

B. Governance

Regent Rolph

Act on Request to Amend Board Policies Related to Appointments, Non-Reappointments, and Terminations John Yeary, General Counsel

Summary and Staff Recommendation

Board staff proposes amendments to Board policies related to university staff appointments, non-reappointments and terminations. Principally, these amendments would provide that any notice procedures for non-reappointment for all classes of employees other than tenured or tenure-track faculty members may be determined by the institution’s chief executive officer, subject to the limitation that for such employees hired on or after July 1, 2024, the service end date in any notice of non-reappointment shall not exceed 90 days from the date of the notice of non-reappointment. As proposed, the 90-day limitation would apply on and after July 1, 2025, for each non-tenured and non-tenure-track employee regardless when hired, unless any of four exceptions applies. In addition, the proposed amendments would make several clarifying and other changes described below.

Universities would have until January 1, 2025, to modify their policies and handbook provisions if needed to comply with the amended Board policies. Board staff recommends that the Board approve the amendments.

Background

In accordance with K.S.A. 76-715, the Board has authorized each state university chief executive officer to make all employee appointment decisions at his or her institution. Current Board policy regarding notice procedures for non-reappointment for employees other than tenured or tenure-track faculty does not include a limit on the time between the date of the notice of non-reappointment for such employees and the service end date, and practices and procedures in this area vary by university. Proposed changes were discussed at meetings of Board and university attorneys in April and October of 2023, and a workgroup of some Board and university attorneys met several times since then to further refine the proposed changes.

To promote more uniform practices, the proposed policy amendment would establish a prospective 90-day limitation on this time frame, with certain specified exceptions allowed, including when the university chief executive officer determines a longer period is warranted in an individual circumstance. In addition, the proposed policy amendment would:

- recognize that all previously classified positions at each state university have been converted to unclassified University Support Staff pursuant to K.S.A. 76-715a;
- address the length and status of non-faculty appointments;
- clarify that Board policy does not require that annual appointment notice be provided for any employee;
- clarify that Board policy does not prevent an institution from entering into a contract of employment with an employee, subject to any employment contract approvals as set forth by KBOR policy;
- provide that each appointment of more than one year that is funded with a state appropriation shall be subject, on an annual basis, to appropriations being provided by the Kansas Legislature;
- correct minor grammatical errors;
- provide that employees who are employed at-will may be suspended, dismissed or terminated for any lawful reason; and
- provide that university grievance procedures for use by faculty and staff can be used in appealing proposed employment suspension, termination or dismissal decisions of the institution as opposed to the

more general “employment decisions” provided in current policy, and that no such procedure shall be required for probationary employees, temporary employees, employees who serve at the will or at the pleasure of the appointing authority, or any employee whose specific term of appointment is otherwise specified in their appointment letter.

The draft policy changes are reflected in strikethrough and underline following this document.

Staff Recommendation

Staff recommends that the Board adopt the proposed amendments.

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C CHIEF EXECUTIVE OFFICER, FACULTY AND STAFF

Unless otherwise specifically stated, as used in the following provisions, the term “unclassified staff” does not include those positions that have been converted from classified to unclassified pursuant to K.S.A. 2011 Supp. 76-715a, and amendments thereto (i.e. University Support Staff). The words “benefits-eligible” and “full-time” as used herein shall not include positions or employees who are deemed to be full-time exclusively by virtue of the state of Kansas Health Care Commission’s determination of eligibility for purposes of employer-provided healthcare coverage. The terms “spouse” and “family” shall be defined in accordance with applicable United States Supreme Court holdings.

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2 APPOINTMENTS

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b Faculty and Staff

i General Provisions

(1) In accordance with K.S.A. 76-715, the Board has authorized each state university chief executive officer to make all employee appointment decisions at his or her institution. The chief executive officer may delegate that authority. Each faculty and staff appointment must be approved by the chief executive officer or the chief executive officer’s designee. The Board delegates to each chief executive officer the authority to appoint ~~unclassified~~ employees and to establish salaries for individual ~~unclassified~~ employees within the authorization provided by the Legislature and within any general guidelines issued by the Board.

