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MEMORANDUM

TO: President Pat Gamble *PKG*
Erik Seastedt, Chief Human Resources Officer

FROM: Ardith Lynch *Ardith Lynch*
Associate General Counsel

DATE: October 9, 2014

RE: Staff Alliance Motion 2014-01
Proposed changes to draft employee furlough policy

Staff Alliance has proposed several modifications to the draft language for P04.07.115 on employee furloughs. This memo responds to the concerns raised by Staff Alliance and explains my attached revisions to the proposed policy.

In Subsection A, Staff Alliance proposed to strike "prospective temporary reductions in pay" as a furlough method. In the alternative, they suggest clarification that a temporary reduction in pay would result in a corresponding reduction in employee effort.

In my opinion, instead of striking "prospective temporary reductions in pay," the suggested clarification is likely to be more beneficial to employees who participate in PERS. PERS gives full-time service credit to employees who occupy a permanent position that regularly requires working 30 or more hours a week (for example, .75 FTE for a 12 month employee). However, PERS reduces an employee's service credit when the employee has more than 10 days of unpaid days off, including furlough days, in a calendar year.

Thus, if a 1.0 FTE employee is furloughed for one day per month, their annual pay will be reduced by about 5%, and their PERS service credit for that year will be reduced.¹ However, if a 1.0 FTE employee is reduced to a .95FTE, their annual pay will be reduced by about 5%, and their PERS service credit for that year will **not** be reduced. In either case, the employee's total work hours and annual pay will be reduced (although their hourly pay² will remain the same); the

¹ Although 12 furlough days per year may exceed likely estimates, an employee may also have unpaid days for other reasons, such as sick leave without pay.

² Nonexempt employees will continue to be paid for the hours they actually work each pay period; they will not be paid for furloughed time.

only difference is that the employee will earn full PERS service credit with a “prospective temporary reduction” in their FTE.

In addition, a temporary reduction in pay is the most practicable method of implementing a furlough for exempt (salaried) employees. Under the Fair Labor Standards Act, exempt employees are disqualified from being paid on a salary basis in a workweek in which a furlough occurs and the employee’s pay is reduced. Therefore, the most feasible method of implementing furlough days for exempt employees is to reduce their FTE’s accordingly, resulting in an equal reduction in each week’s salary.

For the above reasons, I suggest that Subsection A be clarified to read “may be subject to furlough via temporary unpaid leaves of absence or via prospective, temporary reductions in pay and equivalent work hours.” The supervisor and employee can determine the most appropriate way to implement a reduced work schedule for employees whose pay and FTE are temporarily reduced. Hourly employees may prefer a consistent reduction in their biweekly pay; for other employees and departments, blocks of time off may be more desirable.

Staff Alliance did not propose modifications to Subsection B.

Staff Alliance requests two changes in Subsection C. The first proposed modification is a restriction that “furlough plans may only be implemented as a measure to prevent a determination of financial exigency.” This modification would limit the University’s ability to respond quickly to budgetary shortfalls which may be short-term. In contrast, financial exigency is a severe financial crisis that requires action by the Board of Regents; a Determination of Financial Exigency by the Board may result in longer-term reduction or elimination of services, programs and positions, with a lasting impact on employees and the public that the university serves.

The proposed restriction would impose a higher standard for furloughs than layoffs. There is no similar restriction for layoffs; the university may lay off employees for a variety of reasons, including a lack of sufficient available funds, after notice is given to employees. Layoffs do not always address short-term budget shortfalls; because layoff notice periods are 4 weeks for nonexempt employees and 6 months for exempt employees, the cost savings from layoff of higher-level employees are not realized immediately. Furlough should be available as a response to budget shortfalls when layoff of individual employees is not effective or desirable. Furloughs do not sever the employment relationship and would have less long-term impact on university programs and employees than layoffs or financial exigency.

Staff Alliance also requested a revision to the last phrase of Subsection C: “and are subject to review only as may be provided in regulations adopted pursuant to this policy.” The term “review” was intended to refer to appeals, not to re-examination of furlough plans; in fact, Subsection B of the proposed policy, which requires that the president approve furlough plans, ensures that furlough plans will be re-examined before they are implemented. Staff Alliance’s concern may be alleviated by replacing the word “review” with “appeal processes.”

A revised draft of the proposed furlough policy incorporating my suggestions is attached.

P04.07.115 Employee Furlough

- A. ~~Effective January 1, 2015,~~ To address budgetary shortfalls in any unit of the university, employees may be subject to furlough via temporary unpaid leaves of absence or via prospective, temporary reductions in pay and equivalent work hours.
- B. Furloughs shall be implemented in accordance with regulations and plans approved by the president pursuant to this policy, provided however that employees shall receive written notice of furlough as provided by regulation.
- C. Furlough plans may be implemented notwithstanding any other regents' policy, university regulation or university or campus practice or procedure and are subject to review-appeal processes only as may be provided in regulations adopted pursuant to this policy.

This policy is effective January 1, 2015.

Revised October 9, 2014

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Staff Alliance

Motion 2014-01 Proposed Changes to Draft Language for P04.07.115 “Employee Furloughs”

Motion:

We, the UA Staff Alliance, move for the draft policy P04.07.115 “Employee Furloughs” to be modified as follows:

P04.07.115 Employee Furlough

A. Effective January 1, 2015, to address budgetary shortfalls in any unit of the university employees may be subject to furlough via temporary unpaid leaves of absence ~~or prospective, temporary reductions in pay.~~

B. Furloughs shall be implemented in accordance with regulations and plans approved by the president pursuant to this policy, provided however that employees shall receive written notice of furlough as provided by regulation.

C. Furlough plans may only be implemented as a measure to prevent a determination of financial exigency notwithstanding any other regents’ policy, university regulation or university or campus practice or procedure and are subject to review ~~only as may be provided in regulations~~ adopted pursuant to this policy.

Rationale:

The Alliance is aware that UA must find ways to reduce costs. However, a temporary reduction in pay is fundamentally different from a mandatory unpaid leave of absence. Therefore, we propose to strike this language in A. If UA is to implement a pay reduction, we should create a separate policy to address that scenario. If the “prospective, temporary reduction in pay” language is preserved in the policy, it should be clarified as follows: “or prospective, temporary reductions in pay with a corresponding and proportionate reduction in employee effort.”

With regard to the additional language in C, we feel that there should be strict limits on implementing a furlough and that it only be considered in a true budget crisis.

With regard to the strike in C., we encourage not only that UA establish a process to review any furlough, we want to ensure that furloughs are always reviewed, and do not want to include barriers to review in the policy.

Voted on August 28, 2014

Voting members' results as attested by LaNora Tolman, Executive Officer, System Governance:

Yes: 8

No: 0

Abstain: 0

Absent: 0

Monique Musick
Monique Musick, Chair

9/29/14
Date

For action by the President of the University of Alaska

Approved: _____ Date: _____

Modified: TR Gambel Date: 10 Oct 14

Disapproved: _____ Date: _____

Comments:

Essentially approves the
Staff motion, but verbiage as
Amended by GC (attached).
Explanation attached as well.
TRG