

# OFFICE OF HUMAN RESOURCES MANAGEMENT

## CODE OF PRACTICE

### EXCLUDED INSTRUCTIONAL STAFF

#### I. TITLES COVERED IN THIS CHAPTER

This chapter sets forth the terms and conditions of employment for instructional staff who are excluded from representation in collective bargaining either because of their titles or because of the confidential, policy, or managerial responsibilities that they perform at the University<sup>1</sup>, with the exception of employees who are in titles in the Executive Compensation Plan, whose terms and conditions of employment are detailed in a separate manual.<sup>2</sup>

Although excluded instructional staff members are not represented in collective bargaining, as detailed below, they enjoy many of the same or comparable benefits as those enjoyed by instructional staff in the same titles who are represented in collective bargaining.

Job descriptions for vacancies advertised in the above titles should include that the title is excluded from representation in the collective bargaining unit.

#### 2. NON DISCRIMINATION

The University's Policies and Procedures on Equal Opportunity, Nondiscrimination and Against Sexual Harassment are applicable to all excluded instructional staff members.

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<sup>1</sup> Article 1 of the Agreement between CUNY and the PSC provides a list of titles and functions that are excluded from representation.

<sup>2</sup> The terms and conditions of employment for members of the Executive Compensation Plan are detailed in the *Terms and Conditions of Employment for Staff in the Executive Compensation Plan*, revised February 28, 2012.

### **3. ASSIGNMENT TO EXCLUDED TITLES/FUNCTIONS**

#### ***3.1 Untenured Professors, Untenured Associate Professors, and Untenured Assistant Professors, Untenured Employees in the College Laboratory Technician (CLT) Series, Research Associate/Assistant Series, Registrar Series, Uncertificated Lecturers, and Employees in the Higher Education Officer (HEO) series***

Untenured individuals assigned to excluded functions who are appointed to tenure-bearing titles (Professors, Associate Professors, Assistant Professors, CLT series, and Registrar series), Research Associates, Research Assistants, and excluded employees who are Lecturers without Certificates of Continuous Employment (CCE) are appointed annually. Lecturers will not accrue time toward a Certificate of Continuous Employment (CCE) while serving in excluded positions. The service provided in an excluded function by employees in tenure-bearing titles, however, is creditable for the purpose of achieving tenure. For this reason assignment of untenured employees in tenure-bearing titles to excluded functions is strongly discouraged.

Untenured Professors, untenured Associate Professors, untenured Assistant Professors, untenured employees in CLT and Registrar series titles and Lecturers who do not have a CCE shall be appointed or reappointed annually in their tenure-bearing title. In the first year of appointment such notice will be given on or before April 1. Notice of subsequent reappointment or non-reappointment shall be given on or before December 1. If the original appointment is made October 1 or thereafter, the date of notice in the subsequent reappointment or non-reappointment shall be on or before April 1.

For all other titles notice shall be provided on or before June 1 for the first year of appointment or fraction thereof and on or before May 1 for any subsequent reappointments.

#### ***3.2 Tenured Professors, Associate Professors, and Assistant Professors, Tenured Employees in the CLT Series, and Lecturers with a CCE***

Tenured Professors, Associate Professors and Assistant Professors, tenured employees in the College Laboratory Technician series, or Lecturers with a CCE, may be assigned to a function or title that excludes them from coverage under the collective bargaining agreement. Such assignments must be made in writing. The assignment may be for a specified period or an indefinite period at the discretion of the President or

the Chancellor.

## **4. DUES/AGENCY FEE PAYMENTS**

Excluded instructional staff are not represented in collective bargaining and therefore, they are exempt from paying dues or agency fees to a union.

## **5. NON-REAPPOINTMENT OR REMOVAL**

### ***5.1 Untenured Professors, Untenured Associate Professors, Untenured Assistant Professors, Untenured Employees in the College Laboratory Technician series, Employees in the Research Associate/Research Assistant Series, Untenured employees in the Registrar Series and Uncertificated Lecturers***

Employees assigned excluded functions who are untenured Professors, untenured Associate Professors and untenured Assistant Professors, or who are Lecturers without a CCE who will not be reappointed are notified of that fact on or before April 1 preceding the expiration of the first full year of service and not later than December 1 of each succeeding year of service. If, prior to non-reappointment, however, it is determined that the individual should not be permitted to continue to perform or must resign the duties of the excluded position for the duration of the appointment, the employee should be assigned other appropriate duties until the appointment expires. This action may be taken prior to or after the scheduled notification date. If the original appointment was in an academic department, the employee will be returned to that department, which will assign appropriate duties for the duration of the current appointment period. The department may, if time permits, observe, evaluate, and take appropriate action regarding reappointment in accordance with regular procedures.

### ***5.2 Tenured Professors, Tenured Associate Professors, Tenured Assistant Professors, Tenured Employees in the College Laboratory Technician Series, and Lecturers with a CCE***

Employees assigned to excluded functions who are tenured Professors, tenured Associate Professors and tenured Assistant Professors, or who are Lecturers with CCEs are returned to the department in which they were awarded tenure or the CCE and assigned to appropriate duties by the department when they are removed from the excluded position.

### **5.3 Employees in the Higher Education Officer Series**

Excluded employees in the Higher Education Officer series are notified of non-reappointment on or before June 1 in their first year of service and May 1 in all subsequent years. If it is determined that the person should not be permitted to continue to perform the duties of the excluded position, that person should be assigned to other appropriate duties for the duration of the appointment in accordance with Section 5.3.1 and 5.3.2.

#### **5.3.1 Appointment to an Included Title and/or Function**

If the college decides to appoint an individual who was serving in an excluded function to a HEO position that is covered by the collective bargaining unit, the following rules apply:

a) An employee who was initially hired to serve in a position excluded from the bargaining unit who is thereafter appointed during the normal appointment year to a position within the bargaining unit, will, if subsequently reappointed, receive a one-year appointment for the first full year following such change. Thereafter, reappointments are made as if all prior service in the higher education officer title had been in a position included in the bargaining unit. If, based upon prior service, an employee would be placed, as of the reappointment date, in the midst of a two-year appointment, then the employee is given an appointment which will run to the terminal date of the two-year appointment.

b) An employee in the HEO series who formerly held a position included in the bargaining unit, who, without a break in full-time service, was appointed to an excluded function, and who, without a break in full-time service, is subsequently appointed to a position included in the bargaining unit, is considered for future appointments in accordance with the following paragraphs:

1) If the employee held a multiple-year appointment before the assignment to the excluded function and the expiration date of that multiple-year appointment has not yet occurred, then the employee's multiple-year appointment will continue until its expiration date. Thereafter, the length of the employee's appointment (if any) is based upon total service in both the included and excluded positions within the HEO series.

