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Unit 7

State of NH - UHPAC(I)

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AGREEMENT

This Agreement is made this 24th day of April, 2003 by and between the State of Hawaii and the Board of Regents of the University of Hawaii, hereinafter called the Employer or Public Employer, as defined in §89-2, Hawaii Revised Statutes, and the University of Hawaii Professional Assembly, hereinafter called the Union.

ARTICLE I. RECOGNITION

The Employer recognizes the Union as the exclusive representative of Collective Bargaining Unit 7, as certified by the Hawaii Labor Relations Board. The public employees composing the unit are hereinafter referred to as Faculty Members or Faculty.

ARTICLE II. NON-DISCRIMINATION

- A. Neither the Employer nor the Union shall discriminate against any Faculty Member on the basis of race, color, religion, national origin, sex, sexual orientation, age, disability, or for being a disabled veteran, a veteran of the Vietnam era, or for lawful political activity, except for bona fide occupational or legal requirements.
- B. Neither the Employer nor the Union shall discriminate against any Faculty Member on the basis of activity or lack of activity on behalf of the Union.

ARTICLE III. CONDITIONS OF SERVICE

A. MAINTENANCE OF RIGHTS AND BENEFITS

- 1. Except as modified by the terms of this Agreement, Faculty Members¹ shall retain all rights and benefits provided in the written rules, regulations, and policies formally adopted by the Board of Regents existing at the execution of this Agreement which pertain to wages, hours, and other terms and conditions of employment.

The minutes of the Board of Regents shall constitute the basis of the applicable rule, regulation, or policy.

- 2. Except as modified by the terms of this Agreement, the Faculty of the University of Hawaii at Manoa, University of Hawaii at Hilo, and University of Hawaii at West Oahu shall retain the rights and responsibilities set forth in Part 4: Conditions of Service of the Faculty Handbook for Manoa and Hilo Campus, 1977 Edition, provided that:
 - a. Amendments and modifications officially approved by the Board of Regents after the issuance of said Handbook and prior to the execution of this Agreement shall prevail; and
 - b. Only Appendix T (see R-1 of Reference Section) of said Handbook is incorporated herein.
- 3. Except as modified by the terms of this Agreement, the Faculty of the Community Colleges shall retain the rights and responsibilities provided in the officially approved rules, regulations, and policies of the Board of Regents which pertain to the same subject matter covered in Part 4 of the aforesaid Handbook.

B. OUTSIDE EMPLOYMENT

Faculty may engage in outside employment for additional compensation according to the following guidelines:

- 1. The additional employment is neither so extensive nor so demanding as to interfere with the Faculty Member's creditable performance of the primary obligation to the University.

¹ In accordance with Board of Regents' policy, the following definitions of Faculty are used in this Agreement: C (all Faculty at the Community Colleges), I (instructional), R (researcher), S (specialist), B (librarian), A (county extension agent), M (clinical medicine) and J (legal instruction).

- a. The Faculty Member is sued for actions taken by the Faculty Member in the course of the Faculty Member's employment and within the scope of the Faculty Member's duties and responsibilities;
 - b. The Faculty Member must appear as a defendant or is subpoenaed to appear in court when sued for actions taken in the course of employment and within the scope of the Faculty Member's duties and responsibilities;
 - c. The Faculty Member must appear as a witness or is subpoenaed to appear in court on a matter arising in the course of employment and within the scope of the Faculty Member's duties and responsibilities; and
 - d. The Faculty Member is required to give deposition or answer interrogatories on a matter arising in the course of employment and within the scope of the Faculty Member's duties and responsibilities.
2. If a judgment or court approved settlement is made against a Faculty Member in a civil suit for actions taken by the Faculty Member in the course of the Faculty Member's employment and within the scope of the Faculty Member's duties and responsibilities, the Employer agrees to no more than submit to the Legislature any judgment (or court approved settlement) against the Faculty Member, with the Employer retaining the discretion of recommending or not recommending legislative approval.

E. **FACULTY EVALUATION**

Faculty Members will be evaluated periodically in accordance with Section 9-15 (see R-2 of Reference Section) of the Board of Regents' Policies.

F. **TEACHING ASSIGNMENTS AND EQUIVALENCIES**

Standards for teaching assignments and equivalencies are determined in accordance with Board of Regents' Policy Section 9-16 (see R-3 of Reference Section), and Chancellor for Community Colleges Memorandum 2250 dated July 2001 with the amended Appendix 1 (see R-4 of Reference Section).

G. **POLITICAL LEAVE**

Faculty Members may request leave of absence without pay or use vacation leave while campaigning for elective political office. Faculty Members may continue working while campaigning for elective political office as long as the campaigning does not interfere with the duties and responsibilities of the Faculty Member, as determined by the Chancellor or Vice-President, and the Faculty Member complies with Board of Regents' Policy, Section 9-5 (see R-5 of Reference Section), Political Activity (and subsequent amendments) and other applicable rules of the University.

H. **LEAVE SHARING**

Except as modified by the terms of this Agreement, Faculty Members shall be allowed to participate in the Leave Sharing Program (see R-6 of Reference Section) of the State of Hawaii, under the provisions of administrative rules adopted by the University.

ARTICLE IV, FACULTY PROFESSIONAL RESPONSIBILITIES AND WORKLOAD

- A. Faculty Members are responsible for maintaining high professional standards of scholarship and instruction in their field of special competence. In giving instruction upon controversial matters, Faculty Members are expected to set forth justly and without suppression the differing opinions of other investigators, and in their conclusions provide factual or other scholarly sources for such conclusions. Faculty Members should be careful not to introduce into their teaching controversial matters that have no relation to their subject. In the conduct of research, Faculty Members shall adhere to legal and ethical standards and procedures. Faculty Members employed by an organized research unit or other organizational units with a research mission, or whose research is supported by an extramural contract or grant, have a responsibility to follow the directions of their supervisor or principal investigator in the conduct of research in support of the mission of the unit or in fulfillment of the terms of the contract or grant. The commitment to academic freedom in the conduct of research does not imply that a Faculty Member's research is not subject to critical review and judgment as to its quality and significance. When speaking and acting as citizens, Faculty Members shall take suitable precaution to assure that personal utterances or actions are not construed as representing the University.

Faculty Members with eleven (11) month appointments may have duty periods with beginning and ending dates different from those set by the campus, provided that these agreements are made in writing and have been accepted by the Faculty Member and the campus administration.

- B. Since the performance of teaching duties, research, and service extends beyond classroom responsibilities and includes such activities as preparation, student evaluation, syllabus revision, and review of current literature and research in the subject area, such duties cannot be restricted to a fixed amount of time or points in time.
- C. During the interval between semesters and during the spring recess, Faculty Members normally engage in professional activities. However, Faculty Members who do not have duties requiring their presence on campus may travel for personal reasons at their own expense, provided that upon return they report to the Employer the number of days of such travel and provide service for those days at times during the off-duty period.

ARTICLE VI, LEAVES OF ABSENCE WITH PAY

A. SABBATICAL LEAVES

1. The purpose of the sabbatical leave is to provide Faculty Members with an opportunity for further professional growth and development so that they may serve more effectively on their campuses and in their field of specialization.
2. Only tenured Faculty Members at Rank 2 or above may be eligible for a sabbatical leave after six (6) years or twelve (12) semesters of full-time creditable service with the University. Any leave of up to thirty (30) days will not constitute a break in service. Credit toward sabbatical leave is computed in units of not less than a full semester for I and C Faculty Members provided that I and C Faculty Members appointed effective on October 1 or February 1 of the respective semesters shall have such semester count as a full semester. All other classifications shall compute service from the most recent date of hire. Full-time creditable service refers to full-time active duty service at the University.
3. The term of a sabbatical leave shall be for a period of twelve (12) months (usually an academic year) at half the pay that would have been received had the leave not been taken or six (6) months (a semester) at the same pay that would have been received had the leave not been taken.

Tenured Faculty Members serving on eleven-month (11-month) appointments may alternatively be granted sabbatical leaves of shorter duration with full pay at proportionately more frequent intervals after the initial period of six (6) years of full-time creditable service at the University, provided that the total leave with pay taken within a sabbatical leave period does not exceed that provided for regular sabbatical leave.

4. Each Faculty Member who receives a sabbatical leave shall agree to return to the University System for service for a period of not less than the period of the sabbatical leave.
5. Each Faculty Member who applies for a sabbatical leave shall submit through the Chair to the Dean/Director or Chancellor at the Community Colleges, a description or narrative of the educational program, research, or other professional activity to which the Faculty Member proposes to devote the leave, along with the reasons for undertaking such a program while on leave. The Dean/Director shall note a recommendation on each application and shall forward each to the Chancellor at UH-Manoa, UH-Hilo, or UH-West Oahu.
6. Applications for sabbatical leaves shall be evaluated on the basis of:
 - a. The nature of the educational or professional program to be undertaken.
 - b. The effect of the applicant's absence on the work of the department or unit and on the operations of the University.

