
  - 4) Assist the campuses/schools/programs in conducting periodic campaigns informing employees of the Leave Sharing Program,
  - 5) Monitor all donations into the central leave bank and determine the distribution of shared leave credits from the central leave bank, and
  - 6) Audit the shared leave credits in the central leave bank.
- c. The OHR shall:
  - 1) Define the general framework of the leave sharing program,

- 2) Coordinate the activities of the Leave Sharing Review Committee,
  - 3) Process shared leave credits from the central leave bank to the recipient's account, and
  - 4) Maintain records and copies of the leave sharing documents.
- d. Human resources representatives within their respective units shall:
- 1) Inform employees who earn vacation leave that they may donate vacation leave credits or request shared leave credits under this program,
  - 2) Inform employees who earn vacation leave that they may donate vacation leave credits or request shared leave credits under this program,
  - 3) Inform employees who do not earn vacation leave but earn sick leave that they may donate sick leave credits or request shared leave credits under this program,
  - 4) Assure that a leave bank option and a direct share option shall be made available to employees to encourage maximum participation in the program,
  - 5) Ensure that employees are not directly or indirectly intimidated, threatened or coerced with respect to donating or receiving shared leave credits under this program,
  - 6) Inform employees to submit their request for shared leave credits within thirty (30) calendar days prior to or after the beginning date of the leave without pay period to which it is intended to apply,
  - 7) Review for eligibility and appropriateness of all donations and requests for shared leave credits,
  - 8) Analyze and determine that the medical condition meets the eligibility criteria and the Certification of Physician form supports the condition,
  - 9) Ensure that official leave and attendance records are properly maintained with respect to donated leave credits and shared leave credits received by recipients,
  - 10) Monitor the leave sharing recipient's medical condition to ensure that the condition continues to be due to a serious illness or injury,
  - 11) Inform employees that were denied shared leave credits that they may file an appeal, and
  - 12) Prepare the UH Form 102, Annual Report Leave Sharing Program (Attachment 470.1), for submittal to the OHR.
- e. The Vice President/Chancellor/Dean/Director or designee shall:
- 1) Serve as the approving authority for direct share option requests,
  - 2) Provide the reason(s) for denial for disapproved requests, and
  - 3) Recommend approval/disapproval to the Leave Sharing Review Committee for leave sharing requests from the central leave bank.

## 7. Guidelines

### a. Donating Shared Leave Credits

- 1) Employees who earn both vacation leave and sick leave credits may only donate vacation leave credits. The employee's vacation leave balance shall not be less than ten (10) days after the donation is made.
- 2) Employees who do not earn vacation leave may donate sick leave credits, provided that the employee's sick leave balance is not less than thirty (30) days after the donation is made, unless the employee is terminating from service.

- 3) An employee must not have asked for, nor accepted, anything of value in exchange for the donation of shared leave credits.
- 4) The UH Form 68, Leave Sharing Donation Form (Attachment 470.2) shall be used to donate shared leave credits. All donated vacation leave or sick leave credits are irrevocable.
  - a) A vacation leave or sick leave credit donation shall not be refunded to the donor once it is transferred to the leave sharing recipient or to the central leave bank.
  - b) Any donated shared leave credits that are transferred to but not used by the eligible leave sharing recipient shall be deposited to the central leave bank to be available for use by other eligible leave sharing recipients.
- 5) Leave shall be donated in increments of one (1) hour, with a minimum donation of four (4) hours.

b. Receiving Shared Leave Credits

- 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 been absent from work for at least thirty (30) consecutive calendar days within the past twelve (12) months to recover from a serious personal illness or injury or to care for a family member suffering from a serious personal illness or injury,
  - c) Has no disciplinary record of sick leave abuse within the past two years, and
  - d) Has no unresolved outstanding salary overpayment obligations owed to the State.
- 2) In addition to meeting the criteria in 7.b.1), an employee recovering from a serious personal illness or injury must also:
  - a) Have exhausted all vacation leave, sick leave and compensatory time credits,
  - b) Be certified as totally incapacitated,
  - c) Be ineligible for temporary disability benefits, or if eligible, have exhausted all benefits under Chapter 392, HRS, and
  - d) Be ineligible under Chapter 386, HRS, Hawai'i Workers' Compensation Law, or if covered, have exhausted all benefits.
- 3) In addition to meeting the criteria in 7.b.1), an employee requesting shared leave to care for a family member who has a serious personal illness or injury and is totally incapacitated must also:
  - a) Be the primary, full-time caregiver of a family member that is not under the care of a hospital, hospice facility or a care facility (i.e., care home, nursing home, day care, etc), and
  - b) Have exhausted all vacation leave, compensatory time, and sick leave credits for family leave purposes only pursuant to Chapter 398, HRS and the collective bargaining agreement (CBA).
- 4) An eligible 12-month employee recovering from a serious personal illness or injury and/or caring for a family member with a serious personal illness or injury as the primary caregiver, shall receive no more than a combined cumulative total of 240 days of shared leave credits for the duration of employment at the University. Of the 240 days, an eligible 12-month employee may receive no more than a combined cumulative total of 120 days of shared leave credits to care for a family member with a serious personal illness or injury.
- 5) An eligible 9-month employee shall receive no more than a combined cumulative total of 180 days of shared leave credits for the duration of employment at the University. Of the 180 days, an

eligible 9-month employee may receive no more than a combined cumulative total of 90 days of shared leave credits to care for a family member with a serious personal illness or injury.

- 6) The employee may request up to three (3) months of shared leave credits at a time and the physician shall be required to re-certify the recipient's condition at each application.
- 7) A request for shared leave credits shall be submitted within thirty (30) calendar days prior to or after the beginning date of the leave without pay period to which it is intended to apply.
- 8) An employee need not have donated shared leave credits to be eligible to receive shared leave credits.
- 9) If an employee is incapable of applying for shared leave credits, an authorized representative may apply on the recipient's behalf.
- 10) Shared leave credits awarded may be utilized by the recipient after meeting all of the eligibility criteria.
- 11) 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.
- 12) The employee shall continue to be eligible for salary adjustments while on leave through the Leave Sharing Program.
- 13) Leave sharing credits used to recover from a serious personal illness or injury or to care for a family member who has a serious personal illness or injury fulfills the provision in the applicable CBA allowing for leave of absence without pay to recuperate from physical or mental illnesses.
- 14) In the event that a leave recipient is found eligible or entitled to benefits under Chapter 386, HRS, Hawai'i Workers' Compensation Law, Chapter 392, HRS, Temporary Disability Benefits, or disability retirement after shared leave credits have been granted, all approved shared leave credits transferred to the leave sharing recipient shall be rescinded. The employee shall reimburse any salary amount previously paid under this Leave Sharing Program. The shared leave credits rescinded shall be deposited to the central leave bank.

## 8. Procedures

### a. Donating Shared Leave Credits

- 1) The employee shall complete and submit a UH Form 68, Leave Sharing Donation Form (Attachment 470.2), authorizing the donation of leave credits to a specific employee or the central leave bank.
- 2) The supervisor shall forward the request to the human resources representative, who shall review the donation request in accordance with the eligibility guidelines set forth in Section 7.a. of this procedure.
- 3) If donating direct shared leave to an employee from another campus/school/program, the donor's human resources representative shall contact the recipient's human resources representative to verify whether the recipient has been deemed eligible to receive shared leave credits under the Leave Sharing Program.
- 4) If the recipient is eligible, the human resources representative shall forward the donation form to the approving authority for approval/disapproval.
- 5) If the request is approved, the human resources representative shall follow the appropriate instructions in the user guide section of the on-line leave system to process the donation request. The original Leave Sharing Donation Form (Attachment 470.2) shall be filed in a separate secured file and a copy shall be provided to the employee, recipient's human resources representative

(direct share from another campus/school/program) and the Leave Sharing Review Committee, care of OHR.