2) If the employee held a multiple-year appointment before the assignment to the excluded function, but the multiple-year appointment has already expired before the employee's reassignment to an included position, the employee's appointment in the included position will continue

until the expiration date of the appointment received to serve in the excluded function. Thereafter, the length of an employee's appointment (if any) is based upon total service in both included and excluded positions.

3) If the employee's service in the excluded function was at a higher title in the HEO series than the employee had previously held before service in the excluded function, the college is under no obligation to offer reappointment in the higher title and may offer reappointment in the title held immediately before service in the excluded function. If the college offers reappointment in a title higher than the title previously held, such reappointment is for one year only. Thereafter, the length of the employee's appointment is based upon total service in both the included and excluded positions.

### **5.3.2 Prior 13.3.b Appointment**

If the employee held a 13.3.b appointment before assignment to the excluded function, upon removal from the excluded function and return to the same title held immediately before assignment to the excluded function, the employee will retain the 13.3.b. appointment.

## **5.4 REM Positions**

These positions are being phased out. No new appointments are made to REM positions, which are currently known as "hybrid titles." Employees serve in these positions at the pleasure of the President or the Chancellor. If the President or the Chancellor discontinues the employment of an individual serving in a hybrid title, the conditions of employment stated above would ordinarily apply as appropriate, *e.g.*, a tenured Professor would be returned to his/her department and a HEO series employee would be assigned other duties for the duration of the appointment.

## 6. DISCIPLINARY PROCEDURES<sup>3</sup>

The Code of Practice regarding Disciplinary Procedures for Excluded Instructional Staff provides the process for immediate termination or lesser forms of discipline.

**6.1** Article 7.2 of the Board of Trustees' *Bylaws*, as amended on November 28, 2011, delegates to the Chancellor or his/her designee the authority to establish the disciplinary procedures for instructional staff that are excluded from representation in collective bargaining. The Chancellor has designated the Vice Chancellor for Human Resources Management as his designee for this purpose.

The disciplinary procedures described herein apply to instructional staff employees who are serving in functions or titles that are excluded from collective bargaining representation (hereinafter referred to as "excluded instructional staff" or "excluded employees"), other than members of the Executive Compensation Plan.<sup>4</sup> These procedures apply when a decision has been made to terminate an employee from his/her excluded position before the expiration of his/her appointment thereto or to impose a lesser form of discipline.<sup>5</sup> It is not necessary to invoke these procedures, however, if an employee who is being removed from an excluded function or title is reassigned to an included function or title in the same payroll title and at the same salary for the remainder of the excluded appointment period. These procedures do apply when an excluded instructional staff member has an underlying included appointment in a lower payroll title in the same title series, or in an underlying title in a different title series, and the college seeks to remove him/her from the excluded position and return him/her to the included title from which he/she is on leave.

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<sup>3</sup> The term "College" as used herein encompasses all units of the University including, but not limited to, senior colleges, community colleges, the William E. Macaulay Honors College, the Graduate School, the CUNY Graduate School of Journalism, the CUNY School of Law, the CUNY School of Professional Studies, the CUNY School of Public Health, and the Central Office. The term "President" as used herein includes the senior executive of such units that do not have a President, *e.g.*, the Dean of the CUNY School of Law. At the Central Office, the disciplinary proceedings will be initiated by the Executive Vice Chancellor and Chief Operating Officer.

<sup>4</sup> See Article 1.1 of the PSC/CUNY collective bargaining agreement for a list of such excluded titles or functions. The rights of employees in the Executive Compensation Plan are set forth in "The Terms and Conditions of Employment for Staff in the Executive Compensation Plan."

<sup>5</sup> The procedures described in Section 1 hereof would also apply to employees represented in collective bargaining, other than employees who have tenure pursuant to Section 6212 of the New York State Education Law, in the rare case that the expired collective bargaining agreement has not been continued by operation of Article 14 of the Civil Service Law; for employees who have tenure, the provisions of Section 6212(9) would apply in such circumstances.

## **6.2 Immediate Termination**

An excluded employee is subject to immediate discharge from an excluded position, when the circumstances giving rise to the decision to remove the person from the excluded positions are so serious in the College's view that they render it inappropriate for the person to continue in employment for the remainder of the appointment.

Disciplinary proceedings shall be initiated by the College's President by service of a written notice of intent for immediate discharge upon the employee. Upon issuance of the notice of intent for immediate discharge, the employee may, at the discretion of the college, be suspended with pay pending disposition of the notice of intent for immediate discharge, as set forth below. The notice of intent for immediate discharge, which must be sent by certified mail or overnight mail, as well as by regular mail, shall set forth the charge(s) against the excluded employee and the proposed penalty of immediate discharge. Within five (5) business days<sup>6</sup> of the mailing of the notice of intent for immediate discharge, the President or designee shall conduct a meeting with the excluded employee to discuss the charge(s), during which the excluded employee may submit relevant information or documents. As these procedures concern removal from a position that is not represented in collective bargaining, the excluded employee is not entitled to union representation. The excluded employee may, however, be accompanied by another individual who is not a union representative.<sup>7</sup> Within five (5) business days of the meeting described above, the President or designee shall write to the excluded employee and either (1) issue a notice of immediate discharge, which shall be effective immediately, (2) impose a suspension or other appropriate penalty, or (3) withdraw the notice of intent for immediate discharge. If the excluded employee fails to appear at the meeting, the President or designee may issue a notice of immediate discharge, which shall be effective immediately. Communication of the decision of the President or designee must be sent by certified mail or overnight mail, as well as by regular mail.

If the excluded employee is on leave from an underlying title that is represented in collective bargaining and the college wishes to terminate the employee from employment in the underlying title as well, it is necessary to follow the disciplinary procedures in the collective bargaining agreement applicable to the underlying title.