Applications that were previously approved as to item (a) above, but were denied because of item (b) or as a result of budget constraints, shall be given priority.

6. The Faculty Member must agree to return to the University of Hawaii for at least one (1) year thereafter.
7. In order to give non-instructional Faculty Members an opportunity to attend professional meetings, visit research centers, or observe field practices while away from the State on vacation leave, the Employer may grant leaves of absence with pay for the period actually devoted to these activities.

C. VACATION LEAVES

1. Faculty Members on the eleven (11) month salary schedules in the C, R, S, B, and A classifications are eligible to earn vacation leave at the rate of one and three-quarter (1-3/4) working days for each month of service.
2. If such Faculty Members render less than a month of service, their vacation allowance for such month shall be computed as follows:

Actual Days of Service	Working Days of Leave
1 to 3	0
4 to 6	1/2
7 to 9	3/4
10 to 12	1 full day
13 to 15	1-1/4 days
16 to 18	1-1/2 days
19 or more	1-3/4 days

3. Faculty Members on the nine (9) month salary schedule are not eligible to earn vacation leave.
4. Faculty Members on the eleven (11) month salary schedule in the I classification are not eligible to earn vacation leave.
5. Other Conditions.
 - a. Faculty Members who are appointed on a temporary, contractual, or substitute basis while on vacation from another position in the State government or any political subdivision of the State shall not earn vacation allowance for such appointment.
 - b. Vacation allowance shall accrue to a Faculty Member while on leave with pay unless specifically prohibited by this Agreement.
 - c. No vacation allowance shall accrue:
 - 1) During the period of any vacation leave or sick leave granted when the appointment terminates or is to terminate at the end of such leave.
 - 2) During the period the Faculty Member is on leave without pay (except for a period that a Faculty Member is on leave for disability and is being paid Worker's Compensation benefits).
 - 3) During any period of valid suspension.
 - 4) During any period of unauthorized leave.
 - 5) During any period the Faculty Member is on sabbatical leave or study leave.
6. Accumulation or Carry Over of Vacation Leave.
 - a. Faculty Members may accumulate up to twenty-one (21) days of vacation leave per calendar year until they accumulate their first forty-two (42) days. Subsequently, Faculty Members may accumulate not more than fifteen (15) days of vacation leave per calendar year, even if their total accumulated days fall below forty-two (42) days. However, vacation leave in excess of fifteen (15)

Employer, by the Faculty Members or, if they are deceased, by their executors and administrators out of their estates, or deductions may be made for such unearned portions from any salaries due them, or from any moneys credited to them in the annuity savings fund of the Retirement System of the Employer.

11. Effect of Transfer to Position in Which Vacation Allowance is Not Earnable.

When a Faculty Member is transferred from or otherwise relinquishes one position in which vacation allowance may be earned, and accepts employment in another position in the service of the University in which vacation allowance may not be earned, the Faculty Member may be deemed for purposes of receiving pay in lieu of vacation, to have terminated the Faculty Member's services. But in the event that the Faculty Member is not eligible under the circumstances to receive pay in lieu of vacation, the acceptance of such new employment shall not of itself have the effect of forfeiting any vacation allowance to which the Faculty Member is then entitled. Pay for lapsed vacation in excess of the maximum allowed may be granted only as permitted by law.

12. Pay for Vacation Allowance upon Termination.

- a. Whenever a termination of services takes place, the Faculty Member is to be paid, in accordance with law for vacation allowance either in lump sum or in the normal manner.
- b. When payment in lump sum is made, the sum payable for vacation allowance shall be equal to the amount of compensation to which the Faculty Member would be entitled or to which the Faculty Member would be allowed during the vacation period if the Faculty Member were permitted to take vacation in the normal manner.
- c. However, if the Faculty Member is immediately rehired by the Employer, and will continue to earn vacation allowance, such payment shall not be made.

13. A Faculty Member who, pursuant to Federal statutes, is called or ordered and reports either voluntarily or involuntarily for active military duty with a branch of the U.S. Armed Forces shall be deemed to have terminated service for the purposes of this Article. The Faculty Member's choice of lump sum payment for vacation allowance will not of itself cause the forfeiture of unused sick leave credits.

14. In the event that a vacation request is denied by the Employer, the Faculty Member may ask to be given the reasons in writing.

15. Faculty Members whose salaries are paid from other than the general revenues of the State of Hawaii or from funds deemed by the Employer to be assured for an indefinite period of time have vacation leave comparable to other C-11-month, R, S, B, and A Faculty.

D. SICK LEAVES

1. Faculty Members in the Community Colleges shall retain their sick leave benefits as set forth in the policies of the Board of Regents in effect October 10, 1978 (see R-7 of Reference Section).
2. Faculty Members at UH-Hilo, UH-Manoa, and UH-West Oahu shall be provided sick leave as set forth below: (see R-8 of Reference Section for AP 9.350, Application for Transfer of Vacation and Sick Leave Credit or Payment in Lieu of Vacation).

General Provisions.

- a. Deans/Directors shall have the responsibility to maintain the leave document (UH Form 1) and the monthly Leave Status Report for reference.
- b. Earning of Sick Leave
 - 1) Faculty Members earn sick leave at the rate of one and three-quarter (1-3/4) working days or 14 hours for each full month of full-time service.

- 2) If in the opinion of the Chair, notification has not been given in accordance with this section, the Chair may recommend to the Dean/Director that such absence be charged to leave without pay.

e. Application for Sick Leave

- 1) Application for sick leave shall be filed on a UH Form 1 (see R-9 of Reference Section) within five (5) working days after return to duty; provided that in the event such Faculty Member dies before that time or before returning to duty, the executor or administrator of the Faculty Member's estate or the University, if it is deemed proper, may file such application within six (6) months after the occurrence of death.
- 2) The Faculty Member shall be required to submit a certificate from a licensed physician for absences of more than five (5) consecutive working days to substantiate the fact that the period of absence was due entirely to sickness and that the Faculty Member is now physically and mentally able to resume the duties of the position. The Employer may require the Faculty Member to be examined by a physician of the Employer's choice provided the Employer assumes the cost of the physician's services.

f. Sick Leave Charged Only for Regular On-Duty Days

- 1) Regular on-duty day is synonymous with regular State of Hawaii work day and does not include holidays and weekends. A regular on-duty day and a duty week for the purpose of determining sick leave pay shall not exceed eight (8) hours a day and forty (40) hours a week.
- 2) Faculty Members absent from work because of sickness, shall have charged against their sick leave allowance, only regular on-duty days which occur during such absence. For Faculty Members on 11-month appointments, this means any regular on-duty day exclusive of non-duty time.
- 3) For Faculty Members on 9-month appointments, this means any regular on-duty day during the period beginning with the first official day of the duty period in the Fall and ending with the Spring semester's commencement, including periods when classes are not scheduled.

g. Sick leave may be allowed for medical, dental, optical, and optometrical examination appointments which the Faculty Member cannot schedule during non-duty time.

h. Sick leave shall be allowed for temporary disabilities as defined under the Equal Employment Opportunity Commission Guideline, Title 29, Chapter 14, Section 1604, of the Code of Federal Regulations.

i. Time-off for physical examinations required by the Employer shall not be charged against a Faculty Member's sick leave.

j. Lump sum payment is not allowed for unused sick leave when a Faculty Member terminates; however, such sick leave credits shall be transferred to the Employees Retirement System (ERS). (See R-8 of Reference Section for AP 9.350, Application for Transfer of Vacation and Sick Leave Credit or Payment in Lieu of Vacation, September 21, 1990)

E. BEREAVEMENT LEAVE

1. Faculty Members covered by this Agreement shall be allowed three (3) working days as bereavement leave which shall not be deducted from any other leave to which the Faculty Member may be entitled. Bereavement leave shall be granted on such days as designated by the Faculty Member, provided they fall within a reasonable period of time after a death in the immediate family.
2. For the purposes of this Article, immediate family is defined as: parents, siblings, spouse, children, father-in-law, mother-in-law, grandparents, grandchildren or any individual who has become a member of an

Admission Day.....	Third Friday in August
Labor Day	First Monday in September
Veteran's Day	Eleventh day of November
Thanksgiving Day.....	Fourth Thursday in November
Christmas Day.....	Twenty-fifth day of December

All election days, except primary and special election days, in the county wherein the election is held.

