



POLICY TITLE	Bona Fide Financial Exigency and Human Resources Reduction	Policy Number	373
Section	Human Resources	Approval Date	June 18, 1992
Subsection	Disciplinary Sanctions and Terminations	Effective Date	June 18, 1992
Responsible Office	Office of Vice President of Planning, Budget, and Human Resources		

1.0 PURPOSE

2.0 REFERENCES

2.1 Utah Board of Regents Policy R482 *Bona Fide Financial Exigency and Personnel Reduction*, Section 3.11

2.2 Policy 635 *Faculty Rights and Professional Responsibilities*

2.3 Policy 637 *Faculty Grievance*

2.4 Policy 648 *Faculty Personnel Reduction (Interim Policy)*

3.0 DEFINITIONS

4.0 POLICY

4.1 General

4.1.1 In order for the University to carry out its responsibilities it may become necessary for the University to curtail, modify, or eliminate units, subunits, departments, programs, courses, or functions due to unfavorable economic conditions. Faculty and staff may be laid off or reduced in status as a result of financial exigency. "Layoff" as used in this policy is interpreted as a "temporary reduction in force," with "callback" occurring when the bona fide financial exigency and personnel reduction moderates or no longer exists. Layoff is not to be construed as dismissal or termination. Within each department or discipline, callbacks for faculty shall be offered to tenured faculty first.



4.2 Alternative Actions in a Financial Situation Less than a Financial Exigency

4.2.1 In the event the University is faced with a financial situation that is less severe than a financial exigency, university policy and procedures should facilitate the implementation of various alternative approaches available to the University to deal with the situation. Such policy and procedures shall include substantive participation of the Faculty Senate and the Professional Association of Campus Employees (PACE). In considering the alternatives and their application, first priority shall be given to the maintenance of the educational and academic programs central to the mission of the University. These alternatives include, but are not limited to:

- 1) Restrictions on student enrollment.
- 2) Voluntary action including retirement, partial retirement, early retirement, resignation, extended sabbatical leave, severance pay, or reduction in FTE.
- 3) Not filling existing faculty and staff vacancies or vacancies resulting from resignation, retirement, or death.
- 4) Reduction in nonacademic programs, units, and support services to the extent necessary and feasible without significantly impairing the University's ability to pursue its basic educational purposes.
- 5) Elimination of university positions occupied by teaching assistants/fellows, and other adjunct faculty.
- 6) Elimination of non-tenured faculty positions.
- 7) Bona fide program or unit discontinuance pursuant to Policy 648 *Faculty Personnel Reduction (Interim Policy)*.

4.2.2 This list is not intended to be in any order of priority since it is recognized that the University, when faced with a difficult financial situation, would be engaged in an iterative process to identify possible cost reduction measures, and that units and programs within the University would also have particular needs and preferences which vary over time.

4.3 Declaration and Definition of Financial Exigency

4.3.1 The Board of Regents (Board) may declare a bona fide financial exigency at the University. A bona fide financial exigency is an existing or imminent financial crisis which, if uncorrected, would threaten the survival of the University as a whole and which could not be alleviated reasonably by less drastic means. "Survival of the University as a whole" is expressly defined for purposes of this policy as the availability of adequate appropriated funds to enable the University to substantially fulfill its mission as approved by the Board.



4.4 Procedures for Declaration of Financial Exigency

4.4.1 The Board will consult with the president prior to a declaration by the Board of a financial exigency at the University. The President, with approval of the Board of Trustees (Trustees) and based on the substantive consultations with Faculty Senate and PACE, shall provide the Board with an analysis of the circumstances that may support or oppose the declaration of financial exigency, including a review of reasonable alternatives to such a declaration by the Board. The President shall attach to the analysis available information and recommendations from faculty and other campus groups regarding the declaration of financial exigency. When declaring financial exigency, the Board will take action by written resolution setting forth the basis for its decision, after notice and hearing, at a meeting of the Board.

4.5 Plan for Personnel Reductions

4.5.1 After a declaration of financial exigency, if the President, in the course of the continuing iterative process described in section 4.4 of this policy, determines that personnel reductions are called for, he or she shall prepare and, with approval of the Trustees, recommend to the Board a plan for personnel reductions. When developing this plan, the President shall consult with Faculty Senate, PACE, and the Attorney General's Office. The plan shall include discussion of the necessity and procedures for personnel reductions, the appropriate organizational units or subunits within the University identified for personnel reductions, and the criteria for identifying the faculty and staff members who are to be laid off. Before any layoffs become effective, the Board must first approve the University's plan for personnel reductions.