- 6) If the request is disapproved, the human resources representative shall file the original Leave Sharing Donation Form (Attachment 470.2) in a separate secured file. A copy shall be forwarded to the employee with the reason for denial indicated.

b. Receiving Shared Leave Credits

- 2) An employee requesting shared leave may receive shared leave credits via the direct share option and/or the central leave bank option.
- 3) To request shared leave credits, the employee shall complete and submit to the supervisor
  - UH Form 69, Leave Sharing Request Form For Personal Illness/Injury (Attachment 470.3), or
  - UH Form 98, Leave Sharing Request Form To Care For A Family Member (Attachment 470.4) and
  - UH Form 49, Certificate of Physician For Personal Illness/Injury (Attachment 470.5), or
  - UH Form 99, Certificate of Physician To Care For A Family Member (Attachment 470.6), and
- 4) The supervisor shall forward the request to the human resources representative who shall analyze and determine if the employee meets the eligibility criteria in accordance with guidelines set forth under Section 7.b. of this procedure.
- 5) The human resources representative shall complete and sign the UH Form 100, Certification of Eligibility Form (Attachment 470.7) and generate the DPS Form 7, Leave Record from the on-line leave system to track and verify when the employee will exhaust all eligible leave credits.
- 6) If the request and/or medical certification form(s) are incomplete, the human resources representative shall return the form(s) to the employee.
- 7) If additional information is required to determine whether the medical condition meets the eligibility criteria, the recipient shall be requested to sign an authorization to release medical information form. (Contact OHR for the authorization form). The authorization form shall be mailed to the physician along with the request for specific medical information.
- 8) Once all the required documents are completed, the human resources representative shall discuss the leave sharing request with the approving authority.
  - a) For request for direct share, the approving authority shall approve or disapprove the request, in whole or in part, on the UH Form 69, Leave Sharing Request Form. The approving authority's decision shall be made within thirty (30) days of receipt of the application or receipt of additional medical information.
  - b) For requests from the Central Leave Bank, the approving authority shall make a recommendation to the Leave Sharing Review Committee. The approving authority's recommendation shall be made within fifteen (15) days of receipt of the application or receipt of additional medical information.
- 9) Direct Share option
  - a) Within thirty (30) days of receipt of the application or receipt of additional medical information, the approving authority shall provide written notification of the decision to the employee. If any portion of the request is denied, a reason for the denial shall be provided to the employee. See Attachments 470.8 and 470.9 for sample notifications.
  - b) If the request is approved, the human resources representative shall e-mail fellow colleagues seeking leave sharing donations for the eligible employee. See Attachment 470.10 for a sample e-mail.



- c) Employees interested in donating shared leave credits shall follow instructions set forth in Section 8.a. of this procedure.
- d) The human resources representative shall monitor the number of shared leave credits used by the recipient along with the number of shared leave credits available.
- e) The human resources representative shall follow the appropriate instructions in the user guide section of the on-line leave system to use donated shared leave credits.
- f) The human resources representative shall retain the original leave share forms and supporting documents in a separate file.
- g) A copy of the following documents shall be forwarded to the Leave Sharing Review Committee for monitoring purposes:
  - Certification of Eligibility form
  - Leave Sharing Request form
  - Certification of Physician form
  - Supporting documents (if applicable)
  - DPS Form 7, Leave Record
  - Temporary disability benefits/workers compensation documents

10) Central Leave Bank option

- a) The human resources representative shall forward the following documents to the Leave Sharing Review Committee within fifteen (15) working days after receipt of application or receipt of additional information:
  - Certification of Eligibility form
  - Leave Sharing Request form
  - Certification of Physician form
  - Supporting documents (if applicable)
  - DPS Form 7, Leave Record
  - Temporary disability benefits/workers compensation documents
- b) Within thirty (30) days of receipt of the application or receipt of additional information, the Leave Sharing Review Committee shall review the request and make a determination to approve/disapprove the request. A notification letter of the decision shall be sent to the human resources representative.
- c) If approved, the OHR representative shall credit the recipient's account in the on-line leave system.
- d) The human resources representative shall follow the appropriate instructions in the user guide section of the on-line leave system to use donated shared leave credits.
- e) The human resources representative shall maintain copies of the leave share forms and supporting documents and monitor the number of shared leave credits received and used by the recipient.

- 11) 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 human resources representative shall generate a Payroll Notification Form (PNF) to return the employee to paid leave status. For civil service employees, the human resources representative shall notify OHR, Civil Service Section, in writing to generate the PNF. 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.

c. Termination of Shared Leave Credits

- 1) Approved shared leave shall be discontinued under the following situations:

- a) The leave sharing recipient separates or is separated from service, or is terminated at the end of the appointment.
  - b) The leave sharing recipient or recipient's family member no longer suffers from the illness or injury for which the shared leave credits was approved.
  - c) The leave sharing recipient is found to be entitled to workers' compensation benefits under Chapter 386, HRS, or temporary disability benefits under Chapter 392, HRS.
  - d) The Employees' Retirement System (ERS) approves the leave sharing recipient's request for ordinary disability retirement. The eligibility for shared leave credits shall terminate at the end of the month of the date of the ERS notification letter.
  - e) The recipient's family member no longer meets the definition for family member.
  - f) The recipient's family member is admitted to a hospital, hospice or care facility (i.e., care home, nursing home, day care, etc.).
  - g) The leave sharing recipient no longer meets all of the conditions for eligibility under section 7.b. of this procedure.
  - h) The leave sharing recipient receives the maximum-shared leave credits allowed.
- 2) The termination of leave sharing is determined by the date/time of the disqualifying event.
  - 3) The human resources representative shall notify the recipient in writing when the approved shared leave credits have been or will be terminated or rescinded.
  - 4) Adjustments shall be made to the recipient's compensation and leave records, as appropriate, for any period during which the shared leave credits have been terminated or rescinded.
  - 5) All shared leave credits (direct share or central leave bank donation) unused by the recipient shall be returned to the central leave bank. The human resources representative shall follow the appropriate instructions in the user guide section of the on-line leave system in crediting the central leave bank account.

d. 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, Appeal Form (Attachment 470.11) within fifteen (15) calendar days of notification of the denial or notice of termination of shared leave benefits.
- 2) The written request shall be addressed to the Chair of the Leave Sharing Review Committee, in care of the Office of Human Resources, and shall include the following information:
  - a) A specific reason(s) to reconsider the application,
  - b) An explanation of the facts in support of the reconsideration and any supporting documents, including doctor's clinical notes, in support of the reconsideration, and
  - c) The remedy that the employee is seeking and concluding rationale.
- 3) After considering the additional information, the Leave Sharing Review Committee shall render a decision. The decision of the Leave Sharing Review Committee shall be final and conclusive. Written notice of the decision to the employee shall be given within thirty (30) calendar days from the date of the appeal or receipt of additional documentation, whichever is later.

[Duplicated text of UHCCP #9.237 Teaching Equivalencies]

## R-06, Community College Teaching Equivalencies

UHCCP #9.237

### UNIVERSITY OF HAWAII COMMUNITY COLLEGES POLICY

Replaces UHCCP #9.237 dated March 2013

### UHCCP #9.237 Teaching Equivalencies

February 2018

#### I. Purpose

BOR Policy, Section 9-14, establishes the standard teaching assignment for full-time Community College instructional faculty as 27 semester credits per academic year or equivalent. This UHCCP defines the equivalencies for modes of instruction other than lecture and for non-instructional assignments. This UHCCP also establishes the criteria for the general duties and responsibilities of division/department chairs, provides the general criteria by which chairs are to be compensated, and provides the general criteria by which teaching equivalencies will be determined for chairs to perform their duties and responsibilities.

