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HUMAN RESOURCES - ALL UNIVERSITY EMPLOYEES

4.01 EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION

The University of Texas at Tyler is committed to equal employment opportunity. It accepts the obligation as a member of the community at large, and as a governmental contractor, to exercise an active and positive program of non-discrimination in all areas of employment. Employment decisions are made by providing equal opportunity and access on the basis of qualifications and merit.

In accordance with the Board of Regents' Rules and Regulations, Part Two, Chapter I, Section 6, "To the extent provided by applicable law, no person shall be excluded from participation in, denied the benefits of, or be subject to discrimination under any program or activity sponsored or conducted by the System or any of its component institutions, on the basis of race, color, national origin, religion, sex, veteran status, age or disability." In addition to compliance with all applicable federal and state laws and regulations, no person is to be subjected to discrimination on the basis of sexual orientation regarding admissions; employment; or access to programs, facilities or services of The University of Texas System.

The University of Texas at Tyler is also committed to programs of affirmative action designated to overcome under-utilization and under-representation of women, minorities, Vietnam era veterans, disabled veterans, and other such groups in the work force.

- (1) General responsibility for implementation of the policy rests with U. T. Tyler officials. The President has delegated to the Director of Human Resources the responsibility to coordinate implementation of the Equal Employment Opportunity and Affirmative Action programs within U. T. Tyler.

4.02 PERSONNEL FILES

- (3) **A. The Personnel File.** The official personnel file of a University of Texas at Tyler employee shall be maintained by the Human Resources Department and shall contain employment related documents including, but not limited to, the following: appointment letters, performance evaluations, disciplinary actions, counseling documentation, commendations, retirement documents, tax-sheltered annuity documents, group insurance and flexible spending account documents, employment application(s), resume(s), and grievances filed by the employee with responsive documentation.

B. Access to the Personnel File. The Texas Public Information Act provides that the personnel file of an individual employee is to be made available to the employee or the employee's designated representative. Information in the personnel file of an individual employee is subject to public disclosure, without the consent of the employee, except when the disclosure of such information would constitute a clearly

unwarranted invasion of personal privacy.

4.03 SEXUAL HARRASSMENT AND SEXUAL MISCONDUCT

POLICY NUMBER: VI.100

September, 2004

I. STATEMENT OF POLICY

The University of Texas at Tyler is committed to the principle that the University's working and learning environment be free from inappropriate conduct of a sexual nature. Sexual misconduct and sexual harassment in any form will not be tolerated and individuals who engage in such conduct will be subject to disciplinary action.

II. SCOPE OF POLICY

This policy applies to all University administrators, faculty, staff, students, visitors and applicants for employment or admission. It applies not only to unwelcome conduct that violates state and federal laws concerning sexual harassment but also to inappropriate conduct of a sexual nature. It is also applicable regardless of the gender of the complainant or the alleged harasser.

III. STATUTORY REFERENCE

Sexual harassment is a form of sex discrimination under Title VII of the Civil Rights Act of 1964, Title IX of the Civil Rights Act of 1972, and the Texas Commission on Human Rights Act, Article 5221k, Vernon's Texas Civil Statutes, and it is illegal, and actionable under civil and criminal law.

IV. DEFINITIONS

- A. Sexual Misconduct. Sexual misconduct includes unwelcome sexual advances, requests for sexual favors, or verbal or physical conduct of a sexual nature directed towards another individual that does not rise to the level of sexual harassment but is unprofessional and inappropriate for the workplace or classroom.
- B. Sexual Harassment. Sexual harassment includes unwelcome sexual advances, requests for sexual favors, verbal or physical conduct of a sexual nature when:
1. submission to such conduct is made either explicitly or implicitly a term or condition of employment or student status;
 2. submission to or rejection of such conduct is used as a basis for evaluation in making personnel or academic decisions affecting that

individual; or

3. such conduct has the purpose or effect of unreasonably interfering with an individual's performance as an administrator, faculty member, staff or student, or creating an intimidating, hostile or offensive environment.

C. Examples. Examples of behavior that could be considered sexual misconduct or sexual harassment include but are not limited to:

1. physical contact of a sexual nature including touching, patting, hugging, or brushing against a person's body;
2. explicit or implicit propositions or offers to engage in sexual activity;
3. comments of a sexual nature including sexually explicit statements, questions, jokes or anecdotes; remarks of a sexual nature about a person's clothing or body; remarks about sexual activity; speculation about sexual experience;
4. exposure to sexually oriented graffiti, pictures, posters, or materials; and/or
5. physical interference with or restriction of an individual's movements.

V. CONSENSUAL RELATIONSHIPS

Every consenting romantic and sexual relationship between a faculty member and a student or between supervisor and employee may potentially evolve into a sexual harassment case with serious implications, either from a subsequent change of attitude by the parties involved or from a contemporary complaint from a disadvantaged third party. Faculty members exercise power over students, as do supervisors over employees, whether in evaluating them, making recommendations for their promotion or future employment, or conferring other benefits. Others may be adversely affected by the relationship in that it places the faculty member or supervisor in a position to favor or advance one student or employee's interest at the expense of others.

As provided in the American Association of University Professors policy on consensual relationships, faculty are expected to be aware of their professional responsibilities in their relationships with students and "avoid apparent or actual conflict of interest, favoritism, or bias." These relationships are viewed as damaging to the University environment and therefore are strongly discouraged.

Complaints concerning consensual relationships by non-participating individuals will be treated as third-party sexual harassment or sexual misconduct complaints.

VI. INFORMAL RESOLUTION PROCESS

This process may be used as a prelude to filing a formal complaint or as an alternative. It is not necessary that this option be used. Anyone who believes that he or she has been subject to sexual harassment or sexual misconduct may immediately file a formal complaint as described in Section VI of this policy. An individual wishing to utilize the informal resolution process should contact the Director of Human Resources or the Dean of Student Affairs, as designated by the University, with sixty (60) calendar days of the alleged incident.

- A. Informal Assistance. The individual is provided assistance in attempting to resolve possible sexual harassment or sexual misconduct if the individual does not wish to file a formal complaint. Such assistance includes strategies for the individual to effectively inform the offending party that his or her behavior is unwelcome and should cease action by an appropriate University official to stop the unwelcome conduct, or mediation. However, the University may take more formal action to ensure an environment free of sexual harassment or sexual misconduct.
- B. Timeframe. Informal resolutions will be completed within thirty (30) calendar days from receipt of a request for informal resolution.
- C. Confidentiality and Documentation. The University shall document informal resolutions. The Office of the Dean of Student Affairs or the Office of Human Resources as appropriate shall retain such documentation. The University will endeavor to maintain confidentiality to the extent permitted by law. Where the individual's desire to maintain anonymity constrains attempts at establishing facts and eliminating the potential harassment, the University will attempt to find the right balance between the individual's desire for privacy and confidentiality with the responsibility of the University to provide an environment free of sexual harassment.

VII. FORMAL COMPLAINT PROCEDURES (This complaint procedure also constitutes the grievance procedure for complaints alleging unlawful sex discrimination required under Title IX of the Education Amendments of 1972. As used herein, "complaint" is synonymous with "grievance.")

A. Reporting

1. The University of Texas at Tyler encourages any person who believes that he or she has been subjected to sexual misconduct or sexual harassment to immediately report the incident to the appropriate supervisor of the accused faculty member or employee, to the Director of Human Resources, or when a student is the complainant or the accused individual, to the Dean of Student Affairs. In no case will a complainant be required to report such conduct to the person accused of the misconduct. The complainant will be advised of the procedures for filing a formal complaint of sexual harassment or sexual misconduct. When a supervisor or the Dean of Student Affairs

receives a complaint, he or she will immediately notify the Director of Human Resources.

2. Complaints should be filed as soon as possible after the conduct that gave rise to the complaint, but no later than thirty (30) calendar days after the event occurred. In the case of a currently enrolled student, if the last day for filing a complaint falls prior to the end of the academic semester in which the alleged violation occurred, then the complaint may be filed within thirty (30) calendar days after the end of that semester.
3. In order to initiate the investigation process, the complainant should submit a signed, written statement setting out the details of the conduct that is the subject of the complaint, including the complainant's name, signature, and contact information; the name of the person directly responsible for the alleged violation; a detailed description of the conduct or event that is the basis of the alleged violation; the date(s) and location(s) of the occurrence(s); the names of any witnesses to the occurrence(s); the resolution sought; and any documents or information that is relevant to the complaint. While an investigation may begin on the basis of an oral complaint, the complainant is strongly encouraged to file a written complaint. When a supervisor or the Dean of Student Affairs receives a complaint with a written statement, he/she shall immediately notify the Director of Human Resources.

B. Complaint Investigation

1. The Dean of Student Affairs or Director of Human Resources, as appropriate, is responsible for investigating formal complaints. If the complaint is not in writing, the investigator should prepare a statement of what he or she understands the complaint to be and seek to obtain verification of the complaint from the complainant.
2. Within five (5) working calendar days of receipt of a complaint, the Dean of Student Affairs or Director of Human Resources, as appropriate, may either dismiss the complaint or authorize an investigation of the complaint. A complaint may be dismissed if the facts alleged in the complaint, even if taken as true, does not constitute sexual misconduct or sexual harassment; the complaint fails to allege any facts that suggest sexual misconduct or sexual harassment occurred; or the appropriate resolution or remedy has already been achieved, or has been offered and rejected.
 - 2.1 If it is determined that a complaint will not be investigated, the Dean of Student Affairs or Director of Human Resources, as appropriate, will send the complainant a notification letter explaining the reason and informing the complainant that, within ten (10) working calendar days of the notification, he or she may appeal the decision not to proceed with a complaint investigation to the Vice President for Business Affairs or the Vice President for Student Affairs, as

appropriate. The written appeal must explain why the decision to dismiss the complaint was in error. The appropriate vice president will respond within twenty (20) working calendar days of receipt of the appeal. The vice president's decision is final. If the decision to dismiss is overturned, the complaint is sent back to the Office of Human Resources or the Office of the Dean of Student Affairs, as appropriate, for investigation in accordance with the procedures outlined below.

3. As part of the investigation process, the accused individual shall be provided with a copy of the complaint and allowed ten (10) calendar days to respond in writing.
4. The complainant and the accused individual may present any document or information that is believed to be relevant to the complaint.
5. Any persons thought to have information relevant to the complaint shall be interviewed and such interviews shall be appropriately documented. Other acceptable methods for gathering information include but are not limited to visual inspection of materials alleged to be offensive and follow-up interviews as necessary.
6. The investigation of a complaint will be concluded within thirty (30) calendar days of the written complaint. In investigations exceeding forty-five (45) calendar days, a justification for the delay shall be presented to and reviewed by the vice president overseeing the investigative office. The complainant, accused individual and supervisor will be provided an update on the progress of the investigation after the review.
7. Within ten (10) calendar days of the completion of the investigation, a written report will be issued. The report shall include: a recommendation of whether a violation of the policy occurred, an analysis of the facts discovered during the investigation, and recommended disciplinary action if a violation of the policy occurred.
8. A copy of the report will be sent to the appropriate administrative official, the appropriate vice president, the complainant and the respondent. The complainant and respondent have ten (10) working calendar days from the date of the report to submit comments regarding the report to the administrative official. However, if a complaint is filed against a student, then the complainant and respondent may not receive or comment on the report in accordance with the Family Education Rights and Privacy Act's restrictions on disclosure of educational records.
9. Within twenty (20) working calendar days of receiving any written comments submitted by the complainant or respondent, the appropriate administrative official will take one of the following actions: a) request further investigation into the complaint; b) dismiss the complaint if the

results of the completed investigation are inconclusive or there is insufficient reasonable, credible evidence to support the allegation(s); or c) find that this policy was violated. A decision that this policy was violated shall be made upon the record provided by the investigator and any comments submitted by the complainant or respondent; and shall be based on the totality of circumstances surrounding the conduct complained of, including but not limited to: the context of that conduct, its severity, frequency, whether it was physically threatening, humiliating, or was simply offensive in nature. Facts will be considered on the basis of what is reasonable to persons of ordinary sensitivity and not on the particular sensitivity or reaction of an individual.

10. If the appropriate administrative official determines that this policy was violated, he or she will take disciplinary action that is appropriate for the severity of the conduct. Disciplinary actions can include, but are not limited to, written reprimands, the imposition of conditions, reassignment, suspension, and dismissal. Disciplinary actions against students can include probation or suspension from the University.
11. The complainant and the respondent shall be informed in writing of the administrative official's decision and be provided a copy of the final statement of findings. However, if a complaint is filed against a student, then the complainant may not receive this information as the Family Education Rights and Privacy Act prohibits such disclosures.
12. Implementation of disciplinary action against faculty and employees will be handled in accordance with the University's policy and procedures for discipline and dismissal of faculty and employees. The Dean of Student Affairs will impose disciplinary action, if any, against a student in accordance with the University's student disciplinary procedures.

VIII. PROVISIONS APPLICABLE TO ALL COMPLAINTS

- A. Assistance. During the complaint process, a complainant or respondent may be assisted by a person of his or her choice; however, the assistant may not examine witnesses or otherwise actively participate in a meeting or interview.
- B. Retaliation. An administrator, faculty member, student or employee who retaliates in any way against an individual who has brought a complaint pursuant to this policy or an individual who has participated in an investigation of such a complaint is subject to disciplinary action, including dismissal.
- C. Confidentiality and Documentation. The University shall document complaints and their resolution. The Office of the Dean of Student Affairs or the Office of Human Resources as appropriate shall retain such documentation. To the extent permitted by law, complaints and information received during the investigation will remain confidential. Relevant information will be provided only to those persons who need to know in order to achieve a timely resolution

of the complaint.

- D. Monitoring. Periodic monitoring of complaint resolution will be conducted by the Director of Human Resources to ensure that harassment is no longer a factor in the workplace and that no retaliation for filing the complaint has taken place.

