

REGENTS' POLICY
PART IV – HUMAN RESOURCES
Chapter 04.09 - Financial Exigency

P04.09.010. Financial Exigency: Controlling Policy.

Notwithstanding any other regents' policy, university regulation or university or campus practice or procedure, if the board determines that a condition of financial exigency exists either in the university generally, or in a major administrative unit or an academic or other unit of a major administrative unit, then the layoff or termination of tenured faculty, non-tenured faculty and other employees before the end of their employment term will be handled in accordance with this financial exigency policy. As used herein, the term "unit" means any identifiable component of the university at any level of its organization that has an annual budget for the operation of such component.

(06-20-97)

P04.09.020. Determination of Financial Exigency.

- A. Financial exigency exists when the board determines that a shortfall in projected revenues for general operations, as compared with projected expenditures over the same period, will have a material adverse effect on the operation of the university generally, or on a major administrative unit or an academic or other unit of a major administrative unit.
- B. In the event of reduced appropriations, declining enrollments, or other actions or events that compel a reduction in the operating budget of the university generally, or in an MAU or an academic or other unit of an MAU, the board may, in the exercise of its educational and fiscal responsibility, decide to reduce the operation of, to modify, or to close one or more MAUs or an academic or other unit of an MAU. Such reductions, modifications, or closures may require the unilateral reduction of salaries; modification of terms of employee appointments, including the duration of appointments, layoffs or terminations of tenured faculty, non-tenured faculty, or other university employees before the end of their employment term. The board will not be required to reallocate resources from one unit to another to avoid a determination of financial exigency in an MAU or an academic or other unit of an MAU. Any action taken by the board and university in response to a financial exigency will be developed with the understanding that the action will be consistent with the basic mission of the university to provide quality education for its students.
- C. Within the limits of the budgetary constraints, the university will make reasonable efforts to ensure that students affected by a financial exigency determination will be allowed to complete their programs at the affected unit or by transfer to another unit of the university.
- D. The determination of the existence and extent of financial exigency affecting the university generally, or any MAU or an academic or other unit of an MAU is the sole responsibility of the board, but the president of the university may request such a determination by the board. When such determination is made, this policy and university

regulation will take precedence and control over those applicable regents' policy, university regulation and other practices and procedures which govern normal operating procedures.

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P04.09.030. Declaration of Financial Exigency.

In the event the board determines that a condition of financial exigency exists either in the university generally, or in an MAU or an academic or other unit of an MAU, it will make a declaration of financial exigency. The declaration of financial exigency will:

- A. contain a statement that a bona fide financial exigency exists and the reasons for the financial exigency;
- B. specify which units of the university are affected and provide an explanation of the appropriateness of the choice;
- C. specify the level of cost reductions judged to be necessary to deal adequately with the financial exigency; and
- D. specify whether services, programs or positions, or a combination thereof, are to be reduced or eliminated in order to produce the necessary cost reductions; if any positions are to be reduced or eliminated, the declaration will describe the efforts taken in the current and prior fiscal years to reduce costs without the reduction or elimination of filled positions.

(06-20-97)

P04.09.040. Priority in Cases of Position Elimination Resulting from Financial Exigency.

- A. In the event of a declaration of financial exigency that calls for the elimination of positions, the order in which employees in an affected unit will be terminated will be as follows:
 - 1. employees on overload or additional assignments, but only to the extent of the overload or additional assignment;
 - 2. part-time employees on temporary appointments;
 - 3. full-time employees on temporary appointments;
 - 4. part-time employees on regular appointments;
 - 5. full-time employees appointed for terms tied to specific events or projects or grant expirations (term appointments), full-time regular employees, and non-tenured faculty; and
 - 6. tenured faculty.