#### II. Related University Policies

- A. University of Hawai'i Board of Regents Policy, Section 9-14, Teaching Assignments for Instructional Faculty:  
<http://www.hawaii.edu/offices/bor/policy/borpch9.pdf>
- B. Collective Bargaining Agreement between the University of Hawai'i Professional Assembly and the Board of Regents of the University of Hawai'i: <https://www.uhpa.org/contracts/2017-2021-uhpa-bor-contract/>
  - 1. Article III G, Conditions of Service, Teaching Assignments and Equivalencies, and
  - 2. Article XXIII, Appointment, Duties and Compensation for Academic Chairs
- C. UH Systemwide Administrative Procedure, A9.235, Administrative Stipends for Department Chairs, Special Program Directors and Chairs of Academic Subdivisions: <http://www.hawaii.edu/apis/apm/pers/a9235.pdf>

#### III. Definitions

- A. Teaching Equivalency is defined for each course based on the contact hours divided by the basis multiplied by 15 where the contact hours equals the faculty contact hours for the course. This calculation may result in a fractional teaching equivalency.
- B. Basis is defined as the assigned category of the course as follows:
  - 1. Lecture or lecture discussion is organized instruction where the faculty presents information and leads discussions. The basis for these courses equals 15.
  - 2. Lab or lecture/lab requires special purpose equipment for student participation, experimentation, observation, or practice in a field of study. Labs or lecture/labs may involve discussion of a forthcoming lab or review of a completed lab session. The basis for these courses equals 18. The instructional equivalency is the same whether or not a related lecture/lab course is taught as a combine class or as a separate lecture and laboratory course.

3. Studio is an organized method of instruction with emphasis on the synthesizing nature of the design process and conducted through critique and one-to-one interactions. The basis for these courses equals 21.
  4. Shop is a method of instruction where faculty provide supervised instruction to students engaged in applying hands-on experience of skills in areas such as the trades and culinary arts. The basis for these courses equals 24.
  5. Practicum and clinical instruction is a method of instruction where students are performing skills in work settings. The faculty member's contact hours are determined by the number of hours the faculty member supervises the students in the clinical setting or supervises the clinical instructor. The basis for these courses is 24.
  6. Cooperative education and internship courses are supervised experiences in an area of specialization and may be conducted on or off campus with the student making periodic reports to the instructor. The basis for these courses is five students equals one teaching equivalency.
  7. Individual music education is one-on-one instruction in a musical instrument or voice. The basis for these courses is five students equals one teaching equivalency.
  8. Directed reading and independent study courses have no teaching equivalency. However, faculty who are responsible for such courses may include these responsibilities in assessment documents as service to their department.
  9. Any other course not covered in the above definition shall have individually assigned teaching equivalencies.
- C. The current teaching equivalencies for each course taught by the Community Colleges may be found at the Office of the Vice President for Community Colleges website.

#### IV. **Responsibilities**

- A. Vice President for Community Colleges (VPCC) shall have the responsibility to:
1. Define the equivalencies for modes of instruction other than lecture and for non-instructional assignments.
  2. Establish the criteria for the general duties and responsibilities of division/department chairs.
  3. Provide the general criteria by which chairs are to be compensated.
  4. Provide the general criteria by which teaching equivalencies will be determined for chairs to perform their duties and responsibilities.
  5. Generate and disseminate a report that displays and reports the non-instructional equivalencies.
  6. Maintain a record of the teaching equivalencies and non-instructional assignments for all faculty.
  7. Ensure consistency across campuses so that comparable courses have comparable teaching equivalencies.
  8. In recognition that changes in pedagogy, such as on-line courses, hybrid courses, open laboratories, field studies, and emporia approaches all reflect environments different from the traditional self-contained classroom, the VPCC will review teaching equivalencies on a regular basis to determine whether new equivalencies need to be established. Establishment of new equivalencies will be done in consultation with the University of Hawai'i Professional Assembly.
- B. Chancellors shall have the responsibility to:
1. Ensure that full-time 9-month community college instructional faculty are assigned 27 teaching equivalencies and 11-month community college instructional faculty are assigned 36 teaching equivalencies per academic year or equivalent as defined by this policy.

2. Compensate faculty whose teaching load exceeds 27 (9-month) or 36 (11-month) teaching equivalencies or equivalent through overload payment or carrying forward the balance to the next academic year.
3. Establish policies and procedures for the approval of non-instructional teaching equivalencies in accordance with this policy. At a minimum, the procedures must include documentation of all non-instructional assignments and the related teaching equivalency granted each year.

V. **Policy**

A. Faculty responsibility:

The instructional responsibilities of faculty, as they relate to this policy, appear below, excerpted from the Community Colleges Faculty Classification Plan in the Tenure and Promotion Guidelines:

“Instructional faculty members are primarily teachers. This primary focus entails the responsibility to develop an educational philosophy and methodology that will challenge and stimulate students; to require academic rigor and discipline; and to assist students to understand concepts, solve problems, and learn to think independently. At the same time, faculty members need to be responsive to students, be concerned with developing their potential, and be willing to serve as role models, academic advisors, mentors, and leaders. Faculty must motivate students, work with a wide diversity of student abilities and needs, and develop within them the capacity to become life-long learners. In this manner, faculty members promote social responsibility while providing professional assessment of student learning. To carry out these responsibilities, faculty members must maintain currency and understanding in their fields, must continually search for the most effective means of teaching, and must contribute to the development of the curriculum and program improvement.”

- B. 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 non-instructional assignments exceed that which is normally expected of an individual faculty member, the faculty member may be assigned a non-instructional equivalency based on the guidelines in Appendices 1-5. If special circumstances arise, the Chancellor may make modifications to the established range of semester hour equivalencies.

The assignment of non-instructional equivalencies is intended 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, faculty who are assigned non-teaching equivalencies should not be assigned classes that result in an overload payment.

VI. **Procedures**

In implementing the policy on teaching equivalencies, the following will occur:

- A. Faculty will be credited with the specific teaching equivalency for each course assigned.
- B. Faculty assigned non-instructional equivalencies shall be credited with equivalencies in accordance with the following:
  1. Department/Division Chair – Appendix 1
  2. Program Coordinators – Appendix 2
  3. Discipline Coordinators – Appendix 3
  4. Faculty Governance Leadership – Appendix 4
  5. Other Teaching Equivalencies – Appendix 5

- C. The total teaching load for the academic year shall be calculated by adding the instructional and non-instructional teaching equivalencies to total 27 teaching equivalencies, with a maximum of 18 teaching equivalencies in any one semester.
- D. If the faculty member's teaching equivalencies, including non-instructional equivalencies, exceed 27 teaching equivalencies in a year, the college may either pay overload or carry forward a balance to the next academic year. The college may not carry forward a balance in excess of 3 teaching equivalencies without the faculty member's concurrence. Overload payments shall be made after the Spring Semester assignments are finalized.

VII. **Effective Date**

July 1, 2013

Appendix 1

DIVISION/DEPARTMENT CHAIR

The Division/Department Chair is an official position providing quasi-administrative oversight to the departments or divisions as designated on the various campus organizational charts. Division/Department Chair shall be on 11-month appointment, where appropriate to the duties and responsibilities of the assignment. Teaching equivalencies provided to the Division/Department Chair are determined on a number of factors, including the number of personnel in the department, the number of programs administered, the number of course sections offered, the size of the departmental budget, and the complexity of the assignment.

Monthly compensation for Division/Department Chairs shall not be less than \$300 and not more than \$500 per month. The standard Community College Division/Department Chair will receive a stipend of \$300 per month. Stipends greater than \$300 per month may be given based on the complexity of the division/department or on additional functions beyond the Department/Division Chair's duties and responsibilities outlined below. Such stipends greater than \$300 per month may also be given on a temporary basis due to special circumstances that may occur for a limited period of time or unusually complex assignments that may be given for a limited period of time. When such temporary assignments are completed, the stipend will revert back to the original amount. Alternately in place of increased stipends, additional teaching equivalencies may be granted for a limited period of time when special circumstances arise or unusually complex assignments are required. Upon completion of such temporary assignments, the teaching equivalencies will revert back to the original level.

