

CHAPTER 3

NONRENEWAL OF FIXED-TERM RENEWABLE APPOINTMENTS

3.01 Nonrenewal Defined

Nonrenewal is the termination of an academic staff member's employment at the end of the appointment because of funding loss, a budget or program decision, or unsatisfactory performance, when proper notice of nonrenewal under ASPP 3.05 is given.

3.02 Grounds for Nonrenewal

In carrying out its mission and goals, the university retains the right to determine the direction and scope of its programs—including the right to reduce staff levels through nonrenewal because of a funding loss or a budget or program decision. A member of the academic staff holding a fixed-term renewable appointment may be nonrenewed at the end of the appointment because of

- a funding loss,
- a budget or program decision that requires a program to be discontinued, curtailed, modified or redirected, or
- unsatisfactory performance.

Termination during an initial period of evaluation is not a nonrenewal and is not subject to the provisions of this chapter.

NOTE: Nonrenewal does not apply to employees holding indefinite appointments. See ASPP 2.01.2.

3.03 Employer's Responsibility in Cases of Nonrenewal for Funding Loss or a Budget or Program Decision

Whenever a funding loss or a budget or program decision will result in a reduction of the academic staff work force in an operational area, nonrenewal shall be implemented on the basis of years of UW-Madison service (see ASPP 1.03), except as follows. The presumption in favor of years of service shall not apply when program needs dictate other considerations such as the need to maintain specific expertise, responsibility levels, or productivity levels within a program or operational area.

3.04 Employer's Responsibility in Cases of Nonrenewal for Performance

An employer (e.g., immediate supervisor, principal investigator, department chair or unit head) is responsible for clearly communicating to each employee under his or her supervision what the employee's duties are and how the performance of those duties will be evaluated. Before ending an appointment for unsatisfactory performance, the employer must inform the employee in

writing about areas of performance deficiency and must make efforts to work with the employee to improve performance to a satisfactory level (see ASPP 10, Performance Reviews). Some examples of unsatisfactory performance include insufficiently productive or timely output, insufficient creative effort, or failure to communicate effectively with individuals or groups important to the work processes.

Lapses in performance may also result from a disability or personal problem. If the employer knows, or has reason to believe, that either of these is or could be a factor affecting the employee's performance, the employer shall consult with campus resources such as the Office for Equity and Diversity, the Employee Assistance Office, the Ombuds Office, and the Academic Personnel Office before proceeding.

3.05 Notice

The employee shall be given a written notice of nonrenewal, including a statement of the reasons, notification of his or her right to appeal, and a copy of ASPP 3 and 9, in advance of the expiration of the current appointment in accordance with the table below. Prior to issuing the nonrenewal notice, the employing unit must obtain the approval of the dean, director, or designee. Copies of the nonrenewal notice shall be sent to the department chair or unit head, the dean or director, and the Academic Personnel Office. If necessary, the appointment shall be extended to provide the required minimum nonrenewal notice. If the minimum notice period cannot be provided, policies pertaining to layoff apply (see ASPP 5).

Minimum Notice Period for Nonrenewal of Fixed-Term Renewable Appointments	
<u>Years of UW-Madison Academic Staff Service*</u>	<u>Minimum Notice Period in Months</u>
Fewer than 2	3
At least 2 but fewer than 6	6
At least 6 but fewer than 10	9
10 or more	12

NOTE: Rolling-horizon appointments require additional action and may require additional notice (see ASPP 2.01.1.b).

*Academic staff service is defined as continuous years of paid UW-Madison academic staff employment without regard to percent of appointment. For purposes of determining the required notice periods, an appointment of one or both semesters of an academic year shall count as one year of service. A leave of absence of any length or a break in academic staff service of three years or less shall not result in loss of prior years' employment credit.

3.06 Referral Priority

Referral priority entitles a nonrenewed academic staff member to be considered for academic staff positions for which he or she is qualified prior to open recruitment. Fixed-term academic staff members with six or more years of academic staff service at the University of Wisconsin-Madison who are nonrenewed for funding loss or a budget or program decision shall be eligible for referral priority from notification of nonrenewal until the end of the appointment. An academic staff member with referral priority may be hired without open recruitment at the discretion of the department or unit responsible for the position.

