



Talking Points/Comments for FSU BOG Draft Policies

The three draft policies below are on public comment until 12:00 PM, Wednesday, January 31, 2018. You can review and comment using this link. <https://www.fairmontstate.edu/aboutfsu/board-governors/policies-public-comment> We encourage reading each policy in its entirety before commenting.

POLICY NO. 63 – DESIGNATION/STATUS OF EMPLOYEES

HB 2542 passed during the 2017 Legislative Session affected the definitions of classified and non-classified employees. Specifically, it excluded from the classified staff designation all information technology-related positions and anyone hired after July 1, 2017 who met the duties test for exempt status under the FLSA (not eligible for overtime pay).

FSU has taken the position in their draft policy that “all positions are critical to the accomplishment of the mission of the institution.” The criterion “critical to the institution” for designating an employee as non-classified is NOT a new criterion; it was included in state law before passage of House Bill 2542. **FSU is abusing its authority and eroding your rights and job protection with this policy.** Had the legislature intended on eliminating the classified staff status for all non-faculty staff, it would have. While hundreds of workers might be necessary, very few positions are actually critical to the mission.

Non-classified employees serve at the will and pleasure of the organization, unless otherwise established by action of the university. Moreover, many provisions (rights) in state code for classified staff will no longer apply to staff at FSU if this draft policy is approved. Do not be comforted with the draft policy’s provision for who is included in the at-will status. Policies can be revised and just by removing the section on AT-WILL EMPLOYEES from the policy, FSU can easily make all non-faculty staff at-will employees.

Some state law protections you could lose with the elimination of Classified Staff status:

- Due process for discipline and discharge
- Progressive discipline
- Layoff rights
- Summer employment preference in lieu of hiring new staff
- Uniform system for classifying jobs
- Salary structure and salary schedule
- A consistent, objective performance evaluation

Comment online for Policy No. 63 and tell the Board of Governors not to eliminate the classified staff designation. The only new requirement under state law for changing an employee from classified to non-classified affects employees in information technology-related positions and exempt employees hired after July 1, 2017.

Excerpt from state law - §18B-9A-2 – Definitions:

“Nonclassified employee” means, an employee of an organization who meets one or more of the following criteria:

(A) Holds a direct policy-making position at the department or organization level;

(B) Reports directly to the president or chief executive officer of the organization;

(C) Is in a position considered by the president or designee to be critical to the institution pursuant to policies or decisions adopted by the governing board;

(D) Is in an information technology-related position;

(E) Is hired after July 1, 2017, and meets the duties test for exempt status under the provisions of the Fair Labor Standards Act at the time of hire or anytime thereafter; or

(F) Was in a nonclassified position as of January 1, 2017.

Unless otherwise established by action of the institution where employed, a nonclassified employee serves at the will and pleasure of the organization, which authority may be delegated by act of the board.

POLICY NO. 64 – PROGRESSIVE DISCIPLINE AND SEPARATION FROM EMPLOYMENT

Employees who serve at the will and pleasure of the organization may be terminated for any reason; however, this draft policy purports to apply progressive discipline to remediate the conduct of an at-will and pleasure employee. Please note the “may choose (but is not required)” insertion related to progressive discipline.

Reminder: *if Policy No. 63 is adopted, employees lose their classified staff designation and the only thing keeping all staff from being designated as at-will staff is a provision in policy that can be removed by the board at any time.*

According to Policy No. 64, faculty and staff are expected to adhere to the general provisions, comply with the standards of conduct, and not engage in acts of gross misconduct; however, the president determines what constitutes gross misconduct and employees may be disciplined, up to and including termination, for unacceptable conduct and/or poor job performance. The president also determines whether your behavior (on duty or off duty) is so egregious or damaging that it warrants immediate dismissal without progressive discipline. It all sounds good if you trust the president to be fair; however, the list of what constitutes gross misconduct is not only far-reaching compared to what the courts have deemed to be gross misconduct, but also note the reference to “this list is not exhaustive” which means other unidentified conduct could be considered gross misconduct. This policy basically gives the president or his/her designee the authority to terminate anyone for what they deem to be gross misconduct.

Comment online for Policy No. 64 and tell the Board of Governors progressive discipline is paramount in all circumstances other than gross misconduct and you don’t want the president/designee to arbitrarily determine what constitutes gross misconduct – gross misconduct is not a moving target and has been addressed by various administrative boards and the courts. They are continuing to chip away at your rights and job security so that employees will be afraid to speak out for fear of losing their jobs.

POLICY NO. 65 – LAYOFFS AND REDUCTIONS IN FORCE

Non-classified staff have little job security protections in law, so university policy provisions on layoffs will be the rule. **Faculty** layoffs in this policy appear to maintain rank/seniority/tenure for layoff purposes. HB 2542 eliminated bumping rights and recall status for **classified staff**. Current law (see WV Code §18B-7-3) provides, in pertinent part, *“(1) Layoffs for reason of lack of funds or work, or abolition of position or material changes in duties or organization, the institution may layoff the incumbent in the position being eliminated. In the case of elimination of some but not all of the positions of the same job title, consideration shall be given to an employee’s documented quality of work performance as demonstrated in performance evaluations of record (including, but not limited to, disciplinary records), skills, seniority as measured by years of service, or other factors, as determined by the board. (2) If the organization desires to lay off a more senior employee, the organization may offer to the more senior employee a severance package, the value of which shall not exceed the more senior employee’s salary for one year.”*

Concerns related to Policy No. 65: Attendance, behavior, years of service in the current position, and job suitability have been included as factors to determine whom to lay off.

- Attendance - there is no separation of excused/unexcused absences. Could you be targeted for layoff due to absences related to an extended medical leave? Medical appointments? Off work with the flu?
- Behavior – this factor is too subjective. Unless there is documented disciplinary action related to conduct, who is evaluating your day-to-day behavior and qualified to determine whether your behavior warrants your being laid off over another employee in the same job title/unit?
- Job suitability – this factor is too subjective. What are they relying upon to determine whether you are less suitable than others in your job title/unit?
- Years of service in the current position – this factor will discourage upward movement in classification. Would you want to change positions if you could be targeted for layoff over a lesser senior employee?

Comment online for Policy No. 65 and tell the Board of Governors to remove attendance, behavior, years of service in the current position and job suitability from the factors used to determine layoffs. That leaves them with job evaluations, disciplinary records, skill-set, and seniority – all referenced in WV Code above.