IX. DISSEMINATION OF POLICY

- A. The policy will be made available to all faculty, employees and students. New employees will receive sexual harassment and EEO training within thirty (30) calendar days of being hired and will sign a written acknowledgment attesting that they have received the training. All employees will complete and verify that they have received EEO and sexual harassment training at least every other year via *The Training Post* online training system or through training provided by a trainer certified by The Texas Commission on Human Rights in providing EEO and sexual harassment training. Periodic notices sent to students, employees and faculty about the University's Sexual Harassment and Sexual Misconduct Policy will include information about the complaint procedure and will refer individuals to designated offices or officials for additional information.
- B. The University will periodically educate and train employees and supervisors regarding the policy and conduct that could constitute a violation of the policy.

4.04 HOLIDAYS

All regular employees (those appointed at least twenty (20) hours per week for a period of at least four and one-half months in a position not requiring student status) are entitled to such holidays as provided by state law or alternate holidays approved in the official calendar of U.T. Tyler.

A. Hourly and part-time employees meeting the above appointment criteria will be granted holiday time on a percentage basis for the time worked.

B. Regular employees whose work schedules differ from that provided in Section 658.005 of the *Texas Government Code* shall observe the equivalent number of holidays each year as employees working normal office hours.

C. Employees who work during an approved holiday period will be allowed compensatory time off during the twelve-month period following the date of the holiday

worked. Employees may be paid on a straight-time basis for hours worked during a holiday period when taking of compensatory time would be disruptive to normal teaching, research and other critical functions.

D. U. T. Tyler will attempt to accommodate employees' religious holidays and observances providing such accommodation does not cause an undue hardship on other employees or on departmental business.

4.05 EMERGENCY LEAVE

An eligible employee of The University of Texas at Tyler shall be granted emergency leave for funeral leave or may be granted emergency leave for other reasons deemed to be for good cause.

A. Funeral Leave. In the event of a death of an employee's spouse or the employee's or spouse's children, parents, grandparents, grandchildren, brothers or sisters, an eligible employee shall be granted an emergency leave without loss of regular pay. Emergency leave granted for a funeral may be authorized for a period not to exceed three (3) days.

B. Other Emergency Leave. The President or his or her delegate, upon recommendation of the Director of Human Resources, may make a determination on other reasons for emergency leave when the employee shows good cause for such leave. Requests for leave described in this paragraph must be fully documented.

C. Eligibility for Emergency Leave. To be eligible for emergency leave, an employee must be appointed to work at least twenty (20) hours per week for a period of four and one-half months or more in a position that does not require student status.

4.06 MILITARY LEAVE

The University of Texas at Tyler shall grant military leave to an employee who is called to active duty in accordance with the terms set forth below.

A. Annual Military Training and National Guard Activation by Governor.
A University of Texas at Tyler employee who is called to active duty or authorized training as a member of the state military forces or any of the reserve components of the United States Armed Forces shall be granted a paid leave of absence from his or her respective duties without loss of time, efficiency rating, vacation time, or salary for not more than fifteen (15) working days in a federal fiscal year (October 1 through September 30).

B. Active Duty Leave. An emergency leave of absence of not more than fifteen (15) working days with full pay shall be provided to an employee who is called by the Governor of Texas to active duty as a member of the National Guard because of a state emergency without loss of paid military or annual leave.

The fifteen (15) days of military leave need not be consecutive. Members of the state military forces or members of reserved components of the United States Armed Forces who are ordered to duty by proper authority on non-consecutive days are entitled to a total of fifteen (15) days. These fifteen (15) days of military leave are working days and not calendar days.

A leave of absence shall be provided to an employee called to active duty during a national emergency by a reserve branch of the United States Armed Forces. During such leaves of absence, the employee shall accrue state service credit, but shall not accrue vacation or sick leave. However, the employee retains any accrued sick or vacation leave and will be credited with those leave balances upon return.

An employee who remains on active duty after exhausting his or her fifteen (15) days of annual entitlement may use accrued vacation leave to the extent available, or be placed on a leave without pay, or a combination of the two leaves of status for the remainder of the active duty period.

Proof of authorization of duty shall be satisfied by attaching a copy of the employee's military orders to the Personnel Action Form requesting a leave of absence for military duty.

C. Extended Military Leave. Any employee who is restored to a position upon returning from extended military service is considered to have been on a leave of absence during his or her time of federal or state military service.

D. Restoration of Employment. To be eligible for restoration to his or her previous employment upon returning from military service, the employee must

- (1) have been honorably discharged no later than the fifth anniversary of the date of induction, enlistment or call to active military service;
- (2) make written application for restoration within ninety (90) days after his or her discharge or release from active federal or state military service. Evidence of
- (3) be physically and mentally qualified to perform the duties of the position.

honorably discharge no later than the fifth anniversary of the date of induction, enlistment or call to active military service must be attached to the written application for restoration; and

If the employee is physically and mentally qualified to perform the duties of the position, after complying with the requirements of paragraphs (1) and (2) above, he or she shall be restored to the same position that he or she held at the time of entry into active military service or to a position of like seniority, status and pay.

If the employee, by reason of disability sustained in military service, is not qualified to perform the duties of his or her former position, he or she shall be restored

to a position which most nearly approximates the former position in seniority, status and pay.

Employees returning to work following military service under restoration provisions are entitled to include time spent on active military duty as state service credit for purposes of vacation, sick leave and longevity of employment. Returning employees do not accrue vacation or sick leave while on active military duty and are not considered employed by the state.

4.07 COURT APPEARANCE/ADMINISTRATIVE PROCEEDING

Any employee summoned to perform jury duty or subpoenaed as a witness in a court or administrative proceeding to which he or she is not a party shall be excused from work. No deduction shall be made from the salary or wages of any University employee who is called for jury service nor shall the employee be required to account to the University for any fee or compensation received for jury service. Employees are expected to work, if reasonably possible, the time when not actually in a court or administrative proceeding in connection with such service.

In order to qualify for pay during periods of such service, the employee shall furnish documentary proof of service to his or her immediate supervisor.

Any employee called to appear in his or her official capacity in any judicial action or legislative investigation shall neither accept nor receive any witness fee for such a governmental appearance.

If the appearance as a witness is not in an official capacity but is for the purpose of testifying from personal knowledge concerning matters related to the inquiry, then the employee shall be entitled to any customary witness fee.

Any employee appearing as an expert witness shall be entitled to accept compensation for his or her appearance only when such appearance shall be made on his or her own leave time.

The prohibition relating to witness fees does not extend to any mileage or per diem allowance paid to University employees for expenses incurred while serving as a witness as long as a claim for reimbursement for expenses has been made to the University or System. In no instance shall there be double reimbursement for those expenses.

4.08 TIME OFF FOR VOTING

When it is not possible for an employee to vote before or after his or her normal working hours on an official election day, supervisors are authorized to grant a reasonable period of time off for voting. This time should be reported as Other Leave.

No reduction in vacation allowance or salary will be made for the time taken to vote. All employees are eligible for time off to vote.

4.09 FAMILY AND MEDICAL LEAVE ACT

The purpose of this policy is to set forth guidelines and procedures to be followed in complying with the *Family and Medical Leave Act (FMLA)* of 1993 (Act).

All University employees are eligible for up to twelve (12) weeks of family leave per year for certain family reasons provided they have been employed for twelve (12) months by the State of Texas and have worked at least 1,250 hours during the twelve (12) month period immediately preceding the commencement of leave.

A. (1) Leave Requirements.

A "qualified purpose" for FMLA leave is

- (a) birth of son or daughter and care after such birth (during the child's first year of life),
- (b) placement with an employee of a son or daughter for adoption or foster care (during the first year following placement),
- (c) serious health condition of spouse, child or parent of employee, or
- (d) serious health condition of employee (unable to perform essential job functions).

Leave for birth or placement for adoption can be taken prior to the actual birth or adoption.

(2) Medical Examinations. The University may require any of the following as is appropriate:

- (a) Certification from the health care provider to support the leave request when an employee is taking leave to care for a family member or due to his or her own serious health condition (U.S. Department of Labor Form WH-380 "Certification of Health Care Provider" is available from the Office of Human Resources). If the University does not agree with the medical certification, a second opinion at the University's expense may be obtained. If the two opinions disagree, a third opinion may be obtained at the

University's expense and will be the final determination. There is no

certificate requirement if an employee is taking leave for the birth of a child or placement of a child.

- (b) Periodic recertification.
- (c) Periodic reports during FMLA leave on the employee's status and intent to return to work.
- (d) Medical certification to show that intermittent leave is medically necessary.
- (e) A fitness-for-duty certification to return to work.
- (f)

Medical certification if an employee claims inability to return to work after the expiration of leave because of the continuation of a serious medical condition.

(3) Definitions

(a) *Spouse/Dependent*. For purposes of the Act, spouse is defined in accordance with the applicable state law including common law marriages when recognized by the state. Unmarried domestic partners do not qualify for spouse status. Son or daughter is defined under the Act to include a child under 18 years or one who is 18 years or older who is incapable of self care because of a mental or physical disability.

(b) *Serious Health Condition*. A serious health condition is defined as an injury, impairment, or physical or mental condition that involves either 1) inpatient care in a hospital, hospice or residential care facility; or 2) continuing treatment by a health care provider. The term "serious health condition" is intended to cover those conditions which affect one's health to the extent that in-patient care is required or continuing treatment by a provider of health care is necessary on a recurring basis for more than a few days for treatment or recovery. The Act is not intended to cover short-term conditions for which treatment and recovery are brief.

Examples of serious health conditions include heart attacks, heart conditions, most cancers and back conditions requiring extensive therapy or surgical procedures, strokes, respiratory conditions, appendicitis, pneumonia, emphysema, severe nervous disorders, injuries caused by serious accidents on or off the job, pregnancy, severe morning sickness, need for prenatal care, childbirth and recovery from childbirth. A serious health

condition includes treatment for a serious chronic condition which, if left untreated, would likely result in an absence of work for more than three days.

(c) *Continuing Treatment by a Health Care Provider.* Continuing

treatment by a health care provider is defined as

- (i) a period of incapacity (inability to work, attend school, or perform other regular daily activities due to the serious health condition) for more than three consecutive calendar days, involving treatment two or more times by a health care provider, or treatment by a health care provider on at least one occasion that results in a regimen of continuing treatment under the health care provider's supervision;
- (ii) pregnancy or prenatal care, even if an employee does not receive treatment and even if the care does not last three days;
- (iii) a chronic serious health condition, defined as one that requires periodic visits for treatment by a health care provider, continues over an extended period of time, and may cause episodic rather than continuing incapacity (e.g., asthma, severe morning sickness);
- (iv) a permanent or long-term condition for which treatment may not be effective (e.g., Alzheimer's, severe stroke, terminal stages of a disease); and
- (v) an absence to receive multiple treatments by a health care provider either for restorative surgery after an accident or injury or for a condition that would likely result in an incapacity of three or more days in the absence of medical treatment (e.g., cancer, severe arthritis).

In addition to these five broad categories, also included are allergies or mental illness resulting from stress, but only when all of the other criteria of a serious health condition are met.

- (d) *Treatment.* Treatment includes, but is not limited to, examinations to determine if a serious health condition exists and evaluations of the condition. It does not include routine physical exams, routine eye exams or routine dental exams. A course of prescription medicine or therapy would qualify as "a

regimen of continued treatment" but over-the-counter medicines would not.

(e) *Substance Abuse*. Treatment of substance abuse may be included under the Act in order to undergo treatment by a health care provider; however, absences because of an employee's use of a substance without treatment do not qualify for family leave. The inclusion of substance abuse does not prevent the employer from taking any employment action against an employee who is unable to perform the essential functions of the job provided the employer complies with the *Americans with Disabilities Act* (ADA) and does not take action against the employee because such employee exercises rights under the

Act.

(f) *Parental Leave*. An employee's entitlement to leave for the birth or placement of a child expires twelve (12) months after the birth or placement. If both parents work for the University, regardless of whether they work at different work sites or different component institutions, the total amount of leave cannot exceed twelve (12) weeks. This limitation applies only for those cases involving the birth or placement of a child. In cases involving sickness, this limitation does not apply.

(g) *Intermittent and Reduced Schedule Leave*. Employees with a serious health condition or with a spouse, parent or child with a serious health condition (but not those taking leave due to the birth or placement of a child) are also entitled to take "intermittent" or "reduced schedule" leave, if the leave is medically necessary.

"*Intermittent leave*" is defined as leave taken in separate blocks of time due to a single illness or injury, rather than for one continuous period of time, and may include leave for periods from one hour to several weeks. Examples include leave taken on an occasional basis for medical appointments, or leave taken several days at a time spread over a period of six (6) months, such as chemotherapy.

"*Reduced schedule leave*" is defined as a leave schedule that reduces an employee's usual number of working hours per work week or hours per work day. This type of leave might be used, for example, when an employee is recovering from a serious health condition but is not strong enough to work a full-time schedule.

If an employee takes an intermittent or reduced leave schedule, only the amount of leave actually taken may be counted toward the twelve (12) weeks of leave to which an employee is entitled. Where an employee normally works a part-time schedule or variable hours, the amount of leave to which an employee is entitled is determined on a pro rata or proportional basis by comparing the new schedule with the employee's normal schedule.

When an employee has requested intermittent or reduced schedule leave, the University may transfer the employee to an alternative position with equivalent pay and benefits if the employee is qualified for the position, and if it better accommodates the recurring periods of leave more than the employee's current job.

B. Calculation of 12-Month Period. Eligible employees are entitled to take up to twelve (12) work weeks of family leave during any twelve (12) month period measured forward from the date the employee's first family leave begins.

C. Notice by Employee to the University. Employees must give at least thirty (30) days of advance notice to the University of the need to take unpaid family leave, when it is foreseeable, for the birth or adoption of a child or for medical treatment. When it is not practicable to give such notice under any circumstances, such as premature birth or medical illness, the notice should be given as soon as practical within one to two business days of when the employee learns of the need for leave.

An employee shall provide at least oral notice sufficient to make the University aware that the employee needs FMLA leave, and the anticipated timing and duration of the leave. The employee need not expressly assert rights under the Act or even mention the FMLA, but may only state, for example, that leave is needed for an expected birth or adoption. The University should inquire further of the employee if it is necessary to have more information about whether FMLA leave is being sought by the employee and obtain the necessary details for the leave to be taken.