Any day designated by proclamation by the President of the United States or by the Governor as a holiday.

2. If any of the holidays falls on Sunday, the following Monday shall be observed as a holiday. If such a day falls on a Saturday, the preceding Friday shall be observed as a holiday.
3. Holidays shall be credited toward the accrual of vacation and sick leave.

H. LEAVE FOR JURY OR WITNESS DUTY

1. Faculty Members covered by the terms of this Agreement, if summoned to serve as a witness or juror in any judicial proceedings, except those which may involve or arise out of the Faculty Member's outside employment or their personal business or private affairs, shall, if they serve, be entitled to leave of absence with pay.
2. Faculty Members who serve as a witness or as a juror, and who receive a fee and/or mileage allowance, shall be allowed to retain such payments and not have it offset against their salary.
3. Faculty Members called to serve as a witness in cases which may involve or arise out of their outside employment or personal business or private affairs shall not be entitled to leave of absence with pay as provided in Paragraph 1. above, provided that they shall be entitled to use annual vacation leave, leave without pay, or outside employment time as provided in Article III.B. of this contract.

ARTICLE VII, LEAVES WITHOUT PAY

A. LEAVE WITHOUT PAY FOR PROFESSIONAL IMPROVEMENT

1. Leaves of absence without pay for professional improvement may be granted where such leave is determined to be to the advantage of the University, provided a satisfactory temporary replacement can be secured. Such leaves will not be granted for periods longer than one (1) year at a time. Leaves without pay which exceed one (1) month are creditable toward sabbatical leave credit if there is a prior agreement in writing.
2. Professional improvement leaves are granted only in cases where the recipients will enhance their value to the University by deliberately seeking to improve their professional abilities. In these leaves, the improvement of the recipient's professional abilities must be primary and direct, and not a secondary or incidental consequence, such as may result from employment by an outside agency.
 - a. If the support for the leave is provided by the recipient, then the recipient's statement of purpose establishes whether the primary purpose is professional improvement.
 - b. If support is provided by an outside agency, then the agency's reason for providing support defines the primary reason of the leave.
 - c. Fellowships and foundation grants awarded to enable recipients to pursue the kind of research, scholarship, and creative work which improve their professional abilities and so enhance their value to the University are considered to be for professional improvement.

B. LEAVE WITHOUT PAY FOR PERSONAL REASONS

1. Leave without pay may be granted to a Faculty Member for the purpose of engaging in activities judged by the Employer to be to the advantage of the University, but which do not qualify for leave without pay for

1. IntraState Travel

- a. When Faculty Members are required to travel on official business to other islands within the State of Hawaii for a duration of greater than twelve (12) hours or overnight, they shall be provided with a travel allowance consisting of: (1) a fixed sum defined as the Hawaii Meal and Incidental Expense (HM&IE) in the Employer's Travel Policies and Procedures that shall be greater than or equal to \$50 and less than or equal to the applicable federal allowance for meals and incidental expenses; plus (2) reimbursement of actual lodging expenses not to exceed the federal lodging allowance. For travel less than twelve (12) hours, the Employer will reimburse the Faculty Member for the actual expense of one (1) meal not to exceed \$20.00.
- b. In the case of official travel time involving a fraction of a day greater than twelve (12) hours, the allowable claim shall be in terms of quarter-day periods measured from midnight. For purposes of computing the travel allowance, the quarter-day shall commence in accordance with check-in requirements.

2. OutofState Travel

- a. When Faculty Members are required to travel on official business to areas outside the State of Hawaii, they shall be provided a travel allowance consisting of either the federal per diem rate or a mutually agreed upon flat dollar amount not to exceed the federal per diem rate.
- b. In the case of official travel time involving a fraction of a day, the allowable claim shall be in terms of quarter-day periods, with the quarter-day periods measured from midnight. Unless otherwise authorized by the Employer, allowable travel time is the time necessary to travel by the most direct route to and from the points specified in the approved travel plan or request, plus the time necessary to conduct the required official business.

3. Nothing in this Article shall be interpreted to restrict a more liberal per diem payment (or other reimbursement) if such payment is provided by an external source of funding.

C. REIMBURSEMENT FOR PER DIEM RELATED EXPENSES EXCEEDING THE PER DIEM RATE

Requests for excess lodging expenses in excess of the applicable federal rate shall be reasonable, and shall be approved in advance of the Faculty Member's trip. Requests for excess expenses shall require submittal of receipts prior to reimbursement.

D. MEAL AND INCIDENTAL EXPENSES

In order to provide freedom of choice in meal consumption, a Faculty Member shall not have the meal and incidental expense allowance reduced on the basis of meals included in conference programs.

E. TRAVEL OCCURRING ON SAME ISLAND

When Faculty Members with prior authorization from the Employer are required to work in locations which make it impracticable and undesirable to return home at the end of a workday, one (1) of the following shall apply:

1. If commercial lodging is utilized, the Faculty Member shall be paid a travel allowance at the rate provided in Paragraph B.1.; or
2. If the Employer provides lodging, an allowance consisting of the HM&IE as defined in Paragraph B.1.a shall be provided to the Faculty Member.

F. MILEAGE REIMBURSEMENT

The Employer's present rules and regulations for reimbursing Faculty Members for use of their private vehicles when required to use such vehicles in carrying out their duties shall provide for reimbursement at the applicable federal mileage rate per mile traveled on business.

5. If the Administrative Officer takes action which does not satisfy the Faculty Member, and the Faculty Member believes the action violates Paragraph A above, the Faculty Member may file a grievance at Step 1 of the Grievance Procedure (Article XXIV).

C. **ADVISORY COMMITTEE ON ACADEMIC FREEDOM**

The Faculty Advisory Committee on Academic Freedom shall consist of five (5) members appointed from the Faculty Personnel Panel, with exceptions made under the exclusion option pursuant to Article XV. A majority of the committee shall be from the campus in which the alleged infringement occurred. Additionally, at Manoa and the University of Hawaii at Hilo, at least two (2) members of the majority from the respective campus shall be from the school or college of the Faculty Member.

D. **PROCEDURE FOR DEALING WITH ALLEGED BREACH OF PROFESSIONAL ETHICS AND/OR CONFLICTS OF INTEREST IN RESEARCH OR SCHOLARSHIP**

Because the Faculty possess unique and expert qualifications to assess breaches of professional ethics, including conflicts of interest in research or in scholarship, the President or designee may, at his/her option, appoint not more than five (5) Faculty Members to investigate an allegation thereof, before imposing discipline, on the following conditions:

- the accused Faculty Member and the Union are informed in writing that such an investigation is about to be conducted, and are informed of the names of the appointed Faculty Members; and
- the Faculty Members who are appointed do consent to serve; that the appointed Faculty Members are disqualified from participation in any departmental personnel deliberation or decision whatsoever during the period of their appointment as investigators, and from any personnel deliberation or decision whatsoever involving the accused for a period of three (3) years following the termination of their appointment as investigators.

The investigators may render their opinion regarding whether a breach of professional ethics and/or a conflict of interest has occurred, and an opinion regarding the severity of the breach and any curative steps that ought to be taken in amelioration thereof. They may not, however, express an opinion regarding the appropriate discipline, if any, to be imposed by the Employer. Any disciplinary action arising out of the investigation shall be in accordance with Article XVIII.

ARTICLE X, DEPARTMENT OR DIVISION PROCEDURES GOVERNING TENURE, PROMOTION, AND CONTRACT RENEWAL

A. **DEPARTMENTAL PROCEDURES**

Each Department or Division, or comparable unit within the University, shall reduce its committee procedures on tenure, promotion, and contract renewal to writing. If such procedures have not been written and approved within six (6) months of the execution of this Agreement, the Employer shall develop such procedures for the Department or Division.

B. **MINIMUM REQUIREMENTS FOR DEPARTMENTAL PROCEDURES**

Written Department or Division Personnel Committee (DPC) procedures shall at a minimum provide for (a) secret ballot voting at all final votes; (b) strict exclusion from voting of any individual who is not a tenured bargaining unit 07 member over the tenure or contract renewal of another Faculty Member; and (c) allowing only Faculty Members of equal or higher rank to vote on applications for promotions; and (d) procedures for the orderly review of dossiers at the Department or Division level.

Non-tenure track bargaining unit members may participate in the establishment of DPC policies and procedures, and they may also take part in the discussions of the Personnel Committee if the Department or Division has voted to include these Faculty Members in such deliberations.

the Faculty Member has received either an equivalent reduction in other classroom assignments or overload compensation as set forth in Article XXI, Salaries. The Employer, however, may not sell or re-transmit in future semesters any such recording except under the terms of a written Agreement between the Employer and the Faculty Member providing each party with a fifty percent (50%) interest in the net profits from either the sale or rebroadcast.