GUIDELINES:

- 1. Recommendations for teaching equivalencies and stipends should be established at the time of appointment by the Chancellor.
- 2. Appointments are to be effective August 1, unless otherwise approved by the Chancellor.

GENERAL DESCRIPTION OF DIVISION/DEPARTMENT CHAIRS:

DUTIES AND RESPONSIBILITIES FOR INSTRUCTION/ACADEMIC SUPPORT

- 1. Personnel
  - a. Evaluate faculty members for, promotion, tenure, contract renewal, and reappointments;
  - b. Assist in the appointment of lecturers, instructors, and other staff;
  - c. Provide recommendations for leaves of absence, e.g., sick, vacation, sabbatical, study, and leaves without pay; approve and process travel requests; and
  - d. Supervise clerical support, APT positions, and student-help workers as required by the division or the department.

2. Budget
  - a. Assist in establishing campus budget priorities as well as participate in and assist in preparing budget requests;
  - b. Facilitate discussion, prepare, and present division/department budget requests for equipment, student help and supplies;
  - c. Assist and monitor division/departmental expenditures; and
  - d. Maintain the division/department inventory of equipment.
3. Curriculum and Instruction
  - a. Assess program outcomes data, and assist in the preparation of reports;
  - b. Coordinate annual program reviews;
  - c. Coordinate the preparation of division/department instructional scheduling, considering faculty workload;
  - d. Plan and suggest updates to the division/department curriculum, courses, and programs;
  - e. Coordinate and update division or department section of the campus catalog of courses; and
  - f. Aid in improvement of teaching and supervision of instruction.
4. Staff Development
  - a. Provide orientation and support for new lecturers, faculty, and staff to supplement campus efforts; and
  - b. Encourage the development of each faculty member's special talents and interests within the context of the institution's needs and priorities.
5. Student Services
  - a. Facilitate resolution of student academic grievances;
  - b. Assist in and/or coordinate the division/department role in student advising and recruitment; and
  - c. Facilitate student evaluations of instruction.
6. Division/Department Governance
  - a. Serve as communication link, keeping division/department members informed of general campus activities and representing the division/department views to administration;
  - b. Assist in and/or identify and resolve division/departmental concerns; and
  - c. Assist in and/or establish and maintain positive work relationships among faculty, staff and administrators within campus structure.
7. Continuing Education and Training

Provide assistance to the Administrator in the development of community service programs and courses as needed.

**GUIDE TO DETERMINE MINIMUM TEACHING LOAD FOR  
DIVISION/DEPARTMENT CHAIRS**

| Criteria                                                                                                                                                                                                                                                              | Levels  |                    |                |        |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|--------------------|----------------|--------|
|                                                                                                                                                                                                                                                                       | 4 pts   | 3 pts              | 2 pts          | 1 pt   |
| a) Number of course sections (annual)                                                                                                                                                                                                                                 | 400+    | 200-399            | 125-200        | <125   |
| b) Number of programs                                                                                                                                                                                                                                                 | 6+      | 4-5                | 2-3            | 1      |
| c) Total number of employees                                                                                                                                                                                                                                          | 75      | 50-74              | 20-49          | <20    |
| d) Budget                                                                                                                                                                                                                                                             | \$75K+  | \$50-74K           | \$20-49K       | <\$20K |
| e) Additional complexity (weighted double): scheduling, assessment, budget preparation, multi-disciplines, accreditation, multiple sites, clinical, commercial enterprise, grants, campus operations, advisory committees, fundraising, facilities, select admissions | Complex | Moderately Complex | Moderately Low | Low    |

How to determine number of programs:

1. Any program requiring a separate program review
2. Within the Liberal Arts each of the following is defined as a program: Humanities, Social Sciences, Math/Science, Language Arts (or equivalent)

Benchmarks:

| Total Points | Teaching Equivalencies/academic year |
|--------------|--------------------------------------|
| 19+          | 21 teaching equivalencies/yr         |
| 15-18        | 15 teaching equivalencies/yr         |
| 11-14        | 9 teaching equivalencies/yr          |
| <11          | 6 teaching equivalencies/yr          |

Appendix 2

**PROGRAM COORDINATORS**

A Program Coordinator has responsibility for managing various aspects of a program or its equivalent. Programs include all associate degree programs (unless the program is managed by the Division/Department Chair) and those special areas of emphasis within the non-degree 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 assessment of program outcomes, program review, 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 equivalencies provided to the Program Coordinator is based on the specific duties assigned to the Coordinator and the size and scope of the program. Program Coordinators are not the same as those who serve as Division/Department Chairs, even though they may assist in carrying out some of the duties of Division/Department Chairs.

When the workload of the Program Coordinator exceeds the work normally associated with non-instructional workload of a faculty member, then the amount on non-instructional equivalencies will be determined by the campus. The normal range shall be between 3 to 12 teaching equivalencies per academic year. Fractional equivalencies are permitted.



## DISCIPLINE COORDINATOR

A Discipline Coordinator has responsibility for overall coordination of courses within the discipline, e.g., facilitating communication between and among discipline faculty, scheduling classes, selecting textbooks, assisting with transcript evaluations, updating and developing course curriculum, maintaining laboratory facilities, shops and equipment, and overall coordination of the students, and personnel associated with the discipline to include the recruitment and mentoring of lecturers. The amount of teaching equivalencies provided to the Discipline Coordinator is based on the specific duties assigned to the Coordinator.

When the workload of the Discipline Coordinator exceeds the work normally associated with non-instructional workload of a faculty member, then the amount on non-instructional equivalencies will be determined by the campus. The normal range shall be between 1 to 6 teaching equivalencies per academic year. Fractional equivalencies are permitted.

## FACULTY GOVERNANCE LEADERSHIP

Faculty members elected to academic governance positions within the campus Faculty Senate have the responsibility to carry out the duties of reviewing, assessing, recommending, and acting on issues academic policy established by the Board of Regents pertaining to the mission of their respective campuses. Not all members of the Faculty Senate or related governance organizations are granted teaching equivalencies. Each campus shall determine the number of teaching equivalencies to be granted within the following ranges:

- I. Faculty Senate Leadership, from 6 to 12 teaching equivalencies per academic year
- II. Curriculum Committee Leadership, from 4 to 12 teaching equivalencies per academic year

The allocation of the teaching equivalencies within the Faculty Governance Leadership shall be left to the individual campus senates. Fractional equivalencies are permitted.

## OTHER TEACHING EQUIVALENCIES

There are other relevant activities for which teaching equivalencies may be granted, either at the initiative of the campus administration or a faculty member. These equivalencies shall depend on the scope of the activity. Fractional equivalencies are permitted.

Such activities include, but are not limited to:

1. Management of labs, shops, and studios;
2. Major curriculum revision;
3. Research and development in teaching pedagogy;
4. Development of major grant or contract proposals;
5. Institutional service;
6. Providing expert technical assistance to federal, state, county, and other agencies that serve the public and benefit the college; and
7. Accreditation

*[Duplicated text of UH Systemwide Administrative Procedure, AP 9.350 Application for Transfer of Vacation and Sick Leave Credit or Payment in Lieu of Vacation]*

**R-07, UH Systemwide Administrative Procedure AP 9.350, Application for Transfer of Vacation and Sick Leave Credit or Payment in Lieu of Vacation**

AP 9.350 Application for Transfer of Vacation and Sick Leave Credit or Payment in Lieu of Vacation

I. Purpose

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.

II. Definitions

No policy specific or unique definitions apply.

