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## Policy on Employees Exempt from the North Carolina Human Resources Act

### I. Definitions of Exempt University Appointment Types

A. Senior Academic and Administrative Officers (SAAO). The duties and responsibilities of the president and the chancellors, and of their respective senior staff members, and their relationships to one another, to the Board of Governors, to the Boards of Trustees, and to all other officers and agencies within and without the University are set forth in Chapter V of *The Code* of The University of North Carolina (*The Code*). Senior officers of the University of North Carolina System who are subject to the provisions of Section II of this policy are designated as SAAOs. This group includes:<sup>1</sup>

1. The president;
2. The vice presidents and other members of the president's professional staff as determined by the president;
3. The chancellors of the constituent institutions;
4. The vice chancellors, provosts, and deans<sup>2</sup> of the constituent institutions and other members of the chancellor's professional staff as determined by the president;
5. The directors of major administrative, educational, research, and public service activities of the constituent institutions as designated by the Board of Governors or designated as otherwise delegated by the Board to the President.

B. Faculty. Employees of the constituent institutions who have a permanent faculty appointment, including employees within the "physicians or dentists" category under G.S. 126-5 who have faculty appointments.

C. Exempt Professional Staff (EPS). All other non-SHRA employees of the University of North Carolina System with a permanent appointment are designated as Exempt Professional Staff (EPS). This category includes employees who are exempt from the North Carolina Human Resources Act under G.S. 126-5. This category excludes positions within the “physicians or dentists” category under G.S. 126-5 with faculty appointments and excludes temporary appointments, which include but are not limited to university students who are employed incident to their status as students (as in graduate teaching assistantships), Post Docs, House Officers, or work-study positions.<sup>3</sup> Constituent Institutions may adopt their own policies and regulations surrounding these types of employees.

II. The duties and responsibilities of the president and the chancellors, and of their respective senior staff members, and their relationships to one another, to the Board of Governors, to the respective boards of trustees, and to all other officers and agencies within and without the University are set forth in Chapter V of *The Code* of the University of North Carolina. SAAO positions as defined in Section I.A., above, shall be subject to the following conditions of employment.

A. Appointments and Discontinuation of Appointments

1. SAAOs are employed in their administrative positions pursuant to this policy. Except with regard to the appointment of the president, the chancellors, and other employees as provided in *The Code* or the UNC Policy Manual, no contract or other writing may vary these conditions of employment, nor may any oral agreement modify these provisions. The appointments of SAAOs are subject to the approval of the Board of Governors unless otherwise delegated.<sup>4</sup> Such SAAOs do not have tenure in their administrative positions and, except as provided in *The Code* or the UNC Policy Manual, they serve at the discretion of their employer and are not appointed to serve for specified periods of time. The continuance of SAAOs is at all times subject to determination by the appropriate authority, as follows:

a. The president’s continuance in office is determined by the Board of Governors.

b. The continuance in office of members of the president’s professional staff is determined by the president.

c. The continuance in office of the chancellor of a constituent institution is determined by the Board of Governors, which may act to terminate such an appointment upon its own initiative or upon recommendation of the president. The Board of Governors in all instances shall consult the chair of the respective constituent institution’s board of trustees prior to terminating the appointment of a chancellor. The president may place a chancellor on temporary administrative leave, with or without pay, in the president’s discretion. Before placing a chancellor on temporary administrative leave, the president shall consult with the chair of the Board of Governors, the chair of the Committee on University Personnel, and the appropriate chair of the board of trustees.

d. The continuance in office of all other SAAOs of the constituent institutions shall be determined by the chancellor of the institution, unless otherwise provided for in *The Code* or the UNC Policy Manual.

e. Notwithstanding the provisions of (b) and (d) above, the Board of Governors, in accordance with the provisions of Section 501B(6) of *The Code*, reserves the right to act on its own initiative with respect to all promotions, salaries, transfers, suspensions, and dismissals that are to be acted upon by the Board of Governors.

f. The Board of Governors or board of trustees for a constituent institution, as appropriate, may approve a lump sum separation payment, within the board's discretion, to an outgoing SAAO if the employee accepts an offer to receive this payment in exchange for the execution of a release, to the extent permitted by law, of any and all claims against the University through the date of discontinuation. Such a lump sum separation payment for an SAAO shall not exceed the equivalent of ninety (90) calendar days of pay and may be limited by policies adopted by a constituent institution, such as defined separation payment amounts based on years of service.