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<sup>6</sup> As used herein, "business days" refers to all calendar days excluding Saturdays, Sundays, and legal holidays.

<sup>7</sup> If the excluded employee wishes to have a non-union representative attend the meeting, he/she must notify the President or designee in advance of the meeting. The representative must be available to attend the meeting; the meeting will not be delayed more than one (1) business day because of the representative's unavailability. The representative's role is limited to attending the meeting and advising the excluded employee at appropriate times.

### **6.3 Lesser Forms of Discipline**

Disciplinary proceedings seeking a penalty less than immediate termination from the excluded position shall be initiated by the College's Labor Designee by service of a written notice setting forth the basis for the disciplinary action and the proposed penalty.<sup>8</sup> The notice must be sent to the excluded employee by certified mail or overnight mail, as well as by regular mail. Within five (5) business days of the mailing of the notice, the College's Labor Designee shall conduct a meeting, during which the excluded employee may submit relevant information or documents. Within five (5) business days of the meeting described above, the Labor Designee shall write to the excluded employee and either (1) notify the employee of the penalty to be imposed, or (2) withdraw the notice. If the employee fails to appear at the meeting, the Labor Designee may impose the penalty forthwith. Communication of the decision of the Labor Designee must be sent by certified mail or overnight mail, as well as by regular mail. Except as provided below for suspensions of more than ten (10) business days, the decision of the Labor Designee is final and not subject to appeal.

### **6.4 Appeal of Immediate Discharge or Suspension of More Than Ten (10) Business Days**

Within ten (10) business days of the date of the notice of immediate discharge or notice of a penalty of suspension of more than ten (10) business days, the excluded employee may file a written appeal to the Vice Chancellor for Human Resources Management. This appeal must be sent by certified mail or overnight mail to the Vice Chancellor, with a copy by regular mail to the College's Director of Human Resources. The Vice Chancellor shall render a decision on the appeal within ten (10) business days of receipt, which decision must be sent by certified mail or overnight mail, as well as by regular mail. The decision of the Vice Chancellor is final.

## **7. ANNUAL LEAVE**

### **7.1. Annual Leave**

Non-teaching instructional staff who are excluded from representation by the Professional Staff Congress (PSC) earn annual leave at the same rate as non-teaching instructional staff in the same titles who are represented by the PSC. However, under a Council of Presidents policy adopted on April 1, 1985, non-teaching instructional staff who are excluded from representation by the PSC may accrue a maximum of 50 days

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<sup>8</sup> It is not necessary to invoke these disciplinary procedures to put a letter of reprimand in an excluded employee's personnel file.

of annual leave, rather than the 45 day maximum for instructional staff represented by the PSC. The same Council of President policy provides that on June 1 on any year, excluded employees may not retain an accrual in excess of 50 days of annual leave, except those employees who established a personal cap in excess of 50 days as of June 1, 1985.

Effective June 20, 2014, non-teaching instructional staff members who are excluded from representation by the PSC will also use their annual leave time within the annual leave year (September 1 – August 31) in which it is earned. On August 31 of any year (rather than on June 1, as previously required under the Council of Presidents' Policy), any accrued annual leave in excess of the applicable cap will be removed from the employee's record and will not be compensated in the event of discontinuance, resignation or retirement; exceptions to the policy will be made only when a senior executive requires an employee to forego all or part of his/her annual leave because of extraordinary circumstances.

Excluded employees who receive a notice of non-reappointment on May 1 may be allowed to use the excess accrued leave balance by June 30.

### **7.1.1 College Laboratory Technician Series/Higher Education Officer Series<sup>9</sup>**

Excluded instructional staff employed full-time in the College Laboratory Technician series and the Higher Education Officer series have annual leave at the following rates:

During the 1 <sup>st</sup> year of service	15 days
During the 2 <sup>nd</sup> through 11 <sup>th</sup> year of service and thereafter	15 days plus one additional day for each year of service to a maximum of 25 days

### **7.1.2. Research Associates**

Excluded instructional staff employed full-time as Research Associates have 25 days annual leave per year.

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<sup>9</sup>Employees in the College Laboratory Technician series or the Higher Education Officer series who were employed prior to September 1, 1969 shall suffer no loss or diminution of prior vacation privileges.

### 7.1.3 Research Assistants

Excluded instructional staff employed full-time as Research Assistants have annual leave at the following rates:

During the 1 <sup>st</sup> year of service	15 days
During the 2 <sup>nd</sup> through 11 <sup>th</sup> year of service and thereafter	15 days plus one additional day for each year of service to a maximum of 25 days

### 7.1.4 Chief Librarians<sup>10</sup>/Librarians/Registrar Series

Excluded instructional staff employed full-time as Chief Librarians and Librarians appointed on or before January 1, 1988 have annual leave at the following rates:

During the 1 <sup>st</sup> year of service	20 days
During the 2 <sup>nd</sup> through 11 <sup>th</sup> year of service and thereafter	20 days plus one additional day for each year of service to a maximum of 30 days

Excluded instructional staff employed full-time as Librarians or in the Registrar series employed on or before January 1, 1988, and who continue to be employed as Librarians or in the Registrar Series shall have thirty (30) annual leave days.

### 7.1.5 Professors, Associate Professors, Assistant Professors

Excluded employees in the titles Professor, Associate Professor, Assistant Professor, and Lecturer, other than those serving as Chief Librarian, Librarian or in the Registrar series, have an annual leave period that begins on the day after the Spring commencement at the college until the third day excluding Saturday and Sunday, before August 30, or an equivalent consecutive period.

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<sup>10</sup> Chief Librarians appointed in an Executive Compensation Plan title receive annual leave in accordance with *Terms and conditions of Employment for Staff in the Executive Compensation Plan* (revised February 28, 2012).

## **7.2 *Service Credit***

For purposes of determining annual leave accrual rates, service is deemed to include full-time paid leave. Pro-rata service credit is granted for any approved partial leave of absence. Excluded instructional staff members who have announced their intention to retire do not accrue annual leave or earn or use unscheduled holidays while exhausting annual leave and Travia Leave prior to retirement.

## **7.3 *Annual Leave Allotment***

For purposes of annual leave allotment, excluded instructional staff in non-teaching titles hired after January 1, 1988, who are appointed on or after the second day of any month, the second and all subsequent years of service are deemed to commence on the first day of the month following the anniversary date.

