



PERSONNEL COMMITTEE

Wednesday, February 25, 2009

SUBJECT: REQUEST FOR APPROVAL OF REVISIONS TO PERSONNEL REGULATIONS.

PROPOSED COMMITTEE ACTION

Recommend approval of revisions to Personnel regulations: Employee Compensation Plans (5.001), Separations from Employment (5.007), Separation Notice (5.008), Grievance Procedure (5.009), Employee Standards and Disciplinary Procedures (5.012), and University Holidays, Hours of Work and Leave Provisions (5.015).

BACKGROUND INFORMATION

These Florida Atlantic University Personnel regulations were last amended in 2005 and 2006. The proposed amendments reorganize provisions for clarity, update titles, and clarify procedures and employee obligations.

IMPLEMENTATION PLAN/DATE

The regulation will be amended and effective upon approval of the Board of Trustees.

FISCAL IMPLICATIONS

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**FLORIDA ATLANTIC UNIVERSITY
NOTICE OF PROPOSED REGULATION AMENDMENTS**

Date: February 16, 2009

REGULATION TITLE AND NUMBER: Employee Compensation Plans (5.001), Separations from Employment (5.007), Separation Notice (5.008), Grievance Procedure (5.009), Employee Standards and Disciplinary Procedures (5.012), and University Holidays, Hours of Work and Leave Provisions (5.015).

SUMMARY: These Florida Atlantic University personnel regulations were last amended in 2005 and 2006. The current recommended amendments reorganize provisions for clarity, update titles, and clarify procedures and employee obligations.

The Regulation amendments will be implemented upon approval by the FAU Board of Trustees.

FULL TEXT OF THE REGULATIONS: The full text of the proposed regulations is attached below to this Notice. The full text of the existing regulations is posted on FAU's website at www.fau.edu/regulations. In addition, the full text of the proposed regulations and current regulation are available upon request to the Office of the General Counsel at (561) 297-3007 or GeneralCounsel@fau.edu.

AUTHORITY TO AMEND THE REGULATIONS: Article IX of the Florida Constitution and the Board of Governors Regulation Development Procedure dated July 21, 2005.

UNIVERSITY OFFICIAL INITIATING THE REGULATION AMENDMENTS:
Kenneth A. Jessell, Ph.D., Senior Vice President, Finance & Administration

COMMENTS CONCERNING THE PROPOSED REGULATION AMENDMENTS SHOULD BE SUBMITTED WITHIN 14 DAYS OF THE DATE OF THIS NOTICE TO THE CONTACT PERSON IDENTIFIED BELOW. In response, the University may solicit additional written comments, schedule a public hearing, withdraw or modify the proposed regulation amendments in whole or in part after notice, or proceed with adopting the regulation amendments. The comments must identify the regulation(s) on which you are commenting:

THE PERSON TO BE CONTACTED REGARDING THE REGULATION

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Regulation 5.001 Employee Compensation Plans

(1) The University shall administer a compensation plan which will consist of the following:

(a) Executive Service positions are defined as specific designated positions responsible for policy-making at the executive level

(b) Faculty positions are assigned the primary responsibility of teaching, research, or public service activities or for administrative responsibility for functions directly related to the academic mission.

(c) Administrative, Managerial and Professional (AMP) positions are authorized and established positions whose level of job duties meet the criteria for exemption from the Fair Labor Standards Act.

(d) Support Personnel (SP) positions are au

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Regulation 5.007 Separations from Employment

(1) Separations from employment shall be administered consistent with the following provisions:

- (a) Resignation. An employee who resigns from employment shall not have any grievance rights or rights of appeal. Once tendered, a resignation is deemed accepted, and may not be rescinded by the employee without concurrence of the University.
- (b) Abandonment. An employee who is absent without approved leave for three or more consecutive workdays shall be considered to have abandoned the position.
- (c) Notice of Separation. An out of unit Faculty or Administrative, Managerial and Professional employee who receives a ~~Separation~~ Notice of Separation in accordance with Regulation 5.008, and whose notice period has ended, may be separated without further notice.
- (d) Just Cause. The President or designated Vice President or Provost may dismiss an employee for just cause in accordance with Regulation 5.012.
- (e) Layoff. The University may lay off an employee at any time as a result of adverse financial circumstances; reallocation of resources; reorganization of degree or curriculum offerings or requirements; reorganization of academic or administrative structures, programs, or functions; curtailment or abolishment of one or more programs or functions; shortage of work; or a material change of duties. Layoff shall be conducted in accordance with University policy.
- (f) Expiration of Term. The employment of employees holding time limit. Ref 2 108 6908 6.6046 0 12