III. Administrative Procedure

- A. This procedure shall apply to all employees on the vacation and sick leave accrual system, including civil service personnel and BOR appointees.
- B. This procedure shall apply when any of the following conditions exist:
  - 1. 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
  - 2. The employee is eligible for and requests lump sum payment for unused vacation, or
  - 3. 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
  - 4. The employee terminates and has some unused sick leave credit.
  - 5. When an Executive/Managerial appointee returns to an instructional faculty position, lump-sum vacation payment shall be made.
- C. 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 or 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:
  - 1. 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.)
  - 2. The G2 and the supporting documents should be prepared, audited and certified by the respective division as appropriate.
    - a. 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.
    - b. The respective division is to distribute documents in the following manner:
      - (1) For Lump Sum Payment
        - (a) 1st copy to Payroll Office
        - (b) 2nd copy to ERS
        - (c) 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)

(d) 4th copy to employee

(e) 5th copy (extra)

(2) For Sick Leave Only

(a) 1st retained by Division

(b) 2nd copy to ERS

(c) 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)

(d) 4th copy to employee

(e) 5th copy extra

(3) For Transfer to Another State or Connty Agency

(a) 1st\*, 2nd, 4th and 5th copy to the department gaining the employee

(b) 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)

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

IV. Delegation of Authority

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.

V. Contact Information

VI. References

A. Administrative Procedure A9.380, Vacation and Sick Leave System

B. Administrative Procedure A9.390, Vacation Credit Fmnd Transfer

C. Section 88-63 HRS, Credit for Unused Sick Leave

D. Section 78-23 HRS, Leaves of absence

VII. Exhibits and Appendixes

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

Instruction for Completing Form G-2, Application for Transfer of Vacation and Sick Leave Credit or Payment in Lieu of Vacation

DPS Form 7, Leave Record

Instruction for Completing DPS Form 7, Leave Record

*[appended forms not included]*

*[Duplicated text of UH Systemwide Administrative Procedure AP 9.380 Vacation and Sick Leave System]*

**R-08, UH Systemwide Administrative Procedure AP 9.380, Vacation and Sick Leave System**

AP 9.380 Vacation and Sick Leave System

1. Purpose. To promulgate procedures in conformance with vacation and sick leave provisions in the appropriate collective bargaining agreement or applicable federal or state laws. All leaves will be taken pursuant to and consistent with the appropriate collective bargaining agreements.
2. Objective. To establish procedures for an on-line reporting and accounting system for vacation and sick leaves earned and used by eligible University personnel. Other types of leaves such as compensatory time, funeral leave, etc. are also tracked by the online leave system.
3. Applicability/Responsibility.
  - a. This instruction applies to all University employees who are eligible to earn vacation and/or sick leave credits.
  - b. The President, Vice Presidents, Chancellors, Secretary of the Board of Regents, State Director for Career and Technical Education, Deans and Directors or their designees are responsible for the accounting of vacation and sick leave for eligible personnel within their respective area via the on-line leave system.
4. Procedure. Leaves taken by University personnel who are on the accrual system shall be processed in the following manner:
  - a. Employee:

Employees shall input a request via the on-line leave system for all leaves taken or to be taken, including, but not limited to, vacation and sick leave.

See user guide for employees and preparers at for detailed instructions on how to submit a leave request.
  - b. Exception:

Employees without regular access to a computer, may elect to continue applying for leave via the UH Form 1 (see attachment A) and submitting the form to the respective department for processing.

Upon approval by the program or unit supervisor, the UH Form 1 is to be entered into the on-line leave system by the administrative/personnel officer or their designee.
5. Special Instructions.
  - a. Personnel Under Research Grants and Contracts.

Employees hired under research grants and contracts are subject to Administrative Procedure A8.950 Vacation Credit Fund Transfers for Extramurally funded Employees.
  - b. Lump Sum Payment of Accumulated Vacation.

University personnel who are on the accrual system are eligible for lump sum payment of accumulated vacation. The administrative/ personnel officer shall process the necessary documents in accordance with Administrative Procedure A9.350 Application for Transfer of Vacation and Sick Leave Credit or Payment in Lieu of Vacation.

Note: The on-line leave system can only accommodate leave transactions which occur on or after the date of conversion from the batch system. The employee can access the on-line leave system by logging onto and entering their UH username and password. Each employee who is eligible to earn leave will have a leave record by position number.

**UH Form 1, Application for Leave of Absence**

**DOC. NO.** Item 00: Enter unique 6 digit UNIVERSITY OF HAWAII - APPLICATION FOR LEAVE OF ABSENCE

PLEASE PRINT OR TYPE

|                                               |                   |                                          |                                |                            |
|-----------------------------------------------|-------------------|------------------------------------------|--------------------------------|----------------------------|
| 01. UH Username OR Number                     |                   | 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<br>(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<br>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-09, H.R.S. Chapter 398, Volume 7, 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, accident and health or sickness 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.

"Sick leave":

(1) Means accrued increments of compensated leave provided by an employer to an employee for use by the employee for any of the following reasons:

- (A) The employee is physically or mentally unable to perform the employee's duties due to illness, injury, or a medical condition of the employee;
- (B) The absence is for the purpose of obtaining professional diagnosis or treatment for a medical condition of the employee; or
- (C) The absence is for other medical reasons of the employee, such as pregnancy or obtaining a physical examination; and

(2) Shall not include any insurance benefit, workers' compensation benefit, unemployment compensation due to illness or disability, or temporary disability insurance benefit.

[L 1991, c 328, pt of §1; am L 1995, c 154, §4; am L 2000, c 253, §130; am L 2003, c 44, §2 and c 212, §7; am L 2005, c 243, §2]

**[§398-1.5] Posting of notices.**

Every employer shall post and keep posted notices clearly setting forth the rights of employees provided by this chapter in a form prescribed by the director in conspicuous places in every establishment where any employee is employed so as to permit the employee to observe readily a copy on the way to or from the employee's place of employment.

[L 2009, c 48, §1]

**[§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; sick 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) Except as otherwise provided in subsection (c), an employee may elect to substitute any of the employee's accrued paid leaves, including but not limited to vacation, personal, or family leave for any part of the four-week period in subsection (a).
- (c) An employer who provides sick leave for employees shall permit an employee to use the employee's accrued and available sick leave for purposes of this chapter; provided that an employee shall not use more than ten days per year for this purpose, unless an express provision of a valid collective bargaining agreement authorizes the use of more than ten days of sick leave for family leave purposes. Nothing in this section shall require an employer to diminish an employee's accrued and available sick leave below the amount required pursuant to section 392-41; provided that any sick leave in excess of the minimum statutory equivalent for temporary disability benefits as determined by the department may be used for purposes of this chapter.

[L 1991, c 328, pt of §1; am L 1995, c 154, §5; am L 2003, c 44, §3; am L 2005, c 243, §3; am L 2007, c 265, §2]

**[§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. Requests for family

leave shall include evidence that the employee has submitted the request and provided required data in accordance with section 398-9.5

[L 1991, c 328, pt of §1; am L Sp 2009, c 7, §4]

**§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, 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; am L 2000, c 253, §150]

**[§398-9.5] Family leave data collection system; establishment.**

- (a) There is established a family leave data collection system to:
  - (1) Ensure that all employees covered by the benefits of this chapter are informed of their rights under this chapter and their names are entered into the database upon application for benefits;
  - (2) Collect pertinent data, consistent with state and federal privacy statutes, on the use and potential demand for family leave benefits for both public and private-sector employees, including information on who and under what circumstances employees are using family leave benefits, the nature and duration of family members' needs, and the adequacy of current family leave benefits;
  - (3) Provide analysis of the data to assist in the development and implementation of an efficient system of family leave, including potential paid family leave, for employees in Hawaii; and
  - (4) Provide analysis of data to assist in the future development of caregiver services for senior citizens in Hawaii.
- (b) The department shall work with the University of Hawaii center on aging to create a web-based data system with the following capabilities:
  - (1) The capacity for all employees seeking family leave benefits under this chapter to log into the data system and enter pertinent data on the circumstances and need for family leave benefits;
  - (2) The ability to secure confidential information, consistent with state and federal privacy statutes, available only in aggregate form for managers and analysts of the data system;
  - (3) The ability of the employee to print out a simple form to be submitted to the employer certifying that required data has been entered;
  - (4) The ability of data managers and analysts to manipulate and query the database to achieve the purpose of this chapter;
  - (5) A back-up paper system that can be used when computer access or printing is unavailable; and
  - (6) A user-friendly format that can be translated into multiple languages for employees.
- (c) The state auditor shall be provided access to the database and shall prepare annual reports to the legislature, the department, and the University of Hawaii center on aging.