Faculty Members engaged in technology mediated instruction or distance learning require adequate training, equipment and technical support. Where these are not available the Faculty Member may not be required to engage in technology mediated instruction or distance programs.

The class size (the total of all students at all sites) will not exceed the seat load of a comparable, traditionally taught class unless agreed to by the Faculty Member.

C. PATENTS AND COPYRIGHTS

The rights of Faculty Members relating to patents and copyrights shall be governed by the University of Hawaii Patent and Copyright Policy (effective 1/22/68, revised 6/22/81), the Executive Policy E5.500 Administration of the Patent and Copyright Policy, and the Administrative Procedures A5.500, A5.501, and A5.502 (as in effect on 3/85), which are incorporated herein by reference. (See R-11, R-12, R13, R-14, R-15 of Reference Section.)

D. REVIEW AND AMENDMENT

Immediately upon ratification of this Agreement, the parties will meet to prepare a Memorandum of Understanding to address the joint use rights and ownership of distributive instructional programs where both the Faculty Member and other UH material and human resources have contributed to the creative production of such programs.

The parties recognize that the issue of intellectual property is complex and that there may be a need to amend or modify the current University of Hawaii Patent and Copyright Policy. Therefore, a Joint Committee shall be established to periodically review the issue of intellectual property rights and the applicable policies and procedures. The Joint Committee shall be comprised of three (3) representatives appointed by the UH President and three (3) representatives appointed by UHPA. The Joint Committee shall meet at least once each academic year and report its deliberations, findings, and recommendations, if any, to the Employer and the Union.

ARTICLE XII, TENURE AND SERVICE

A. DEFINITIONS. As used in this Agreement, the term:

1. "Academic tenure" means the right of Faculty Members to permanent or continuous service in the University.
2. "Probationary period" means the period of assessment of eligible Faculty Members prior to the awarding of tenure.
3. "Temporary appointments" means Faculty Members on Limited Term Contracts, Visiting Faculty, and Lecturers who are not eligible for tenure.

B. PROBATIONARY PERIOD

1. Probationary Service.
 - a. The probationary period begins when the Faculty Member first holds a tenure track appointment effective on or after July 1 and prior to October 2 of full-time service.
 - b. The probationary period ends by the granting of tenure, the refusal of tenure by the Employer, or the non-renewal of appointment. During this period, probationers do not have a claim to their position and the Employer, through its officers, may exercise its prerogative of non-appointment without a statement of reasons.
 - c. "Full-time probationary service" eligible for credit toward academic tenure must consist of teaching and/or research and/or extension and/or specialized work in the University in Ranks 2, 3, 4, and 5 in the A, B, or S classification, or in Ranks 3, 4, and 5 in I or R classification, or in Ranks II, III,

becomes effective August 1. For Faculty Members at rank 2 or 3, this contract shall be for two (2) years and may be followed by one-year (1-year) contracts effective August 1, with the terminal year usually ending July 31. Faculty at all other ranks who are to be reappointed shall be given one-year (1-year) contracts effective August 1 with the terminal year ending July 31. Additional contract renewals shall be for one-year (1-year) terms not to exceed seven (7) years of full-time probationary service.

C. EFFECTIVE DATES FOR PROBATION

For the purposes of tenure, a full-time appointment which is effective on October 1, or prior to that will be considered as a full year of probationary service on July 31 next. Where the effective date of the initial appointment is later than October 1, the partial year will not count in the calculation of the probationary period. In such event, the probationary period will commence on August 1 following.

D. RENEWAL OF CONTRACTS DURING THE PROBATIONARY PERIOD

1. General

Recommendations for renewal shall require that the Faculty Member's performance has been assessed for strengths and weaknesses and has been rated as satisfactory, that there is a continuing need for the Faculty Member's services at the University, and that the Faculty Member has made the professional improvement or has demonstrated the professional and personal qualities needed by the department, or similar considerations. A positive assessment does not necessarily assure renewal of appointment.

2. Procedures

The reappointment recommendation form is initiated by the Department/Division Chair. The form will provide for the assessment by the Department/Division Chair and the Department/Division Personnel Committee of the Faculty Member's performance. The form is passed to the Department/Division Personnel Committee which will include its assessment and recommendation with the form and transmit the material to the Chair who will make an assessment and recommendation. The Chair will then show the assessments and recommendations to the Faculty Member concerned before forwarding same to the Dean/Director. The assessments and recommendations shall be forwarded to the Dean/Director no later than December 20.

Written notification of intent to terminate an appointment at the end of the initial contract shall be given by the Employer to a probationary Faculty Member by January 15 of the second year. If notification of termination is not given by January 15, the Faculty Member will be given a one-year (1-year) terminal contract commencing on the following August 1.

After two (2) or more full-time probationary years, at least twelve (12) calendar months notice of termination will be given.

3. Non-reappointment, Statement of Reasons

In a case in which the Employer has exercised its prerogative of non-reappointment, the Faculty Member may within twenty (20) calendar days of receipt of the written notification request a meeting with the Dean or other appropriate official.

Upon request, the Faculty Member will be advised orally of the reasons for the non-reappointment. Upon written request of the Faculty Member within ten (10) calendar days of the meeting, the reasons will be confirmed in writing.

4. Not Subject to the Grievance Procedure, except Paragraph D.2. of this Section.

Since the probationer does not have a claim to the position and the Employer may exercise its prerogative of non-reappointment, the requested statement of reasons is provided for purposes of information only; and the statement of reasons, the decision of the Employer, and the provisions of this Article, with the exception of Paragraph D.2., Procedures, shall not be subject to the grievance procedure.

- f. The dossier is forwarded by the DC to the Dean/Director³ who, after making an assessment and recommendation, shall refer it to the TPRC. The TPRC shall review the dossier and make a recommendation, after which the dossier is returned to the Dean/Director for transmission to the appropriate Chancellor.
- At UH-West Oahu, the dossier is forwarded to the Chancellor, who shall refer it to the TPRC. The TPRC shall review the dossier and make a recommendation, then return it to the Chancellor.
- g. When the Chancellor disagrees with the recommendation of the TPRC, the Chancellor shall discuss the case with the TPRC before making a recommendation.
- h. The Faculty Member shall be notified of the recommendation of the TPRC when it is reported.
- i. The Employer will notify the Faculty Member of its decision in accordance with Paragraph E. of this Article.
- j. In order to protect and enhance the integrity of the Faculty participation in this process, the DPC, DC, and TPRC shall proceed with the utmost discretion and in a confidential manner. The voting shall be done by secret ballot. The applicant shall not attempt to influence or communicate with the committees or their members. Faculty Members participating in all Personnel Committees have the responsibility for avoiding conflicts of roles by recusing themselves from the process when such conflicts exist.
- k. The internal procedures of the DPC shall not constitute the basis for a grievance. These procedures may be considered during the negative tenure review process.
- l. If a school or college, because of newness or size is not organized with departments or divisions, the DPC shall be dispensed with, and a Faculty Personnel Committee will be constituted for that school or college. If additional Faculty to supplement the committee are desired, the school or college Chancellor may appoint Faculty Members from other colleges or schools of the University to serve on an ad hoc basis.
- m. At UH-Manoa, if a department or program has fewer than five (5) eligible⁴ tenured Faculty Members, who are available (i.e., not on leave of absence) to serve on the DPC, then the Dean or Director may constitute a Faculty Personnel Committee in consultation with the department chair or program director. This ad hoc Faculty Personnel Committee will be made up of all UH-Manoa tenured Faculty with an appointment of .25 FTE or greater in the department or program, and additional tenured Faculty Members from related disciplines.
- n. For UH-Hilo departments that have six (6) or more full-time Faculty Members, the DPC referred to in Article X and this Article may be composed of personnel in that department. In the formation of the Personnel Committee, the department should avoid inclusion of personnel who are applicants for tenure or promotion, personnel under consideration for contract renewal, and personnel on terminal year appointments.
- The department may include other Faculty from within the Division in its Personnel Committee. For these departments, the term DC shall refer to Department Chair for purposes of personnel evaluations.
- Faculty in departments with less than six (6) full-time Faculty Members shall be served by a DPC composed of Faculty from the departments within their Division. For these departments the term DC shall refer to Division Chair for purposes of personnel evaluations.
- o. The procedures set forth in this section shall apply to the tenure review process beginning with the academic year 2003-2004.

³ The title of the official at this level of review may vary by campus.

⁴ Not eligible are Faculty Members serving as department chair or program director of the involved department or program, or those Faculty Members holding Executive/Managerial appointments.