D. Notice by University to the Employee. It is the University's responsibility to designate leave, paid or unpaid, as FMLA-qualifying and to give notice of the designation to the employee (U.S. Department of Labor Form WH-381 "Employer Response to Employee Request for Family or Medical Leave" is available from the Office of Human Resources). Once the University has acquired knowledge that paid leave is being taken for an FMLA required reason, the University must notify the employee within two business days (absent extenuating circumstances) that the leave is designated and will be counted as FMLA leave.

E. Requirement of Using Sick, Vacation and Compensatory Leave. With

the exception of employees receiving workers' compensation income benefits,

employees are required to use all accumulated sick, vacation, and compensatory leave, if applicable, when taking leave under the Act. The twelve (12) week entitlement may run concurrently with workers' compensation leave provided the employee is otherwise eligible for FMLA leave.

The University is not permitted to count paid leave that was not for an Act leave purpose against an employee's family leave entitlement. For example, if an employee has taken sick leave on various occasions for a cough, cold, flu or condition that is not an extended illness, those days may not be counted towards the twelve (12) week entitlement under the Act. If, however, the employee is expecting the birth of a child and has taken leave prior to the birth for prenatal care, the employer may require the employee to use his or her sick and vacation leave and limit the total amount of time away from the University to a total of twelve (12) weeks. If applicable, the University must inform the employee that paid leave must be taken when an individual requests family leave.

F. Premium Payments for Medical Insurance. When an employee is on unpaid family leave, the University will continue to contribute its share of premium sharing for medical/dental insurance as if the employee had continued in employment during the leave. For example, if the employee normally has family medical coverage, the University will continue sharing the cost of the premiums with the employee at the family rate. The employee is required to pay his or her share of the premiums in the same manner required when working. An employee may pay his or her share of premiums of the health plan in any manner customarily used by the University.

G. Failure of Employee to Pay Share of Insurance.

- (1) If the employee fails to pay a timely health plan premium, a thirty (30) day grace period will be provided after the agreed upon date for which payment is due. If the employee does not make payment within thirty (30) days, the University may cease to maintain the health coverage on the date the grace period ends. Prior to expiration of the grace period, the University will notify the employee of the discontinuation of insurance coverage.
- (2) If the University discontinues health coverage as a result of nonpayment of premiums, the employee's group health benefits must be restored to at least the same level and terms as were provided when leave commenced. Therefore, the returning employee shall not be required to meet any qualification requirements, such as a waiting period or pre-existing condition requirements, when the employee has failed to continue his or her health coverage for nonpayment of premiums.

If an employees fails to return to work after a period of unpaid family leave, and the University has paid for maintaining health

(3)

coverage, the University is entitled to recover the premiums paid unless the reason the employee does not return to work is due to 1) continuation of a serious health condition that would entitle the employee to family leave; or 2) other circumstances beyond the control of the employee.

- (4) An employee is considered to have returned to work after he or she has worked for a period of thirty (30) calendar days. Therefore, an employee who returns to work for only one week and then departs is not considered to have returned to work for purposes of premium payments. The University may recover health insurance premium payments from certain sums due to the non-returning employee such as travel reimbursement checks, etc., provided that prior to the deduction of any amounts, the Office of General Counsel is consulted to ensure that such deduction is appropriate.

H. Returning Employee. When an employee returns to work under the Act, he or she is entitled to be restored to the same position held when the leave started, or to an equivalent position with equivalent pay. An equivalent position is one that has the same pay, benefits, and working conditions, and involves the same or substantially similar duties and responsibilities and with the equivalent skill, effort, responsibility and authority.

I. Notice by Employer Requirement. A notice will be posted to notify employees of their rights and responsibilities under the Act. The University must also supply to employees a notice describing the Act which is issued by the Department of Labor (Fact Sheet ESA 93-24 which is available from the Office of Human Resources).

J. Rights of Employees. Employees who exercise their rights under the Act are entitled to do so without restraint and shall not be subject to discharge or discrimination by the employer on the basis of exercising his or her rights under the Act. The employer may not discriminate against an individual for having filed charges, instituted any proceeding under or related to the Act, or giving any information in connection with an inquiry or proceeding regarding the Act.

K. Record Keeping Requirements. The following records must be kept by the University (1) regarding family leave:

Books or records of no less than three years, which contain the basic payroll and identifying employee data, including name, address, occupation, rate of pay, terms of compensation, hours worked, additions and deductions to the wages, and total compensation.

- (2) Dates FMLA leave is taken by an employee. The leave must be designated in the records as FMLA leave.

- (3) Documentation of family leave taken in increments of less than one full day, as well as hours of the leave.
- (4) Copies of the employee notices of leave furnished to the University under the Act, if in writing, and copies of all general and specific notices given to employees under the Act and copies of the regulations that were issued on June 4, 1993.
- (5) Any documents describing employee benefits or University policies. This includes written and electronic records regarding the taking of paid and unpaid leave.
 - (6) Premium payments of employee benefits.
- (7) Records of any dispute between the employee and the University regarding any designation of leave as FMLA leave, including any written statements from the University or employee and the reasons for the designation and disagreement.

It should be noted that records and documents relating to medical certifications, recertification and medical histories of the employee or employee's family members should be maintained in separate files and treated as confidential medical records. Therefore, these records do not go into the employee's personnel file. The medical information may be disclosed to supervisors and managers, if needed, regarding work restrictions; to the first aid and safety personnel if the employee's physical and medical conditions require medical treatment; and to government officials investigating compliance with the Act.

L. Coordination with Other Leave Entitlement. The Act regulations state that if a university provides more benefits than required by the Act, the Act will not restrict those benefits. Therefore, benefits such as sick leave pool and extended disability leave, when available, should be used in conjunction with and count toward the twelve (12) weeks of family leave. It should also be noted that the Act does not restrict or modify any federal or state anti-discrimination law or the employer's obligation to comply with the ADA.

4.10 ENTITLEMENT TO SICK LEAVE

All regular employees shall be allowed sick leave with pay at the rate of eight (8) hours for each month or fraction of a month of service. Sick leave with pay may be taken for absences necessitated by sickness, injury, pregnancy and confinement. Sick leave may be used when an employee is needed to care for a member of the employee's "immediate family" who is ill. A regular employee will earn sick leave

entitlement beginning on the first day of employment and terminating on the last day of duty.

- A. Eligibility.** A regular employee is defined as one who is employed to work at least twenty (20) hours per week for a period of at least four and one-half (4-1/2) months, excluding students employed in positions which require student status as a condition for employment.
- (1) 1/2) months, excluding students employed in positions which require student status as a condition for employment.
 - (2) “ Immediate family” is defined as an individual who resides in the same household as the employee and is related to the employee by kinship, adoption or marriage; or a foster child of the employee who resides in the same household and who is under the conservatorship of the Texas Department of Protective and Regulatory Services; or a minor child of the employee, regardless of whether the child lives in the same household.
 - (3) Hourly and part-time employees meeting the appointment criteria above will receive sick leave on a percentage basis for the time appointed.
 - (4) Faculty members who meet the definition of a regular employee are eligible and must submit prescribed leave forms for all absence due to illness even though no classes were missed, if the absence occurred during the normal workday for regular employees.

B. Procedure.

A state employee who transfers directly from one state agency to another shall be entitled to credit with the new employing agency for his or her accrued sick

- leave entitlement, provided the employment with the State is uninterrupted.
- (1) uninterrupted.

(2) An employee laid off under a formal reduction-in-force policy shall have his or her sick leave balance restored if re-employed by the State within twelve (12) months of termination. An employee separated for other reasons shall have the sick leave balance restored if re-employed by the state within twelve (12) months of termination, provided there has been a break in service of at least thirty calendar days since termination.

No sick leave is earned while an employee is in an ineligible status (appointed other than as a regular employee, on Leave Without Pay, etc.). Any employee who transfers from a leave-eligible status to an ineligible status shall, at the time of the transfer, have all duly accrued sick leave balances "frozen."

- (3) Should the employee return

subsequently to a leave eligible status, he or she will have available the previous balances and begin to accrue additional sick leave.

- (4) Sick leave balance accrued prior to extended military leave is "frozen" until the employee returns to employment. No sick leave is earned during the extended military leave.
- (5) In order to be eligible for sick leave with pay, an employee must comply with the following:
 - (a) Report promptly by telephone to his or her supervisor the reason for his or her absence and keep the supervisor informed of his or her condition.
 - (b) If absence is of more than three (3) days' duration because of sickness, injury or pregnancy, the employee will send to the supervisor a doctor's certificate showing the cause or nature of the illness, or some other written statement which is acceptable to the supervisor.
- (6) The University may, at its discretion, require an employee to submit proof that any absence was necessary and due to illness or injury. The University may also require proof, before an employee returns to work, that he or she is physically fit to return. Any employee who is found to have obtained sick leave pay under false pretenses is subject to discharge.
- (7) Negative balances of sick leave cannot be carried forward from one month to the next. Employees must be placed on leave without pay for hours overdrawn on sick leave.
 - (8) In the case of death of an employee who has an accrued sick leave balance, his or her estate will be paid for one-half (1/2) of the accrued sick leave balance or 336 hours, whichever is less. The payment shall be based on the number of eligible sick leave days duly accrued. If an official state holiday falls within this period, the number of days for which the estate is entitled to be paid is increased by the number of holidays that come within this period. The payment shall be calculated at the rate of compensation being paid the employee at the time of his or her death.
- (9) It is U. T. Tyler's policy that all absence due to illness be duly reported and charged to accrued sick leave.

4.11 WORKERS' COMPENSATION AND INSURANCE PROGRAM

It is the policy of The University of Texas at Tyler that a self-insured Workers' Compensation Insurance Policy will provide certain benefits for injuries sustained in the course and scope of employment.

A. Eligibility, Waiver, Revocation, and Notification of Coverage.

- (1) All employees of The University of Texas at Tyler whose names appear on the payroll are eligible for Workers' Compensation Insurance as of January 1, 1991, as provided by the Texas Workers' Compensation Act, Chapter 503, *Texas Labor Code*.
- (2) Employees who do not wish coverage may waive rights to all benefits prior to employment.
- (3) The waiver may be removed at any time during continuous employment and will be effective immediately.
- (4) The institution shall give notice to all employees that Workers' Compensation Insurance has been provided.

B. Medical Benefits.

- (1) If an employee's injury is found to be compensable under The University of Texas System Workers' Compensation Insurance program, the employee is entitled to all health care reasonably required by the nature of the compensable injury.
- (2) The injured employee is entitled to the employee's initial choice of doctor. This choice of doctor should be documented on the "Employer's First Report of Injury" form (TWCC-1). The employee may not change treating doctors without authorization from the Texas Workers' Compensation Commission (TWCC). If the employee changes treating doctors without authorization from TWCC, the employee may become personally responsible for any medical treatment rendered by the unauthorized physician.
- (3) When purchasing prescription drugs for treatment of the work-related injury, the employee should not use his or her group health plan card. Most pharmacies will bill the U.T. System WCI Office directly upon verification of coverage. Personal and non-prescription items are generally not covered by the workers' compensation program.

(4) Unless the injured employee has received medical treatment from an unauthorized physician, he or she should not be billed directly for

health care which is required to treat his or her work-related injury. If the employee does receive a bill from a health care provider, the employee should immediately send the bill to the U.T. System WCI Office for payment. All expenses for medical treatment are subject to fee guidelines established by TWCC.

C. Income Benefits.

- (1) Workers' Compensation Insurance income benefit payments for the injured employee are generally expressed in terms of "weeks of compensation." Currently, one week's benefit is equal to seventy percent (70%) of the employee's average weekly wage, except that the benefits will be equal to seventy-five percent (75%) of the employee's average weekly wage for the first twenty-six (26) weeks of disability if the employee earns less than \$8.50 per hour. The average weekly wage is calculated from the "Employer's Wage Statement" using a formula defined in the law. The weekly benefit is subject to a statutory maximum and minimum payment.
- (2) No compensation accrues during the first seven (7) days of absence from work due to the injury. During this "elimination" period, the employee must utilize accrued sick leave, accrued vacation leave, or be placed on "leave without pay" status. If the disability continues for four (4) weeks, the elimination period then becomes payable provided the employee was not in a paid leave status for that time.
 - (3) If the absence extends beyond seven (7) days, the employee has the choice of continuing to receive full wages under accrued sick leave or vacation leave, if available, or applying for weekly compensation benefits. If weekly compensation benefits are paid, the employee must be placed on "leave without pay" until he or she returns to work. It is the employee's responsibility to inform his or her department of this choice and the department must keep the U.T. System WCI Office advised of current leave status. The employee may also be responsible for maintaining his or her other insurance coverages while on leave without pay.
- (4) Payment of weekly compensation benefits for a job-related injury or occupational disease will not extend beyond 401 weeks from the date of injury except in very limited circumstances.

D. Death and Survivor Benefits.

- (1) If the injury or occupational disease results in the death of the employee, the current statute provides for a lump sum funeral expense benefit. In addition, the surviving spouse is eligible for a weekly benefit

payable until the spouse's death or re-marriage. In the event of remarriage, a lump sum payment equal to the amount of the benefits due for a period of two years will be paid to the surviving spouse. Surviving children may be eligible to share a portion of weekly death benefits.

- (2) Any beneficiary claiming entitlement to receive death benefits must first file a "Statement of Beneficiary" form with both the U.T. System WCI Office and the Texas Workers' Compensation Commission. More detailed instructions regarding claims for death benefits may be obtained by calling the U.T. Tyler Office of Human Resources.

E. Nondiscrimination Against Claimants.

- (1) The University of Texas at Tyler shall not discharge or in any other manner discriminate against any employee because the employee has filed a claim; instituted, or caused to be instituted, any proceeding under the Texas Workers' Compensation Act; or has testified or is about to testify in any such proceeding.
- (2) An employee discharged in violation of this policy shall be entitled to be reinstated to his or her former position, upon appropriate adjudication.
- (3) Nothing contained in this policy shall prevent discipline or discharge of any employee for just cause, in accordance with established discipline and discharge policy. Discipline and discharge actions must be pursuant to established policy and may be due to repeated violation of established safety regulations.
- (4) This policy does not prohibit discipline and discharge for reasons other than retaliation.
- (5) The University of Texas at Tyler shall cooperate with the Texas Workers' Compensation Commission and Texas Rehabilitation Commission in seeking to provide rehabilitation to disabled employees.