2. SAAOs of a constituent institution are subject to the direction and control of the chancellor and serve at the chancellor's discretion. They are employees "at will" unless otherwise provided for in policy or *The Code*; thus, the chancellor may not purport to confer on any such employee a period of employment of fixed duration or otherwise confer any property interest in such employment. However, an SAAO may be appointed to a period of employment not to exceed a specified number of years, so long as the instrument accomplishing such an appointment states clearly that the incumbent SAAO is subject to discontinuation at any time, during that period, at the discretion of the chancellor.

3. Tenure status as a member of the faculty of a constituent institution, held concurrently by any SAAO of the University, is separate and distinct from the administrative position, and such tenure status is governed by the provisions of Chapter VI of *The Code* and by the tenure policies of the relevant constituent institution. Those tenure policies have no bearing upon and do not govern the administrative appointments covered by this policy. For the avoidance of doubt, an SAAO may be discontinued "at will" from an administrative position in accordance with this policy regardless of any concurrently held tenured faculty position or tenure policies of a constituent institution. Appointment to any full-time SAAO position shall be the primary appointment, and therefore these policies shall govern the terms and conditions of employment.

#### 4. Appointment of the President

a. The Board of Governors shall elect a president in accordance with G.S. 116-14(a), Section 500 A of *The Code*, and any policies it adopts. The Board of Governors shall approve the salary and compensation of the president.

b. The Board of Governors may approve a contract with the president. The contract may specify terms including, but not limited to, the president's term of employment; salary; benefits; performance-based incentives; other deferred or supplemental compensation, including endowment-funded stipends; provisions for the termination of the president's employment, including any lump sum separation payment and retreat rights; and any other terms it agrees upon.

c. In all other regards, the employment of the president is subject to *The Code*, the policies of the Board of Governors, and the North Carolina General Statutes.

#### 5. Appointment of Chancellors

a. The appointment of chancellors shall be made by the Board of Governors upon the recommendation of the president, in accordance with G.S. 116-11(4). All salary and non-salary compensation paid to or received by the chancellors in connection with their service as chancellors shall be approved by the Board of Governors upon recommendation of the president.

b. The Board of Governors may approve a contract with a chancellor as recommended by the president. The contract may specify terms including, but not limited to, the chancellor's term of employment; salary; benefits; performance-based incentives; other deferred or supplemental compensation, including endowment-funded stipends; provisions for the termination of the chancellor's employment, including any separation payment and retreat rights; and any other term(s) the Board of Governors agrees to, which shall be consistent with applicable policy or regulation.

c. In all other regards, the employment of chancellors is subject to *The Code*, the policies of the Board of Governors, and the North Carolina General Statutes.

d. Except as specifically otherwise provided in the contract, and except as provided in paragraph II.A.1(c) of this policy, after the Board of Governors has approved a contract with a chancellor, it will be the sole responsibility of the president to implement the terms of the contract.

#### B. Compensation

The compensation of SAAOs shall be set by the Board of Governors unless otherwise delegated.<sup>5</sup> No president, chancellor, or other SAAO may be paid, in addition to his or her compensation as established pursuant to the foregoing requirements, for any services rendered to any institution-related foundation, endowment, or other entity that was established by the University, that is controlled by the University, or that is tax exempt based on providing support for the University, without the express approval of the Board of Governors for the president or chancellors, and express approval of the president for all other SAAOs. This provision does not prohibit any institution-related foundation, endowment, or other entity that was established by officers of the University, that is controlled by the University, or that is tax exempt based on being

a support organization for the University from providing funds to support the approved compensation of the president, chancellor, or other SAAO.

III. Exempt Professional Staff (EPS) of the University of North Carolina System as defined in Section I.C., above, shall be subject to the following conditions of employment.

