36.13 — Faculty tenure and probationary appointments.

(1) Definitions. In this section:

(a) "Probationary appointment" means an appointment by the board held by a faculty member during the period which may precede a decision on a tenure appointment.

(b) "Tenure appointment" means an appointment for an unlimited period granted to a ranked faculty member by the board.

(2) Appointments. (a) Except as provided under par. (b), the board may grant a tenure appointment only upon the affirmative recommendation of the appropriate chancellor and the appropriate academic department or its functional equivalent. Neither the chancellor nor the academic department or its functional equivalent may base a tenure recommendation upon impermissible factors, as defined by the board by rule.

(b) The board may grant a tenure appointment without the affirmative recommendation of the appropriate academic department or its functional equivalent if all of the following apply:

1. The board has the affirmative recommendation of the appropriate chancellor.

2. A faculty committee authorized by the board by rule to review the negative recommendation of the academic department or its functional equivalent finds that the decision of the academic department or its functional equivalent was based upon impermissible factors, as defined by the board by rule.

3. The board has the affirmative recommendation of a committee appointed according to the policies and procedures of the appropriate institution to review the individual’s record with reference to criteria for tenure published by the institution under procedures established by the board by rule. No person may be appointed to the committee under this subdivision unless the person is knowledgeable or experienced in the individual’s academic field or in a substantially similar academic field. No member of the committee appointed under this subdivision may be a member of the academic department or its functional equivalent that made the negative recommendation. The committee appointed under this subdivision may not base its tenure recommendation upon impermissible factors, as defined by the board by rule.

(c) A tenure appointment may be granted to any ranked faculty member who holds or will hold a halftime appointment or more. The proportion of time provided for in the appointment may not be diminished nor increased without the mutual consent of the faculty member and the institution subject to sub. (5) and s. 36.21.

(d) A probationary appointment shall not exceed 7 consecutive academic years in a full-time position in an institution. A leave of absence, sabbatical, or a teacher improvement assignment does not constitute a break in continuous service and shall not be included in the 7-year period. The board may promulgate rules specifying additional circumstances that do not constitute a break in continuous service and that shall not be included in the 7-year period.

(3) Rules. The board and its several faculties after consultation with appropriate students may promulgate rules for tenure and probationary appointments, for the review of faculty performance and for the nonrenewal and dismissal of faculty members. Such rules shall be promulgated under ch. 237.
Limited appointments. (1) An appointment to a position listed in sub. (2) shall be a limited appointment and the appointment shall be at the pleasure of the board. A faculty member who has been granted tenure or a person holding an academic staff appointment under ss. 36.13 and 36.15 shall not lose that appointment by accepting a limited appointment.
(2) Limited appointments apply to the following positions: president, provost, vice president, associate vice president, assistant vice president, chancellor, vice chancellor, associate chancellor, assistant chancellor, associate vice chancellor, assistant vice chancellor, college campus dean, secretary of the board, associate secretary of the board, assistant secretary of the board, trust officer and assistant trust officer and such other administrative positions as the board determines at the time of the appointment.


Cross-reference: See also chs. UWS 15 and 19, Wis. adm. code.

36.21 Lapse of appointments Termination due to certain budget or program changes.
Notwithstanding ss. 36.13 (4) and 36.15, the board may, with appropriate notice, terminate any faculty or academic staff appointment when a financial emergency exists such an action is deemed necessary due to a budget or program decision requiring program discontinuance, curtailment, modification, or redirection. No person may be employed at the institution within 2 years to perform reasonably comparable duties to those of the person whose appointment was terminated without first offering such person a reappointment. The board, after consultation with the faculty and chancellor of each institution, shall adopt procedures to be followed in the event of termination of academic staff under this section, and the board may adopt procedures, consistent with ss. 36.22, to be followed in the event of termination of faculty under this section and ss. 36.22.

History: 1973 c. 335.