[L Sp 2009, c 7, §2]

**[§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]

*[Duplicated text from Board of Regents Policy RP 12.205, Patent and Copyright Policy]*

## **R-10, BOR Policy RP 12.205, Patent and Copyright Policy**

### RP 12.205 Patent and Copyright Policy

Note: Due to the repeal of Chapter 20-3, Hawaii Administrative Rules, effective May 20, 2017, University of Hawaii Regents Policy RP 12.205 Patent and Copyright Policy is being adopted as a provisional policy to meet the University's compliance obligations while it develops its related Executive Policy and consults with various stakeholders, including the exclusive collective bargaining representatives under Chapter 89, HRS, and its academic and research community under current academic governance processes.

#### I. Purpose

To set forth policy regarding patents and copyrights.

#### II. Definitions

No policy specific or unique definitions apply.

#### III. Policy

- A. Patents. 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 or 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, subject to procedures or restrictions contained in specific agreements with a federal or other agency sponsoring or funding the research.

- B. Copyrights. This policy is designed to cover copyright of books and other copyrightable materials under the laws of the United States or international copyright agreements. Except for works produced or written for hire, any copyrightable material produced by a member of the faculty or staff of the university shall be the exclusive property of the author. The author may register the copyright or dedicate the work to the public, subject to any restrictions imposed by sponsoring or funding agencies not under university control.

#### IV. Delegation of Authority

There is no policy specific delegation of authority.

#### V. Contact Information

Office of the Vice President for Research and Innovation, telephone number: (808) 956-5006; and email [ovpri@hawaii.edu](mailto:ovpri@hawaii.edu) may be contacted for information relating to this Regents Policy.

#### VI. References

- A. <http://www.hawaii.edu/offices/bor/>  
B. <https://www.hawaii.edu/ohr/faculty-staff/eber>  
C. [EP 12.205 Administration of the Patent and Copyright Policy](#)

**R-11, UH Executive Policy EP 12.205, Administration of the Patent and Copyright Policy**

EP 12.205 Administration of the Patent and Copyright Policy

I. Purpose

- A. 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.
- B. 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.
- C. 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).
- D. 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.
- E. To encourage and assist scholars and researchers in identifying potentially patentable discoveries, to require prompt and early reporting thereof to the Patent and Copyright Committee and to promote scholarly publication concerning such discoveries in a manner that does not prejudice the obtaining of a patent.
- F. 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.
- G. 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 Patent and Copyright Committee or a patent management organization or publishing entity designated by that Committee.
- H. 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.
- I. 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.

II. Definitions

No policy specific or unique definitions apply.

III. Executive Policy

RP 12.205 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.

A. PATENT AND COPYRIGHT COMMITTEE (PCC)

1. Membership of PCC: The PCC shall consist of the following ten persons:
  - a. 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.
  - b. 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.
  - c. Director of Procurement and Property Management.
  - d. The Legal Consultant to the PCC, who shall be an ex officio non-voting member.
  - e. 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.
2. Meetings of PCC:
  - a. 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.
3. Powers and Duties of PCC:
  - a. The PCC shall have the following powers and duties:
    - (1) To interpret and apply the Patent and Copyright Policy.
    - (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.
    - (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) 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.
    - (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 provide 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.
    - (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.
    - (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.
    - (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.
    - (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.
    - (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.

4. Appeals from Decisions of PCC:

- a. 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.

B. PATENTS

1. When University has exclusive Patent Rights:

- a. 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:

- a. The University shall relinquish all rights to the inventor in the following cases:
  - (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) 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.
  - (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. Reporting Inventions:

- a. 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:
  - (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.
  - (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) 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.
  - (4) The Chairman and members of the PCC shall take adequate steps to assure and preserve the confidentiality of all invention disclosure documents.
  - (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 .



- (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.
  - (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.
  - (8) The originator shall be notified in writing of the final decision of the University.
4. Duty of Inventor to Execute All Necessary Documents:
    - a. 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:
    - a. 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:
      - (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.
      - (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.
      - (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.
      - (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. 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. Outside Employment and Avoiding Conflict of Interest:
    - a. 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:
      - (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.

- (2) The Dean shall forthwith submit the notification to the Chairman of the PCC, together with his written recommendation thereon.
  - (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.
  - (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:
- a. Contracts and other arrangements between the University and outside commercial sponsors of research must comply with the following criteria :
    - (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.
    - (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.
    - (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

## C. COPYRIGHTS

- 1. Scope:
  - a. The Policy covers books or other written materials, as well as other original works of authorship in the various forms copy rightable under the copyright laws of the United States and international copyright conventions.
- 2. Rights of Faculty and Staff:
  - a. 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:
  - a. 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 there from.

4. Works for Hire:
  - a. A work written or produced for hire is defined as:
    - (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.
    - (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:
  - a. 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 there from.
6. Notification to PCC of Intent to Publish Works:
  - 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.

#### IV. Delegation of Authority

The University's Patent and Copyright Committee (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.

#### V. Contact Information

Subject Matter Experts  
Leonard Gouveia  
lgouveia@hawaii.edu  
956-4740

Office of the Vice President for Research and Innovation, telephone number: (808) 956-4740; and email lgouveia@hawaii.edu may be contacted for information relating to this Executive Policy.

#### VI. References

- A. Link to superseded Executive Policies in old format <https://www.hawaii.edu/policy/archives/ep/>
- B. Link to Administrative Procedures in old format <https://www.hawaii.edu/policy/archives/apm/sysap.php>

#### VII. Exhibits and Appendices

No Exhibits and Appendices found.

**R-12, UH Systemwide Administrative Procedure AP 5.500, 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 there with, 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.

- (1) 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.
- (2) 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.
- (3) 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.
- (4) The Chairman and members of the PCC shall take adequate steps to assure and preserve the confidentiality of all invention disclosure documents.
- (5) The originator shall be notified of meetings of the PCC and may attend the meetings at which his disclosure will be considered.
- (6) 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.
- (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.

- (8) The originator shall be notified in writing of the final decision of the University.
  - (9) 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.

**R-13, UH Systemwide Administrative Procedure AP 5.501, 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.

**R-14, UH Systemwide Administrative Procedure AP 5.502, 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 Patent and Copyright Committee.
- (5) The Patent and Copyright Committee 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.

*[Duplicated text of UH Systemwide Administrative Procedure, AP 9.075 Personnel Records]*

**R-15, UH Systemwide Administrative Procedure AP 9.075, Personnel Records (September 2009)**

This replaces Administrative Procedure No. A9.075 dated August 1999.

September 2009

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.

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 personnel records of all BOR employees appointed pursuant to Chapter 304A, H.R.S., which includes but is not limited to faculty, lecturer, casual hire, Administrative, Professional and Technical (APT), and Executive employees. This instruction does not apply to personnel records of student employees or civil service employees.