(2) Provosts, vice presidents or executive vice chancellors, and deans shall serve at the pleasure of the university chief executive officer. Each state university chief executive officer shall designate a chief financial officer for the university, who shall serve at the pleasure of the university chief executive officer. Other university administrative staff positions may be designated as positions that serve at the pleasure of the chief executive officer or at the pleasure of the chief executive officer’s designee: provided, however, that such will and pleasure designation is stated in the administrator’s written ~~annual~~ notice of appointment. The Board shall be notified of the appointment of any provost, vice president, executive vice chancellor, chief financial officer, or other position that reports directly to the university chief executive officer. Such notice shall be given after the appointment occurs and prior to its announcement. The Board shall be notified of the departure of any provost, vice president, executive vice chancellor, chief financial officer, or

other position that reports directly to the university chief executive officer at the time the university chief executive officer becomes aware of the departure or planned departure.

~~(3) The following~~ With the conversion of all previously classified positions at each state university to unclassified University Support Staff pursuant to K.S.A. 76-715a, all employees of a state university shall be unclassified; the Chancellor or President, provosts, vice presidents, executive vice chancellors, deans, all administrative officers, student health service physicians, all teaching and research personnel, health care employees and student employees. Except for those positions that have been converted from classified to unclassified service as a result of a change in duties, or those employees whose positions have been converted from classified to unclassified University Support Staff pursuant to K.S.A. 76-715a, these categories shall not encompass any custodial, clerical, or maintenance employees, or any employees performing duties in connection with the business operations of the institution, except administrative officers and directors.

(4) Each state university may determine the length of each employee appointment. Except as otherwise allowed by Board of Regents policy, non-faculty appointments shall be no longer than annual. Such non-faculty appointments may be designated as at-will or otherwise at the pleasure of the appointing authority, and no annual appointment notice is required for any employee. Nothing in this policy shall prevent an institution from entering into a contract of employment with an employee, subject to any employment contract approvals as set forth by KBOR policy.

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vi Annual and Multiple Year Appointments

~~(1) Except as provided in this section, all appointments of unclassified non-tenure track and non-tenured personnel shall be annual. Every~~ Each appointment of more than one year that is funded with a state appropriation shall be subject, on an annual basis, to appropriations being provided by the Kansas Legislature.

(2) University of Kansas Medical Center Tracks

(a) Clinical Scholar Track:

The University of Kansas Medical Center may employ and appoint personnel with clinical responsibilities to non-tenure track positions as determined to be in the best interest of the Medical Center by the Chancellor. Faculty health care practitioners whose sole practice is in connection with a KU practice plan, and/or a KU-affiliated VA hospital or pediatric provider, may be considered full-time solely for purposes of appointment to the Clinical Scholar Track. Faculty health care providers whose sole medical practice is in connection with a KU physician practice plan and who are appointed by the chief executive officer of the University of Kansas Hospital Authority (“KUHA”) to hold the position of Senior Vice President for Clinical Affairs or Physician in Chief of the KU Cancer Center as part of the Medical Center’s clinical integration with KUHA may be considered full-time solely for purposes of appointment to the Clinical Scholar Track as determined by the Chancellor to be in the best interest of the Medical Center. A component of the clinical appointment may include teaching. Contracts shall be renewable and the lengths shall be: Instructor, one year; Assistant Professor, one to three years; Associate Professor and Professor, three years. ~~Three-year~~ Three-year contracts may be rolling contracts that, unless otherwise specified, annually shall roll over to create a new three-year term. The University may terminate a rolling contract by giving notice, prior to June 30th of any year, that the contract will terminate at the end of the then current contract term. Salary shall be

determined each year by the availability of funds and by merit, which includes, but is not limited to, productivity. Contracts may be terminated by mutual agreement of the faculty member and the University. Prior to the expiration of the appointment, and except as provided above with respect to a rolling contract, the University may only terminate the contract for cause, including loss of clinical privileges or loss of clinical employment with the practice corporation or foundation, or financial exigency.