36.22 Layoff or termination of faculty member due to certain budget or program changes. (1) DEFINITIONS. In this section:
(a) "Layoff" means an indefinite suspension or involuntary reduction in services and compensation of a faculty member's employment by the system.
(b) "Program change" means program discontinuance, curtailment, modification, or redirection.
(c) "Termination" means the permanent elimination of a faculty member's employment by the system.

(2) LAYOFF OR TERMINATION DUE TO CERTAIN CIRCUMSTANCES. (a) The board may, under this section and s. 36.21, with appropriate notice, lay off or terminate any faculty member when such an action is deemed necessary due to a budget or program decision requiring a program change.
(b) Any layoff or termination of a faculty member under par. (a) may be made only in accordance with the provisions of this section and implies the retention of rights indicated in this section. A faculty member who is laid off retains the rights specified in subs. (1) to (6) and a faculty member who is terminated retains the rights specified in subs. (13) and (14).
(c) Nonrenewal of an appointment, regardless of the reason, is not a layoff or termination under this section.

(3) SENIORITY. (a) In the case of layoffs of faculty members due to a budget or program decision requiring a program change, layoffs shall follow seniority unless a clear and convincing case is made that program or budget needs dictate other considerations such as the need to maintain diversity of specializations within a department.
(b) The faculty of each institution shall determine the form of seniority that is to be considered. This determination shall be effective uniformly throughout the institution. Seniority may be defined in the following, or in other, ways:
1. Without regard to rank, with seniority established by total years of service in the institution,
2. By rank, and within rank according to total years of service in the institution,
3. By rank, and within rank, according to length of service in the institution at that rank,
4. **NOTIFICATION.** (a) Each faculty member who is to be laid off shall receive prompt written notification from the chancellor. Prior to issuing a layoff notification, the chancellor shall offer to consult with, and seek advice from, a faculty committee designated or created by the faculty of the institution.
(b) The notification under par. (a) shall include all of the following:
1. A summary of the reasons supporting the need for the layoff,
2. A statement of the basis on which the individual position was selected for elimination and one of the following:
   a. If the position was selected for elimination on the basis of seniority, the criterion used and data supporting the choice,
   b. If the position was selected for elimination on a basis other than seniority, the data and reasons supporting that choice,
3. A statement of the date on which the layoff is to be effective,
4. A copy of the statutes regarding layoff of faculty due to a budget or program decision requiring a program change and such other information or procedural regulations as the chancellor deems appropriate.
5. **NOTIFICATION PERIOD.** (a) In the case of the layoff of faculty due to a budget or program decision requiring a program change, notification must be given at least 12 months in advance of the effective date.
(b) During the 12-month period under par. (a), and prior to entering layoff status, the chancellor may offer as appropriate, and the faculty member may accept, any of the following:
1. Terminal leave and early retirement,
2. Relocation leave accompanied by resignation,
3. Acceptance of either option under par. (b) terminates the faculty member's association with the system at the end of the leave period
6. **FACULTY HEARING COMMITTEE.** (a) The faculty of each institution shall establish a committee or designate an existing committee to serve as a hearing committee for the purposes of this section. The committee shall consist of faculty members of the institution chosen by the faculty in a manner to be determined by the faculty. This standing faculty committee shall conduct the hearing, make a verbatim record of the hearing, prepare a summary of the evidence, and transmit the record and summary along with its recommended findings of law and decision to the board.
7. **REVIEW HEARING.** (a) A faculty member who has been notified of layoff is entitled to a hearing before the faculty hearing committee as to the appropriateness of the decision to lay off that particular individual. The budget or program decisions made to discontinue, curtail, modify, or redirect a program are not subject to review in the hearing.
(b) A hearing must be requested within 20 days of the receipt by the faculty member of notification of layoff. The request shall state with particularity the grounds to be relied upon in establishing the impropriety of the decision. Relevant information supplementary to that contained in the notification
statement may be requested. The question to be considered in the review is whether one or more of the following improper factors entered into the decision to lay off:

1. Conduct, expressions, or beliefs on the faculty member's part that are constitutionally protected, or protected by the principles of academic freedom.
2. Factors proscribed by applicable state or federal law regarding fair employment practices.
3. Improper selection of the individual to be laid off.
   (c) For purposes of par. (b), "improper selection" has occurred if material prejudice resulted from any of the following:
   1. The procedures required by the board were not followed.
   2. Available data bearing materially on the role of the faculty member in the institution were not considered.
   3. Unfounded or arbitrary assumptions of fact were made.
   4. Immature or improper factors other than those specified in par. (b) entered into the decision.
   (d) The committee shall determine whether one or more of the improper factors under par. (b) entered significantly into and affected the layoff decision on the basis of the evidence presented. If the committee believes that one or more improper factors may have entered into the layoff decision but is convinced that the same decision would have been reached had the error or errors not occurred, the committee shall find the layoff decision to have been proper. The committee shall report its findings and recommendations to the chancellor and the faculty member.

(B) HEARING PROCEDURE. (a) If the faculty hearing committee requests, the chancellor shall provide legal counsel to the committee for a hearing under sub. (7). The hearing shall be closed unless the faculty member who has been notified of layoff requests an open hearing, in which case it shall be open.

(b) The faculty hearing committee may, on motion of either party, disqualify any one of its members for cause by a majority vote. If one or more of the faculty hearing committee members disqualify themselves or are disqualified, the remaining members may select a number of other members of the faculty equal to the number who have been disqualified to serve, except that alternative methods of replacement may be specified in the rules and procedures adopted by the faculty establishing the hearing committee under sub. (6). No faculty member who participated in the decision to lay off or who is a material witness may sit in on the faculty hearing committee.

(c) The faculty member shall be given at least 10 days' notice of the hearing. The hearing shall be held not later than 20 days after the request for hearing except that this time limit may be extended by mutual consent of the parties or by order of the faculty hearing committee.

(d) The faculty member shall have access to the evidence on which the administration intends to rely to support the decision to lay off, and shall be guaranteed all of the following minimal procedural safeguards at the hearing:

1. A right to be heard on his or her own behalf.
2. A right to counsel or other representatives or both, and to offer witnesses.
3. A right to confront and cross-examine adverse witnesses.
4. A verbatim record of the hearing, which might be a sound recording, provided at no cost.
5. Written findings of fact and decision based on the hearing record.
6. Admissibility of evidence as described in s. 227.45 (1) to (4).
(e) Adjournments shall be granted to enable either party to investigate evidence as to which a valid claim of surprise is made.

(9) RECOMMENDATIONS AND REVIEW BY THE BOARD. The layoff decision of the chancellor and the recommendations, if any, of the faculty hearing committee, shall be transmitted to the president and to the board and acted upon as follows:

(a) If the faculty member has not requested a hearing before the faculty hearing committee, the chancellor's decision shall be deemed proper and shall be reported for information to the president and the board.

(b) If the faculty member has requested a hearing and the faculty hearing committee has found the decision to be proper, the report of the faculty hearing committee shall be forwarded to the president and board by the chancellor with a recommendation. The faculty member may request a review by the board, and the board review panel may at its option grant a review. Unless the board review panel grants the request for review, the recommended findings of fact and decision of the faculty hearing committee shall be the final decision of the board.

(c) If after a hearing, the faculty hearing committee's recommended findings of fact and decision are that the initial decision was improper, the chancellor shall review the matter and give careful consideration to the committee's finding. If the chancellor accepts the committee's findings, the chancellor's decision shall be final. If the chancellor contests the recommended findings that the decision was improper, the verbatim record, a summary of the evidence, and the recommended findings of fact and decision shall be forwarded to the board review panel. The chancellor and the faculty member shall be furnished with copies of this material and shall have a reasonable opportunity to file written exceptions to the summary and proposed findings and decision and to argue with respect to them orally and in writing before the board review panel. The board review panel shall hear and decide the case and the decision of the board review panel shall be final.