- a)
 - a) direct that the application dossier be reconsidered; may direct that the reconsideration process commence at any of the levels of review, or that any intervening level of review up to the Chancellor or appropriate Vice President be omitted; and may also direct that any improper material which has prejudiced the decision be expunged from the dossier; and/or
 - b) direct that a new TPRC be appointed in accordance with the provisions of this Agreement; or
 - c) direct that the probationary period be extended for an additional year, notwithstanding the limitations in this Article and the Faculty Member be permitted to submit a new application for tenure.
 - 4) In extreme cases, where the Hearing Officer finds that the provision of the Agreement or the supplemental guidelines and procedures which form the basis of the appeal were grossly violated, and such violation seriously prejudiced the decision, the Hearing Officer may submit findings in a report to the Employer and the Union. The report may include a recommendation that tenure be granted.
 - 5) The Hearing Officer shall report findings of fact, conclusion, and recommendations to the Employer and Union within thirty (30) days of the close of the hearing.
 - 6) Upon the receipt of the report of findings, the Employer shall, after a review of the report, make a decision within a reasonable time whether to award tenure or remand the matter for reconsideration as directed by the Hearing Officer. The Employer shall notify the Union of its decision, and if requested, a statement of reasons will be provided should the Employer not grant tenure pursuant to the recommendation of the Hearing Officer.
 - 7) In the event that the President disagrees with the conclusions of the Hearing Officer, the President will complete a full review of the procedural and substantive issues involved at each stage of the process. The President will provide a full accounting of the basis for the decision rendered, prior to forwarding any recommendation to the Board of Regents. The rationale for the decision must be transmitted by the President to the applicant. Upon the completion of the reconsideration as directed by the Hearing Officer, the decision of the Employer shall be final and binding on all parties.
 - 8) The fees of the Hearing Officer and other costs related to the hearing shall be shared equally by the Employer and the Union.
- b. In the alternative, the Faculty Member may request a meeting with the Administrator who notified the Faculty Member of the negative decision. In such event, the Administrator shall meet with the Faculty Member.
- 1) If the Faculty Member then wishes to appeal the decision and request a reconsideration on the substance of the application, the Faculty Member may submit the request together with any additional materials within ten (10) calendar days after such meeting.
 - 2) If the recommendation of the TPRC in the review process has been positive, the Employer shall, at the request of the Faculty Member, appoint a special committee to review the case and make recommendations on any specific, substantive aspects of the application referred to it. In the review process the special committee shall be free to meet with the Faculty Member and the Administrator as it deems necessary. It shall act with discretion and due consideration for the confidentiality of the matter involved. The special committee shall be made up of four (4) members selected by the Employer after consultation with the Chair of the TPRC, if available, and the Chair of the Faculty Member's department, division, or equivalent unit.
 - 3) At the conclusion of the reconsideration process, the Employer will notify the Faculty Member of its decision. If the decision remains negative, and if the Faculty Member so

3. Immediate Tenure

The Employer may grant a tenured Faculty Member transferring from Campus 1 to Campus 2 immediate tenure at Campus 2. Accepting tenure at Campus 2 automatically voids tenure at Campus 1.

4. Transfer of Tenured Faculty

Tenured Faculty may be transferred from one (1) locus of tenure on a campus to another, or from Campus 1 to Campus 2 within the UH system. The transfer of tenured Faculty may be initiated for the following reasons:

- a. at the request of the individual Faculty;
- b. at the request of the Employer; or
- c. as the result of the transfer of a program from Campus 1 to Campus 2.

If the individual Faculty Member requests transfer from Campus 1 to Campus 2, the Employer may transfer tenure to the Faculty Member on Campus 2. Accepting tenure at Campus 2 automatically voids the Faculty Member's tenure at Campus 1.

If tenure is not transferred to Campus 2, the Faculty Member will be granted a leave of absence from the tenured position at Campus 1 for one (1) year; the leave may be extended for one (1) additional year. The Faculty Member will lose tenure at Campus 1 if he/she does not return after two (2) consecutive years encompassed by that leave.

Faculty Members may be transferred from one (1) campus to another at the request of the Employer with the transfer of tenure to Campus 2.

A Faculty Member appointed to an administrative position on another campus shall be granted a leave of absence from the tenured position at Campus 1 for up to two (2) years. The Faculty Member will lose tenure at Campus 1 if he/she does not return after two (2) consecutive years on leave.

5. Transfer of Programs

If a program of the University System is transferred from one (1) campus to another, Faculty Members engaged in the program shall have the right of first refusal to appointment in the program at Campus 2. Faculty Members who elect to transfer retain their rank and their tenure status or probationary service credit toward tenure. If they do not wish to transfer from Campus 1, every effort shall be made to find an appropriate appointment on Campus 1 or at another campus in the University System.

The conditions of all transfers shall be set forth in writing and signed by the Faculty Member, the administration, and the Union.

ARTICLE XIII, FACULTY APPOINTMENTS NOT ELIGIBLE FOR TENURE

A. GENERAL

A significant number of individuals in the bargaining unit are not eligible to receive tenure. Such positions are funded through state general appropriations, special funds, revolving funds, and external government and private grants or contracts, or a combination thereof. These include the following:

1. Faculty Members being paid on the Lecturer Fee Schedule;
2. Part-time appointments;
3. Visiting Faculty;
4. Appointments that fill vacancies where a Faculty Member has return rights to the position;

B. PROCEDURES FOR RECOMMENDING PROMOTION

1. The application for promotion is prepared by the candidate in consultation with the Department/Division Chair, if so requested by the candidate, in accordance with the established guidelines. No anonymous material shall be made a part of any dossier.
2. Should there be a substantial change in the promotion criteria in the year of application, the candidate shall have the option of being considered under the criteria contained in the guidelines distributed in the preceding year.
3. Procedures and provisions described in Article XII, F.2., Paragraphs a through o, shall apply for promotion as well as tenure, except as otherwise provided in this Article.
4. The Employer will notify the Faculty Member of its decision in writing normally no later than June 30. The promotion, if granted, will be effective as of August 1, even if the decision and notification are made after June 30.

C. SALARY UPON PROMOTION

Faculty Members promoted in accordance with this Article shall have their salary increased by eight percent (8%).

D. NEGATIVE RECOMMENDATION

1. In the promotion evaluation process, the Chancellors will, after receipt of the Tenure and Promotion Review Committee (TPRC) report, notify each Faculty Member whose dossier contains a negative recommendation with respect to the promotion application.
2. When a Faculty Member receives such notice from the Office of the Chancellor, the Faculty Member may, within ten (10) calendar days after receiving such notice, inform the Office of the Chancellor in writing of a desire to examine the dossier.
3. Upon receiving the request, the Office of the Chancellor shall provide the Faculty Member an opportunity to examine the dossier within ten (10) calendar days.
4. The Faculty Member may, within ten (10) calendar days after examining the dossier, submit written comments and additional material to the Office of the Chancellor for transmission to the TPRC. If the TPRC recommendation is positive, the Faculty Member may submit the additional material directly to the Chancellor. The Office of the Chancellor shall notify the TPRC that additional materials have been submitted.
5. The TPRC will consider the comments and additional material submitted by the Faculty Member and incorporate these together with its recommendation in the dossier. When the Chancellor disagrees with the recommendation of the TPRC, the Chancellor shall discuss the case with the TPRC before making a recommendation or decision. The Chancellor will, after reviewing the dossier and the recommendation of the TPRC, make a recommendation or decision.
6. When a Faculty Member receives written notification from the Employer in accordance with Section B, that the application for promotion has not been granted, the Faculty Member may, within ten (10) calendar days after receiving such notice, inform the Office of the Chancellor in writing of a desire to examine the dossier.
7. Upon receiving the request, the Office of the Chancellor shall provide the Faculty Member an opportunity to examine the dossier within ten (10) calendar days.
8. The Faculty Member may, within ten (10) calendar days after examining the dossier, or within twenty (20) calendar days of receipt of the written notification if the Faculty Member does not examine the dossier, request a meeting with the Chancellor. In such event the Chancellor shall schedule a meeting with the Faculty Member within ten (10) calendar days.

The PRP will submit its report within thirty (30) calendar days after meeting with the Chancellor or the President to the Office of the President for inclusion in the dossier. Any member of the PRP may submit an individual report that the PRP shall incorporate with its report.

The Employer will notify the Applicant of the report of the PRP, if negative, and of the decision of the President, if negative. Within ten (10) calendar days after receiving such notice, the Applicant may submit a request in writing to the Office of the President for an opportunity to examine the dossier, and arrangements will be made to provide such opportunity. Additionally, if the Applicant so requests, the Employer will provide the Applicant with a statement of reasons for the decision.

