



# FERRIS STATE UNIVERSITY

## HUMAN RESOURCES

### HR Related Policies & Procedures

Effective Date: October 22, 2004

FSU-HRPP 2005:09

## Termination Appeal Procedure

### COVERED EMPLOYEES

- Full-Time Administrative
- Full-Time Support

### [Board of Trustees Employee Definitions](#)

Note: Policy/benefits for bargaining unit employees is determined by the terms and agreements of a [collective bargaining agreement](#) (CBA). Please refer to the specific CBA for details.

### BOT POLICY

#### **Sec. 6-111. Summary of the Termination Appeal Procedure.**

(1) A termination appeal procedure has been established as a means to resolve certain complaints regarding termination of employment.

The Termination Appeal Procedure provides a method by which a covered employee can have his or her termination from employment reviewed by a neutral person not involved in the decision-making process.

### HR PROCEDURES/DESCRIPTION/DEFINITIONS

#### **I. Purpose and Scope**

The Termination Appeal Procedure has been established to provide an exclusive, final and binding method for eligible employees who are terminated to resolve all claims, controversies or complaints arising out of or relating to the employee's complaints based in whole or in part on the personnel policies or on federal, state or local law, whether statutory or common law.

The intent of the Termination Appeal Procedure is to ensure that no administrative employee, coach or hall director forfeits the right to notice or pay in lieu of notice without just cause. It is also intended to ensure that the employment of a non-probationary support employee is not terminated without just cause or business or economic reasons. It is also intended to ensure that a covered employee is not terminated for a discriminatory or otherwise unlawful reason.

## II. Definitions

- A. EMPLOYEE - An administrative, coaching, hall director, or support employee who:
1. Is eligible to utilize the Termination Appeal Procedure pursuant to the Personnel Policies 6-110 and;
  2. Has a complaint about his/her termination from employment or entitlement to notice.
- B. TERMINATION - Involuntary and permanent separation from employment by the University and shall include any actual dismissal or forced resignation, discharge, firing or release.

## III. Steps

Step 1: Internal Review. The first step in the Termination Appeal Procedure is a review by the President or the President's designee of the decision to terminate. An employee who desires to challenge the termination must submit a request for review of the termination to the President or the President's designee by completing Part 1 of the Termination Appeal Form provided by the University. Part 1 of the Termination Appeal Form must be fully completed and signed and must state every reason why the employee contests the termination and must specify the relief sought by the employee. The Termination Appeal Form must be delivered to the President or President's designee or must be sent certified mail and postmarked within fourteen (14) calendar days of the date the employee received written notification of termination unless mutually extended. The Termination Appeal Form may be obtained from the Office of Human Resources.

The President, or the President's designee, will investigate the circumstances surrounding the termination and may meet with the employee, if it is deemed necessary, to discuss and/or attempt to resolve the employee's complaint. After investigating, the President or the President's designee will answer the employee's complaint on Part 2 of the Termination Appeal Form. The answer will be personally delivered or postmarked no later than fourteen (14) calendar days after the receipt of Part 1 of the Termination Appeal Form. If mailed, the answer will be sent by certified mail, return receipt requested, to the address designated by the employee on the Termination Appeal Form.

If the employee does not receive a timely written answer from the President, or the President's designee, the relief sought by the employee shall be deemed to have been denied. In that event, or if the employee is not satisfied with the results of the review of the President, the employee may elect to arbitrate the termination.

Step 2: Arbitration. The second and final step in the Termination Appeal Procedure is arbitration. The employee must give written notice to Governmental Relations and General Counsel of the employee's election to arbitrate the termination by completing and signing Part 3 of the Termination Appeal Form. Part 3 of the Termination Appeal Form must be delivered to the Office of the General Counsel or must be sent certified mail and postmarked no later than fourteen (14) calendar days after the postmark date of the response from the President or the President's designee, or if the employee receives no response from the President, then 28 calendar days after the date the employee mailed or personally delivered Part 1 of the Termination Appeal Form.

Upon receipt of a timely notice of the election to arbitrate, the University and the employee shall submit the case to arbitration in accordance with and subject to the following:

#### Selection of Arbitrators

- A. Governmental Relations and General Counsel will promptly deliver or mail a list of names of arbitrators to the employee. In all cases the list will contain the names of at least five (5) experienced arbitrators who are members of the American Arbitration Association. Upon receipt of the list of arbitrators the employee shall contact Governmental Relations and General Counsel and schedule a Pre-Arbitration Meeting.
- B. At the Pre-Arbitration Meeting the employee shall select an arbitrator from the list of five (5) arbitrators provided by the University or the parties may mutually agree to an arbitrator not included on the list. The parties shall also:
  1. Exchange a list of witnesses to be called at the Arbitration Hearing.
  2. Exchange a summary of the evidence to be presented at the Arbitration Hearing.
  3. Stipulate to the facts and/or issues whenever possible. Stipulations shall be in writing and signed by both parties.
  4. The University shall supply to the employee a copy of the employee's personnel file if requested.
  5. Witnesses and evidence not disclosed at the Pre-Arbitration Meeting shall not be presented at the Arbitration Hearing unless the parties stipulate otherwise. Such stipulation shall be in writing and signed by both parties.