4.6 Personnel Reductions

4.6.1 Personnel reductions shall be done equitably, in good faith, and in a systematic manner directly related to the financial exigency.

4.7 Personnel Reduction Criteria

4.7.1 In making any personnel reduction recommendation to the Board, the first priority of the President shall be the maintenance of the academic and educational programs central to the mission of the University. Of high priority shall be the preservation of the quality and effectiveness of all essential non-instructional, maintenance, administrative or support functions of the institution. Highest consideration will be given to retaining faculty or staff whose lack of retention would result in a serious distortion of a specific program or function, as determined by the institution under its procedures developed pursuant to section 4.6 of this policy. The integrity of the tenure system for faculty will be respected, and appointment of a faculty member with tenure will not be terminated in favor of retaining a faculty member without tenure except in extraordinary circumstances where a serious distortion of the academic program would otherwise result. Criteria which should be considered in these determinations include, but are not limited



to, tenure, length of service, quality and essentiality of service and work, field of specialization, maintenance of necessary programs or services, and maintenance of affirmative action programs.

4.7.1.1 New Faculty Appointments When Tenured Faculty are Dismissed

4.7.1.1.1 The University will not lay off tenured faculty members from a program and at the same time make new faculty appointments to other positions in that program except where a serious distortion in the academic program of the institution would otherwise result.

4.7.1.2 Serious Distortion

4.7.1.2.1 The finding of serious distortion is to be based upon procedures and criteria developed by the President in consultation with, and with the concurrence of, Faculty Senate and PACE, and approved by the Board. A finding of serious distortion in conjunction with the non-retention of a tenured faculty member will not require a finding of any deficiency in the faculty member's performance.

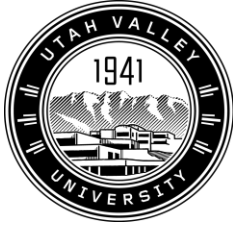
4.8 Notice of Layoff

4.8.1 Within the time frame provided in section 3.11 of the Board of Regents Policy R482 *Bona Fide Financial Exigency and Personnel Reduction*, the faculty and staff who are affected by a personnel reduction will be given written notice of such action. The notice will be delivered personally or by certified mail, with return receipt request.

4.9 Form of Notice

4.9.1 The notice must include the following:

- 1) The effective date of layoff;
- 2) A statement of the reasons for the Board's action to declare a financial exigency;
- 3) A statement that clearly indicates that separation is not due to the job performance of the employee;
- 4) The basis, the procedures, and the criteria used to lay off faculty and staff, including a copy of the University's plan for personnel reduction prepared pursuant to section 4.4 of this policy;
- 5) A disclosure of the information and data upon which the decision was made, including access to appropriate documentation upon request;
- 6) A statement notifying the affected faculty or staff member of the appeal procedures contained in section 4.11 of this policy; and



7) The reinstatement rights of the faculty and staff.

4.10 Time of Notice

4.10.1 The University shall make every effort to give as much notice as is practical in light of the financial exigency to each affected faculty and staff member in advance of the effective date of the layoff. The legislative appropriation process and the subsequent analysis needed before the Board declares a condition of financial exigency and receives, considers, and approves implementation of the program for personnel reduction may allow little time for official notice of layoff. The granting of adequate notice, and where possible, the full notice provided by institution policy pursuant to Policy 648 *Faculty Personnel Reduction (Interim Policy)*, should be afforded high priority by the institution. In any case, the following minimum written notice of layoff is required:

- 1) To tenured faculty members a notice of layoff not less than six months before the effective date of the layoff.
- 2) To non-tenured faculty members not less than 60 calendar days before the effective date of the layoff.
- 3) The University may provide for payments in lieu of notice.

4.11 Reassignment

4.11.1 At the time it is preparing and implementing a plan for personnel reduction, the University shall make a good faith effort to reassign any faculty or staff member to be laid off to an existing vacant position within the University for which the faculty or staff member is qualified. The reassignment of faculty and staff, including decisions regarding tenure, salary, and other rights in the new assignment, shall be negotiated with the participation of the faculty and staff of the program or area to which the proposed reassignment is to be made. Reassigned faculty with tenure carry that tenure to the new program.