In the event that the President disagrees with the conclusions of the PRP, such a decision must include a full review of procedural and substantive issues at each stage of the process. The rationale for the decision will be transmitted to the applicant.

I. PANEL OF REFEREES

Referees shall be utilized to assist in expediting the consideration of allegations of procedural violations in situations in which the TPRC has recommended against promotion and the Chancellor has decided against promotion.

A panel shall consist of five (5) referees to be jointly selected by the President of the University or the President's designee and the President of the Union or a senior Faculty Member designated by the Union's President, for each of the four (4) years of this Agreement. The referees shall be selected from among persons with experience in and knowledge of the University. These persons may be from within or without the University.

Assignment of a referee to review a given case shall be by rotation, and the next available referee shall be requested by the Chancellor to review the case.

J. REFEREE REVIEW OF PROCEDURAL MATTERS

1. Request for Referee.

In situations in which the TPRC had recommended against promotion and the Chancellor has decided against promotion, the Applicant may, within five (5) calendar days after meeting with the Chancellor, submit a written request to the Chancellor that the case be reviewed by a referee, if the Faculty Member believes that a procedural error occurred which may have affected the case in a negative manner. The request shall include a statement of the particular procedural provision in this Article of the Collective Bargaining Agreement or the Promotion Guidelines which has been violated, and the manner in which the violation has contributed to the negative decision.

2. Report of the Referee.

The Chancellor shall forward the request to the next available referee who shall, within ten (10) calendar days of receipt of the request, submit a written report to the Chancellor. The Chancellor shall provide the Applicant with a copy of the Referee's report.

If the Referee's report is in the negative as to either aspect of the question set forth below to be answered by the Referee, the case shall be terminated.

If the Referee's report is in the affirmative as to both aspects of the question addressed, the case shall be submitted to the Promotion Review Panel (PRP), if the Applicant so requests in writing to the Chancellor within five (5) calendar days of receipt of the Referee's report. The Applicant may submit additional materials to the Chancellor for transmission to the PRP, not duplicative of materials already in the dossier or previously submitted.

3. Function of the Referee.

The Referee, in reviewing the case, shall consider the Collective Bargaining Agreement and the Promotion Guidelines for the year in question as well as the application dossier and the additional materials submitted

D. REPRESENTATION OF FPP MEMBERS ON TPRC'S

The appointment of Tenure and Promotion Review Committees (TPRC's) provided for in Articles XII and XIV shall be made from the FPP. At least fifty percent (50%) of the membership of each TPRC shall be from the campus of the applicant. FPP Members appointed from campuses other than that of the applicant shall be from the discipline of the applicant or from related disciplines.

ARTICLE XVI, RETRENCHMENT

A. GENERAL

Retrenchment refers to the termination of the employment of any Faculty Member during any appointment as a result of lack of work or other legitimate reason in accordance with §89-9(d), H.R.S., such as fiscal exigency; reallocation of resources; reorganization of degree or curriculum requirements; reorganization of academic or administrative structures or programs; curtailment of one (1) or more programs.

B. CONSULTATION ON RETRENCHMENT

When the Board of Regents determines that retrenchment may occur, it will so inform the Union and will provide whatever information that is available, including a list of Faculty Members expected to be retrenched, and a list of vacancies for which active recruitment is occurring throughout the UH System. The Union may submit its assessment and/or recommendation within thirty (30) days of such notification. The Board of Regents will not proceed with its retrenchment action until forty-five (45) days after its notification to the Union.

C. ORDER OF RETRENCHMENT

After determination by the Board of Regents of the need to retrench and its assessment of institutional needs, the following order of layoffs shall be followed within the program, department, division, or comparable unit to be retrenched:

1. Part-time Faculty, including lecturers
2. Non-tenured Faculty
3. Tenured Faculty

Within each of these groups of Faculty Members, more senior Faculty shall be accorded priority over less senior Faculty. For the purposes of this section, seniority is defined as the total period of full-time continuous service since the date of initial appointment, with the understanding that of two (2) Faculty Members having the same length of service, the one with the higher rank, or placed on the higher step with the same rank, shall be regarded as the more senior. Approved leaves with or without pay do not count as breaks in continuous service.

No retrenchment shall be effectuated with respect to full-time personnel in a department, division, or comparable unit or program while other persons are teaching overload in the same subject in that unit.

D. NOTICE TO FACULTY

The administration shall notify persons affected by retrenchment as soon as practicable and, barring circumstances beyond its control, shall provide the following notice of termination:

1. For those holding a term appointment, at least four (4) calendar months.
2. For those holding tenured appointments, at least twelve (12) calendar months. Following notice of termination, the University may, at the Faculty Member's request, agree to release the Faculty Member from regular duties up to half time to facilitate the pursuit of opportunities for retraining.

K. RESTRICTIONS ON HIRING NEW FACULTY

The Employer shall not employ new part-time or full-time Faculty Members in any organizational unit in which a layoff is effective until such time as all qualified retrenched persons eligible for recall in the organizational unit have been offered such recall.

L. EXCLUSIONS

Non-renewal of appointment under Article XII or Disciplinary Actions under Article XVIII shall not be considered retrenchment.

ARTICLE XVII. REPRESENTATION RIGHTS

- A. Duly certified staff representatives of the Union shall be permitted on University premises at all reasonable hours for the purpose of conducting official Union business such as investigating complaints and grievances that have arisen and to ascertain whether or not the Agreement is being properly administered. The Union agrees that such visitation rights shall be exercised reasonably and also shall not interfere with the normal operations of the University.

The Union shall provide the Employer with a list of duly certified Union representatives and maintain that list currently.

- B. The Union may use the University's meeting facilities for Union meetings upon request to the Employer, subject to the Employer's policies and procedures.

- C. The Union shall be permitted to use the University mail services for the purposes of intra-campus distribution, subject to the Employer's policies and procedures.

- D. The Union may use audio-visual equipment in connection with official Union meetings, provided that the equipment requested is not otherwise in use, and provided that the Union shall reimburse the University the normal charges for the use and services connected with the use of such equipment.

- E. The Union may use duplicating machines of the University on the following basis:

1. The Union shall be assigned at least one (1) auditron to be designated by the Employer. The Union shall reimburse the Employer for the normal charges connected therewith.
2. On those campuses where the machines are not equipped for operations with auditrons, the Union may make reasonable use of a comparable machine to be designated by the Employer, upon request and when the machine is not otherwise in use. The Union shall reimburse the University for the use of such machine at the same rate as the Union would for the use of the auditron-equipped machine on the Manoa Campus.
3. The use by the Union of the machines authorized herein shall not interfere with or interrupt normal University operations.

- F. The Union may post bulletins and notices on official bulletin boards pertaining to official Union business. All such postings shall be made over the signature of a certified Union representative, who shall furnish copies of all postings to the Employer at the time of posting, for the information of the Employer.

- G. Upon written request of the Union, the Employer shall provide information which is necessary to represent its membership adequately, provided the information is available and is not confidential.

- H. Any Faculty Member elected or appointed to a Union office will, if such office requires a full or half-time service in the exercise and discharge of its duties, be given a leave of absence, either full or half-time, without pay pursuant to Article VII, A., not to exceed one (1) year at a time.

- I. All matters affecting employee relations, including those that are, or may be, the subject of a policy promulgated by the Employer are subject to consultation with the Union. The Employer shall make every reasonable effort to consult with the Union prior to effecting changes in any major policy affecting employee relations.

6. The Faculty Member shall not be suspended or discharged during the foregoing procedures, including the grievance procedure, except as provided in Paragraphs B.7. and B.8. below. However, the Chancellor may temporarily reassign the Faculty Member, or place the Faculty Member on administrative leave with pay, if the Chancellor believes that the Faculty Member's continuance may disrupt the operations of the University.
7. The Faculty Member may be suspended without pay during the foregoing procedures where the Faculty Member has willfully failed to report for duty during the duty period as defined in Article V, Duty Period.
8. However, if a Faculty Member pleads guilty or no contest to, or is convicted of, a felony in a competent federal, state, or local court of law within the United States, the Employer may suspend without pay or discharge the Faculty Member if there is an adverse impact on the University or its operations. If the Employer proceeds to suspend or discharge the Faculty Member, the Employer shall make a statement in writing of the grounds and have such a statement served upon the Faculty Member. The Faculty Member may file an answer to the statement with the Chancellor within seven (7) calendar days after receipt of the notification. If the Faculty Member fails to answer within seven (7) calendar days, the Employer may proceed with the suspension without pay or the discharge.