#### **IV. Standards to be Applied by the Arbitrator**

- A. Once an arbitrator has been chosen, the case shall be arbitrated in accordance with the Voluntary Labor Arbitration Rules of the American Arbitration Association, except as herein modified.

B. Termination for Cause - THE PERSONNEL POLICY 6-110 STATES WHICH EMPLOYEES ARE ENTITLED TO UTILIZE THE TERMINATION APPEAL PROCEDURE WHEN TERMINATED BY THE UNIVERSITY FOR CAUSE.

1. The jurisdiction of the arbitrator shall be limited to complaints protesting termination from employment. The arbitrator shall determine whether the termination was lawful under applicable federal, state and local statutory and common law and shall determine whether the University had cause for termination as defined in the University Administrative Personnel Policy. The arbitrator must consider and rule on every issue which was specified on the Termination Appeal Form or which was presented at the pre-arbitration meeting and which was not resolved prior to arbitration.
2. In reaching a decision, the arbitrator shall interpret, apply and be bound by any applicable University handbooks, rules, policies and procedures and by any applicable federal, state and/or local law. The arbitrator shall have no authority, however, to add to, detract from, change, amend or modify any law, handbook, rules, policy or procedure in any respect. Nor shall the arbitrator have authority to consider or decide any matters which are the sole responsibility of the University in the management and conduct of its business.

c. Termination for Business or Economic Reasons – THE PERSONNEL POLICY 6-110 STATES WHICH EMPLOYEES ARE ENTITLED TO UTILIZE THE TERMINATION APPEAL PROCEDURE WHEN TERMINATED BY THE UNIVERSITY FOR BUSINESS OR ECONOMIC REASONS.

Where the University asserts that the termination from employment was for business or economic reasons, the arbitrator's authority is limited to determining whether the University's decision was in good faith and in accordance with paragraph 1 and paragraph 2 below:

1. Termination from employment for business or economic reasons includes, but is not limited to, termination resulting from economic conditions, technological developments, operational changes, reorganization, elimination or transfer of operations or jobs, reductions in hours or changes in job qualifications. In all such cases, the University will determine what work is available and how many employees in each classification and department are needed to do that work. Decisions concerning those matters are not subject to challenge or review through this procedure except as indicated in the following paragraph.
2. Challenges to terminate employment for business or economic reasons are limited to issues of whether the University's selection of specific employees for such terminations is in violation of applicable procedures and criteria.

## V. **Form of Award**

The arbitrator shall submit to the parties a written award signed by the arbitrator. When money is awarded to either party, the award shall specify the elements of and basis for any monetary award. The award shall be accompanied by a written opinion signed by the arbitrator which shall include findings of the fact and, where appropriate, conclusions of law.

## VI. **Relief**

- A. If the arbitrator finds that the employee violated any lawful rule, policy or procedure established by the University as just cause for termination, and finds that the employee was terminated for that violation, the employee's termination must be upheld and the arbitrator shall have no power to reduce the termination to some lesser disciplinary action.
- B. If the arbitrator finds that the employee was unlawfully or unjustly terminated, the arbitrator may grant any remedy or relief that a court of competent jurisdiction could grant. However, in no event shall the arbitrator award relief greater than that sought by the employee.
- C. If the arbitrator finds that the employee was unlawfully or unjustly terminated and finds that reinstatement would be appropriate under the circumstances, the arbitrator shall order the University to offer the employee's reinstatement to a position comparable to the one previously held by the employee. If reinstatement is inappropriate, the arbitrator may award such monetary relief as could be awarded by a court of competent jurisdiction.
- D. In any award of back pay, the arbitrator shall deduct any lawful offsets for the employee's interim earnings, or any other sums paid in lieu of employment during the period after discharge, and for any amount attributable to proven failure by the employee to mitigate the damages.
- E. If the arbitrator finds the employee's claim is specious or frivolous, the arbitrator may award costs to the University.

## VII. **Costs**

Except as provided above, the arbitrator's fees and expenses shall be borne fully by the University, except that fees incurred as a result of any postponement shall be borne by the party causing the postponement of the hearing.

## VIII. **Transcript of Proceedings**

Either party may request that a transcript be made of the arbitration proceedings. The party requesting the transcript shall bear the full cost of the transcript, unless the other party also requests a copy of the transcript, in which event the parties shall divide the cost equally.

**IX. Witnesses**

An employee who is called as a witness shall not suffer loss of pay for the time spent in the arbitration hearing when the hearing is held during the employee's regular work schedule. The expense of any non-employee witnesses shall be borne by the party calling the witness.

**X. Representation**

Either party may be represented by an attorney or other representative at any step in the Termination Appeal Procedure.

**XI. Attorney's Fees**

Neither party shall be liable for the payment of expenses or fees charged to the other party by any attorney or other representative who assists the party or participates in any way in the Termination Appeal Procedure, except as may be appropriately awarded by the arbitrator under Article VI of the this procedure and/or applicable federal, state or local law.