4.12 ENROLLMENT IN UNIVERSITY COURSES

The University of Texas at Tyler encourages employees to enroll in courses appropriate to their needs and interests. In accordance with this policy, employees may attend one three-hour class conducted at the University during normal working hours each long semester.

Time spent in class attendance during normal working hours will be made up as agreed upon in advance by the employee and the supervisor. With prior approval, vacation leave may be used for this purpose in any long semester.

Class attendance must be approved in writing by the employee's supervisor and dean or director prior to registration and filed with the Director of the Office of Human Resources. Classes must be scheduled during times that do not conflict with peak work periods.

A faculty member (tenured or not) may pursue an advanced degree in a component institution of the U.T. System other than the one at which he or she is employed or at another institution outside of the U.T. System. Such course work for a full-time faculty member must be approved by the head of the faculty member's department and the appropriate dean or deans and the chief administrative officer of the institution.

A non-tenured faculty member who wishes to pursue an advanced degree on his or her home campus must be recommended by the head of the department in which he or she is employed, and the recommendation must be approved by the appropriate dean or deans and the chief administrative officer of the institution.

A tenured faculty member should not normally pursue an advanced degree on his or her home campus.

Depending upon the amount of course work carried by the faculty member (student), adjustments in salary may be made as deemed appropriate by the head of the institution in which he or she is employed. Any paid faculty development leave for such a purpose should be paid from faculty salaries as permitted under Legislative appropriations or from non-state funds.

In view of the need for self-improvement and increased interdisciplinary education, there should be no prohibition against faculty members taking course work which is not to be applied toward a degree.

The amount of course work allowed a full-time faculty member is normally not more than one course during the work day without advanced approval of the immediate supervisor.

4.13 FACULTY AND PROFESSIONAL STAFF CONTRACTS

Contracts for faculty and professional staff are issued each year as early as possible following the formal adoption of the budget by the U.T. System Board of Regents for the ensuing year. Contracts are to be signed and returned within two weeks.

4.14 MULTIPLE STATE EMPLOYMENT

Employees of The University of Texas at Tyler may be employed concurrently by other state agencies or institutions subject to the following:

A. The Board of Regents' Rules and Regulations establish policies concerning members of the faculty or staff of component institutions of The University of Texas System engaging in outside employment that encompasses multiple state employment. The Regents' Rules and Regulations address the issue of employment in two positions within state government. The Texas Government Code sets forth certain provisions pertaining only to multiple employment with the State of Texas.

B. A person who is legally employed by more than one Texas state agency or institution of higher education may not receive benefits from the state in excess of those provided for one full-time employee. The person is subject to the following provisions and must be informed of them before the person becomes employed by more than one agency or institution:

- (1) Separate vacation and sick leave records must be maintained for each employment.
- (2) Upon termination from one employment, the leave balances accrued under that employment may not be transferred to the remaining employment.
- (3) The person accrues state service credit for all purposes as if the employee had only one employment.
- (4) The state's contribution toward the employee's benefit replacement pay will be subject to the overall individual limit.
- (5) The total state contribution toward an employee's group insurance is limited to the amount specified for full-time active employees. The employee may choose the insurance program of only one of the employing entities for the employee and/or departments. That entity will be responsible for the entire state contribution to premium sharing, however, arrangements can be made by interagency agreements to share the state's contribution proportionally.
- (6) Situations of multiple employment for an individual who holds a nonexempt position should be avoided. If a non-exempt employee works in a multiple employment capacity, he or she is subject to overtime provisions of the Fair Labor Standards Act, and will have all combined time worked in excess of forty hours per week considered as overtime. The employee shall be compensated for such overtime in accordance with the overtime provisions of the Fair Labor Standards Act.

For the purposes of multiple employment, the components of The University of Texas System are considered separate agencies, thereby allowing exempt employees to work at more than one institution and be paid for all hours worked. Exempt employees

- (7) may hold positions at two or

more components for up to fifty hours (125% appointment) in a workweek. If the total hours of appointment exceed fifty, then review and approval by the Executive Vice Chancellor for Health Affairs or the Executive Vice Chancellor for Academic Affairs, as appropriate, is required. If an employee is employed for more than fifty hours per week at an academic institution and a medical component, then the Executive Vice Chancellor for Academic Affairs and the Executive Vice Chancellor for Health Affairs must approve the appointments.

- (8) The employee must inform his or her employing state agencies or institutions of higher education before accepting additional employment with another agency or institution.

C. Component institutions employing individuals with multiple component assignments shall enter into the necessary agreements designating the institution which is to be the principal employer for the purpose of defining the individual's employment as the total hours assigned to one component institution, or alternatively, the total hours the person is assigned to all component institutions.

4.15 PROFESSIONAL DEVELOPMENT

U.T. Tyler encourages and provides limited funds for the professional development of its faculty and staff. Faculty seeking funds to support their research may apply to the Faculty Research Committee. The University supports attendance at professional meetings by providing some travel funds. Departments or colleges may conduct workshops and seminars through the use of consultants. Faculty and academic units may apply for financial support for their activities to the Office of the Provost and Vice President for Academic Affairs, which administers the professional development funds.

4.16 GROUP INSURANCE

The University of Texas at Tyler sponsors or participates in several insurance and benefits programs which are intended to assist U.T. Tyler employees in the attainment of their personal insurance and security goals at costs lower than would normally be available on an individual basis. These programs include

- Hospitalization and Medical Insurance
- Dental Insurance
- Vision Care Insurance
- Personal Accident Insurance
- Group Life Insurance Long-Term Disability Vision Plan
- Unemployment Compensation Insurance
- Workers' Compensation Insurance

Premium Sharing
Payroll Savings (U.S. Savings Bonds)
Tax Sheltered Annuities Employee
Assistance Program Employee
Retirement Plan

Details on most of these programs are described in booklets made available at the beginning of employment at U.T. Tyler or when coverage revisions occur. Please read them carefully. For questions regarding any of the insurance and benefits programs or for changes to existing coverage and benefits, contact the Office of Human Resources. Any changes in the programs referenced above will be conveyed to employees by Human Resources as soon as possible after that change occurs.

4.17 ELIGIBILITY OF RETIREES FOR GROUP INSURANCE COVERAGE

A. Policy. Retired University of Texas at Tyler employees are eligible for coverage under the Employee Group Insurance Program (EGIP) if they meet the eligibility standards for the retiree group insurance coverage.

B. Eligibility.

- (1) U. T. Tyler employees are eligible for coverage under the EGIP if they have at least five (5) years of creditable service under the Teacher Retirement System (TRS) and are eligible to receive a retirement benefit. Additionally, eligibility is extended to employees who qualify as a disability retiree under TRS. In accordance with TRS guidelines, disability retirement status may be granted to employees with ten (10) or more years of service as well as those employees with less than ten (10) years of service. In accordance with TRS guidelines, disability retirement status may be granted to employees with ten (10) or more years of service as well as those employees with less than ten (10) years of service, however different lengths of disability retirement may be available depending on age and amount of service.
 - (2) Eligibility for health insurance coverage, as described above, is also extended to Optional Retirement Program (ORP) and Employees Retirement System (ERS) participants as long as TRS retirement service requirements are satisfied. An employee who has received an award letter from the Social Security Administration granting benefits under that program is eligible for health insurance coverage as described above.
- (3) The covered retiree's surviving spouse or surviving dependent child(ren), covered under a University-sponsored group health plan at the time of death of a retiree, may continue coverage under the group plan.

- (4) A University retiree's eligibility for group health insurance coverage shall terminate upon the termination of disability status. The disability retiree shall have the same conversion rights as an active employee upon termination of group coverage. The coverage spouse or dependent child(ren) shall also have the same conversion rights.

- (5) University employees having group term life insurance coverage at the time of retirement may retain reduced group coverage as a retiree. With ten (10) or more years of service, coverage is retained at a level of \$10,000. With less than ten (10) years of service, coverage is retained at a level of \$2,500.

- (6) With the inception of the group universal life insurance policy, employees with insurance coverage in excess of \$50,000 upon retirement may retain the amount of coverage in excess of \$50,000 until the policy effective date following their 100th birthday.

4.18 AWARDS AND RECOGNITION PROGRAM

The Board of Regents approved the establishment of a System program of employee recognition to develop within the ranks of employees at The University of Texas at Tyler a spirit of loyalty and a deep-rooted feeling of being a part of the institution. The program shall involve appropriate presentation of service awards in recognition of each five-year period of continuous service.

The University of Texas at Tyler shall, through annual programs, recognize and award employees with presentations determined by each five (5) year period of continuous service.

Tangible awards may be presented to employees in recognition of lengths of service by their department heads or the appropriate administrative official. Such awards shall not be in excess of fifty dollars (\$50.00) per employee.

Eligibility for recognition shall be determined by the Director of Human Resources based upon the service record contained in the official employee record file.

4.19 Nondiscrimination Policy And Complaint Procedure

I. STATEMENT OF POLICY

It is

- (1) Appointment is necessary to maintain continuous employment with the State of Texas as a direct transfer from another state agency.

the policy of The University of Texas at Tyler to provide an educational and working environment that provides equal opportunity to all members of the University community. In accordance with federal and state law, the University prohibits unlawful discrimination on the basis of disability, sex, age, race, color, national origin, religion, citizenship, veteran status, and sexual orientation.

II. SCOPE OF POLICY

This policy applies to all University administrators, faculty, staff, students, visitors and applicants for employment or admission. This policy is the principal prohibition of all forms of discrimination on campus, except as follows:

- The University's controlling policy and procedure relating to sexual harassment and sexual misconduct can be found in Section 4.03 of the *Handbook of Operating Procedures* and Human Resources Policy VI.100, *Sexual Harassment and Sexual Misconduct*.

III. STATUTORY REFERENCES

Discriminatory conduct of an unlawful nature, as covered by this policy, shall include the following:

- Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d et seq., and its implementing regulation at, 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, or national origin;
- Title IX of the Education Amendments of 1972, 20 U.S.C. § 1618 et seq., and its implementing regulation at, 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex.
- Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794 (amended 1992), and its implementing regulation at, 34 C.F.R Part 104, which prohibit discrimination on the basis of disability;
- Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §12132, and its implementing regulation at, 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability; and
- The Age Discrimination Act of 1975, 42 U.S.C. §6101 et seq., and its implementing regulation at, 34 C.F.R. Part 110, which prohibit discrimination on the basis of age.

IV. DEFINITIONS

- A. **Discrimination**, including harassment, is defined as conduct directed at a specific individual or a group of identifiable individuals that subjects the individual or group to treatment that adversely affects their employment or education on account of disability, sex, age, race, color, national origin, religion, citizenship, veteran status, or sexual orientation.
- B. **Harassment**, as a form of discrimination, is defined as verbal or physical conduct that is directed at an individual or group because of disability, sex, age, race, color, national origin, religion, citizenship, veteran status, or sexual orientation when such conduct is sufficiently severe, pervasive or persistent so as to have the purpose or effect of interfering with an

individual's or group's academic or work performance; or of creating a hostile academic or work environment. Constitutionally protected expression cannot be considered harassment under this policy.

C. **Contact Information** for the Director of Human Resources and Dean of Student Affairs Office are:

Joe Vorsas, Director of Human Resources, UT Tyler, 3900 Univ. Blvd., Tyler Texas, 75799, Phone: (903)566-7294, Email: jvorsas@mail.uttyl.edu (for employee or job applicant assistance on matters regarding Title II, Title IX, Section 504, ADA, EEO, and Age Act)

Howard Patterson, Ph.D. Dean of Student Affairs, UT Tyler, 3900 Univ. Blvd., Tyler, Texas 75799, Phone: (903)566-7350, Email: hpatterson@uttyler.edu (for student assistance on matters regarding Title II, Title IX, Section 504, and Age Act)

V. RESOLUTION OPTIONS

A person who believes that he or she has been subjected to discrimination or harassment in violation of this policy and seeks to take action may use either the informal resolution process or the formal complaint process, or both. The informal resolution and formal complaint resolution process described in this policy are not mutually exclusive and neither is required as a pre-condition for choosing the other; however, they cannot both be used at the same time.

VI. INFORMAL RESOLUTION PROCESS

This process may be used as a prelude to filing a formal complaint or as an alternative. It is not necessary that this option be used. Anyone who believes that he or she has been subject to discrimination may immediately file a formal complaint as described in Section VI of this policy. Informal resolution may be an appropriate choice when the conduct involved is not of a serious or repetitive nature and disciplinary action is not required to remedy the situation. No formal investigation is involved in the informal resolution process.

A. **Reporting.** Students wishing to use the informal resolution process should contact the Dean of Student Affairs Office. All other individuals wishing to utilize the informal resolution process should contact the Director of Human Resources. In either case, reporting of the alleged offense must be reported within sixty (60) calendar days from the date of the alleged offense.

B. **Informal Assistance.** The individual is provided assistance in attempting to resolve possible discrimination if the individual does not wish to file a formal complaint. Such assistance includes strategies for the individual to effectively inform the offending party that his or her behavior is offensive and should cease, action by an appropriate University official to stop the offensive conduct, modification of the situation in which the offensive conduct occurred, or mediation between the parties. However, the University may take more formal action to ensure an environment free of discrimination.

- C. **Timeframe.** Informal resolutions will be completed within thirty (30) calendar days from receipt of a request for informal resolution.
- D. **Confidentiality and Documentation.** The University will document informal resolutions. The Office of the Dean of Student Affairs or the Office of Human Resources, as appropriate, will retain such documentation. The University will endeavor to maintain confidentiality to the extent permitted by law. Where the individual's desire to maintain anonymity constrain attempts at establishing facts and eliminating the potential harassment, the University will attempt to find the right balance between the individual's desire for privacy and confidentiality with the responsibility of the University to provide an environment free of unlawful discrimination.

VII. FORMAL COMPLAINT PROCEDURES (This complaint procedure also constitutes the grievance procedure for complaints alleging unlawful sex discrimination required under Title IX of the Education Amendments of 1972. As used herein, "complaint" is synonymous with "grievance.")