4.12 Appeal Rights

4.12.1 Unless otherwise required by law or regulation, the University's grievance procedure (Policy 156 *Grievances*) shall not delay the effective date of the layoff. University procedure shall provide for an internal appeals process.

4.12.2 Notice of appeal—An affected faculty or staff member may appeal the layoff decision by filing a written notice of appeal with the President within 20 days of receipt of the notice of layoff. At his or her sole discretion, the President may designate an individual or a committee chosen at the President's direction to act as his or her designee.

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4.12.3 The notice of appeal should contain a concise statement of the grounds for appeal.

4.12.4 Standard of review—An affected faculty or staff member may contest a layoff only for:

- 1) Violation of his or her academic freedom or constitutional rights, or
- 2) Failure to comply with this policy, with related university policy, or with the plan for personnel reduction approved by the Board.

4.12.5 Because the procedures for the declaration of financial exigency contained herein require the demonstration of the need for such declaration after substantive consultations, notice, and hearing, the decision of the Board to declare financial exigency is not subject to contest by faculty or staff in any grievance or appeal procedure within the institution or before the Board. Likewise, once approved by the Board, the University's plan for personnel reduction is not subject to contest by faculty or staff in any grievance or appeal procedure within the University or before the Board.

4.12.6 The President or the President's designee shall arrange a meeting with the affected faculty or staff member not less than 30 nor more than 45 days after receipt of the notice of appeal, or at such other time as may be mutually agreed upon between the faculty or staff member and the President or President's designee. The faculty or staff member may be accompanied by a representative of his or her choice.

4.12.7 Prior to meeting with the President or President's designee, the faculty or staff member shall submit any documentation, data, or other information which he or she wishes the President or President's designee to consider as a basis for the appeal.

4.12.8 In reaching a decision on the appeal, the President or President's designee shall consult with the affected faculty or staff member as required in section 4.10 of this policy. The President or President's designee may also conduct an investigation into the allegations raised by the faculty or staff member which may include consulting with any individual who has relevant information to the inquiry.

4.12.9 Within 30 days of meeting with the affected faculty or staff member, the President or President's designee shall issue a written decision to the faculty or staff member which provides an explanation for the decision and details the documentation, data, and any other source of information relied on in reaching his or her decision. The President or President's designee may:

- 1) Affirm the recommendation to lay off a faculty or staff member;
- 2) Overturn the decision to lay off the faculty or staff member; or



3) Remand the matter to the appropriate body for reconsideration or further investigation.

4.12.10 The decision of the President or President's designee is final unless the Trustees choose, at their sole discretion, to review a final decision. An appeal to the Trustees shall be requested within 15 days of receipt of written notice of the decision to be appealed.

4.12.11 Unless otherwise required by law or regulation, the appeal procedure contained herein shall not delay the effective date of the layoff.

4.13 Reinstatement Rights

4.13.1 *For tenured faculty*—In cases of layoff of tenured faculty members, the position concerned may not be filled by replacement within a period of three years from the effective date of the layoff unless the tenured faculty member has been offered a return to employment in that position and has not accepted the offer within 30 calendar days after the offer was extended.

4.13.2 *For non-tenured faculty and non-faculty employees*—In case of a position from which a non-tenured faculty member or any other salaried employee has been laid off, the position concerned may not be filled by replacement within a period of one year from the effective date of the layoff unless that position has been offered to the person laid off from that position, and the offer has not been accepted within 30 calendar days after the offer was extended.

A faculty member who has been laid off and who accepts reinstatement in the same position shall resume the rank and tenure status held at the time of layoff, be credited with any sick leave accrued prior to the date of layoff, and be paid a salary commensurate with the rank and length of previous service.

4.13.3 A non-faculty employee who has been laid off and who accepts reinstatement in the same position shall be credited with any sick leave the employee had accrued prior to the date of layoff, paid a salary commensurate with the length of previous service, and credited with any annual leave which the employee had accrued prior to the date of layoff and for which the employee has not received payment.

5.0 PROCEDURES

POLICY HISTORY		
June 18, 1992	Approved for Policy Manual	
June 22, 2017	<i>Nonsubstantive change:</i> In section 2.0, updated title of Policy 637 from "Faculty Grievance" to Faculty Tenure"	Policy Office