If the Faculty Member files an answer and disagrees with the statement, the Chancellor shall consider the statement and meet with the Faculty Member if so requested. The Chancellor shall notify the Faculty Member, with a copy to the Union, of his or her decision within seven (7) calendar days after receipt of the Faculty Member's answer to the statement. Should the Chancellor decide to proceed with discharge, the Faculty Member shall be suspended without pay until the grievance and arbitration procedures of Article XXIV have been exhausted.

The Faculty Member may file a grievance at Step 2 of Grievance Procedures, set forth in Article XXIV, within fifteen (15) calendar days following receipt of the notification of the Chancellor's decision. Should the Faculty Member not file a grievance within the fifteen (15) calendar days, the decision of the Chancellor shall become final and binding.

If a Faculty Member's felony conviction is overturned on appeal, or the grievance is upheld, the Faculty Member shall be reinstated to the position which the Faculty Member held prior to the suspension or discharge action retroactively with full compensation, rights, and benefits as if the Faculty Member was never suspended or discharged.

C. OTHER DISCIPLINARY ACTIONS

Other disciplinary actions which do not involve suspension or discharge may be the subject of a grievance at the level of the Chancellor, appropriate Vice President, their successors in office, or their respective designee (Step 1 of the Grievance Procedure).

ARTICLE XIX, PERSONNEL FILES

- A. Official personnel files shall be maintained for each Faculty Member. Personnel files will be kept and maintained in accordance with Administrative Procedures A9.075 (see R-16 of Reference Section) Personnel Records.

Official personnel files shall be maintained in the following places:

1. For the University of Hawaii at Manoa, in the Offices of the Deans/Directors;
2. For the University of Hawaii at Hilo, in the Offices of the Deans, and the Office of the Director of Libraries;
3. For UH-West Oahu, in the Office of the Dean of Faculty; and
4. For the Community Colleges, in the Offices of the Chancellors.

The Employer shall inform the Union of the location and name of the custodian of the official Faculty personnel files. The Employer shall also notify the Union whenever the Faculty Member's file is moved to another location.

1. For each Employee-Beneficiary with no dependent-beneficiaries enrolled in the following Trust Fund health benefit plans:

<u>BENEFIT PLAN</u>	<u>MONTHLY CONTRIBUTION</u>
a. Medical (PPO or HMO)	\$141.32
b. Dental	\$14.80
c. Vision	\$3.60
d. Dual coverage medical	\$84.20
e. Dual coverage dental	\$8.82
f. Dual coverage vision	\$2.06

The Employer shall pay the same monthly contribution for each member enrolled in a self only medical plan (PPO or HMO), regardless of which plan is chosen.

2. For each Employee-Beneficiary with one (1) or more dependent-beneficiaries enrolled in the following Trust Fund health benefit plans:

<u>BENEFIT PLAN</u>	<u>MONTHLY CONTRIBUTION</u>
a. Medical (PPO or HMO)	\$419.78
b. Dental	\$50.02
c. Vision	\$7.68
d. Dual coverage medical	\$251.28
e. Dual coverage dental	\$24.94
f. Dual coverage vision	\$4.38

The Employer shall pay the same monthly contribution for each member enrolled in a family medical plan (PPO or HMO), regardless of which plan is chosen.

3. For each Employee-Beneficiary enrolled in the Trust Fund group life insurance plan, the Employer shall pay \$4.16 per month which reflects one hundred percent (100%) of the premium and administrative fee.

- B. Effective July 1, 2004, for plan year 2004 to 2005, with the exception of subparagraph 2b. below, the Employer shall pay an amount equivalent to sixty percent (60%) of the final premium rates established by the Trust Fund for the respective health benefit plan plus one hundred percent (100%) of all administrative fees. Such monthly contribution shall not exceed the amounts specified in subparagraphs 1 and 2a. below.

i Health Benefit Plan shall mean the medical PPO, dental, vision, dual coverage medical, dual coverage dental, and dual coverage vision plans.

The amounts paid by the Employer in subparagraphs 2b. and 3. below shall be based on the plan year 2004 to 2005 final monthly premium rates established by the Trust Fund.

1. For each Employee-Beneficiary with no dependent-beneficiaries enrolled in the following Trust Fund health plans, the amount shall not exceed:

<u>BENEFIT PLANS</u>	<u>MAXIMUM MONTHLY CONTRIBUTION</u>
a. Medical (PPO or HMO)	\$161.34
b. Dental	\$15.60
c. Vision	\$3.58
d. Dual coverage medical	\$96.30
e. Dual coverage dental	\$9.30
f. Dual coverage vision	\$2.06

The Employer shall pay the same monthly contribution for each member enrolled in a self only medical plan (PPO or HMO), regardless of which plan is chosen.

ARTICLE XXIII, APPOINTMENT, DUTIES, AND COMPENSATION FOR ACADEMIC CHAIRS

- A. Only Faculty Members with the Rank of 4 or 5 shall be eligible to serve as the Department, Division, or Program Chair. If no one in these ranks is available, then a Faculty Member from the unit holding a lower rank may be appointed as Acting Chair.
- B. The chancellor of a Community College, the Chancellor of UH-West Oahu, and the Dean/Director at UH-Hilo and UH-Manoa⁶ shall appoint Department, Division, or Program Chairs for periods up to three (3) years. The appointments are renewed annually. Acting Chairs shall not be appointed for a term to exceed two (2) consecutive years.
- C. Faculty Members in the various Departments, Divisions, or Programs shall meet to consider the recommendation of a Bargaining Unit Member to serve as Chair. Prior to the appointment or reappointment, the chancellor of a Community College, the Chancellor of UH-West Oahu, and the Dean/Director at UH-Hilo and UH-Manoa shall consult with the all the Faculty Members wishing to participate to receive their recommendation. If there is no consensus among the Faculty, the Chancellor, Dean/Director shall consider both the majority and minority views before making an appointment. Should there be a consensus among the Faculty Members as to who should serve as the Chair, and the recommendation is rejected, the Chancellor, Dean/Director shall meet with the Faculty Members and provide a written statement setting forth the reasons for selecting another Faculty Member.
- D. Academic Chairs are appointed by the appropriate administrative authority, but they are not managerial or supervisory employees. The duties of academic Chairs will be set forth in a revised UH-System Faculty Handbook.
- E. Monthly compensation for department or division chairs, associate chairs, or assistant chairs shall not be less than \$100 per month. The size and complexity of the department, division, or program and the nature of the quasi-administrative functions being performed shall determine the specific amount of the stipend. In addition, eleven (11) month appointments and workload equivalencies will be given where appropriate to the duties and responsibilities of the assignment.

ARTICLE XXIV, GRIEVANCE PROCEDURE

A. DEFINITION

A grievance is a complaint by a Faculty Member or the Union concerning the interpretation and application of the express terms of this Agreement. All matters under this Article, including investigations, shall be considered confidential. Information pertaining to the decision of an arbitrator may be subject to disclosure under the provisions of Section 92F, Hawaii Revised Statutes.

B. GENERAL

- 1. Faculty are encouraged to work out grievances with their immediate superiors on an informal basis, including voluntary mediation, without resort to the formal grievance procedure, whenever possible. If it is not possible to resolve the grievance informally, and the Faculty Member desires to pursue the matter, the procedures under Paragraph C. below shall apply.
- 2. Any information pertaining to the grievance in the possession of the Employer needed by the grievant or the Union in behalf of the grievant to investigate and process a grievance shall be provided to them on request within seven (7) working days.

C. PROCEDURES

- 1. Requirements for Filing a Formal Grievance.

A grievance must be submitted in writing and shall contain (1) a statement of the facts concerning the grievance, (2) the specific provision of this Agreement alleged to have been violated, (3) the relief requested, and (4) whether the Faculty Member attempted an informal adjustment of the grievance and, if so, with whom.

⁶The specific administrative appointing official may be subject to the process of BOR reorganization or administrative redelegation.

- 2) The decision of the Arbitrator shall be final and binding upon the Union, its members, the Faculty Member(s) involved in the grievance, and the Employer. There shall be no appeal from the Arbitrator's decision by either party, if such decision is within the scope of the Arbitrator's authority as described below.
 - a) The Arbitrator shall not have the power to add to, subtract from, disregard, alter, or modify any of the terms of this Agreement. The Arbitrator's award must be consistent with the terms of this Agreement.
 - b) When the Arbitrator finds that any disciplinary action under Article XVIII was improper, the Arbitrator may set aside, reduce, or otherwise modify the action, and may award back pay to compensate, wholly or partially, for any salary lost.

The fees of the Arbitrator, the cost of transcription, and other necessary general costs, shall be shared equally by the Employer and the Union. Each party will pay the cost of presenting its own case and the cost of any transcript that it requests.