A. Reporting

1. The University of Texas at Tyler encourages any person who believes that he or she has been subjected to discrimination to immediately report the incident to his or her supervisor, to the appropriate supervisor of the accused faculty member or employee, to the Director of Human Resources, or when a student is the accused individual, to the Dean of Student Affairs. The complainant will be advised of the procedures for filing a formal complaint of discrimination. When a supervisor or the Dean of Student Affairs receives a complaint, he or she will immediately notify the Director of Human Resources.
2. Complaints should be filed as soon as possible after the conduct giving rise to the complaint, but no later than thirty (30) calendar days after the event occurred. In the case of a currently enrolled student, if the last day for filing a complaint falls prior to the end of the academic semester in which the alleged violation occurred, then the complaint may be filed within thirty (30) calendar days after the end of that semester.
3. In order to initiate the investigation process, the complainant should submit a signed, written statement setting out the details of the conduct that is the subject of the complaint, including the complainant's name, signature, and contact information; the name of the person directly responsible for the alleged violation(s); a detailed description of the conduct or event that is the basis of the alleged violation; the date(s) and location(s) of the occurrence(s); the names of any witnesses to the occurrence(s); the resolution sought; and any documents or information that is relevant to the complaint. While an investigation may begin on the basis of an oral complaint, the complainant is strongly encouraged to file a written complaint. When a supervisor or the Dean of Student Affairs receives a complaint with a written statement, he/she shall immediately notify the Director of Human Resources.

B. Complaint Investigation

1. The Dean of Student Affairs or Director of Human Resources, as appropriate, is responsible for investigating formal complaints. If the complaint is not in writing, the investigator should prepare a statement of what he or she understands the complaint to be and seek to obtain verification of the complaint from the complainant.
2. Within five (5) calendar days of receipt of a complaint, the Dean of Student Affairs or Director of Human Resources, as appropriate, may either dismiss the complaint or authorize an investigation of the complaint. A complaint may be dismissed if the facts alleged in the complaint, even if taken as true, does not constitute discrimination; the complaint fails to allege any facts that suggest discrimination occurred; or the appropriate resolution or remedy has already been achieved, or has been offered and rejected.

2.1 If it is determined that a complaint will not be investigated, the Dean of Student Affairs or Director of Human Resources, as appropriate, will send the complainant a notification letter explaining the reason for the dismissal and informing the complainant that, within ten (10) calendar days of the notification letter, he or she may appeal the decision not to proceed with a complaint investigation to the appropriate vice president. The written appeal must explain why the decision to dismiss the complaint was in error. The appropriate vice president will respond within twenty (20) calendar days of receipt of the appeal. The vice president's decision is final. If the decision to dismiss is overturned, the complaint will be sent back to the Office of the Dean of Student Affairs or Director of Human Resources, as appropriate, for investigation in accordance with the procedures outlined below.

3. As part of the investigation process, the accused individual shall be provided with a copy of the complaint and allowed ten (10) calendar days from the date the accused received the complaint within which to file a written response.
4. The complainant and the accused individual may present witnesses and any document or information that is believed to be relevant to the complaint.
5. Any persons thought to have information relevant to the complaint will be interviewed and such interviews will be appropriately documented.
6. The investigation of a complaint will be concluded as soon as possible but within thirty (30) calendar days after receipt of the written complaint. In investigations exceeding forty-five (45) calendar days, a justification for the delay will be presented to and reviewed by the appropriate vice president overseeing the investigative office. The complainant, accused

individual and appropriate supervisor will be provided an update on the progress of the investigation after the review.

7. Within ten (10) calendar days of the completion of the investigation, a written report will be issued. The report shall include: a recommendation of whether a violation of the policy occurred, an analysis of the facts discovered during the investigation, any relevant evidence, and recommended disciplinary action if a violation of the policy occurred.
8. A copy of the report will be sent to the appropriate vice president, the complainant and the accused individual. The complainant and accused individual have ten (10) calendar days from the date of the report to submit comments regarding the report to the vice president. However, if a complaint is filed against a student, then the complainant and accused individual may not receive or comment on the report due to the Family Educational Rights and Privacy Act's (20 U.S.C. §1232g) restrictions on disclosure of educational records.
9. Within twenty (20) calendar days of receiving any written comments submitted by the complainant or accused individual, the vice president will take one of the following actions: a) request further investigation into the complaint; b) dismiss the complaint if the results of the completed investigation are inconclusive or there is insufficient reasonable, credible evidence to support the allegation(s); or c) find that this policy was violated. A decision that this policy was violated shall be made upon the record provided by the investigator and any comments submitted by the complainant or accused individual; and shall be based on the totality of circumstances surrounding the conduct complained of, including but not limited to: the context of that conduct, its severity, frequency, whether it was physically threatening, humiliating, or was simply offensive in nature. Facts will be considered on the basis of what is reasonable to persons of ordinary sensitivity and not on the particular sensitivity or reaction of an individual.
10. If the vice president determines that this policy was violated, he or she will take disciplinary action that is appropriate for the severity of the conduct. Disciplinary actions can include, but are not limited to, written reprimands, the imposition of conditions, reassignment, suspension, and dismissal. Disciplinary actions against students can include probation, suspension, or expulsion from the University.
11. The complainant and the accused individual shall be informed within ten (10) calendar days in writing of the vice president's decision and be provided a copy of the final statement of findings. However, if a complaint is filed against a student, then the complainant may not receive information prohibited by the Family Educational Rights and Privacy Act.
12. Implementation of disciplinary action against faculty and employees will be handled in accordance with the University's policy and procedures for discipline and dismissal of faculty and employees. The Dean of

Student Affairs will impose disciplinary action, if any, against a student in accordance with the University's student disciplinary procedures.

VIII. PROVISIONS APPLICABLE TO ALL COMPLAINTS

- A. Assistance. During the complaint process, a complainant or **accused individual** may be assisted by a person of his or her choice; however, the assistant may not examine witnesses or otherwise actively participate in a meeting or interview.
- B. Retaliation. An administrator, faculty member, student or employee who retaliates in any way against an individual who has brought a complaint pursuant to this policy or an individual who has participated in an investigation of such a complaint is subject to disciplinary action, including dismissal.
- C. Prevention of Recurrence. If discriminatory conduct is found to have existed, the University will take appropriate steps to (1) prevent recurrence of any such discriminatory conduct, and (2) correct its effects on the complainant and others, if appropriate.
- D. False Complaints/Statements. Any person who knowingly and intentionally files a false complaint under this policy or knowingly and intentionally makes false statements in the course of an investigation is subject to disciplinary action up to and including dismissal from the University.
- E. Confidentiality and Documentation. The University shall document complaints and their resolution. The Office of the Dean of Student Affairs or the Office of Human Resources, as appropriate, shall retain such documentation. To the extent permitted by law, complaints and information received during the investigation will remain confidential. Relevant information will be provided only to those persons who need to know in order to achieve a timely resolution of the complaint.
- F. Monitoring. Periodic monitoring of complaint resolutions will be conducted by the Director of Human Resources to ensure that discriminatory practices are no longer a factor in the workplace or academic environment, and that no retaliation for filing the complaint has taken place.

IX. DISSEMINATION OF POLICY

- A. The policy will be made available to all faculty, employees and students. New employees will receive nondiscrimination and EEO training within thirty (30) calendar days of being hired and will sign a written acknowledgment attesting that they have received the training. All employees will complete and verify that they have received EEO and nondiscrimination training at least every other year via *The Training Post* online training system or through training provided by a trainer certified by The Texas Commission on Human Rights in providing EEO and nondiscrimination training. Periodic notices sent to students, employees

and faculty about the University's Nondiscrimination Policy will include information about the complaint procedure and will refer individuals to designated offices or officials for additional information.

- B.** The University will periodically educate and train employees and supervisors regarding the policy and conduct that could constitute a violation of the policy.

4.20 APPOINTMENT OF CLASSIFIED EMPLOYEES

A. The effective beginning date for the appointment of new classified staff shall normally be the first day of work, but under one of the following conditions, the beginning date may be a holiday, Saturday, or Sunday:

- (2) Appointment is to a position which requires the new employee actually to begin work on a holiday, Saturday or Sunday.

- (3) Appointment is to a monthly salaried position which is effective on the first day of a calendar month provided that the appointment requires performance by the employee of all customary duties of the job for all of the official working days of the month in which the employment is to begin.

B. Appointments will normally carry an ending date effective on or before August 31 of the fiscal year in which the appointment is being made. Appointments made from grants or contracts may terminate in accordance with the terms thereof. The following special provisions apply:

- (1) The ending date of an appointment or the date on which an appointment is terminated may include a holiday, Saturday or Sunday which immediately follows the last day of work, except when the holiday, Saturday or Sunday is the first day of a new calendar month.
- (2) A separating employee may, with the agreement of the institution, be allowed to remain on the payroll after the last day worked to utilize vacation leave time in lieu of being paid a lump sum.

C. The following conditions will not constitute a break in an individual's continuity of employment.

- (1) Termination followed, without loss of payroll time, by immediate reappointment
- (2) Termination to enter military service followed by reappointment within ninety (90) days after honorable discharge or release from military service
- (3) Transfer of employee, without loss of payroll time, within The University of Texas System or from another state agency
- (4) Leave without pay.

D. The following conditions will constitute a break in an individual's continuity of service.

- (1) Termination followed by a loss of payroll time before reappointment with any component institution of The University of Texas System, another state institution of higher education, or university, or other state agency

- (2) Termination to enter military service and failure to be reappointed within ninety (90) days of honorable discharge or release from military service.

4.21 PROBATIONARY PERIOD FOR CLASSIFIED EMPLOYEES

All newly appointed classified employees of The University of Texas at Tyler shall be subject to a probationary period of six (6) continuous months from the beginning date of employment.

This period shall be used for the supervisor's observation of a new employee's work performance and to permit the employee to adjust to the job and working conditions. Throughout this period, the immediate supervisor shall provide any assistance considered necessary to improve performance or facilitate adjustments.

During this period, The University of Texas at Tyler is free to terminate the employment of any probationary employee who is judged not to be competent or otherwise qualified to continue employment without said employee being subject to the discipline and dismissal policies and procedures. Any action associated with this paragraph should be documented and shall become a part of the employee's files. Prior to termination, the administrative official must review the facts of the case with the Office of Human Resources. Provided, however, that an employee claiming the status of a whistle blower or who alleges that his/her constitutional rights have been violated or that he/she is the victim of discrimination shall be permitted to appeal the termination decision on that basis and shall have the burden of proof to establish these allegations.

Upon completion of the probationary period, an employee shall have all privileges of a non-probationary employee.

4.22 VACATION ENTITLEMENT

With the exception of faculty members who have appointments of less than twelve (12) months and those appointed to positions which require student status as a condition of employment, all employees appointed twenty (20) hours per week or more for four and one-half (4-1/2) months or more, shall earn vacation entitlement beginning on the first day of eligible employment and terminating on the last day of eligible employment.

A. Employees paid on an hourly basis are entitled to vacation with full pay accrued at the same rate as employees paid on a monthly basis. Part-time employees who are employed twenty (20) hours per week or more for four and one-half months are eligible for vacation leave and accrue time on a proportionate basis.

B. Credit for one month's vacation leave accrual will be given for each month or fraction of a month and will be posted on the first day of employment and on the first day of each succeeding month thereafter. If the employee is on any type of paid leave

which extends into a subsequent month, any vacation accrual for the month of paid leave will not be posted until the date of his or her return to duty. An employee who goes on paid leave following his or her last day of duty, does not return to duty, and subsequently separates from employment, is not entitled to leave accruals while on such paid leave for any calendar month(s) following the month in which the last day of duty occurs.

C. Vacation with pay may not be granted until the employee has been continuously employed with the State for six (6) months, although credit will be accrued during that period.

Continuous employment means that no leave without pay for a full calendar month has been taken during these six (6) months.

(1)

(2) An employee who has completed six (6) months or more of continuous state employment and then leaves state employment is, upon reemployment, eligible to take vacation leave as it is earned or to be paid for it upon separation following such reemployment.

D. The rate of vacation leave accrued each month shall be governed by length of state service in accordance with the schedule of vacation leave accrual set forth in the General Appropriations Act.

(1) In the event that this schedule conflicts with operational procedures, each component institution may rearrange the vacation accrual and holiday schedule within the total number of days provided in the current General Appropriations Act.

(2) Vacation should be taken during the fiscal year in which it accrues. If this is not possible, accrued vacation leave may be carried forward to the next fiscal year in accordance with the limits provided in the current General Appropriations Act.

All hours of unused accumulated vacation leave in excess of the maximum allowable carryover limit are lapsed at the end of the fiscal year and will be credited to the employee's sick leave balance as of the first day of the next fiscal year.

(3)

(4) An employee must complete the required years of employment to be entitled to receive the higher rate of vacation leave accrual. The length of employment is calculated from the employee's anniversary of employment date. Credit for the higher rate of accrual shall be given on the first calendar day of the month if the anniversary date is on the first calendar day of the month. Otherwise, the increase of vacation accrual will occur on the first calendar day of the following month.

E. Employees who are excused from work because of holidays shall not have their time charged against vacation time.

F. No vacation leave is earned while an employee is in an ineligible status including any Leave Without Pay status.

G. An employee who at any time during the employee's lifetime has accrued six (6) months of continuous state employment and who for any reason separates from state employment is entitled to be paid for the accrued balance of the employee's vacation time as of the date of separation. A separation includes a separation in which the employee

- (1) leaves U. T. Tyler to begin working for another state agency or institution, if one or more workdays occur between the two employments.
- (2) moves from a position that accrues vacation time to a position that does not accrue vacation time. In this situation, an employee will be paid for accrued vacation.
- (3) moves from a position that accrues vacation time to a position in another state agency or institution that does not accrue vacation time, if the other state agency or institution refuses to credit the employee for the balance of the employee's vacation time as of the date of the move.
- (4) holds two or more positions and separates from one that accrues vacation time.

H. A separating employee may, with the agreement of the institution, be allowed to remain on the payroll after the last day worked to utilize vacation leave time in lieu of being paid a lump sum. Such an employee will not accrue any additional vacation leave while remaining on the payroll to utilize such vacation leave.