(b) Clinical Track:

The University of Kansas Medical Center may employ and appoint personnel with primarily clinical responsibilities to part-time or full-time non-tenure track positions as determined to be in the best interest of the Medical Center by the Chancellor. A component of the clinical appointment may include teaching. Initial contracts for appointments on this track shall range from one to ~~three-year~~ three-year terms and shall be renewable. This Clinical Track includes four ranks: Clinical Instructor, Clinical Assistant Professor, Clinical Associate Professor and Clinical Professor. Criteria for promotion in this track are specific to the applicable school within the Medical Center. The University may terminate a contract by giving notice, prior to June 30th of any year that the contract will terminate at the end of the current contract term. Salary shall be determined each year by the availability of funds and by merit, which includes, but is not limited to, productivity. Contracts may be terminated by mutual agreement of the faculty member and the University. Prior to the expiration of the appointment, the University may only terminate the contracts for cause, including loss of clinical privileges or loss of clinical employment with practice corporation or foundation, or financial exigency.

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(d) Research Track

The University of Kansas Medical Center may employ and appoint personnel to a Research Track whose primary effort is dedicated to research. Appointments may be part-time or full-time, non-tenure track positions as determined to be in the best interest of the Medical Center by the Chancellor. Contracts for appointment shall be one-year and are renewable. The Research Track includes four ranks: Research Instructor, Research Assistant Professor, Research Associate Professor and Research Professor. Criteria for promotion in this track are specific to the applicable school within the Medical Center. Salary shall be determined each year jointly by the dean and department head, and shall be consistent with applicable guidelines/limits of the funding organization and/or the specific grant/contract/award. Prior to the expiration of the contract, the University may only terminate the contract pursuant to the written agreement or for cause, including financial exigency or loss of clinical privileges or clinical employment, if any. Contracts may be terminated by mutual agreement of the faculty member and the University.

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(4) Other Non-Tenure Track Faculty Appointments

(a) Each University may employ and appoint qualified personnel to other full-time or part-time, non-tenure track faculty positions as determined by the chief executive officer to be in the best interest of the university. The primary responsibility for persons on these appointments shall be one or more of the following: teaching, clinical service, research, outreach and service, or other creative endeavors in academic departments. Titles and ranks shall be determined by the university.

(b) Initial contracts for such appointments shall not exceed three years, may be renewable but may not be rolling. At the end of each ~~three-year~~ three-year period, the university shall determine whether to renew each individual appointment made pursuant to paragraph (a) of this subsection and, if so, whether for 1, 2 or 3 additional years. Salary shall be determined each year by availability of funds and by merit, which includes, but is not limited to, productivity. Criteria for promotion, if available, shall be determined by the university and set forth in university policy.

(c) Contracts for appointments made pursuant to paragraph (a) of this subsection may be terminated by mutual agreement of the faculty member and the University. Prior to the expiration of the appointment, the university may only terminate the contract for financial exigency or for cause in accordance with Board or university policy, including loss of clinical privileges, if any, or loss of clinical employment with practice corporation or foundation, if any.

(d) For purposes of the multiple year appointments made pursuant to paragraph (a) of this subsection, full-time faculty members may apply for a one-time, one-way transfer between appointment categories (tenure track, non-tenure track). Once a transfer from non-tenure track to tenure track has occurred, the guidelines for earning tenure apply. Time and title in the non-tenure track does not count toward the probationary period to obtain tenure. A request for transfer from a tenure-track to non-tenure-track appointment must be made prior to but no later than September 1 of the penultimate year of the probationary tenure-track appointment. Any such appointments must be made in specific compliance with parameters approved by the Kansas Board of Regents.

~~(e) The Board shall review in 2019 the implementation by and impact on the university campuses of this Other Non-Tenure Track Faculty Appointments policy.~~

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6 SUSPENSIONS, TERMINATIONS AND DISMISSALS

a Felony Offenses

- i Felony Conviction. The chief executive officer of a state university has the authority to discharge any employee, including a tenured faculty member, immediately upon conviction of any felony.
- ii Felony Charge. The chief executive officer of a state university has the authority to discharge or place on leave without pay any employee, including a tenured faculty member, who has been charged with a felony offense. Prior to any such determination, the employee shall be given notice of the proposed action and an opportunity to respond.

b Other

- i Faculty and staff may also be suspended, dismissed or terminated from employment for reasons of significant reduction in or elimination of the funding source supporting the position, program discontinuance, financial exigency, or for just cause related to the performance of or failure to perform the individual's duties or for violation of the reasonable directives, rules and regulations, and laws of the institution, the Board and the State of Kansas or the United States.
- ii Employees who are employed at-will may be suspended, dismissed or terminated for any lawful reason.