## **7.4 *Use and Accrual of Annual Leave***

It is intended that employees use their annual leave within the annual leave year (September 1 through August 31) in which it is earned. Employees covered by this manual are not allowed to retain an annual leave accrual of more than 50 days as of August 31 of any year, unless, as of June 1, 1985, they had established a personal annual leave cap that was greater than 50 days. Any annual leave in excess of 50 days, or in excess of the personal annual leave cap, that is not taken by August 31 of any year will be removed from the record and thereafter may not be used, and there will be no compensation for unused annual leave in excess of 50 working days or in excess of the June 1, 1985 personal limit set forth above in the event of discontinuance, resignation, or retirement.

There is a limited exception to the foregoing for instructional staff members appointed to excluded titles or functions before July 1, 2014 or appointed to such titles on or after July 1, 2014 with prior service in the University in a title earning annual leave prior to January 1, 2014. Such individuals may be permitted to carry over to the next annual leave year a balance in excess of 50 days or their personal cap, but only when a senior executive, designated by the President for a college or by the Executive Vice Chancellor and Chief Operating Officer for the Central Office, authorizes in writing the carry-over of annual leave into the next annual leave year because the employee will be required to forgo all or part of his or her annual leave due to extraordinary circumstances. This authorization must take place not later than July 31. Such excess annual leave must be used before the following December 31.

## **7.5 *Scheduling Annual Leave***

Annual leave periods, including leave taken to reduce excess accruals, must be scheduled with the approval of supervisors, subject to review and approval by a senior executive of the college or the Central Office, at times when there will be no disruption of the normal functioning of the college or the unit of the Central Office. Except when used for personal emergencies, annual leave must be scheduled and approved in advance.

## **7.6 *Payment of Accrued Annual Leave Upon Resignation or Retirement***

Excluded instructional staff, other than those who announce their bona fide intention to retire and meet applicable conditions contained in Section 3107 of the Education Law, are compensated in a lump sum for all annual leave on the final date of the appointment or in the case of resignation as of the final work day up to the annual leave cap of 50 days or the employee's personal cap.

# **8. HOLIDAYS**

## **8.1 *Holiday Schedule***

Excluded instructional staff who are engaged in non-teaching functions and who work a 35-hour workweek have the following regular holidays with pay:

- Independence Day - July 4
- Labor Day - First Monday in September
- Columbus Day - Second Monday in October
- Thanksgiving Holiday - Fourth Thursday in November and Friday following
- Christmas Holiday - December 24 and 25
- New Year's Holiday - December 31 and January 1
- Martin Luther King, Jr.'s Birthday - Third Monday in January
- Lincoln's Birthday - February 12
- Presidents Day - Third Monday in February
- Memorial Day - Last Monday in May

## **8.2 *Holidays that Occur on a Saturday or Sunday***

If a holiday falls on a Saturday or a Sunday, which is not a regular work day for the

employee, it is observed on the Friday before or the Monday following as designated by the University or, at the option of the University, may be designated as an unscheduled holiday, to be taken following the holiday for which it is substituted, but prior to the end of the annual leave year, with the prior approval of the employee's supervisor.

### **8.3 *Unscheduled Holidays***

In addition to any unscheduled holidays provided pursuant to Section 8.2 above, there are four unscheduled holidays to be taken within the annual leave year. The record of unscheduled holidays available to and taken by each employee is maintained separately from annual leave balances or temporary disability leave balances. In no event are unscheduled holidays converted to annual leave or temporary disability leave. The four established unscheduled holidays are made available for the use of employees who are in active pay status on July 1.

### **8.4 *Adjustment of Unscheduled Holidays If Employment Ends***

In the event the employer-employee relationship ends prior to the specific dates listed below, an appropriate adjustment is made in the employee's annual leave balance or the final pay check of the employee.

<b>Date</b>	<b>Number of Unscheduled Holidays to Which Employee Is Entitled</b>
July 1	One day
October 1	Two days
January 1	Three Days
April 1	Four Days

Thus, an employee who uses four unscheduled holidays in September, and resigns in February owes the university one day of annual leave or one day's pay. Employees who join the University or are appointed after July 1, October 1, or January 1, but before April 1 are credited with a proportionate number of unscheduled holidays available in units of one full day. Similarly, an employee who is appointed in December is credited with two unscheduled holidays.

### **8.5 *Use of Unscheduled Holidays***

A request to take a specific day as an unscheduled holiday is made in accordance with the usual practices at the college. Unscheduled holidays must be taken within the annual leave year in which they are earned, and they may not be carried into the next annual leave year. Unscheduled holidays must be taken as full days.

## **9. TEMPORARY DISABILITY LEAVE**

### ***9.1 Definition, Use, Accrual***

Temporary Disability Leave is defined as any temporary physical or mental incapacity including pregnancy, complications of pregnancy and childbirth. Excluded instructional staff are granted temporary disability leave of twenty (20) calendar days, exclusive of Saturdays, Sundays, and authorized holidays and recesses during each year of service. The unused portion of such temporary disability leave shall be cumulative to a maximum of one hundred sixty (160) calendar days during which the college is in regular session.<sup>11</sup> For the purpose of determining an individual's allotment of temporary disability leave, this provision is effective as of the date of the employee's appointment.

### ***9.2 Absence in Excess of Allotment***

Any absences in excess of the cumulative temporary disability leave accrued to the absentee shall be taken without pay, except that the Board of Trustees may, in cases of protracted disability or unusual hardship, hear recommendations from the President that this provision be waived in exceptional circumstances, without thereby establishing a precedent.

### ***9.3 Computation of Temporary Disability Leave Use***

Temporary disability leave is calculated commencing from the date of first absence from assigned duties and includes all additional calendar days, exclusive of Saturdays, Sundays, and authorized holidays and recesses until such person's return. Excluded instructional staff on fractional schedules receive prorated temporary disability leave and accumulated disability leave. Temporary disability leave is earned only after a full calendar month of service and no accruals or partial accruals are granted for service of less than a full calendar month. A full calendar month of service means service from the first working day through the last working day of a given month.