I. Lump sum payments for accrued but unused vacation time are computed as though the employee actually worked that time. An employee will be credited for any holiday that falls within the period after the date of separation and the last date of the period in which the employee would have used the time had the employee remained on the payroll.

J. An employee transferring from U. T. Tyler to another state agency or institution will have his or her accrued but unused vacation leave balance transferred as long as the employment is not interrupted by a separation.

K. Upon separation, any unearned vacation advanced and taken by an employee shall be deducted from the employee's final paycheck on the basis of one working day for each unearned vacation day taken.

L. In the case of the death of an employee who has an accrued vacation balance after six (6) months of continuous employment, his or her estate will be paid for all of the employee's accumulated vacation leave. The payment shall be calculated at the rate of compensation being paid the employee at the time of his or her death.

4.23 EMPLOYEE LEAVE OF ABSENCE WITHOUT PAY

A leave of absence without pay may be granted to staff of The University of Texas at Tyler, on request, subject to the terms and conditions set forth in this Handbook and subject to the controlling provisions of Part One, Chapter III, Section 16 of the *Regents Rules*.

With the interests of the institution being given first consideration and for good cause, a leave of absence without pay may be granted for a period within the term of appointment of any staff member provided he or she is employed at least twenty (20) hours per week for a period of at least four and one-half (4-1/2) months. This policy does not apply to students employed in positions which require student status as a condition of employment.

Except for disciplinary suspensions or use of approved Workers' Compensation and military leave, all accumulated paid leave entitlements must be exhausted before granting a leave of absence without pay. Sick leave must be exhausted only in those cases where the employee is eligible to take sick leave.

Leaves of absence without pay will be limited to twelve (12) months or extend no later than the end of the fiscal year in which the leave begins.

Leaves of absence for a first year or portion thereof, or a second consecutive year's leave, may be granted by the chief administrative officer, subject to the general conditions included herein. Leaves of absence for a third consecutive year will be granted only in unusual circumstances, such as military service, reasons of health, continued graduate study, and public service or other activity that reflects credit on the institution and enhances an individual's ability to make subsequent contributions to the institution. Requests for a third consecutive year of leave of absence without pay must be reviewed and approved by the appropriate executive vice chancellor.

Subject to financial constraints, the approval of a leave of absence constitutes a guarantee of employment for a specified period of time.

Prior to beginning the leave of absence without pay, the employee must specify what arrangements he or she wishes to make concerning his or her group insurance coverage.

After a return to duty of one year, the leave of absence privilege will again be available subject to the conditions above.

Upon expiration of a leave granted pursuant to Section 4.09 an employee may be eligible for a leave of absence.

Except in the case of an employee returning to state employment from military leave without pay, any full calendar month in which the employee is on leave without pay will not be counted in the calculation of total state service credit for the purposes of vacation or longevity pay entitlement. No employee shall accrue vacation or sick leave for such month.

4.24 OVERTIME COMPENSATION

This policy sets forth guidelines to be followed to comply with the Fair Labor Standards Act (FLSA) and applicable personnel policies related to the accrual of and compensation for overtime.

A. Time Records. The University of Texas at Tyler is required by the Fair Labor Standards Act to maintain accurate time and leave records for all non-exempt employees. Departments may maintain time records for exempt employees.

B. Fair Labor Standards Act.

1. Requirements. The FLSA requires The University of Texas at Tyler to compensate non-exempt employees for any hours over forty (40) actually worked in one work week at a rate of one and one-half (1.5) times the employee's normal rate of pay. This requirement is applicable to all employees except for those in positions classified as executive, professional, or administrative which are exempted from FLSA overtime provisions, as outlined in U. T. Tyler FLSA **Policy Number II.110 (revision 2)**.
2. Overtime Compensation. All non-exempt employees who are required or permitted to work in excess of forty (40) hours in a work week shall be entitled to additional compensation in one of the following ways:
 - (a) By receiving compensatory time off at a rate of one and one-half (1.5) hours for each hour over forty (40) actually worked (paid leave or holidays taken during a work week are not to be counted as hours worked in determining FLSA overtime hours) subject to the following limitations:
 - (i) Employees engaged in public safety or emergency response may not accrue more than 480 hours of compensatory time (320 overtime hours plus 160 premium hours). Employees must be paid for any overtime hours worked in excess of the accumulation limit at a rate of one and one-half (1.5) times the employee's regular rate of pay.

- (ii) All other non-exempt employees may not accrue more than 240 hours of compensatory time (160 overtime hours plus 80 premium hours). Employees must be paid for any overtime hours worked in excess of the accumulation limit at a rate of one and one-half (1.5) times the employee's regular rate of pay.

Accrued compensatory time may be used by employees at a mutually convenient time following the work week in which such compensatory time is accrued. An employee has the right to use compensatory time earned, and time accrued under the FLSA may not be forfeited. In certain circumstances, the University may require employees to schedule compensatory time off that has been accrued.

- (b) By payment for each hour over forty (40) actually worked in a work week at a rate of one and one-half (1.5) times the employee's regular rate of pay. The regular rate of pay shall include the employee's base salary and longevity pay, hazardous duty pay, housing emoluments, and FICA benefit replacement pay. Payment for overtime is at the discretion of the University and may be granted in instances in which granting compensatory time is not practical.

3. **Schedule of Activities.** The schedule of activities shall be so organized that employees are not routinely required to work in excess of established work periods except when demanded by operational necessity. Any overtime services required of non-exempt employees must have the prior written approval of the President or his delegate.
4. **Payment of Compensatory Time Upon Separation.** Employees or the estates of deceased employees must be paid for any unused accumulated (banked) FLSA overtime hours at the time of termination of University of Texas at Tyler employment. There is no authority to transfer unused accumulated FLSA overtime hours between component institutions or state agencies.

C. Equivalent Time. Equivalent time, also known as state compensatory time, should not be confused nor combined with FLSA compensatory time discussed above. Equivalent time is granted on a straight hour for hour basis or paid on a straight regular hour pay rate.

1. Accrual of Equivalent Time.

- (a) Equivalent time occurs when the total number of hours worked and paid leave or paid holidays exceed forty (40) hours in one work week. In such instances, the employee shall be allowed equivalent time off equal to the number of hours in excess of forty (40).
- (b) An employee who is exempted from the overtime provisions of the FLSA as an executive, professional or administrative employee may, at the discretion of the President or his delegate, be allowed equivalent time off for any hours recorded in excess of forty (40) during one work week. These hours may be a combination of working hours, paid leave and holidays.

2. Use of Equivalent Time.

- (a) Equivalent time must be used within twelve (12) months following the end of the work week in which it was earned.
- (b) Normally, employees will not be paid for any unused equivalent time, subject to the exceptions provided below.
- (c) The interagency transfer of unused equivalent time is not authorized. Normally, the estate of a deceased employee may not be paid for the employee's earned but unused equivalent time, subject to the exceptions provided below.

3. Exceptions for Equivalent Time.

Employees of U. T. Tyler may be paid for equivalent time hours on a straight hour-for-hour basis when the taking of such time off would be disruptive to normal teaching, research, and other critical functions, if such payment is authorized by the President or his delegate. These employees are exempt from the requirement that all equivalent time must be used within twelve (12) months.

D. Occasional and Sporadic Employment. A full-time employee may work, at his or her option, for the University of Texas at Tyler on an occasional and sporadic basis in a part-time job. If the work performed in the occasional job is substantially different from the regular full-time work, the hours worked in the part-time capacity are excluded in calculating overtime compensation.

4.24 LONGEVITY PAY

Employees of The University of Texas at Tyler shall be entitled to longevity pay in accordance with the General Appropriations Act, Section 9, Page 40, 11(e). Such pay

shall be in the amount of \$20.00 per month for each five (5) years of service as an employee of the State of Texas up to and including forty (40) years of service.

A. Eligibility.

- (1) All full-time, non-academic employees, excluding commissioned law enforcement personnel eligible for hazardous duty pay, are eligible for longevity pay. **(See Policy II.555 related to hazardous duty pay.)** Full-time is defined as employment for forty (40) hours per week.
- (2) Non-academic employees shall be defined as:
 - (a) an employee whose appointment is within the classified pay plan, or
 - (b) an employee who has an administrative or other staff appointment without regular teaching assignments.

B. Basis of Longevity. Longevity for the purposes cited herein shall be the same as the basic state service used for the determination of annual leave rate accrual and includes certain time spent in the military service. This recognizes all employment with the state, including full-time and part-time; faculty, student and staff employment; and legislative service.

- (1) Any state employee returning to state employment following service in the military is entitled to longevity credit for pay purposes for the time spent in the military. Years of service as a National Guard Technician prior to January 1, 1969, are creditable as years of service as an employee of the state for purposes of longevity pay.
- (2) Any faculty member whose appointment becomes that of a nonacademic employee is entitled to longevity credit for pay purposes to include the actual length of appointment as a faculty member in determining basic state service.

C. Schedule of Payments. Longevity pay shall be paid in three-year (36 months) increments in accordance with the following schedule:

State Service in Years	Monthly Longevity Payment
3	\$20
6	40
9	60
12	80
15	100
18	120
21	140
24	160
27	180
30	200
33	220
36	240
39	260
42+	280

D. Payment. After the completion of three (3) years' service, longevity pay commences on the first day of the next month at the specified rate and continues at that rate until the completion of another three (3) year increment.

Longevity pay shall not be prorated. A change in status occurring during the month will be effective the first day of the following month. For example, an employee appointed on September 1st of a given year completes thirty-six (36) months service on August 31st, three years later. The longevity payment will commence on the first day of the next month, September 1st. Accordingly, an employee appointed on September 2nd of a given year will complete 36 months of service on September 1st, three years later. Longevity pay will commence on the first day of the next month, October 1st.

E. Transfers. The institution or agency employing an individual on the first day of the month will be responsible for longevity pay.

F. Method of Payment.

- (1) Longevity pay is considered a part of total compensation although the base salary rate of an employee is not affected by such payment.
- (2) Separate lump-sum payment for longevity pay is not authorized. Such payment is included as part of the regular payroll procedure.
- (3) The inclusion of longevity pay as a part of total compensation affects federal withholding, OASI, the amount of group insurance and other benefit calculations, rate of overtime pay, if any, and retirement contributions.

(4) Longevity pay shall not be considered in making calculations for lumpsum payment of vacation upon termination. It shall, however, be considered in calculating lump-sum payments of vacation and sick leave to the estate of a deceased employee.

(5) Longevity pay shall be paid from the same source of funds from which an employee's regular salary is paid.

4.26 PERFORMANCE EVALUATIONS

It is the policy of the Board of Regents that an annual written performance evaluation be completed for all University of Texas at Tyler employees. Such evaluations are intended to improve work performance and to assist in making decisions regarding promotions, merit salary increases and discipline.

A. Probationary Employees. Probationary employees shall have their work performance evaluated after 90-days and prior to the expiration of 180 days of employment. These evaluations shall utilize the standard performance evaluation questionnaire.

B. Non-probationary Employees. Non-probationary employees shall have their work performance evaluated not less than once per year, but evaluations may take place more frequently at the discretion of the employee's supervisor or other administrative superior.

C. Performance Evaluation Program Support. It shall be the responsibility of the Office of Human Resources or another designated administrative office to assure that the appropriate performance evaluation forms are available to management personnel in each department. It is the responsibility of that office to assure that performance evaluation forms are available on a schedule sufficient to achieve the 90-day, 180-day and annual performance evaluations for each employee. A copy of the completed performance evaluation shall be retained by the Office of Human Resources for maintenance in appropriate employee files and a copy shall be retained by the department.

4.27 DISCIPLINE AND DISMISSAL OF EMPLOYEES

The following policies and procedures were adopted by the Board of Regents for discipline and dismissal of certain employees.

A. Policy. It is the policy of The University of Texas at Tyler to encourage fair, efficient and equitable solutions for problems arising out of the employment relationship and to meet the requirements of state and federal law.

B. Scope of Policy. These policies and procedures are applicable to conduct or job performance of an employee that results in a decision to impose a

disciplinary penalty of demotion, suspension without pay, or dismissal, including those employees who allege receipt of an adverse personnel action for reporting a violation of law. It does not apply to

- (1) institutional police, faculty or teaching staff who are subject to other approved discipline or dismissal procedures;
 - (2) suspension with pay pending investigation of allegations relating to an employee;
 - (3) decisions not to offer reappointment to persons whose appointment for a stated period of one year or less expires at the end of such period without the necessity of notice of non-renewal as provided in the Rules and Regulations of the Board of Regents or the rules and regulations of the institution; or
 - (4) dismissal of employees
 - (a) who are appointed to positions without fixed terms and, under applicable rule or regulation, serve at the pleasure of a specific administrative officer;
 - (b) who occupy positions that are dependent upon funding from a specific source and such funding is not received;
 - (c) as a result of a reorganization;
 - (d) because of financial exigency;
 - (e) during the 180-day probationary period;
 - (f) who are appointed for a stated period that is less than 180 days; or
 - (g) who are appointed at a per diem or hourly rate
- (1) and work on an as-needed basis.

C. Discipline and Dismissal Policy and Procedure.

Requisite Standard of Conduct. All employees are expected to acquaint themselves with performance criteria for their particular job and with all rules, procedures, and standards of conduct established by the Board of Regents of The University of Texas System, U.T. Tyler, and the employee's department or unit. An employee who does not fulfill the responsibilities set out by such performance criteria, rules, procedures, and standards of conduct may be subject to adverse personnel action.

(2) *Conduct which is Subject to Disciplinary Action.*

- (a) *Work Performance.* Failure of an employee to maintain satisfactory work performance standards can constitute good cause for

disciplinary action including dismissal. The term "work performance" includes all aspects of an employee's work.

Work performance is to be judged by the supervisor's evaluation of the quality and quantity of work performed by each employee. When, in the opinion of the supervisor, the work performance of an employee is below standard, the supervisor should take appropriate disciplinary action.

