

SECTION: PERSONNEL

SUBJECT: Non-reappointment or Termination of Faculty and Other Exempt Employees with Term Appointments (not “for cause”)

Background: This policy describes the procedures used when contracts for faculty or exempt staff employees are not renewed.

(Note: Procedures for Dismissals for Cause can be found in Policy 3.117)

Point of Contact: Human Resource Services

Other LCSC offices directly involved with implementation of this policy, or significantly affected by the policy: Offices of the President, Provost and Vice President for Finance & Administration, and Vice President for Student Affairs.

Date of approval by LCSC authority: March 27, 2019

Date of State Board Approval N/A

Date of Most Recent Review: March 2019

Summary of Major Changes incorporated in this revision to the policy: Updated to be consistent with changes in SBOE Policy II.F.5.c. <https://boardofed.idaho.gov/board-policies-rules/board-policies/human-resources-policies-section-ii/policies-regarding-nonclassified-employees-ii-f/> If the CEO is the subject of discrimination prohibited by law, the non-classified employee may petition the Board to review the final action of the institution. Employees also have the right to file a complaint with the EEOC or IHRC.

Please note: Procedures for Dismissals for Cause can be found in Policy 3.117

1. Notice of Nonrenewal of Term Appointment or Contract of Employment

- A. Except as provided in 2.0, the President's decision not to renew the appointment or contract of employment of a non-classified, non-faculty employee having a contract of employment or of a non-tenured faculty member (a “non-renewal”) shall be communicated in writing to the employee in accordance with the following standards:
- B. Non-Classified Contract Employees (“Exempt/Professional Staff” members):
 - 1) Notice of non-renewal must be given in writing to the employee at least 60 days before the end of the existing period of employment for annual appointments. For appointments of less than one year, the written notice must be at least thirty (30) days prior to the end of the existing period of appointment or contract of employment. Reasons for non-renewal need not be stated. Non-renewal without cause is the legal right of the Board. If any reasons for non-renewal are provided

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to the employee for information, it does not convert the non-renewal to dismissal for cause and does not establish or shift any burden of proof. Failure to give timely notice of non-renewal because of mechanical, clerical, mailing, or similar error is not deemed to renew the contract of employment for another full term, but the existing term of employment must be extended to the number of days necessary to allow 60 (or 30 days where applicable) calendar days’ notice to the employee.

- 2) Except as set forth in this paragraph, non-renewal is not grievable within the institution nor is it appealable to the Board. However, if an employee presents bona fide allegations and evidence to the President that the non-renewal of the contract of employment was the result of discrimination prohibited by applicable law, the employee is entitled to use the internal discrimination grievance procedure to test the allegation. If the President is the subject of the allegations, the employee may present the bona fide allegations and evidence to the Executive Director of the Board. The normal internal grievance procedure for discrimination must be used unless changed by mutual consent of the parties. The ultimate burden of proof rests with the employee. The institution is required to offer evidence of its reasons for non-renewal only if the employee has a prima facie showing that the recommendation of non-renewal was made for reasons prohibited by applicable law. Unless mutually agreed to by the parties in writing, the use of the discrimination grievance procedure will not delay the effective date of non-renewal.
- 3) If, and only if, the President is the subject of the alleged discrimination prohibited by applicable law, the non-classified contract employee may petition the Board to review the final action of the institution. Any petition for review must be filed at the Office of the State Board of Education within 15 calendar days after the employee receives notice of final action. The Board may agree to review the final action, setting out whatever procedure and conditions for review it deems appropriate, or it may choose not to review the final action. The fact that a review petition has been filed will not stay the effectiveness of the final action, nor will the grant of a petition for review, unless specifically provided by the Board. Board review is not a matter of right. An employee need not petition for Board review in order to have exhausted administrative remedies for purposes of judicial review. Nothing in this section should be construed as any prohibition against filing a complaint with an appropriate state or federal entity, including but not limited to the Equal Employment Opportunity Commission (EEOC) or the Idaho Human Rights Commission (IHRC).

C. Non-Tenured Faculty –, Notice of non-renewal must be given in writing to the employee, as follows SBOE Policy II.G, <https://boardofed.idaho.gov/board-policies->

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[rules/board-policies/human-resources-policies-section-ii/policies-regarding-faculty-institutional-faculty-only-ii-g/](#)

- 1) **First Year Of Service** - Not later than March 1 of the first full academic year of service if the appointment is not to be renewed at the end of the academic year or, if a one-year appointment terminates during an academic year and is not to be renewed, at least three (3) months in advance of its termination.
- 2) **Second Year of Service** - Not later than December 15 of the second full academic year of service if the appointment is not to be renewed at the end of the academic year or, if the appointment terminates during an academic year and is not to be renewed, at least six (6) months in advance of its termination.
- 3) **Three Or More Years of Service** – Not later than July 15 preceding the academic year at the end of which the appointment is to be terminated; or, if the appointment terminates during an academic year and is not to be renewed, at least 12 months in advance of its termination.
- 4) Failure to give timely notice of non-renewal because of mechanical, clerical, mailing, or similar error does not extend or renew the contract of employment for another term, but the existing term of employment will be extended to provide the employee with timely notice of non-renewal.
- 5) Non-renewal is not subject to the investigation or review except that the employee may request an investigation or review to establish that written notice was or was not received in accordance with the time requirements set forth in this section. In such cases, the investigation or review will be concerned only with manner and date of notification of non-renewal. The employee must request such investigation or review in writing to the President with 15 days of receipt of the written notice of non-renewal.
- 6) Provided, however, that if the non-tenured faculty member presents bona fide allegations and evidence in writing to the President that the non-reappointment was the result of discrimination prohibited by applicable law, the non-tenured faculty member is entitled to use the internal discrimination grievance procedure to test the allegation. In such cases, the same procedures, burden of proof, time limits, etc. as set forth for the grievance of non-renewal by non-classified employees shall be used.
- 7) Non-tenured faculty members who are notified that they will not be reappointed or that the succeeding academic year will be the terminal year of appointment are

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not entitled to a statement of reasons upon which decision for such action is based. No hearing to review such a decision will be held.

D. Reduction in Force under Financial Exigency

- 1) Per SBOE Policy Section II.N. <https://boardofed.idaho.gov/board-policies-rules/board-policies/human-resources-policies-section-ii/staff-reduction-procedures-all-employees-ii-n/>, notice of non-reappointment is not required when the Board has authorized a reduction in force resulting from a declaration of financial exigency and an exempt employee with a term appointment is to be laid off. In that event, notice of layoff shall be given as provided under the rules for reduction in force.