### ***9.4 Notification of Illness***

Any excluded instructional staff member who is absent from duty because of a temporary disability leave must promptly notify the Office of Human Resources and his

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<sup>11</sup>Employees who on September 1, 1969 were entitled to cumulative unused temporary disability leave in excess of one hundred sixty (160) calendar days shall retain the excess accumulation. However, thereafter, no temporary disability leave can be accumulated in excess of one hundred sixty (160) calendar days.

or her supervisor of the nature of the temporary disability and of the probable duration of the absence.

### ***9.5 Leave Advance and Repayment***

Excluded employees entitled to disability insurance benefits who have exhausted their temporary disability leave balance are advanced paid disability leave from the date of commencement of their temporary disability up to the commencement of disability insurance benefit payments, only upon presentation to the Human Resources Director of satisfactory evidence, provided by a duly-licensed physician, of illness and a prognosis that such illness is reasonably certain to result in a long-term disability that will last more than six consecutive months. Upon the employee's return to duty such advanced temporary disability leave that had been provided must be repaid through assignment of future accruals. In the event the employee resigns or voluntarily leaves the University, the remaining value of the advanced temporary disability leave shall be deducted from remaining paychecks or otherwise reimbursed to the University.

## **10. DEDICATED SICK LEAVE PROGRAM**

Excluded instructional staff members are eligible to participate in The City University of New York Dedicated Sick Leave Program. This program enables individuals who are employed full-time on an annual salary basis to donate sick leave and/or annual leave for use as sick leave by a seriously ill or injured eligible employee who has been designated by the donor. Eligible recipients may receive up to one-hundred and twenty (120) days or six (6) months of paid sick leave, whichever is greater, in any one program year (September 1 – August 31), inclusive of the annual leave period for teaching faculty. Donated leave may be approved in increments not exceeding two (2) months. The Dedicated Sick Leave Program permits donations of annual leave and/or sick leave across campuses and across titles. Staff members should contact the Human Resources Office for information regarding the details of the program.

## **11. CATASTROPHIC SICK LEAVE BANK**

Excluded instructional staff members are eligible to participate in The City University of New York Catastrophic Sick Leave Bank on the same basis as other CUNY employees. The Catastrophic Sick Leave Bank ("CSLB") is a pool of sick leave and annual leave voluntarily donated by individuals who are employed full-time on an annual salary basis for potential use as sick leave by eligible full-time employees who are also donors to the bank. Eligible recipients may receive up to ninety (90) days of paid CSLB leave in any one (1) program year (September 1 – August 31). CSLB leave may be approved in increments not to exceed one (1) month. The Catastrophic Sick Leave Bank is administered centrally by the University's Office of Shared Services.

## **12. OTHER LEAVES**

### ***12.1 Travia Leave***

Excluded instructional staff who are members of a public retirement system and who meet the eligibility requirements for service retirement, and those who are members of the optional retirement program and who meet similar eligibility requirements to those of the public retirement system, who announce their bona fide intention to retire and file the appropriate application to retire, are granted a retirement leave of absence with full pay (known as “Travia Leave”) consisting of one-half of their accumulated unused temporary disability leave up to a maximum of one semester, or the equivalent number of school days, if the employee has the maximum accrual of 160 days. The terms and conditions relating to the counting of such days, intervening vacation periods, cancellation of such leave, reinstatement to active service, etc., are governed by Section 3107 of the State Education Law.

While on Travia Leave, the staff member remains on payroll, and pension benefits may not begin until the Travia Leave is exhausted and the employee is no longer on the payroll. He/she does not continue to earn temporary disability leave, annual leave or unscheduled holidays while on Travia Leave.

To receive Travia Leave an excluded instructional staff member must:

- a) Participate in one of the public retirement systems (such as NYCERS or TRS) or the Optional Retirement Program (TIAA/CREF) and be eligible for pension benefits; and
- b) Announce his/her bona fide intention to retire and file the appropriate retirement application.

For staff in excluded instructional staff positions who participate in one of the public retirement systems (*e.g.*, NYCERS or TRS), the eligibility requirements for Travia Leave are the same as the eligibility requirements for paid service retirement, *i.e.*, a combination of years of service and age, which vary depending upon the date of hire.

For excluded instructional staff members who participate in the Optional Retirement Program, the eligibility requirements for Travia Leave are generally 55 years of age with a minimum of five years of service.

### ***12.2 Paid Parental Leave***

Full-time excluded instructional staff who have a minimum of one year of service are entitled to a leave of absence with full pay to care for a newborn or newly adopted child up to five (5) years of age for a period not to exceed eight weeks. Paid parental leave

must be taken immediately upon the birth or adoption of the child. For the birth mother, paid parental leave shall commence immediately upon the expiration of approved use of temporary disability leave related to childbirth. Paid parental leave may be taken prior to the birth when deemed medically necessary for the birth mother, and the birth mother does not have sufficient temporary disability leave to cover that period. Paid parental leave may also be taken prior to the adoption of the child, when necessary to fulfill the legal requirements for an adoption (*e.g.*, foreign travel).

If both parents are CUNY employees, one parent must postpone the commencement of his/her paid parental leave until the expiration of the other parent's paid parental leave. The couple would be eligible for two consecutive leaves limited to a combined total of 14 rather than 16 weeks. In no event may either parent take a leave of more than 8 weeks. The couple may appeal to the President of the College for permission to take the leave concurrently. The decision of the President is final.

The employee must give notice of intent to take paid parental leave to his/her department chair or unit head and to the Director of Human Resources at least 90 calendar days prior to the proposed date of the leave or when the employee has knowledge of the impending birth or adoption, whichever occurs later.

As with other paid leaves, the period during which the employee is on paid parental leave will count as service.

Paid parental leave taken pursuant to this program will run concurrently with Family Medical Leave Act ("FMLA") leave and the unpaid parental leave provided below, to the extent that such leave is available to the employee.

### ***12.3 Unpaid Parental Leave***

Special leaves for the purpose of caring for a newborn infant are granted to excluded instructional staff upon notification to the President and application for such leave, provided the applicant has legal responsibility for the care and/or support of said child. Insofar as it is practicable, such leave shall begin on February 1 or September 1 unless the date of the birth of the child is such as to render these times inappropriate. The duration of the leave is ordinarily for one full semester. In exceptional cases, the President may terminate such leave during the college term, provided that there is an appropriate opening in which the applicant's service may be utilized. An extension of such leave is permitted on request for a period not in excess of one year from the end of the original leave. No further extensions are permitted. If the duration of the leave is less than one calendar year, it is credited toward salary increments; if it is one calendar year or more, it is not to be credited toward salary increments.