- (b) *Misconduct.* All employees are expected to maintain standards of conduct suitable and acceptable to the work environment. Disciplinary action, including dismissal, may be imposed for unacceptable conduct. Examples of unacceptable conduct include, but are not limited to

- (i) falsification of time sheets, personnel records, or other institutional records;
- (ii) neglect of duties or wasting time during working hours;
- (iii) smoking anywhere except in designated smoking area;
- (iv) gambling, participating in lotteries, or any other games of chance on the premises at any time;
- (v) soliciting, collecting money, or circulating petitions on the premises other than within the rules and regulations of the institution;
- (vi) bringing intoxicants or drugs onto the premises of the institution, using intoxicants or drugs, having intoxicants or drugs in one's possession, or being under the influence of intoxicants or drugs on the premises at any time;
- (vii) abuse or waste of tools, equipment, fixtures, property, supplies, or goods of the institution;
- (viii) creating or contributing to unhealthy or unsanitary conditions;
- (ix) violations of safety rules or accepted safety practices;
- (x) failure to cooperate with supervisor or co-worker, impairment of function of work unit, or disruptive conduct;
- (xi) disorderly conduct, harassment of other employees (including sexual harassment), or use of abusive language

on premises;

- (xii) fighting, encouraging a fight, or threatening, attempting or causing injury to another person on the premises;
- (xiii) neglect of duty or failure to meet a reasonable and objective measure of efficiency and productivity;
- (xiv) theft, dishonesty or unauthorized use of institutional property including records and confidential information;
- (iv) creating conditions hazardous to another person on the premises;

- (xvi) destroying or defacing institutional property or records, or the property of a student or employee;
- (xvii) refusal of an employee to follow instructions or to perform designated work that may be required of an employee, or refusal to adhere to established rules and regulations;
- (xviii) repeated tardiness or absence, absence without proper notification to the supervisor or without satisfactory reason, or unavailability for work; and
- (xix) violation of policies or rules of the institution or The University of Texas System.

(3) *Investigations.* All incidents that involve the potential for disciplinary actions shall be investigated by the employee's supervisor or other designated administrative official. If the investigation results in evidence that establishes with reasonable certainty that the employee engaged in conduct which warrants disciplinary action, the supervisor shall follow the pre-disciplinary hearing procedures before seeking approval for the proposed disciplinary action.

(4) *Pre-Disciplinary Hearings.* An employee shall be informed of the basis for any proposed disciplinary action resulting in demotion, suspension without pay, or dismissal and have an opportunity to respond before a final decision is made to take disciplinary action. The hearing serves as an opportunity to avoid mistaken decisions to impose discipline and is not intended to resolve definitively the propriety of the disciplinary action being considered. There is no prescribed form for this hearing; it should be informal. However, before reaching a final decision to impose discipline, the supervisor shall

- (a) inform the employee, either in person or in writing, of the reasons for the proposed disciplinary action, the facts upon which the supervisor relies, the names of any persons who have made statements about the disciplinary incidents, and the content of such statements;
- (b) give the employee access to any documentary material which the supervisor has relied upon; and
- (c) give the employee an opportunity to respond to the charges either orally or in writing within a reasonable time and to persuade the supervisor that the evidence supporting the charges is not true.

The supervisor will review the evidence and proposed disciplinary action with the Human Resources Director, or his or her delegates, and will obtain the approval of the appropriate department head or administrative equivalent before proceeding to impose the disciplinary penalty, if any

(5) *Imposing the Disciplinary Penalty.*

(a) *Notice.* Upon completing the pre-disciplinary hearing procedures and obtaining the approval of the appropriate department head or administrative equivalent, the supervisor shall inform the employee in writing of the following:

- (i) whether the disciplinary penalty is demotion, suspension without pay, or dismissal;
- (ii) the effective date of the demotion, suspension or dismissal; (iii) a specific period for a suspension without pay, not to exceed fifteen (15) work days;
- (iv) the specific incident, conduct, course of conduct, unsatisfactory work performance, or other basis for the disciplinary penalty;
- (v) any previous efforts to make the employee aware of the need to change or improve work performance or conduct; and
- (vi) reference to any relevant rule, regulation, or policy.

(b) *Effect Upon Employee Benefits.* An employee who is demoted or suspended without pay continues to accrue vacation and sick leave, to be covered by group insurance, and to be entitled to other employee benefit programs.

If a demotion or suspension without pay is appealed and it is determined that there was not good cause for the demotion or suspension, the employee shall be entitled to payment for wages lost as a result of the demotion or suspension.

If it is determined upon appeal that a dismissal was not for good cause, the employee shall be reinstated to the same or similar position and shall be entitled to payment of back wages less any unemployment benefits received by the employee after the date of dismissal. Employee benefits such as vacation and sick leave shall be credited back to the date of dismissal.

D. Procedure for Appealing Disciplinary Actions. Disciplinary actions resulting in dismissal, suspension without pay, or demotion may be appealed by the affected employee pursuant to the process set forth below. The time limits set forth in the appeal procedure must be adhered to by both the employee and the appropriate supervisory and administrative personnel unless extended for good cause by the Director of Human Resources. The failure of the employee to process the appeal in a timely manner to the next level shall constitute a withdrawal of the appeal. The failure of supervisory or administrative personnel to respond timely to an appeal shall constitute authorization for the employee to process the appeal to the next step.

- (1) Step One. The employee may present a written appeal to the immediate supervisor within five (5) working days from the date of the disciplinary action. The appeal shall contain a clear and concise statement of why the disciplinary action is inappropriate. Within ten (10) working days of the date of the appeal, a written decision shall be mailed to the employee.
- (2) Step Two. The decision of the step one official may be appealed by the employee to the dean or director within five (5) working days of the date of receiving the step one decision. The appeal must be in writing and shall state why the decision of the step one official is incorrect. A written decision on the appeal shall be mailed to the employee within ten (10) working days of the date of the appeal.

Step Three. If the employee is not satisfied with the step two decision, the
- (3) employee may present a written request for a hearing before the Vice President or administrative equivalent for the employee's department. The request for a hearing must state with particularity why the disciplinary action was inappropriate and/or why the decision of the step two official should be changed. The request must be made within five (5) working days following the date of the appealed decision. The Vice President or administrative equivalent shall, at his or her discretion, either hear the appeal in person or appoint a delegate(s) to hear the appeal. The hearing shall be conducted pursuant to the procedure set out in 4.26.E below.
- (4) Step Four. If the employee is not satisfied with the step three decision, a written appeal may be made to the President within five (5) working days of the date of the step three decision and must state why such decision is incorrect. The review by the chief administrative officer shall be based solely upon the step three record and shall not include any new issue or evidence. Within a reasonable period of time, not to exceed thirty (30) days following the date of the appeal, a written decision shall be mailed to the employee. The decision of the chief administrative officer is final.
- (5) Records of Disciplinary Actions. Copies of all documents pertaining to disciplinary actions shall be filed in the employee's personnel file.

E. Hearing Procedures.

(1) Pre-Hearing Rules and Procedures

(a) *Naming the Delegate(s)*. If the Vice President or

administrative equivalent elects to appoint a delegate(s) to hear the appeal, the name or names will be furnished to the employee as soon as practical after the selection is made. If more than one person is appointed, one of such persons

shall be designated to serve as chair in the notice to the employee.

(b) *Challenges to Impartiality.* An employee may challenge the fairness and impartiality of the Vice President or administrative equivalent or an appointed delegate(s). The challenge must be in writing and must clearly state the factual basis for the challenge. A challenge of the Vice President or administrative equivalent must be made within five (5) days of the date of the request for a hearing and a challenge of the delegate(s) must be made within five (5) days after the date of the notice appointing the delegate(s). It shall be up to the person challenged to determine whether he or she can serve with fairness and impartiality. If the challenged Vice President or administrative equivalent determines that he or she cannot be fair and impartial in the consideration of the appeal, he or she shall appoint a delegate(s) to hear the appeal. If a challenged delegate(s) determines that he or she cannot be fair and impartial in the consideration of the appeal, the Vice President or administrative equivalent shall appoint another delegate(s).

(c) *Time Limits.* The hearing shall be conducted as soon as practical, but not later than twenty (20) working days following the date of the appeal or the appointment of delegate(s).

(d) *Discovery Rights and Document Exchange.*

(i) The employee may request institutional documents, records or exhibits. Such request must accompany the step three written appeal. The requested records will be furnished if, in the opinion of the Vice President or administrative equivalent or the designated chair as the case may be, they are relevant to the appeal and are not made confidential by law.

(ii) At least five (5) days prior to the time set for the hearing, the institution representative for the appeal and the employee shall furnish each other with the names of the witnesses to be called, a summary of their expected testimony and a copy of each document, record or exhibit to be introduced at the hearing.

(2) *Hearing Rules and Procedures.*

(a) *Role of Hearing Chair.* The Vice President or administrative equivalent or the delegate designated as chair shall preside at the hearing and ensure the order of presentation as well as decide on questions of relevancy. The chair shall also have the discretion to determine the form and scope of cross-examination allowed during the hearing. Upon request, the chair may consult with and be advised by counsel during the hearing.

(b) *Right to Representation.* The employee has the right to be represented at the hearing by an attorney or other individual representative. If the employee is represented by an attorney or an individual from an employee organization that does not claim the right to strike, the institution may be represented by an attorney from the Office of General Counsel of The University of Texas System.

(c) *Hearing Record.* In all appeal hearings where the employee is represented by an attorney or an individual from an employee organization, a court reporter shall be furnished by the institution to transcribe the hearing and swear in witnesses. The party requesting a copy of the transcript of the proceedings shall be responsible for its cost. In all other appeal hearings the institution shall tape the hearing and make a copy of the tape available to the employee on request. The transcript of the court reporter or the tape of the proceedings shall be the official record of the hearing.

(d) *Burden of Proof.* The institution has the burden of proving by a preponderance of credible evidence that good cause exists for the disciplinary action and, therefore, shall have the right to open and close the proceedings.

(e) *Order of Presentation and Right to Cross-Examination.* The hearing shall consist of opening statements on behalf of the institution and the employee and testimony by witnesses called by the institution and the employee, with both parties having the right to cross-examine witnesses and make closing statements. Relevant exhibits may be introduced by either party and the chair shall take notice of the employee's personnel records.

(f) *Institutional Employees as Witnesses.* Any employee can be asked to appear as a witness for either party. It shall be the

duty of an employee requested to testify to do so as to any facts which may be relevant to the appeal.

(3) *Post-Hearing Rules and Procedures.*

- (a) The delegate(s) shall deliberate, prepare and forward written findings and recommendations to the Vice President or administrative equivalent within ten (10) working days after the close of the hearing.
- (b) The Vice President or administrative equivalent shall mail his or her decision to the employee within ten (10) days following the receipt of the findings and recommendations from the delegate(s).
- (c) If the Vice President or administrative equivalent has heard the appeal, he or she shall mail a written decision to the employee within ten (10) working days after the close of the hearing.

4.28 GRIEVANCE POLICY AND PROCEDURES

It is the policy of U.T. Tyler to encourage fair, efficient and equitable solutions for problems arising out of the employment relationship and to meet the requirements of state and federal law.

A. Scope. Complaints concerning wages, hours of work, working conditions, performance evaluations, merit raises, job assignments, reprimands, the interpretation or application of a rule, regulation or policy, unlawful discrimination on any basis, or allegations that the termination of a probationary or temporary employee or an hourly or per diem employee who works on an as needed basis was for an unlawful discriminatory reason shall not be processed through the Discipline and Dismissal Appeal Procedure.

Such complaints will be considered on an informal basis in order to allow prompt correction or explanation of the subject of the complaint:

- (1) *Probationary, Temporary, Hourly, and Per Diem Employees Included.*
The complaint of all employees, including probationary and temporary employees, and those hourly or per diem employees who work on an as-needed basis will be considered pursuant to the procedure provided below.
- (2) *Retaliation Prohibited.* No employee will be penalized, disciplined or prejudiced for exercising the right to make a complaint or for aiding another employee in the presentation of that complaint.

B. Procedure for Bringing a Grievance.

- (1) The employee shall informally present the complaint to his or her supervisor or administrative equivalent for discussion, consideration and resolution within five (5) working days from the date of the action that is subject of the complaint. If the supervisor is the subject of the complaint, the employee may address the complaint to the appropriate department head or administrative equivalent.
- (2) If the complaint is not satisfactorily resolved by the supervisor or administrative equivalent within five (5) working days, the employee may present the complaint in writing to the appropriate department head or administrative equivalent for consideration and action. A written decision will be mailed to the employee within five (5) working days of receipt of the complaint.
- (3) If the employee is not satisfied with the decision of the department head or administrative equivalent, a written appeal stating why the appealed decision is incorrect may be made to the appropriate dean, director or administrative equivalent within five (5) working days of the date the appealed decision is received by the employee. Within ten (10) working days of the date of the appeal, a written decision will be mailed to the employee.
- (4) Complaints not satisfactorily resolved by the dean, director or administrative equivalent may be appealed in writing to the appropriate Vice President or administrative equivalent for the employee's department within five (5) working days the date of the appealed decision is received by the employee. The appeal shall state why the appealed decision is not correct. Within a reasonable time, not to exceed thirty (30) days following receipt of the appeal, a written decision shall be mailed to the employee. This decision is final.

The written complaint and all decisions or responses regarding such complaint shall be a part of the personnel file of the employee.

(5) **4.29 TRAINING PROGRAM**

The purpose for this policy is to establish guidelines for implementation of an education and training assistance program for qualified employees of The University of Texas at Tyler pursuant to the State Employees Training Act, Section 656.041 *et seq.*,

Texas Government Code, and Part Two, Chapter V, Section 3, *Regents Rules*.

The University of Texas at Tyler encourages employees to pursue education and training opportunities through four training programs: a college or university degree program, an in-service training and education program, an out-of-agency staff

development program, or an internship program. Participants in these programs must be regular, full-time, non-teaching employees in positions that do not require student status as a condition of employment. Funding for participation in any of these programs will come from the University.