To initiate and maintain referral priority, the nonrenewed academic staff member must register with the Academic Personnel Office and notify that office of changes of address or employment status. Referral priority ends automatically when a staff member accepts an alternative appointment that is not temporary, fails to accept an appropriate alternative appointment with any employer, resigns, or fails to notify the Academic Personnel Office of changes of address or employment status. The primary test in the determination of appropriate alternative appointment is not salary level but the comparability of the qualifications necessary and skill level required.

3.07 Right to Appeal

An academic staff member who is nonrenewed has the right to appeal when the staff member believes that there are no valid grounds for nonrenewal (see ASPP 3.01); or that another academic staff member should have been nonrenewed instead; or that the nonrenewal is arbitrary, capricious, for reasons prohibited by law, or in violation of ASPP when the alleged violation is substantive enough to influence the decision under review. An arbitrary or capricious nonrenewal decision is one that is made without a basis in fact or for inconsequential or unsubstantial reasons when the needs of the program have not changed, funds for the position are available, and performance has been satisfactory. A pending appeal of a nonrenewal decision does not extend the appointment.

3.08 Appeal Process

1. *Review by the Dean or Director.* The academic staff member must submit a written request for review of the nonrenewal decision to the dean, director or designee within 20 working days of receipt of the nonrenewal notice. The request must include a statement of facts and circumstances supporting the request. The academic staff member is entitled to request a meeting with the dean, director or designee, who shall meet with the academic staff member; if requested to do so. The dean, director or designee shall conduct an objective review of all pertinent facts and circumstances and shall notify the academic staff member, the department or unit, and the Academic Personnel Office of his or her decision in writing within 20 working days of receipt of the written request for review. If there is no response by the dean or director to the written request for a review within the designated time period, the employee can appeal to the Academic Staff Appeals Committee within 20 working days of the expiration of the designated period.

2. *Appeal to the Academic Staff Appeals Committee.* The academic staff member shall have 20 working days from receipt of the dean or director's decision to file an appeal with the Secretary of the Academic Staff office, which will forward the files to the Academic Staff Appeals Committee and the

dean or director, with a copy to the Academic Personnel Office, within five working days. The dean or director shall provide the employing department and employee's supervisor with a copy of the academic staff member's appeal. The Academic Staff Appeals Committee shall conduct a review in accordance with ASPP 9.

a. *Access to the Evidence.* The appellant shall have the right to review all evidence the employer used to make the nonrenewal decision. All additional information the employer uses or plans to use to support the decision shall also be provided to the appellant in a reasonable time prior to a review. Likewise, the employer shall have the right to review all materials to be presented by the appellant. The exchange shall take place within a reasonable time prior to a review.

b. *Burden.* The employee has the burden to show by a preponderance of the evidence that there are no valid grounds for nonrenewal (see ASPP 3.01); or that another academic staff member should have been nonrenewed instead; or that the nonrenewal is arbitrary, capricious, for reasons prohibited by law, or in violation of ASPP when the alleged violation is substantive enough to influence the decision under review.

c. *Notification and Disposition.* The Academic Staff Appeals Committee shall forward its findings of fact with a recommendation to the chancellor or designee and shall send a copy to the employee, the department chair or unit head, the dean or director, and the Academic Personnel Office. Within 30 working days of receipt of the Committee's recommendation, the chancellor or designee shall implement the recommendation or give the appellant and the Committee written reasons for any decision to modify the recommendation. The employee, the department chair or unit head, the dean or director, and the Committee shall be notified of the decision of the chancellor or designee, which is final. If the decision of the chancellor or designee has not been issued within 30 working days, the recommendation of the Academic Staff Appeals Committee becomes final.

3. *Time Limits.* Steps in the appeal process must be initiated and completed within the designated time periods except when modified by mutual consent. If the employee fails to initiate the next step in the appeal process within the designated time period, the appeal will be considered resolved by the decision at the last completed step.

4. *Representation.* The presence of a representative or other third party designated by the employee is permitted at any stage during the appeal process.

3.09 Joinder of Nonrenewal Appeals

If the nonrenewal of two or more members of the academic staff arises from the same or similar situation in a single operational area, the academic staff members who appeal or the dean or director may request joinder of cases for review. The Academic Staff Appeals Committee shall consider joinder before taking up the merits of any case. In addition, the Academic Staff Appeals Committee may join the cases on its own motion.