## ***12.4 Family and Medical Leave***

Excluded instructional staff are covered under the provisions of the Family and Medical Leave Act, which permits an eligible staff member to take a leave for the following purposes: for the birth of a son or daughter and to care for the newborn child; for placement with the employee of a son or daughter for adoption or foster care; to care for the employee's spouse, domestic partner, or parent with a serious medical condition; or for the employee's own serious medical condition or for any qualifying exigency arising out of the fact that the spouse, or a son, daughter, or parent of the employee is on active duty (or has been notified of an impending call or order to active duty) in the Armed Forces in support of a contingency operation.

## ***12.5 Jury Duty***

Excluded instructional staff who are required to serve on a jury, or are required to report to court in person in response to a jury duty summons, or are required to report for jury examination, or to qualify for jury duty, receive their regular salary during such absences provided that they remit to the University an amount equal to the non-travel compensation received by them, if any, for jury duty.

# **13. PROFESSIONAL EVALUATION**

It is recommended that a written evaluation be developed by the appropriate supervisor, signed by the excluded instructional staff member and placed in the personnel file prior to the date of reappointment. Excluded employees should be evaluated against individual expectations and goals that have been established at the beginning of the appointment year.

# **14. SALARIES**

## ***14.1 Salary Schedules***

Excluded instructional staff are placed on the salary schedule for their instructional staff in the PSC/CUNY collective bargaining agreement.

### **14.1.1 Movement Within Schedule**

Movement within schedule is defined as movement from one schedule step to the next higher step in the same schedule. Except as otherwise specified herein, Article XII of the *Bylaws of the Board of Trustees* governs movement within schedule. For excluded instructional staff in Higher Education Officer series titles, movement within schedule takes place on the January first or July first following completion of at least eleven (11) full months of service. For all other excluded instructional staff, the movement within

schedule takes place on the January first of each succeeding year following completion of at least ten (10) full months of service.

### **14.1.2 Five and Seven Year Step Increases**

Excluded employees in the titles Professor, Associate Professor, Assistant Professor, Instructor II, Lecturer, Lecturer Doctoral Schedule, Higher Education Officer, Higher Education Associate, Higher Education Assistant, Assistant to Higher Education Officer, Assistant to Higher Education Officer II, in the Registrar series, and in the College Laboratory Technician series will receive the five-year step (the penultimate step on the schedule) no later than upon completion of five years of service at the last one-year step (the step immediately preceding it on the schedule). Excluded instructional staff in the titles listed above will receive the seven-year step (the last step on the schedule) no later than upon completion of two years of service at the five-year step.

### **14.2 Performance Bonus Program for Full-Time Excluded Instructional Staff**

Subject to the annual approval of the Chancellor or the Chancellor's designee, there is a Performance Bonus Program for full-time excluded instructional staff to reward high performance, recognize exceptional work in service to the University, and attract, motivate, and retain exceptional employees.

To be eligible for a performance bonus, excluded employees must be evaluated against individual expectations and goals and must demonstrate exceptional performance beyond normal expectations. Managers must be able to document specific achievements that have made important, measurable contributions, and to provide specific examples of exceptional overall performance during the evaluation year. The bonus may be for an amount up to 7% of the excluded employee's salary. The bonus is not added to the base salary, but it is pensionable. The colleges fund the bonus payments directly.

To be eligible, employees must have served full-time in a position that excludes them from PSC representation as of the annual evaluation date, have served in the position for a minimum of one full appointment year, and hold a regular (*i.e.*, not substitute) appointment. Employees who have been on leave during the evaluation year may be considered for a bonus provided that they have worked at least six-months during the evaluation year.

Section 5.15 of the Manual of General Policy outlines the responsibilities, process and implementation of the Performance Bonus program.

## **15. RESEARCH, FELLOWSHIP AND SCHOLAR INCENTIVE AWARDS**

The awards discussed in this section are available only to excluded instructional staff who are appointed in faculty titles.

### ***15.1 Research Funding***

Funds for research are available without restriction to eligible members of the instructional staff, and junior members of the faculty in particular, who are on the regular University payroll processed through the Office of the Comptroller of the City or State of New York. Research funding is used to support activities in the creative arts and all academically relevant research in the areas of natural science, social science and humanities, including but not limited to research related to curriculum development, improvement in teaching, adaptation of standard educational techniques to special clientele and the relationship between technical or occupational training and the liberal arts curriculum.

#### ***15.1.1 University Committee on Research Awards***

The University Committee on Research Awards, appointed by the Chancellor, with representation among the biological sciences, the physical sciences, the humanities, the professional schools, and non-classroom professionals, is charged with the responsibility to make, in its discretion, research grants to individual instructional staff members of The City University of New York.

### ***15.2 Fellowship Awards***

Application may be made for one of three types of fellowship leaves:

- a) a full year leave at 80% of the bi-weekly salary rate
- b) a one-half year leave at 80% of the bi-weekly salary rate
- c) a one-half year leave at full pay.

#### ***15.2.1 Eligibility***

Funds for fellowship awards are limited to tenured instructional staff members on the permanent instructional staff (and Lecturers with CCEs), who have completed six years of continuous paid full-time service with the University exclusive of non-sabbatical or fellowship leave. Individuals in professorial titles who are on leave from the title Lecturer with a CCE are also eligible for a fellowship award. Service includes service in

a school or college maintained in whole or part with City funds immediately preceding service in a college or institution under the jurisdiction of the Board of Trustees, provided that credit such prior service does not exceed three (3) years.

### **15.2.2 Application**

Applications for fellowship leaves may be made for (a) Research, (b) Improvement of teaching, or (c) Creative work in literature or the arts. Such applications must state that the applicant will continue to serve for at least one year after expiration of the term of his/her leave unless this provision is expressly waived by the Board of Trustees. The application is submitted in the form of a plan to the Provost. If the Provost approves, he/she forwards the application to the President with his/her endorsement. The President transmits the application to the Board of Trustees, with his/her recommendation.