(e)

~~-2) Probationary; and Temporary and Acting employees.~~ Probationary and Temporary employees may be separated from employment at any time without any requirement of notice or reason and without right of appeal or grievance. Probationary employees who have been employed more than 90 days may be given two weeks advance notice or the

(3) Other Positions. Employees in the following categories may be separated from employment at any time upon 30 days advance notice without right of appeal or grievance:

1. Employees holding acting appointments.
2. Employees holding visiting appointments.

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Regulation 5.008 Notice of Separation ~~Notice~~.

(1) ~~Separation by the University~~ Applicability

(a) A Notice of Separation may only be issued to a regular ~~This Regulation applies to~~ non-tenured or non-permanent status Faculty, and ~~all~~ Administrative, Managerial and Professional employees who are not subject to a collective bargaining agreement.

(b) A Notice of Separation may be issued with or without cause for any reason, and without right of appeal or grievance.

~~Service in pay plans other than those described in (1)(a) above, or with any entity other than Florida Atlantic University, does not count toward length of employment for purposes of this Regulation.~~

~~(c) Employees in the following categories are not covered by this Regulation and are not entitled to the defined separation notice, however employees in the following categories, except those appointed with multi-year contracts, will receive 30 days notice. In addition, service in the following categories does not count toward length of employment for purposes of this Regulation:~~

- ~~1. Employees holding acting or temporary appointments.~~
- ~~2. Employees holding visiting appointments.~~
- ~~3. Employees who are appointed for less than one academic year.~~
- ~~4. Employees who are appointed to multi-year contracts.~~
- ~~5. Employees who are in positions funded through contracts and grants (not overhead funds).~~
- ~~6. Employees who are issued a letter of offer which states, in substance, that their employment will cease on the date indicated and no further notice of cessation of employment is required.~~

(2) ~~Separation~~ Notice Periods

(a) Service in pay plans or positions other than those described above, or with any entity other than Florida Atlantic University, does not count toward length of employment or hiring date for purposes of this Regulation.

(b) Employees issued a Notice of Separation shall receive the following advance notice periods prior to separation ~~Employees covered by this Regulation, who are being notified of separation from the University, shall be given a written notice with the following advance notice periods:~~

1. Employees hired prior to August 29, 2001:
 - ~~a. With two or more years of covered employment:~~ twelve months-

2. Employees hired on or after August 29, 2001, but prior to November 15, 2005:
 - a. ~~In their initial year of covered employment: one month~~
 - b. ~~In their second year of covered employment: three months~~
 - c. ~~With two or more years of covered employment: six months~~
3. Employees hired on or after November 15, 2005:
 - a. In their initial year of covered employment: one month
 - b. In their second year of covered employment: two months
 - c. With two or more years of covered employment: three months

(bc) Employment shall terminate without right of appeal or grievance after cease at the
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Regulation 5.009 Grievance Procedure

(1) GRIEVANCE POLICY STATEMENT

(a) Florida Atlantic University encourages a pro-active, collegial work environment in which employees have the opportunity to discuss and resolve work related concerns with the appropriate supervisor. In those cases where an employee has an unresolved dispute concerning that employee's terms or conditions of employment, the employee may choose to file a grievance. The purpose of this Regulation is to set out a procedure for the investigation and resolution of grievances filed by instructional and research faculty; administrative, managerial and professional staff; and support personnel employees, at Florida Atlantic University who are not subject to the terms of collective bargaining agreements.

(b) Job-related problems should be resolved, whenever possible, before the filing of a grievance. Open communication and informal resolution

the satisfaction of both parties. The Step One Representative shall notify the grievant in writing of the decision.

2. Step Two – If the grievant is not satisfied with the Step One decision, the grievant may request in writing that the grievance proceed to Step Two. This request must be made within 7 days of the date of the Step One decision. The Step Two Representative shall be the appropriate Vice President or Associate Provost or their designee. The Step Two Representative shall schedule a conference, to be held within ~~7~~10 days of the written request, with the grievant, and any other persons believed to be necessary to the equitable settlement of the grievance. The Step Two Representative will endeavor to settle the dispute and will notify the grievant of the Step Two decision in writing within 7 days of the conference. The Step Two decision is final and binding upon the parties.

3. Submit rebuttal evidence.
4. Be represented by counsel.

The President or the President's designee shall issue a decision within 15 days of the conclusion of the hearing, which shall be final and binding.