(10) BOARD REVIEW. A review panel shall be appointed by the president of the board, and shall include 3 members of the board, and 2 not voting staff members from the academic affairs office of the system. The panel shall review the criteria and reasoning of the chancellor and the findings and recommendations of the faculty hearing committee in each case forwarded for its review, and shall reach a decision on the recommendation to be approved. The decision shall be final and binding upon the chancellor and the faculty member affected, unless one or more of the board members of the review panel request that the decision be reviewed by the full board in which case the record shall be reviewed and a decision reached by the full board.

(11) LAYOFF STATUS. (a) A faculty member whose position has been eliminated or reduced in accordance with the provisions of this section shall, at the end of the appropriate notice period, be placed on layoff status, unless the layoff notice has been rescinded prior to that time.

(b) The faculty member whose notice period has expired, and who is placed on layoff status, shall remain on layoff status until any or all of the following occurs:

1. The period of the faculty member's appointment has expired under its own terms.
2. The faculty member is reappointed to the position from which he or she was laid off. Failure to accept a reappointment terminates the faculty member's association with the system.
3. The faculty member accepts an alternative continuing position in the system. Failure to accept an alternate appointment does not terminate the faculty member's association with the system.
4. The faculty member resigns.
5. The faculty member, while on layoff status, shall notify the chancellor by December 1 of each year as to his or her location, employment status, and desire to remain on layoff status. Failure to provide this notice of desire to remain on layoff status terminates the faculty member’s association with the system.

(12) ALTERNATIVE EMPLOYMENT. Each institution shall devote its best efforts to securing alternative appointments within the institution in positions for which faculty laid off under this section are qualified under existing criteria. In addition, the system shall provide financial assistance for one year for faculty who are designated for layoff to reapply within the department or within another department of the institution, where reappointment is feasible. Further, the system shall devote its best efforts to ensure that faculty members laid off or terminated in any institution are made aware of openings within the system.

(13) REAPPOINTMENT RIGHTS. Each institution shall establish administrative procedures and policies to ensure that where layoffs or terminations occur due to a budget or program decision requiring a program change, no person may be employed at that institution within 2 years to perform reasonably comparable duties to those of the faculty member laid off or terminated without first offering the laid off or terminated faculty member reappointment without loss of seniority and other rights. The 2-year period shall be computed from the effective date of layoff as specified in the original notice.

(14) RETENTION OF RANK AND SALARY. Any faculty member reappointed within 3 years after layoff or termination shall be reappointed with a rank and salary at least equivalent to the rank and salary when laid off or terminated, together with such other rights and privileges that may have accrued at that time. Any faculty member relocated within an institution or within the system shall not lose either rank or salary adversely affected except by consent at the time of relocation.

(15) RIGHTS OF FACULTY MEMBERS ON LAYOFF. A faculty member on layoff status in accordance with the provisions of this section has the reemployment rights guaranteed by subs. (12) and (14), and has all of the following minimal rights:

(a) The right to participate in fringe benefit programs as is allowed by state statutes and rules governing rights of laid off state employees.

(b) The right to continued use of campus facilities as is allowed by policies and procedures established by the department and institution.

(c) The right to participate in departmental and institutional activities as is allowed by guidelines established by the department and institution.

(16) SYSTEMWIDE TENURE. The commitment to systemwide tenure within the institutions formerly governed under ch. 37, 1971 Stats., shall be honored by those institutions for those eligible under s. 36.13 (4), 1971 Stats., in the event of layoff or termination under the provisions of this section.

(17) LACK OF FACULTY ACTION. If the faculty of an institution is given due notice but does not establish or designate a hearing committee under sub. (6) (a), the chancellor may appoint a committee of faculty members to provide this function.