A. College Degree Program.

- (1) *Definition.* College degree programs include enrollment for graduate or undergraduate course work leading to a formal degree.
 - (2) *Objective.* The objective of the program is to provide a college or university education for qualified system employees as specifically required in the area of employment.
- (3) *Exceptions.* Exceptions to any of the provisions of the College Degree Program must have written approval from the institutional chief administrative officer.
- (4) *Eligibility.* Compliance with this section is the responsibility of the University and the employee selected for the program.
 - (a) The employees selected must have the necessary academic qualifications to meet all entrance requirements of the college or university where the course work is provided, and be able to complete all degree requirements within two (2) years of the date of entry into the program.
 - (b) Course work must be directly related to a job or job series currently used by the University.
 - (c) The employee must be scheduled for appointment to a job requiring the degree, upon completion of schooling, and have at least five (5) years of service within The University of Texas System. University employees may enter this program only one time.
 - (d) Selected employees must have been evaluated as to competence and aptitude for training granted, be recommended through the chief administrative officer or designee of the University and be approved by the appropriate Director of Human Resources.
 - (e) Selected employees on education stipend shall be considered as employees and accrue vacation, sick leave, and other benefits while in student status.
 - (f) The stipend awarded to employees selected for the College Degree Program will be fifty percent (50%) of their annual full-time base rate.

- (5) *Administration.* Obligations assumed by Employees Receiving System-Sponsored College Degrees.
- (a) Employees who receive financial assistance from the University to complete either undergraduate or graduate degrees will be obligated to fulfill such terms and conditions as promulgated by the President or designate. Reimbursement will be for tuition and mandatory fees only.
 - (b) An agreement to return to the University as an employee upon graduation and attainment of the degree and to remain in employment of The University of Texas System for a period of time subsequent to graduation that is proportionate either to the period of time the employee has received financial assistance to attend college or university, or to the amount of financial assistance received (normally, two years of employment for each calendar year of college attendance under this program).
 - (c) An agreement to repay in a lump-sum, or such alternate arrangement as the President or designee of the University may prescribe, the amount of money paid by the University for the cost of such college education if the individual for any reason, except circumstances beyond the individual's control, fails to complete the training or otherwise defaults in any provision of the agreement between the University and the individual.
 - (d) In order to receive reimbursement, the selected employee must present to the President or designee original receipts for payment for all tuition and required fee charges and grade sheets showing successful completion of course work. Successful completion is defined as receiving a grade of "C" or better in an undergraduate course, or a "B" or better in a graduate course. Requests for reimbursement must be made within a time frame set by the employing component institution.
 - (e) Reimbursement for private college or university education costs will not exceed the cost of compensable courses charged by the nearest state-supported institution of higher education.

B. Human Resources Development (In-Service Training and Education Program).

- (1) *Definition.* This training and education program offers job oriented training provided essentially within The University of Texas System. It may include on-the-job training, training in preparation for job assignment, and continuing training programs that are basically job oriented. This program

is for selected individual staff members and will be provided on the basis of need and to the extent funds are available.

(2) *Objectives.* This type of training is intended to equip an individual to perform a particular task within a particular situation and/or to equip the employee to deal with new technological and legal developments, to develop additional work capabilities, or to increase the employee's level of competence.

(3) *Program Elements.* In-service training and education programs are divided into three principal categories.

(a) Orientation serves the purpose of acquainting the employee to a new job situation. It does not include development of skills for the particular situation.

(b) Basic training for a specific task, including pre-employment training involving job knowledge and/or the development of skills required for a specified task. It also includes training in supervisory and managerial skills.

(c) Advanced in-service training includes the development of a higher level of skill, an increase in job knowledge, and instruction in new concepts and changing aspects of job responsibility.

(4) *Eligibility.* Training will be provided as the individual situation may require. Need for programs will vary according to skills required and the availability of pre-employment training, as well as staffing needs and the availability of skilled applicants. Employees will be identified, selected, trained, and evaluated according to the needs of the employing System component.

(5) *Obligations.* The employee has an obligation to complete successfully the training program and should recognize that the employing component will use this type of training as a continuation of the selection process.

C. Outside (Out-of-Agency) Staff Development Program.

Definition. Out-of-agency staff development is education or training authorized by the University for selected staff members. Such education may consist of workshops, seminars, institutes, training sessions, college courses (with or without academic credit), and other special programs or activities offered either within or outside the state. Out-of-agency staff development must be of a concentrated, precise content and designed to improve the individual's professional or technical knowledge in the performance of present or prospective duties and responsibilities.

(1) *Objective.* The objective of out-of-agency staff development is to improve the efficiency and economy of operations by

- (a) developing well-trained staffs,
 - (b) assisting all employees toward achieving their highest potential usefulness,
 - (c) motivating employees and stimulating a sense of participation and involvement, and
 - (d) ensuring that the State of Texas receives a fair return on its investment in training and education.
- (3) *Program Elements.* This program is generally the type that is relatively short term specific in content and presented outside the employing component. General parameters include
- (a) identifying staff members who need staff development and determining the kind and scope of program each needs;
 - (b) training individuals for current assignments, and developing them for future assignments, as a means for improving the quality and quantity of work done;
 - (c) developing all supervisors to enable them to assume and discharge their primary responsibility for the maximum utilization of personnel, the training of their staff members, and the maintenance of sound employee relations;
 - (d) advising and assisting employees with respect to continuing education and means they can pursue for self enhancement and increasing their usefulness to the State of Texas; and
 - (e) following up on out-of-agency staff development education and training activities to determine whether they have effectively met the needs of the System component.
- (4) *Eligibility.*
- (a) Out-of-agency staff development education and training authorized will be conducted primarily for the benefit of the University.
 - (b) The training and education must be related to the employee's current or proposed duty assignment during the period of the employee's participation.
 - (c) Such training and education must be approved by the President or

delegate, upon recommendation of the head of the employing department or unit.

(5) *Reimbursement.*

- (a) In order to receive reimbursement, the selected employee must present to the President or designee original receipts for payment for all tuition and required fee charges and grade sheets or a certificate of completion showing successful completion of course work. Successful completion is receiving a grade of "C" or better for undergraduate course work, or a "B" or better for graduate work. Requests for reimbursement must be made within a time frame set by the employing component institution.
- (b) Reimbursement for college or university education costs will not exceed the cost of compensable courses charged by the nearest state-supported institution of higher education.

(6) *Obligations.*

- (a) Employees receiving out-of-agency staff development will be obligated to fulfill such terms and conditions as the President may prescribe, compatible with the nature and extent of the training or education.

- (b) Such terms and conditions may include, but not be limited to, the following:

- (i) An agreement to be bound by the rules and regulations contained herein and these policies and procedures as may be established by the Director of Human Resources that are applicable to the employee's particular training or education.

- (ii) An agreement to return to employment with the University upon completion of the training or education.

- (iii) An agreement to remain in employment of the University for a fixed period subsequent to the completion of any training or education. This period would be related to, and commensurate with, the period spent in training or education (normally, two years of employment for each calendar year of training under this program).

- (iv) An agreement to repay in lump-sum, or by alternate arrangement agreed to by the President, the amount of money paid by the University for training and education costs if the individual, for any reason, except circumstances beyond his/her control, fails to complete the training or

otherwise becomes in default of any of the provisions of any agreement between the component and the individual.

D. Internship Training Programs.

- (1) *Definition.* Internship training is intended to connote the type of learning experience that can be obtained only through actual work experience. Internship programs will normally be of longer duration than other types of training mentioned under the headings of staff development and training and education. This training will be provided to selected eligible employees on the basis of need to the employing component and to the extent funds are available.
- (2) *Objectives.* This type of training has broader objectives than other types of training in that it serves not only The University of Texas at Tyler, but also the State of Texas in the following ways:

- (a) Allows System components to observe potential employees while simultaneously enjoying an advantageous recruiting position.
- (b) Facilitates the infusion of new people and new ideas into the information interchange which is continually taking place between state government and the System.
- (c) Allows the state to subsequently gain trained personnel who can carry a heavier workload in a relatively short period.
- (d) Produces a work product, although this is not the justification for any internship program.

(3) *Program Elements.*

- (a) Type I internships are those that are within The University of Texas System for individuals who are not employees of the state and should be initiated only to the extent they can provide a meaningful working role and learning experience.
- (b) Type II internships are for state or System employees. The primary objectives of this type of internship program are for the trainee to gain skills from other agencies that have formal relationships with the employing agency

and to promote the ability of the persons to work with broader situations and to work more competently in multiple levels of government.

(4) *Administration.*

(a) Internship education and training authorized by U. T. Tyler will be conducted primarily for the benefit of The University of Texas.

(b) Type I internships, those within System components, should relate to the educational program of the person serving the internship. This suggests that there will be a constant interchange and evaluation between both the component and the System or supervising agency of the person's educational program. Type I internships should be encouraged only to the extent that the supervising component can provide a meaningful working role and learning experience. No obligatory arrangement is suggested for Type I internships. It should also be kept in mind that internships are not designed primarily to produce a work product. Voluntary internships should comply with the Fair Labor Standards Act to ensure that no employment obligation exists.

(c) Type II internships have the following requirements:

(i) The need for these programs will vary according to the skills required and the availability of pre-employment training within the State of Texas and/or the System.

(ii) The employee has an obligation to successfully complete the training program and should recognize that the State of Texas and/or the System will use this type of training as a continuation of the selection process.

(iii) Employees receiving internship training authorized by the System will be obligated to fulfill such terms and conditions as the Human Resources Director may prescribe, compatible with the nature and extent of the training or education.

(iv) Employees on internship status should be considered as employees of the employing component and should therefore accrue vacation leave, sick leave, and other benefits as they would if they were physically present on the job.

(v) Internship training and education must be approved by the President or his delegate on recommendation of the head of the employment department or unit.

4.30 REDUCTION IN FORCE

The purpose of this policy is to provide guidelines and procedures for implementing a reduction in force that affects classified employees of U.T. Tyler.

It is the policy of U.T. Tyler to implement a reduction in force when necessary because of financial exigency or a bona fide reorganization. The Vice President for Business Affairs, with the approval of the President, shall decide when it is necessary to reduce the work force because of a financial exigency or a bona fide reorganization. The decision shall be based on a report prepared at the direction of the Vice President for Business Affairs or the President.

A. Planning Requirements. Before a reduction in force is proposed, alternatives that may eliminate its need or limit its scope shall be considered. Such alternatives include, but are not limited to, job sharing, temporary leaves of absence without pay, attrition, pay freezes, pay cuts, and demotions.

The goal shall be to identify those functions and positions that can be altered or eliminated with the least effect on the work force and necessary services of the unit.

The head of the affected administrative unit shall decide which functions or positions should be combined or eliminated. In making that decision, existing business conditions, as well as future needs of the administrative unit and U.T. Tyler may be considered.

B. Development of Report. The contents of a report requesting a reduction in force shall include supporting documentation and shall contain the following:

(1)

Factual information that shows the existence of a financial exigency or that a proposed reorganization will result in a more cost effective or efficient administrative unit.

(2) A description of the functions or services supplied by the administrative unit that will be affected by the proposed reduction in force, how those functions or services will be combined, altered or eliminated, and the rationale for the combination, alteration or elimination.

(3)

Identification of those jobs or positions that will be affected.

(4)

Utilization of the criteria in 4.29.C to identify those employees who are to be terminated and an explanation of how and why each person was selected for termination.

C. Terminations. Where a financial exigency or bona fide reorganization results in the need to terminate employees, the head of the administrative unit seeking the reduction shall be responsible for deciding which employees will be terminated. The

criteria to be used for selecting which of the affected employees will be terminated shall include but are not limited to:

- (1) employee qualifications for the jobs remaining after the reduction;
- (2) employee work performance as evidenced by written evaluations or other documentation (seniority will be the determining criteria in those cases where employees are equally qualified); and
- (3) status as a regular, full-time employee will be given preference unless it is in the best interest of U.T. Tyler to employ part-time, temporary or hourly employees for the available positions.

D. Notice.

- (1) Employees who are to be terminated shall be provided with as much advance written notice as possible in order to avoid personal hardship. To the extent possible, notice shall be at least sixty (60) days in advance of the proposed date of termination.

(2) The written notice of termination shall include an explanation of the reasons for the reduction in force, an explanation of why an employee's position is to be eliminated, or why a particular employee has been selected for termination.

E. Grievance Procedures.

- (1) An employee who is to be terminated may appeal that decision to the head of the affected administrative unit within ten (10) working days of receiving notice of termination. The reasons for appealing shall be limited to claims that a financial exigency does not exist, that the reorganization was not bona fide, that a comparison of the employee's qualifications and performance with those of employees who were retained shows that the selection of the employee was arbitrary and without reason, or that the termination decision was made for reasons that are unlawful under state or federal laws or the Constitution.
- (2) The grievance shall be in writing and shall state the facts that support the employee's allegations. The employee shall have the burden of proof with respect to the allegations.

The head of the administrative unit shall respond to the grievance within ten (10) working days of its receipt.

- (3)

- (4) If the employee is not satisfied with the response, he or she may, within five (5) working days of response, appeal in writing to the appropriate Vice President for Business Affairs or the President stating why the appealed response is incorrect. The Vice President for Business Affairs or President shall review the grievance and response and make a decision within thirty (30) days of receipt of the appeal. The decision shall be final. It will be in writing and shall be mailed to the employee.

F. Reemployment. Reemployment procedures for employees terminated pursuant to a reduction in force shall include the following:

- (1) A list of the names of employees terminated because of a reduction in force shall be retained in the Office of Human Resources. The names of the former employees shall remain on the list for a period of six (6) months after the date of termination unless deleted pursuant to (3) below.
- (2) As jobs become available at U.T. Tyler within the same job classification or in classifications requiring similar skills and training, reasonable effort will be made to notify and reemploy qualified former employees on the reemployment list. Effort will be made to notify employees for six (6) months after termination. A notice of open positions for which the former employee may be qualified shall be sent to his or her last known address by registered or certified mail. It shall be the responsibility of the former employee to apply for any position for which he or she feels qualified.
- (3) A reasonable period of time, not to exceed ten (10) working days, shall be provided to allow each former employee who is notified to apply for reemployment. Former employees who are notified and fail to respond within ten (10) working days or reject reemployment opportunity will be removed from the reemployment list. The ten (10) working day application period may be extended for good cause.
- (4) Any former employee will have his or her sick leave balance restored if reemployed by U.T. Tyler within twelve (12) months of the initial lay-off.

G. Nondiscrimination in Termination and Reemployment. All termination and reemployment decisions pursuant to this policy shall be made without regard to race, color, national origin, religion, sex, age, veteran status, or disability of the employee.