### **15.2.3 Considerations**

The Board of Trustees considers the advantage of the applicant as a scholar and teacher to be expected from such a fellowship award, and the consequent advantage through his/her service to the college. Special consideration is given to those applicants who have not had a sabbatical leave or fellowship leave in fourteen (14) or more years.

### **15.2.4 Termination of Leave**

Employees who receive a full-year fellowship leave may, at their option, upon written notice to the President no later than October 30 or March 30, whichever is applicable, terminate the fellowship leave after one-half year. Where fellowships are terminated upon request of the employee, such termination relieves the University of any obligation to further claims for the second half of the leave, but does not reduce the time period or other qualifications required for consideration for a subsequent fellowship leave.

### **15.2.5 Retirement Credit**

The University will request the appropriate retirement system to credit the period of the fellowship leave as service for retirement purposes. The period of the fellowship leave is credited for increment purposes.

## ***15.3 Library Staff***

Fellowship leaves received by members of the instructional staff who serve in the libraries will be of the same duration as those of other instructional staff. Members of the instructional staff who serve in libraries do not accrue annual leave during the period of the fellowship leave.

## ***15.4 Professional Reassignments in Libraries***

Instructional staff who serve in the libraries may be granted a paid leave not to exceed five weeks during any year commencing September 1 and ending August 31 for research, scholarly writing, and other recognized professional activities that enhance their contribution to the City University. The reassignments are subject to approval by the personnel and budget committee of the library department and appropriate college-wide committees.

## ***15.5 Scholar Incentive Awards***

Scholar Incentive Awards of not less than one semester nor more than one year are available to full-time employees in the following titles: Professor, Associate Professor, Assistant Professor, Instructor, Lecturer, University Professor, Distinguished Professor and Medical series. The only purpose of the Awards is to facilitate bona fide and documented scholarly research. Other projects or proposals (*e.g.*, meeting degree requirements, study, service outside the University) or reasons (*e.g.*, professional career, personal) are not considered for these Awards.

### **15.5.1 Application**

The application is submitted in the form of a plan to the Provost. If the Provost approves, he/she forwards the application to the President with his/her endorsement. Such endorsement must state that the work the applicant intends to do is consonant with the principles of the Scholar Incentive Award. Upon positive recommendation of the President, the application is forwarded to the Chancellor for review and recommendation.

### **15.5.2 Eligibility and Compensation**

The following principles for Scholar Incentive Awards apply:

a) A candidate must be a full-time member of the instructional staff in one of the above titles.

b) The candidate has completed not less than one full year of continuous paid full-time service with the University before becoming eligible for a Scholar Incentive Award. A candidate is eligible for a subsequent Scholar Incentive award after six years of creditable service with the University since the completion of the last Scholar Incentive Award. A Scholar Incentive Award may not be held concurrently with a fellowship leave.

c) If a Scholar Incentive Award is immediately preceded by full-time continuous service creditable for tenure or a Certificate of Continuous Employment or a fellowship

leave and immediately followed by such full-time continuous service, the period of creditable service immediately preceding the Scholar Incentive award shall be counted in computing the years of service required for the granting of tenure, Certificate of Continuous Employment or fellowship award.

d) A candidate may be compensated by the University for up to 25% of annual salary rate. The total amount of money earnable with outside support and the University salary may not exceed 100% of the annual salary rate that the person would have received without the leave. The amount may be less than 25% if the amount of any outside fellowship and grant support would result in earnings above 100% of salary.

## **16. HEALTH INSURANCE/WELFARE BENEFITS**

### ***16.1 Benefits Information***

Specific information regarding health insurance and welfare benefits may be obtained from the college benefits officer.

### ***16.2 Health Insurance***

Health insurance for excluded full-time instructional staff is provided through the New York City Health Insurance Program.

### ***16.3 Retiree Health Insurance***

#### **16.3.1 Members of the New York Teachers Retirement System**

Health insurance through the New York City Health Insurance Program is available to excluded full-time instructional staff who retire as members of a public retirement system (e.g., New York City Teachers Retirement System).

#### **16.3.2 Members of TIAA/CREF**

Health insurance through the New York City Health Insurance Program is available to excluded instructional staff who, as members of the Optional Retirement Program (TIAA/CREF) have separated from CUNY service and are collecting a retirement benefit based on their service at CUNY, if and when the following conditions are met:

- a) For instructional staff initially appointed to a full-time annual position on or before June 30, 1976:
  - (1) Separated from CUNY service at age 55 or over with at least (10)

years of pensionable, continuous, full-time CUNY service, OR

(2) Separated from CUNY service prior to age 55 with at least fifteen (15) years of pensionable, continuous full-time CUNY service and attained the age of 55.

b) For instructional staff initially appointed to a full-time annual position between July 1, 1976 and August 31, 1985:

(1) Separated from CUNY service with at least fifteen (15) years of pensionable, continuous, full-time service and attained the age of 62, OR

(2) Separated from CUNY service with at least ten (10) years of pensionable, continuous, full-time CUNY service and no subsequent full-time employment in a college, university, or other institution of post-secondary education related to the duties performed while in active service at The City University or to duties normally performed by the instructional staff at The City University and attained the age of 62.

c) For instructional staff initially appointed to a full-time annual position on or after September 1, 1985:

(1) Separated from CUNY service at age 62 or over with fifteen (15) years of pensionable, continuous, full-time CUNY service, OR

(2) Separated from CUNY service prior to age 62 with fifteen (15) years of pensionable, continuous, full-time CUNY service and no subsequent full-time employment in a college, university, or other institution of post-secondary education related to the duties performed while in active service at The City University of New York or to duties normally performed by the instructional staff at The City University and attained the age of 62.

d) "Continuous service," as used in this section, is not broken by any approved leave of absence without pay. The period of such approved leave without pay does not count toward the total number of years required for eligibility.

## ***16.4 Welfare Benefits***

The University makes contributions to the PSC/CUNY Welfare Fund on behalf of excluded instructional staff for such benefits as dental, optical, and prescription drug benefits. The PSC/CUNY Welfare Fund is responsible for determining eligibility and benefits.