(d) The employee may submit a written statement to be placed in his/her personnel file at the conclusion of the grievance process and is entitled to all other rights provided by applicable law.

Specific Authority: Article IX of the Florida Constitution, Florida Board of Governors Resolution dated January 7, 2003, 1001.706 FS., 1001.74(5) FS. History—New 7-6-81, Formerly 6C5-5.011, Amended 11-11-87, 11-9-05, 3-15-06, 3-18-09.

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Regulation 5.012 Employee Standards And Disciplinary Procedures

(1) Scope and Authority. This Regulation applies to all instructional and research faculty and administrative, managerial and professional staff, not covered by a collective bargaining agreement; and all support personnel employees.

(a) The authority to discipline employees is vested in the University President. The President has delegated this authority as follows:

1. To the Provost, Vice President or their designee, to whom the employee reports, for suspensions and terminations.
2. To the Dean, Director or higher level immediate supervisor, for all other disciplinary actions.

(2) Standards of Conduct. The following standards are required for all employees. Departure from these standards by an employee will constitute offenses and will result in disciplinary action being taken:

(a) Employees shall respect the rights of others

(b) Employees shall exhibit a level of behavior supporting the mission, purposes and best interests of the University

(c) Employees shall perform assigned duties in an orderly, efficient and effective manner

(d) Employees shall adhere to all University regulations, policies and directives

(3) Disciplinary Procedures. Employees who intentionally act to impair, interfere with, or obstruct the mission, purposes, order, academic atmosphere, operations, processes, and functions of Florida Atlantic University shall be subject to appropriate disciplinary action by University authorities. This includes incompetence in the performance of job duties, and misconduct.

(a) Counseling. Except for offenses which require that immediate disciplinary action be taken, employees will receive counseling and will be given an opportunity to comply with the supervisor's instructions before disciplinary action is taken. Counseling shall be constructive and done with the primary purpose of helping the employee correct a problem.

(b) Just Cause

1. Procedure: Disciplinary action shall be taken only for just cause. The disciplining authority shall review alleged offenses to determine:

a. Notice - Whether the employee knew or should have known that the behavior is not acceptable.

b. Job-related offenses - Whether the offense occurred while the employee was at work or is job-related. If offense occurs while the employee is off duty and away from the job, any disciplinary action taken must be preceded by a decision, supported by facts, that the offense adversely affects the employee's ability to perform assigned duties, or the University's ability to carry out its mission and purposes.

c. Proof of Misconduct – Whether the alleged offense has been investigated objectively and the investigation has established a reasonable belief that the University's standards of conduct have been violated.

d. Past Practice – Whether the proposed discipline is consistent with past treatment of employees who have committed similar offenses.

e. Appropriateness of Discipline – Whether the severity of the proposed discipline is reasonably related to the seriousness of the offense and the employee's past record of work performance, conduct, and discipline.

(c) Types of Disciplinary Action. The following types of disciplinary actions shall be administered in accordance with this Regulation:

1. Reprimand (oral and/or written)
2. Suspension
3. Discharge

(d) Probationary Employees. Probationary employees may be disciplined without a right of appeal and are subject to dismissal for any single offense or for failure to meet required performance levels during the probationary period.

(e) Guidelines for Disciplinary Action.

1. The employee shall be given written notice of any disciplinary action.
2. The notice shall state the reason for the disciplinary action.
3. A copy of the notice shall be retained in the employee's personnel file.

(4) Standards for Disciplinary Action. The appropriate level and severity of disciplinary action, based on progressive discipline and ranging from oral reprimand to termination, shall be determined in each individual case, by following the guidelines of just cause. The following list of unacceptable conduct, further defined as incompetence or misconduct, is in violation of the University's Standards of Conduct, and shall include, but shall not be limited to, the following:

(a) Substandard, incompetent, unprofessional or incomplete performance of any responsibility or assigned duty;

(b) Insubordination- A deliberate and inexcusable refusal or failure to obey a reasonable order given by the supervisor or other authorized University personnel in the performance of their official duties. Such orders may include orders given by authorized University Administrators or University Police to vacate campus premises;

(c) Excessive tardiness, or a pattern of tardiness;

(d) Excessive absences, or a pattern of absences;

(e) Absence without authorization - Failure to obtain approval prior to any absence from work, to notify or call the appropriate supervisor or the supervisor's designee on the first day of an absence or obtaining leave based upon a misrepresentation or falsification. Includes unauthorized absence from the work area;