- B. The president or a chancellor designated by the president may depart from the priority order for position elimination resulting from financial exigency specified above if after consultation with the affected units and consideration of the educational mission of the units the financial savings to be realized, the need for continuity, and the qualifications of the remaining employees to perform the necessary tasks, the president or chancellor designated by the president determines that the best interests of the university as a whole so requires.
- C. An exempt employee whose position is eliminated because of financial exigency will be entitled to a minimum of 8 calendar weeks of notice in advance of the cessation of employment.
- D. A nonexempt employee whose position is eliminated because of financial exigency will be entitled to a minimum of 4 calendar weeks of notice in advance of the cessation of employment.

(06-20-97)

P04.09.050. Re-employment After Position Elimination Resulting from Financial Exigency.

Provisions for re-employment of individuals who have been terminated because of position elimination resulting from financial exigency will be established by university regulation.

(06-03-94)

P04.09.060. Grievances Challenging a Financial Exigency Declaration.

- A. A declaration of financial exigency may be the basis of a grievance only if the grievance challenging the declaration of financial exigency is filed within 15 calendar days after the declaration of financial exigency and only on the grounds that one or more of the four statements required to be contained in the declaration of financial exigency is clearly erroneous and that the error materially affects the declaration.
- B. The burden of proof will be on the grievant to prove by a preponderance of the evidence that one or more of the determinations stated in the declaration of financial exigency is clearly erroneous and that the error materially affects the declaration. If the grievant meets this burden, the university will then have the burden of establishing that the weight of the overall evidence nonetheless supports the finding of a bona fide financial exigency.
- C. Notwithstanding the provisions of P04.08 and R04.08, any grievance challenging a declaration of financial exigency will be filed pursuant to the university's grievance procedure, but will be initiated at the Step 3 level as a grievance against the president and will be joined for purposes of the grievance review and final determination with all other grievances challenging the financial exigency declaration.

(05-04-99)

P04.09.070. Grievance Arising from Position Elimination Resulting from Financial Exigency.

- A. Any grievance arising out of the termination of an individual pursuant to position elimination arising from financial exigency, or that may arise relative to the treatment of an individual as a result of position elimination resulting from financial exigency, must be initiated by filing the grievance in the manner provided by P04.08 and R04.08 at the Step 3 level as a grievance against the president within 15 calendar days of the time the employee is notified by the university, or within 15 calendar days from the time the employee knew, or reasonably should have known, whichever occurs first, that the employee's interests may be adversely affected by the proposed position elimination resulting from financial exigency.
- B. Any grievance hearings that result from the filing of grievances under this procedure may be consolidated if deemed appropriate by the hearing officer.
- C. The existence of financial exigency and the designation of the units to which it applies are not subject to review in grievances brought under this policy.

(05-04-99)

UNIVERSITY REGULATION
PART IV - HUMAN RESOURCES
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R04.09.050. Re-employment After Position Elimination Resulting from Financial Exigency.

For a period of three years following position elimination resulting from financial exigency, an employee terminated as a result of position elimination who is not otherwise employed in the university in the same or a comparable position will be offered re-employment in the position previously held should the position be reestablished in the same department or unit from which the employee was terminated.

Where two or more former employees qualify for an offer of re-employment for the same vacancy, priority will be given to the last employee terminated. Notice of an offer of re-employment is considered given when the notice is mailed by certified mail to the employee's last known mailing address, or the notice is received, whichever is earlier. Re-employment rights expire if the employee's written acceptance of the position is not received by the appropriate human resources office within 15 calendar days of the date notice is given. If the offer of re-employment is not accepted, the former employee will receive no further special consideration for re-employment. If the offer of re-employment is accepted, the former employee will receive the following benefits to the extent permitted by applicable laws, policy and regulation:

A. Appointments

An employee who held a continuing appointment on the date of termination by reason of position elimination resulting from financial exigency and who is re-employed in the same position will resume a continuing appointment. An employee who held a tenured appointment on the date of termination by reason of position elimination resulting from financial exigency and who is re-employed in the same position will resume a tenured appointment.

B. Sick Leave

An employee will be credited with the sick leave accruals held by the employee on the date of termination by reason of position elimination resulting from financial exigency.

(02-22-01)