4. Procedures

a. The Vice President/Chancellor/Vice Chancellor/Dean/Director 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 in reverse chronological order based on the effective date of action (i.e., most current on top), as applicable:

- 1) Letter of hire/offer and acceptance of employment
- 2) Curriculum vitae, APT application (UH Form 64)
- 3) Payroll Action Documents (i.e., PNF, UH Form 6)
- 4) State of Hawai'i Employee's Withholding Allowance and Status Certificate (Form HW-4) and Employee's Withholding Allowance Certificate (Form W-4)
- 5) Approval documents of appointments, changes in appointments, approval of tenure (e.g., notice of renewal, approval of appointment/reappointment)
- 6) Employee's Claim for Prior Creditable Service for Awards (UH Form 12)
- 7) Self-Identified Ethnic Background (UH Form 27)
- 8) Salary Assignment Forms (e.g., U.S. Savings Bond)
- 9) Training-related documents
- 10) Sabbatical or Professional Improvement Leave documents
- 11) Reporting of changes to employee information or equivalent

- 12) Performance evaluation reports including notice of renewal, Promotion and Tenure or APT Performance Evaluation
  - 13) Notice of disciplinary actions (e.g., Written Reprimand, Letter of Suspensions or Discharge)  
  
NOTE: Refer to Unit 8 contract, Article 15 – Personnel File regarding the maintenance of derogatory materials.
  - 14) Letters of commendation or recognition
  - 15) Employment separation documents
  - 16) Application for Transfer of Vacation and Sick Leave Credit or Payment in Lieu of Vacation (Form G-2) or Early Payout of Accumulated Vacation Leave Credits (Form G-2A)
  - 17) Any document deemed critical to record or monitor employment history
- c. The following documents may be filed separately and apart from the personnel file at the unit’s discretion:
- 1) Hawai’i Employer-Union Health Benefits Trust Fund
  - 2) State Deferred Compensation
  - 3) State Part-time, Casual & Seasonal (PTS) Deferred Compensation
  - 4) Annual Leave Status Reports
  - 5) Employees’ Retirement System
  - 6) Request for Position Action (UH Form SF-1), APT Position Description (copy of on-line position description or UH Form 39) or Executive Position Description (UH Form 63).
- d. The following must be kept in separate secured files:
- 1) Employment Eligibility Verification (Form I-9)
  - 2) General Confidentiality Notice (UH Form 92)
  - 3) Workers’ Compensation Claims and related documents
  - 4) Temporary Disability Benefit Claims and related documents
  - 5) Leave Sharing Requests and related medical certification documents
  - 6) Family Leave Requests and related medical certification documents
  - 7) Other medical information such as pre-employment medical information, ADA medical information, or TB Clearance
  - 8) Immigration/Visa documents
  - 9) 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
  - 10) Grievance materials
  - 11) Recruitment materials (e.g., Form 17, applications, resumes, interview notes)
  - 12) Promotion and Tenure application and dossiers
  - 13) Salary Placement related documents

14) Parent-Teacher Conference Request forms

Transfer any of the above records 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).

- e. Personnel files should be maintained in locked filing cabinets in areas/rooms which are accessible only to authorized individuals. All employees should be instructed on the confidentiality of personnel files by their respective Vice President/Chancellor/Vice Chancellor/Dean/Director 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 and collective bargaining agreements.
  - 5) The State's Procedures for Transfer of Records to the State Records Center, University Administrative Procedure A8.450, Records Management Guidelines and Procedures, and University Executive Policy E2.214, Security and Protection of Sensitive Information
- 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, upon receipt of an official document verifying an employee's transfer. 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 A8.450, Records Management Guidelines Procedure.
- i. Return to UH Employment. When a former employee returns to employment at the UH, 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 A8.450, Records Management Guidelines and Procedures.

*[\*Attachment A not included]*

## **R-16, 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.

## **R-17, Memorandum of Understanding on the Procedures for Special Salary Adjustments and Bonus Payments**

### **Special Salary Adjustments**

The parties recognize that a rational salary system includes many elements, particularly where the appointment of academic professionals draws applicants from local, national, and international employment pools. The parties have agreed to the following principles when making special salary adjustments:

- A. The salaries paid at the University of Hawai‘i should be competitive with those paid at peer institutions.
- B. Members of the faculty need, and accept, the opportunity to be recognized for outstanding achievement in the profession. Special salary adjustments can provide a system that recognizes meritorious performance in teaching, research, and/or service.
- C. The existence of salary differentials among faculty in a given discipline must be clearly attributable to academic credentials, rank, experience, years of service, and/or the individual’s academic and service accomplishments. Inequitable differentials caused by other factors should be eliminated.
- D. Although there is no one field of study or academic discipline intrinsically more valuable than another, there is a need to address differentials in salaries required to retain faculty in specific fields or disciplines
- E. Salary determination and placement must be free from biases, in accordance with Article II, Non- Discrimination.

Internal reallocation of budgeted resources to fund special salary adjustments shall not undermine the ability of the Departments or Divisions to carry out their educational missions.

Special salary adjustments will be made during the term of this Agreement only to prevent the erosion of the academic program or mission of the University. Even when otherwise justified, special salary adjustments to individuals will not be made when the cumulative impact of funding such adjustments, on students, faculty workload, and departmental/division resources, is deleterious to the University.

### **Bonus Payments**

The parties further recognize that certain faculty achievements deserve to be recognized and rewarded through one-time bonus payments. Bonus payments are a means of recognizing outstanding achievement in the areas of teaching, research, and/or service. As with special salary adjustments, bonus payments shall be subject to the availability of funds and will not be made if there will be a resulting deleterious effect to the University. Requests and nominations for bonus payments shall be made in accordance with the procedures below.

### **Procedures**

- A. Faculty may apply for a special salary adjustment or bonus payment by submitting a completed Special Salary Adjustment or Bonus Payment request form with supporting attachments to the appropriate Dean or Director. Faculty may also be nominated for special salary adjustments and bonus payments.
- B. All requests and nominations shall be brought before the Faculty Member’s department/division. All bargaining unit members in the department/division shall be given the opportunity to review the request and support or not support the request. The department/division position and comments shall be provided to the Dean or Director.
- C. After consultation with the department, the Dean or Director shall review the request and submit a recommendation to the appropriate Chancellor. The recommendation shall include a proposed method of funding the request and a general statement concerning the impact the funding of the request will have upon the programs, faculty workload, and department/division resources.
- D. The Chancellor shall review the request and submit a recommendation to the President. All requests shall be forwarded to the President, including those not supported for lack of funding or based on the evaluative review.
- E. The President shall approve or deny all requests and nominations after consultation with the University of Hawai‘i Professional Assembly. The President will secure the written concurrence of the University of Hawai‘i Professional Assembly on the request form before any adjustment or bonus is awarded. A copy of the completed request form will be transmitted by the President’s office to the Dean or Director and the Faculty Member.

### **R-18, Memorandum of Understanding on Workforce Housing**

The parties acknowledge and recognize that the Joint Committee formed under the 2015 – 2017 Collective Bargaining Agreement, MOU, R-18, has created a positive and productive working relationship.

1. Therefore, immediately upon ratification of this agreement, the Committee shall continue to develop proposals, concepts, and plans around workforce housing and housing alternatives to address areas of concern in a reasonable proximity to all the Employer's campuses. The Joint Committee shall report its findings and recommendations to the Employer and the Union by January 1, 2019; and
2. Therefore, upon submission of the Committee Report due January 1, 2017, the Employer and Union hereby extend the Committee's authorization to immediately continue its joint efforts to address areas of concern.

**R-19, Memorandum of Understanding on Lecturer Status in the Bargaining Unit**

Upon request of the University of Hawaii Professional Assembly, the University Administration, through the official custodian of records on each campus, shall provide a report that identifies which Lecturers have been hired by a unit, defined as the Department, Division, or other level at which the hiring decision is made, to teach a sufficient number of credit hours to be in the bargaining unit for a minimum of eight (8) semesters in the last seven (7) consecutive years. Credit hours taught as a Lecturer and regular Faculty Member shall be considered for this determination. If there are courses to be taught in the unit, such Lecturers shall be offered a one (1), two (2) or three-year (3-year) contract based on seniority, which is to be determined by the number of qualifying semesters as described above. Subject to availability, such Lecturers are to be offered contracts which provide them with the minimum number of credit hours to place them in the bargaining unit.