A. Appointments

1. Exempt Professional Staff (EPS) are employed pursuant to this policy. The Board of Governors may delegate its authority to make appointments and determine salaries for positions within this section to the president, who may further delegate certain authority as provided by university policies approved by the Board of Governors.<sup>6</sup>

2. EPS appointments within a constituent institution covered by this policy shall be made by the chancellor, or the chancellor's designee, by means of a letter of appointment that includes notice that the employment conferred is either for a stated definite term, is an employment "at will" subject to discontinuation at the discretion of the chancellor, or is a commissioned police officer role subject to disciplinary and discharge procedures as provided in this policy; the salary, benefits, applicable provisions for the separation of employment, including any separation payment and retreat rights; any funding contingencies applicable to the position; notice that the employment is subject to these policies or applicable institutional policies, as originally adopted and as they may be periodically revised from time to time, and a copy of the institutional policies shall be attached to the letter of appointment (or accessible through references via links in the letter of appointment); and any other term(s) the chancellor (or designee) agrees to, which shall be consistent with applicable policy or regulation. No EPS "at will" appointment may purport to confer any property interest in such employment.

3. When an EPS employee is to serve simultaneously in both a position covered by this policy and a position of University employment not covered by this policy, with the result that two different appointments provide different conditions of employment, one position shall be designated the primary appointment to determine the conditions of employment and the rights and responsibilities of the employee.

a. If appointment to a position covered by this policy occurs after an appointment to a position not covered by this policy, the letter of appointment to the position covered by this policy shall constitute the required designation of primary appointment; conversely, if appointment to a position covered by this policy precedes appointment to the other category of University employment, the letter of appointment or contract establishing the second employment shall constitute the required designation of primary appointment. In either case, the designation of primary appointment shall specifically describe the different rights, duties, and compensation for each position and the relationship, if any, between the two positions.

b. Any funding contingency shall be set forth separately for the position covered by this policy and for the other position, since the operation of any such contingencies may be independent.

c. When an appointment to an EPS position is to be accompanied by appointment to a faculty position pursuant to Section 611 of *The Code*, the term “affiliate” or similar nomenclature, shall be used to identify the faculty appointment.

B. Separation from Employment

1. Discontinuation of Appointment at Will, with Notice or Separation Pay. Employment within an EPS position that is established by the letter of appointment to be employment “at will” is subject to discontinuation at any time at the discretion, respectively, of the president or of the chancellor (or designee) and may be for any reason or no reason so long as the reason is not unlawful; provided, that such a discontinuation (as distinguished from discharge for cause, Section III.B.3.) shall be subject to advance timely notice of discontinuation and/or receipt of a lump sum separation payment. At the respective chancellor’s or the president’s discretion (or their designee), the notice provided in this Section B may be a working notice for the employee, or the notice period may be covered by paid administrative leave.

FOR EMPLOYEES HIRED PRIOR TO JULY 1, 2024

The chancellor or the president (or their designee) may provide the employee with a combination of notice and separation pay that totals the respective required number of days. The determination of whether the employee shall receive notice of discontinuation of the appointment, receive separation pay in lieu of notice, or a combination of the two shall be in the sole discretion of the respective chancellor or the president (or their designee).

a. During the first year of service, not less than a thirty (30) calendar day notice prior to discontinuation of employment or a lump sum separation payment equivalent to thirty (30) calendar days of pay;

b. During the second and third years of service, not less than a sixty (60) calendar day notice prior to discontinuation of employment or a separation payment equivalent to sixty (60) calendar days of pay; and

c. During the fourth and all subsequent years of continuous service, not less than a ninety (90) calendar day notice prior to discontinuation of employment or a separation payment equivalent to ninety (90) calendar days of pay.

FOR EMPLOYEES HIRED ON OR AFTER JULY 1, 2024

The chancellor or the president (or their designee) shall provide advance timely notice of discontinuation at least thirty (30) calendar days prior to the date of discontinuation.

In addition to the thirty (30) days’ notice provided above, the chancellor or the president (or designee) may offer the employee a lump sum separation payment which

shall be in exchange for an executed release of any and all claims, to the extent permitted by law, against the University through the date of discontinuation. Such a lump sum separation payment for an employee shall not exceed sixty (60) calendar days of pay and may be limited by policies adopted by the constituent institution, such as defined separation payment amounts based on years of service. An offer of a separation payment is not a right of choice for the employee, but rather an option exercised in the sole discretion of the respective chancellor or president (or designee).

2.       Expiration of Term Appointment. Employment within a covered EPS position that is established by the letter of appointment to be for a stated definite term expires automatically at the conclusion of the stated term without the requirement of any advance notice. Such an appointment may be renewed or extended at the sole discretion of the employer. Unless otherwise provided in the letter of appointment, the employer may make reasonable efforts to provide at least thirty (30) calendar day notice of a contract renewal but has no obligation to provide notice of renewal (or non-renewal).