(f) Loafing - Continued and deliberate idleness during working hours which results in the employee's failure to perform assigned duties;

(g) Sleeping on duty;

(h) Falsification of records - The willful and deliberate misrepresentation, falsification or omission of any fact whether verbal, written, or communicated in some other medium;

(i) Unauthorized use of University property, equipment or personnel;

(j) Improper or careless use or operation of State property or equipment;

(k) Misuse or duplication of any University key;

(l) Unauthorized distribution and solicitation;

(m) Horseplay - Actions which disrupt or have the effect of disrupting the work of the participants or other employees;

(n) Fighting - Any form of violence, or threat of violence to others or against one's self;

(o) Threatening or abusive language;

(p) Illegal possession, sale, distribution or misuse of alcohol, drugs and other controlled substances, including drinking on the job, and/or reporting to work impaired under the influence of alcohol or drugs;

(q) Theft, conversion, misuse, damage or destruction of University property or of the property of members of the University community;

(r) Sabotage - Participation in an act of destruction or attempted destruction of University property or equipment;

(s) Conviction of a crime - The conviction of an employee of a crime, which would adversely affect the employee's ability or availability to perform the duties of the job, or the University's ability to carry out its mission;

(t) Violation of safety practices;

(v) Providing false information to University officials, withholding requested and/or required information, or the misuse of University documents:;

(w) Prohibited Harassment - As defined by law, University Regulation or Policy:;

(x) Conduct unbecoming a public employee - Conduct, whether on or off the job, which adversely affects the employee's ability to continue to perform his assigned duties, or the University's ability to carry out its assigned mission:;

(y) Abuse of position or unauthorized use of department identification:;

(z) Divulging confidential information or unauthorized release of records:;

(aa) Interference with the freedom of movement of any member or guest of the University:;

(bb) Interference with the rights of others to carry out their activities or duties at or on behalf of the University:;

(cc) Interference with academic fr

(nn) Repeated carelessness in, omission of, or inattention to, the performance of assigned duties and responsibilities;

(oo) Violation of State or Federal law or University Regulations or Policies; and

(pp) Violation of University Police General Orders.

(5) Suspensions and Terminations

~~(a)~~ The appointment of an employee may be suspended or terminated for cause. Employees shall be given written notice of the suspension or termination by the President, Provost, Senior Vice President or the Vice President to whom the employee reports. -The notice shall state the reason for the suspension or termination. During the period following notice, the employee may be reassigned at the discretion of the President, Provost, Senior Vice President or Vice President to whom the employee reports or be placed on Administrative Leave with Pay.

(6) Administrative Leave pending investigation. The President or Vice President for Finance or designee may immediately suspend an employee from the performance of duties with or without pay when the employee is under investigation by the University for violation of the University's Standards of Conduct, or when the President, Provost, Senior Vice President or Vice President to whom the employee reports has reason to believe that the employee's presence on the job would adversely affect the functioning of the employee's office or the University, or jeopardize the safety or welfare of other employees, colleagues, or students. Administrative Leave may be with or without pay, pending final administrative action. Within two work days, excluding weekends and official holidays, the President or Vice President for Finance shall serve written notice upon the employee including a statement of the reasons for any action taken. If the employee has been placed on Administrative Leave without pay and ultimately prevails in the grievance procedure, the employee shall be reinstated with back pay.

(7) Notification. Notices given under this Regulation shall be hand-delivered or sent "return receipt requested" to the employee's address of record with the University. It is the duty of employees to keep current their address of record by notification to the University's Department of ~~Personnel Services~~Human Resources.

(8) This Regulation shall apply to acts conducted on or off campus when relevant to the orderly conduct, processes and functions of the University.

Specific Authority: Article IX of the Florida Constitution, Florida Board of Governors Resolution dated January 7, 2003, 1001.706 FS., 1001.74(5) FS., History— New 6-7-88, Formerly 6C5-5.014; Amended 11-9-05, 3-15-06, 3-18-09.

PROPOSED

Florida Atlantic University

Regulation 5.015 ~~University Holidays, Hours of Work and Leave Provisions~~ Personnel Policies

The University President has the authority to establish and set human resources and personnel policies, including but not limited to, holiday schedules, hours of work and all policies regarding the accrual and usage of leave with pay.

Specific Authority Resolution of Florida Board of Governors dated January 7, 2003, Florida Statutes, 1001.706, 1001.74(5). History—New 11-9-05, Amended 3-18-09.