**XII. Discovery**

The arbitrator may authorize discovery consistent with both the need to provide a full and fair consideration of the relevant and material facts of the case and the need to provide a relatively inexpensive and expeditious method to resolve the parties' dispute.

**XIII. Time Limits**

The time limits contained herein may be extended only by the mutual written agreement of the parties. Failure of the employee to meet the time limits, or agreed upon extensions, for filing a request for review, electing arbitration or meeting to choose an arbitrator, shall be deemed to be a binding agreement by the employee to settle all the employee's claims in accordance with the latest decision of the University and shall constitute a failure to exhaust the Termination Appeal Procedure. All time limits specified are calendar days.

**XIV. Exclusive Remedy, Effect of Arbitration and Condition Precedent**

The Termination Appeal Procedure is intended to be the sole and exclusive remedy and forum for all claims arising out of or relating to an employee's termination from employment. The decision and award of the arbitrator is intended to be final and binding between the parties as to all claims arising out of or relating to an employee's termination from employment which were or could have been raised at any step in the Termination Appeal Procedure. The arbitrator's decision shall be enforced and governed by the Uniform Arbitration Act, adopted in Michigan as MCL Section 600.5001.

If necessary, judgment upon the award rendered by the arbitrator in accordance with the process specified herein may be entered in the Mecosta County Circuit Court.

In the event a court of competent jurisdiction should determine that the Termination Appeal Procedure is not the sole and exclusive remedy and forum for some or all of an

employee's claims and/or that the decision and award of the arbitrator, if any, is not final and binding between the parties as to some or all of the employees claims, it is intended that exhaustion of the Termination Appeal Procedure be a condition precedent to the institution or maintenance of any legal, equitable, administrative, or other formal proceeding by an employee for all claims arising out of or relating to the employee's termination from employment.

## **RESPONSIBILITY**

Employee: Timely follow procedures as outlined, cooperate with the process.

President (or designee): Review appeal and respond appropriately.

Governmental Relations and General Counsel: Facilitate arbitration process.

Refer Questions To: *Human Resources or Governmental Relations and General Counsel*



**B. AT-WILL EMPLOYEES ONLY**

Do you believe you were terminated in violation of the University Personnel Policy regarding entitlement to notice/pay?  Yes  No

If yes, please explain in detail why you believe your termination was in violation of the University Personnel Policy regarding entitlement to notice/pay.

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**II. DISCRIMINATION CLAIMS– ALL EMPLOYEES**

A. Do you believe you were discriminated against?  Yes  No

If yes, please explain in detail why you believe you were discriminated against and state the basis for the alleged discrimination (e.g., race, color, national origin, sex, age, religion, marital status, handicap, height, weight, veteran status or other):

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B. Do you believe you were retaliated against?  Yes  No

If yes, please explain in detail why you believe you were retaliated against and identify the activity you believe resulted in retaliation (e.g., filing a claim for workers' disability compensation, making complaints to a federal, state or local agency or other activity):

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III. SETTLEMENT DESIRED

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Employee's signature: \_\_\_\_\_ Date: \_\_\_\_\_

This form must be fully completed and must be sent to the President's Office. It must be received or postmarked no later than fourteen (14) calendar days after the date you received notification of termination. Retain a copy for your file. The results of the President's (or designee's) review will be mailed to you within fourteen (14) days after receipt of part 1 of this form.



**FERRIS STATE UNIVERSITY  
TERMINATION APPEAL – PART 3**

Request for Arbitration Hearing

I do not agree with the results of the President's review of my termination. I request that my case be submitted to arbitration in accordance with the University's Termination Appeal Procedure. I agree to accept the decision and award of the arbitrator as final and binding as to all claims relating to my employment relationship with the University which have been or could have been raised at any step in the Termination Appeal Procedure. I understand that all costs associated with the arbitration will be borne by the University except for the cost of any transcripts, legal fees, witness expenses or hearing postponements on my behalf.

\_\_\_\_\_  
Employee's Signature

\_\_\_\_\_  
Date

IN ORDER TO ELECT ARBITRATION, THIS FORM WITH PART 3 COMPLETED MUST BE SENT TO GOVERNMENTAL RELATIONS AND GENERAL COUNSEL, MCKESSY HOUSE, 120 E. CEDAR STREET, BIG RAPIDS, MI 49307 AND MUST BE RECEIVED OR POSTMARKED NO LATER THAN 14 CALENDAR DAYS AFTER THE RESULTS OF THE PRESIDENT'S REVIEW WERE PERSONALLY DELIVERED OR THE POSTMARK DATE IF MAILED TO YOU. IF NO RESPONSE FROM THE PRESIDENT WAS MADE AT THE FIRST STEP, THEN THIS FORM MUST BE RECEIVED OR POSTMARKED NO LATER THAN TWENTY-EIGHT (28) CALENDAR DAYS AFTER THE DATE THAT PART 1 OF THE TERMINATION APPEAL FORM WAS MAILED OR DELIVERED. RETAIN A COPY FOR YOUR FILE. UPON RECEIPT OF THIS FORM, THE GENERAL COUNSEL'S OFFICE WILL CONTACT YOU TO ARRANGE FOR THE SELECTION OF AN ARBITRATOR.