The Employer is not obligated to provide contracts to Lecturers where it is determined that they have performed poorly.



## **R-20, Roles and Consultation Protocols Involving UH Administration, UH Professional Assembly, and UH Faculty Senates**

### General Statement

University of Hawai'i Board of Regents Policy RP 1.210 recognizes the critical role played by faculty in the academic governance of the University, and authorizes the establishment of Faculty Senates to "advise the administration (primarily at the campus and unit level) on matters impacting and/or relating to the development and maintenance of academic policy and standards to the end that quality education is provided, preserved, and improved."

Hawaii Revised Statutes (HRS) Chapter 89 requires the University of Hawai'i to bargain with the exclusive representative of the faculty, the University of Hawai'i Professional Assembly (UHPA), over terms and conditions of employment as defined by law, and to consult with UHPA on all non-bargainable matters affecting employee relations. The duty to consult requires the University to present information and receive comments and suggestions from the exclusive representative before making changes in any major policy, and early enough that the input may be effectively considered.

The purpose of this memorandum is to designate topics that the University administration will refer to the Senates or other shared governance entities, to UHPA, or to both. Generally, academic matters are referred to the Senates or other shared governance entities, and employee relations matters are referred to UHPA. Some topics have mixed academic and employee relations aspects, and are referred to both. The parties recognize that distinguishing between academic matters and employee relations matters is not always easy. The parties also recognize that some faculty consultation may occur at the departmental level, and not through the formal consultation process with UHPA specified by HRS § 89-9(c), or the consultation process with the Faculty Senates pursuant to shared governance. If a situation arises that is not covered by this memorandum, before making any referral, the University will first confer with UHPA in an attempt to determine the proper referral.

### PART I: Faculty Senates or other Shared Governance Entities

The University will refer the following topics to Senates, or, where noted, to other shared governance entities. Absent clear impact on employee relations in a special situation, the University need not refer these topics to UHPA, because they generally do not affect employee relations.

- 1) Initiation, review, and evaluation of proposed, probationary, or established research, instructional and academic programs.
- 2) Initiation, modification, and review of courses, general education requirements, student and program learning outcomes, and degree requirements.
- 3) Policies related to admission, transfer, attendance, grading, and other academic matters.
- 4) Policies relating to assessment of courses and programs.
- 5) Policies relating to the classification of faculty, the expectations of faculty by rank, and the criteria, but not the process, used in determining contract renewal, tenure and promotion, and faculty five-year periodic review.
- 6) Policies governing student-faculty relations and student rights, other than matters involving discipline of faculty. This responsibility is shared with other recognized governance groups such as student government.
- 7) Review of the University and/or campus mission, strategic planning directions, goals, assessments, and related budget priorities. This responsibility may be exercised through campus committees that may include other shared governance entities.
- 8) Participation in recruitment, selection, and evaluation of academic executive leadership at the campus and system level. This responsibility may also be shared with other shared governance entities.
- 9) Policies regarding emeritus faculty, management of the academic activities of a college or department, departmental criteria for evaluation of programs or faculty, or departmental curriculum development, will be referred to shared governance entities or departments at the level concerned.

The University will make every effort to assure that consultation with Faculty Senates occurs in a timely manner during the academic year, but some decisions may be required when the Faculty Senates or Senate Executive Committees are not available for consultation.

## PART II: University of Hawai'i Professional Assembly

The University will refer the following topics to the UHPA pursuant to its responsibility as exclusive representative of Bargaining Unit 07 under HRS Chapter 89, HRS. These topics will not be referred to Senates, with the exception of major reorganizations as discussed below, or other shared governance entities, because generally they do not affect academic matters.

- 1) All topics recognized as bargainable by HRS Chapter 89, HRS, or the Hawai'i Labor Relations Board, including wages, hours, contributions to health funds, and other terms and conditions of employment.
- 2) All topics addressed in the collective bargaining agreement between the University of Hawai'i Professional Assembly and the Board of Regents of the University of Hawai'i, as it may be amended from time to time.
- 3) Policies relating to the process of evaluation or periodic review of faculty.
- 4) Policies that directly and significantly affect workload, ability to gain contract renewal, promotion, or tenure within established criteria, compensation in any form, leaves with or without pay, discipline, or intellectual property of faculty.
- 5) Policies or programs providing supplemental compensation, or benefits such as tuition waivers for faculty.
- 6) Policies or programs providing housing for faculty, where provided at clearly sub-market rates.
- 7) Policies that directly affect the health or safety of faculty.
- 8) Policies that are consultable under HRS § 89-9 (c) but lack a significant component of academic concern.
- 9) Relocations of a Department or unit

## PART III: Joint Referrals to Senates or other Shared Governance Entities, and UHPA

The following topics mix academic and employee relations, and will be referred simultaneously to both UHPA, and the Senates or other shared governance entities, for consultation, with conditions or limitations as noted.

- 1) Classification of faculty.
- 2) Transfer of programs between campuses.
- 3) Conflicts of interest or commitment, including establishing a canon of ethics, and an effective means of professional maintenance of those ethics, such as faculty self-discipline.
- 4) Changes in tuition or fees that have a material impact on budget items.
- 5) Major changes in academic calendar.
- 6) All reorganizations impacting bargaining unit 07 members will be referred to UHPA; however, the University may also consult with Faculty Senates on major reorganizations of the University or branches of it. Major reorganizations are those involving multiple colleges or programs, or significant reorganizations of University system and college administrations.
- 7) Proposals that affect all University employees, including but not limited to health and safety programs, housing for employees, tuition waivers, and similar programs.
- 8) Topics that impact bargaining unit 07 members for which the Board of Regents is seeking approval through the rule-making requirements under HRS Statutes Chapter 91.

The University may solicit advice and consultation from other governance groups or exclusive bargaining agents, if a proposed policy or program impacts those parties.

If a proposed policy turns out to be bargainable under Section HRS § 89-9(a) HRS, the University will withdraw it from the Faculty Senate(s) and pursue it solely with UHPA. The University and UHPA will confer with each other promptly if a bargainable topic is identified.

## PART IV: Additional Consultation

Some faculty consultation may occur directly with department and/or college faculty and not through the formal consultation process with UHPA specified by HRS Chapter 89, or the shared governance consultation process with the Faculty Senates. Examples of such consultation include advice and consultation on emeritus status for faculty, internal budget allocations, scheduling of courses and management of the academic activities of a college or department, college or department based criteria for evaluation of programs and faculty, curriculum development, and other operational concerns. The consultation that occurs with the department and/or college faculty does not supercede or modify the obligations to consult with UHPA and/or the Faculty Senates on the subject matters designated in Parts I through III above.

PART V: Dispute Resolution

To the extent that University and UHPA cannot agree on whether a matter is within the delegation to the Faculty Senate(s) or UHPA, UHPA may grieve the topic pursuant to the collective bargaining agreement (CBA) at Step Two. If the grievance is not resolved at Step Two, and UHPA timely requests arbitration thereof pursuant to the provisions of the CBA, the University and UHPA shall instruct the Faculty Senate(s) that its deliberations on the grieved topic shall be disregarded pending the Arbitrator's decision. This part does not supersede or diminish UHPA's rights to grieve violations of the Collective Bargaining Agreement.

PART VI: Modification

The University, UHPA, and the Faculty Senates shall review this document at least every three years for the purpose of clarifying or modifying the consultation protocols. Modifications of this Memorandum may be made at any time in writing under the mutual signature of the parties.

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