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c Grievance Procedure

- i Each state university shall establish and publish grievance procedures for use by faculty and staff in appealing ~~employment decisions~~ suspension, termination or dismissal decisions of the institution. The procedures shall provide the employee with notice of the action to be taken, the reasons for the action where appropriate, and an opportunity to be heard. A copy of all institutional grievance procedures shall be provided to the institution’s general counsel for review prior to becoming effective. No such procedure shall be required for probationary employees, temporary employees, employees who serve at the will or at the pleasure of the appointing authority, or any employee whose specific term of appointment is otherwise specified in their appointment letter.
- ii The decision of the chief executive officer, or the chief executive officer’s designee, concerning any grievance pursuant to paragraph i ~~appealing employment decisions of the university~~ shall be final and is not subject to further administrative review by any officer or committee of the university or by the Board of Regents.

7 NOTICE PROCEDURE FOR NON-REAPPOINTMENT

- a For tenure-track faculty, notice of non-reappointment should be given in writing in accordance with the following standards; such standards shall not be applicable to any administrative assignments held by the tenure-track faculty member.
 - i Not later than March 1 of the first academic year of service, if the appointment expires at the end of that year; or if a one-year appointment terminates during an academic year, at least three months in advance of its termination.
 - ii Not later than December 15 of the second academic year of service, if the appointment expires at the end of that year; or, if an initial two-year appointment terminates during an academic year, at least six months in advance of its termination.
 - iii At least twelve months before the expiration of an appointment after two or more years in the institution.
 - iv These statements shall apply even during periods of declared financial exigency, unless impossible, in which case notice shall be provided as early as feasible.
- b Any notice procedures for non-reappointment for all classes of employees other than tenured or tenure-track faculty members ~~shall~~ may be determined by the institution’s chief executive officer, subject to the following limitations.
 - i For each non-tenured or non-tenure-track employee hired on or after July 1, 2024, the service end date in any notice of non-reappointment shall not exceed 90 days from the date of the notice of non-reappointment.

ii On and after July 1, 2025, for each non-tenured and non-tenure-track employee regardless when hired, the service end date in any notice of non-reappointment shall not exceed 90 days from the date of the notice of non-reappointment unless:

(1) a conflicting applicable Board-approved labor agreement provides for a longer period;

(2) a conflicting applicable Board-approved University Support Staff system of administration plan developed pursuant to K.S.A. 76-715a prior to July 1, 2023 provides for a longer period;

(3) the employee is in a grandfathered class established by a university prior to July 1, 2023, that provided employees in the grandfathered class a longer notice period; or

(4) the university chief executive officer determines a longer period is warranted in an individual circumstance.

iii On or before January 1, 2025, all university policies and handbook provisions containing any notice procedures for non-reappointment for all classes of employees other than tenure-track faculty members shall be brought into compliance with this policy.

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12 COMMITMENT OF TIME, CONFLICT OF INTEREST, CONSULTING AND OTHER EMPLOYMENT

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c Reporting Requirements

i Annual Reporting of Consulting Arrangements, Significant Financial or Managerial Interests, and Outside Employment

~~As part of the annual appointment process,~~ All faculty and unclassified staff shall disclose annually to the university whether they or members of their immediate family (spouse and dependent children), personal household, or associate entities (e.g., corporations, partnerships or trusts in which they have a significant interest) have consulting arrangements, significant financial or managerial interests, or employment in an outside entity. This report and information shall be provided to the university no less than once each year. Each university shall be permitted to use a form of its administration’s own choosing to collect the required information so long as it contains the threshold requirements contained in this policy. The state university may, at its discretion, require its faculty and unclassified staff to submit information in addition to that required by this policy, but in no event shall the reporting faculty and staff be permitted to report less information than is required by this policy.

For purposes of this policy, significant financial or managerial interests (or significant financial or other interests) means all holdings greater than \$5,000 or more than 5% ownership in a company.

Failure to timely submit the required reporting form to the university shall result in denial of the opportunity to submit research proposals to external funding agencies and may result in discipline in accordance with university procedures. When the university determines that the information submitted indicates that an actual or apparent conflict of time commitment or conflict of interest does or may exist, the university may require the faculty or unclassified staff member to submit additional information and explanation regarding that conflict.