## ***16.5 Retiree Welfare Benefits***

Excluded instructional staff who are eligible for and receiving New York City retiree health insurance benefits (see Sections 15.2.1 and 15.2.2 above) are also eligible for welfare benefits provided through the PSC/CUNY Welfare Fund.

## ***16.6 Healthcare Benefits Upon Disability***

An excluded member of the full-time instructional staff who participates in the Optional Retirement Program, who becomes disabled, and who is determined by the United States Social Security Administration or by the TIAA/CREF disability program or its successor to be physically or mentally incapacitated for the performance of duty, is eligible to receive paid New York City Employee Benefits Program basic health benefits, provided that s/he had completed at least ten (10) years of full-time service at The University immediately prior to being disabled; s/he is receiving a retirement benefit from the Optional Retirement Program; and s/he receives no basic health coverage from another source.

In the event that the United States Social Security Administration determines that the instructional staff member is not disabled, and the instructional staff member's disability claim has not been reviewed by TIAA/CREF or its successor, at the request of the instructional staff member, he/she and The City University of New York shall designate a mutually acceptable physician to review the instructional staff member's claim that s/he is physically or mentally incapacitated for the performance of duty, applying the identical standards and criteria as the New York City Teachers' Retirement Program. If the instructional staff member is determined by the designated physician to be physically or mentally incapacitated for the performance of duty, s/he shall be eligible for the New York City Employee Benefits Program basic health benefits, provided that s/he had completed at least ten (10) years of full-time service at The University immediately prior to being disabled, s/he is receiving a retirement benefit from the Optional Retirement Program, and s/he receives no basic health coverage from another source. In the event that the disability is the result of a work-related injury, the length of service requirement is waived.

## **17. RETIREMENT**

### ***17.1 Available Retirement Plans***

New York State law mandates that full-time excluded instructional staff members enroll in a retirement system, unless the employee is a retiree collecting a pension from New York State or any of its political subdivisions. A new instructional staff member has 30 days from his/her appointment date to choose a retirement program; the choice is

irrevocable. If no choice is filed within 30 days, the law mandates that the employee be assigned to the New York City Teachers' Retirement System ("TRS"). Instructional staff may choose between the New York City Teachers' Retirement System ("TRS") or the Optional Retirement Program ("ORP"), presently administered by The Teachers Insurance and Annuity Association-College Retirement Equities Fund ("TIAA-CREF"). Alternate funding vehicles—currently Guardian and Met Life, are also available. Previous members of the New York City Employees' Retirement System (NYCERS) or the Board of Education Retirement System (BERS) who wish to remain in either of those systems may do so if they file an application for Transfer Contributor status within 30 days of appointment.

### **17.1.1 The New York City Teachers' Retirement System**

The New York City Teachers' Retirement System ("TRS") is a defined benefit plan in which retirement benefits are based on age, final average salary ("FAS") and years of service. Employees hired before April 1, 2012 are eligible to retire with a full retirement allowance upon reaching 62 years of age with 5 years of credited service, OR at age 55-61 with 30 years or more of service. Employees between 55 and 61 years of age who have completed at least 5 years of service may be eligible to retire with a reduced retirement allowance. Employees hired on or after April 1, 2012 are eligible to retire at age 63 with 10 or more years of service. Please consult with your Human Resources Office to determine individual eligibility.

### **17.1.2 The Optional Retirement Program (ORP)**

The Optional Retirement Program (ORP) is administered by TIAA-CREF. Alternate funding vehicles - currently Guardian and MetLife are also available. The ORP is a defined contribution plan with benefits based on the amounts contributed by the employer and the employee and the success of the investments. Vesting occurs after the first 366 days of continuous employment, with contributions made from date of appointment. Vesting is immediate if the employee has a current TIAA-CREF contract. The ORP has no minimum age for retirement.

### **17.1.3 Other Savings Plans**

The City University of New York Voluntary Savings Plans allow 403(b) Tax Deferred Annuity contribution deductions biweekly from paychecks on a pretax basis. Similarly, The New York State Deferred Compensation 457(b) Plan is also available.

## **18. RETRENCHMENT**

The discontinuance of persons in excluded titles or functions shall be made on the basis of managerial or functional needs without regard to date of initial appointment or length of service. A person discontinued from an excluded title or function who holds tenure or

who prior thereto held a position in a tenure-bearing title shall return to the department in which the tenure was held, or service toward tenure earned. A tenured person appointed to an excluded title or function in a retrenchment unit other than the department in which he or she holds tenure shall retain his/her tenure rights during the period in which he or she is serving in such excluded title or function. A non-tenured person appointed to an excluded title or function in a department or unit other than the department in which his/her service toward tenure was earned shall retain such service credit during the period in which he or she is serving in such excluded title or function.

The implementation of the college retrenchment plan and notification of individuals to be discontinued shall be as per the Manual of General Policy. (5.19)

## **19. WAIVER OF TUITION FEES**

### ***19.1 Undergraduate Courses***

All excluded full-time members of the instructional staff are granted a waiver of tuition fees for undergraduate credit-bearing courses offered by the University during the fall and spring semesters in accordance with the procedures for the waiver of undergraduate tuition fees for other groups of employees (*i.e.*, after one year of service).

### ***19.2 Graduate Courses***

On a space available, no-cost basis, excluded full-time members of the instructional staff are granted a waiver of tuition fees for up to six credits per semester during the fall and spring semesters at the graduate level.

## **20. FACULTY AND STAFF DEVELOPMENT**

Excluded employees, who hold tenure or CCE may participate voluntarily in the CUNY-PSC programs of professional development. Excluded staff in non-teaching instructional staff titles may also participate on a voluntary basis, however, the University has the right to assign staff to the programs only during the normally scheduled work day.

Staff completing such faculty or staff development programs shall, upon their request, have acknowledgment of this fact placed in their personal personnel files.

Staff in excluded titles are not eligible to participate in the professional development opportunities provided through the HEO/CLT Professional Development Fund.

## **21. WORKERS' COMPENSATION**

Workers' Compensation shall be applicable.

## **22. OCCUPATIONAL HEALTH AND SAFETY**

The University shall furnish to each of its employees, a place of employment, which is free from recognized hazards that are causing or are likely to cause death or serious harm to its employees and shall comply with occupational safety and health standards promulgated under the Occupational Safety and Health Act of 1970.

*August 7, 2014*