3.       Discharge for Cause. Any Exempt Professional Staff may be discharged for stated cause (for commissioned police officers, see paragraph B.4. below).

a.       Discharge for cause is to be distinguished from discontinuation with notice (Section III.B.1.) and automatic expiration of term (Section III.B.2.)

b.       Stated causes for discharge shall include, but not necessarily be limited to, incompetence, unsatisfactory performance, neglect of duty, or misconduct that interferes with the capacity of the employee to perform effectively the requirements of their employment.

c.       The president shall adopt an implementing Regulation for the Discharge for Cause of EPS employees, which shall provide for at least notice and an opportunity to respond.

4.       Disciplinary Action and Discharge for Commissioned Police Officers. Notwithstanding the above provisions, any employee occupying a covered commissioned police officer position shall be subject instead to the disciplinary procedures as prescribed in Article 8 of G.S. 126 and applicable policy or regulation.

#### C.       Reviews of Personnel Actions

1.       UNC System Office and each constituent institution respectively shall adopt and publicize procedures applicable to relevant cohorts of employees, under which covered employees may secure review of decisions.

2.       Decisions reached pursuant to such review procedures concerning the discontinuation, expiration of term appointment, termination, or discharge or other formal discipline for cause may be appealed in accordance with the provisions of Section 612 of *The Code*.

3. Notwithstanding the above provisions, any employee occupying a covered commissioned police officer position shall be subject instead to the grievance procedures as prescribed in Article 8 of G.S. 126 and applicable policy or regulation.

D. Equal Employment Opportunity

It is the policy and intention of the University of North Carolina System that there be equal employment opportunity and freedom from unlawful discrimination in all employment within the University, as set out in Section 103 of *The Code*.<sup>7</sup> Employment in an SAAO or EPS position shall be conducted in accordance with all provisions of State or federal law or regulation prohibiting any such discrimination and in accordance with applicable affirmative action plans.

E. Protected Activity

Employment in SAAO or EPS positions shall not be adversely affected by the exercise of rights guaranteed by the First Amendment of the United States Constitution or by Article I of the North Carolina Constitution; provided, that employees in SAAO and EPS positions shall be subject to any limitations on political activity established by Article 5 of G.S. 126. The Board of Governors' policies concerning political activity, Section 300.5.1 of the UNC Policy Manual, *et seq.* as they may be revised from time to time, shall apply to SAAO and EPS positions.

IV. Other Matters.

A. Effective Date. The requirements of this policy shall be effective upon adoption by the Board of Governors.

B. Relation to State Laws. This policy is meant to supplement, and does not purport to supplant or modify, those statutory enactments, regulations, and policies which may govern the activities of public officials.

C. Regulations and Guidelines. This policy shall be implemented and applied in accordance with such regulations and guidelines as may be adopted by the president.

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<sup>1</sup> Cf. G.S. 116-14(a), 116-14(b), 116-11(4), 116-11(5), and 126-5(c1)(8).

<sup>2</sup> Deans at the North Carolina School of Science and Mathematics fall within Section I.C., of this policy.

<sup>3</sup> Employment of EHRA employees of the North Carolina Cooperative Extension Service (COS) of NC State University and NC A&T University is governed under policies promulgated directly by their institutions' respective board of trustees. See G.S. 126-5(c1)(9a) and G.S. 153A-439(b). Employment of EHRA employees of the Clinical Support Service (CSS) at East Carolina University, and of EHRA employees of the Dental Medicine Support Services (DMSS) at the University of North Carolina at Chapel Hill and East Carolina University, is governed under policies promulgated directly by their institutions' respective board of trustees. See G.S. 116-37.3 and G.S. 116-40.6.

<sup>4</sup> Pursuant to G.S. 116-11(13), and notwithstanding *The Code* or any other policy, the Board of Governors has delegated certain authorities to the president of the University. See Section 200.6 of the UNC Policy Manual, *Delegation Authority to the President of the University*, adopted November 13, 2016.

<sup>5</sup> See endnote 3, above.

<sup>6</sup> See UNC Policy Manual Sections 200.6 and 600.3.4.

<sup>7</sup> Bona fide occupational qualifications or other exceptions to those general prohibitions, specifically provided for by state or federal law, may be applied to positions covered by this policy.