- d. **Step 3A. Performance Judge.** If the grievance involves the termination of a tenured Faculty Member or the termination of a non-tenured Faculty Member's employment agreement prior to the expiration of its term on the stated grounds that he or she has failed to meet the performance requirements of his or her position and the grievance has not been settled at Step 2, then within thirty (30) calendar days after the receipt of the written decision of the President or the President's designee, the Union may request a Performance Judge by giving written notice to that effect, in person or by registered or certified mail, directed to the President or the President's designee.

The Performance Judge shall be a neutral third party selected by representatives of the parties from a list of persons whom the parties have mutually agreed are eligible to serve as Performance Judges for the duration of this Agreement. The parties, by mutual agreement, may add or delete individuals from the list of Performance Judges. Selection of a Performance Judge for a grievance shall be by mutual agreement. If the parties are unable to agree, selection of a Performance Judge shall be made by each party alternately deleting one (1) name at a time from the list of Performance Judges. The first party to delete a name shall be determined by lot. The person whose name remains on the list shall be designated the Performance Judge. The Performance Judge shall use the following conditions as tests in reaching a decision on whether the Employer's action against the Faculty Member for failure to meet the performance requirements of his or her position was with or without merit:

- 1) The evaluation process and its consequences were discussed with the Faculty Member;
- 2) The Faculty Member was made aware of his or her current job description and job related performance requirements;
- 3) The evaluation procedures were observed, including providing the Faculty Member the opportunity to meet, discuss, and rebut the performance evaluation and apprising the Faculty Member of the consequences of failing to meet performance requirements;
- 4) The evaluation was fair and objective;
- 5) The Faculty Member was provided feedback during the evaluation period and, as appropriate, the Faculty Member was offered assistance in order to improve and meet performance requirements;
- 6) The evaluation was done without discrimination; and
- 7) Prior to any termination, the feasibility of transferring the Faculty Member to another position for which the Faculty Member qualifies was considered.

ARTICLE XXVIII, CONFLICT

If there is any conflict between the provisions of this Agreement and any rules, regulations, and policies of the Employer, the terms of this Agreement shall prevail.

ARTICLE XXIX, NO STRIKE OR LOCKOUT

- A. The Union, its representatives, and Faculty Members will not authorize, instigate, incite, aid, or engage in any work stoppage, slowdown, sick-out, picketing, or strike against the Employer during the life of this Agreement, except on the matter of wages, and, as to wages, only as provided in this Article.
- B. The Employer agrees that during the life of this Agreement there will be no lockout.
- C. The parties shall continue to meet from time to time, each on the call of the other, to bargain in good faith on the matter of wages; but in no event shall the parties fail to meet by January 2, 2004. Should the matter of wages remain at impasse after January 2, 2004, then either the Union or the Employer may, from and after January 3, 2004, engage in any activity, including strike or lockout, to resolve the impasse, provided that the Union or the Employer has provided ten-day (10-day) written notice thereof to the other and to the Hawaii Labor Relations Board.
- D. This Article does not apply to lawful picketing on issues of public interest unrelated to the University and on premises that are not under the control or jurisdiction of the University.

ARTICLE XXX, DURATION

- A. This Agreement shall be effective as of July 1, 2003, and shall remain in effect to and including June 30, 2005.
- B. Negotiations for renewal shall be as provided by law.

REFERENCE SECTION

R-2

[Duplicated text of Board of Regents Policy Chapter 9, Section 15]

SECTION 9-15, EVALUATION OF BOARD OF REGENTS' APPOINTEES**Section 9-15 Evaluation of Board of Regents' Appointees**

- a. Board of Regents' appointees will be evaluated periodically in accordance with the guidelines below and the specific procedures developed by the appropriate administrative offices to implement this policy. These performance evaluations shall be conducted in order:
 - (1) to provide assurance to the University and its constituents that professional staff resources and particular areas of expertise are being used to the best advantage;
 - (2) to provide for the systematic recognition of excellence and develop incentives for superior performance; and
 - (3) to provide means for the improvement of performance in furtherance of the University's mission.
- b. In recognition of the special role of the Faculty in the academic mission of the University, procedures for periodic review of Faculty performance must provide safeguards for academic freedom and shall provide the opportunity for participation of Faculty peers in the review process. Accordingly, each Chancellor, in consultation with appropriate Faculty governance organizations, shall develop procedures for such review which incorporate these principles. The procedure shall include a requirement for evaluation of every Faculty member at least once every five (5) years, and may provide for exempting Faculty who have undergone a review for reappointment, tenure, or promotion, or who have received a merit salary increase during this period. Faculty review procedures shall be submitted by the Chancellor for approval by the President.
- c. Administrative, Professional, and Technical (APT) employees shall be evaluated at least once every three years according to procedures approved by the President.
- d. Employees in the Executive and Administrative/Managerial classification shall be evaluated annually as specified in Section 9-14.
- e. For any campus which does not have an approved Faculty review procedure development in accordance with Section b. for implementation in academic year 1981-82, Faculty shall be evaluated according to procedures approved by the President. These procedures shall remain in effect until procedures developed in accordance with Section b. are approved and implemented. (Oct. 16, 1981)

The implementation of this policy shall be the responsibility of the Chancellors of the respective units.

- d. Teaching assignments for part-time instructional Faculty or for Faculty paid less than full time from instructional funds shall be as in Section a. pro-rated by their fractional full-time equivalent in instruction.
- e. Each unit shall ensure against discriminatory teaching assignments. In addition, Chancellors shall establish procedures to monitor the effectiveness of teaching reductions for non-instructional duties.
- f. During the spring semester of academic year 1981-82, equivalencies shall be developed by April 30, 1982, in accordance with this policy, and teaching assignments beginning in fall semester 1982-83 shall be determined as set forth herein. (Jan. 22, 1982)

CHANCELLOR FOR COMMUNITY COLLEGES MEMO

CCCM# 2250 July 2001

SUBJECT: Teaching Assignment Policy

A. REFERENCES:

1. University of Hawaii Board of Regents Policy 9.16 - *Teaching Assignments for Instructional Faculty*.
2. University of Hawaii Administrative Policy on *Teaching Assignments for Instructional Faculty*, Office of the President, September 1990.
3. Board of Regents Policy Chapter 9-1a, *Appointments*.
4. Administrative Procedure, A9.235, *Administrative Stipends for Department Chairs, Special Program Directors and Chairs of Academic Subdivisions*.

B. PURPOSE:

This CCCM addresses the Community Colleges' implementation of the University of Hawaii Administrative Policy relating to the Board of Regents policy on Teaching Assignments for Instructional Faculty, to delineate the general duties and responsibilities of division/department chairs, to provide for the general criteria by which chairs are to be compensated, and to provide for the general criteria by which assigned time will be determined for chairs to perform their duties and responsibilities.

C. DEFINITION:

The University of Hawaii Board of Regents has established a standard teaching assignment for full-time Faculty in the Community Colleges as 30 semester credit hours per year (30 SCH/Yr), or equivalent.

The special mission of the Community Colleges has resulted in the establishment of a diverse group of educational programs which, in turn, has resulted in the establishment of equivalencies to the established BOR policy, expressed in terms of weekly class contact hours and student registrations. Class contact hours are defined as 50-minute periods during which Faculty members instruct or supervise groups of students.

At the present time, the following equivalencies to this 30 SCH/Yr standard teaching assignment are being utilized:

For Faculty members teaching science, business and/or basic academic skills classes which require a combination of lectures and laboratory exercises, 18 weekly class contact hours per academic year is equivalent to the standard teaching assignment.

For Faculty members teaching classes in technical/occupational programs, studio art and health and physical education, and/or basic academic skills classes, which require a different combination of lectures and laboratory or shop activities, 23-25 weekly class contact hours per academic year is equivalent to the standard teaching assignment.

For Faculty members teaching classes in Cooperative Education or Work Practicum where students are learning by working in business or industry, following a prearranged sequence of learning activities, 150 student registrations each academic year is equivalent to the standard teaching assignment.

For Faculty teaching under uniquely special circumstances, other equivalencies are defined on a case-by-case basis.

D. POLICY:

Faculty Responsibilities. The responsibilities of Faculty generally involve two (2) distinct categories of activities, assigned instructional activities, and non-instructional activities.

publications; providing expert testimony; providing expert technical assistance to federal, state, and/or county agencies; and other related activities that serve the public.

Allocation of the Standard Teaching Assignment. The duties and responsibilities of full-time Faculty members consist of a combination of instructional and non-instructional activities designed to conform with established Board of Regents policy. The "mix" of these activities may vary from individual to individual.

When the combination of these activities exceed that which is normally expected of an individual Faculty member, the standard teaching or service assignment (30 SCH/Yr, or equivalent) may be reduced.

Appendix 1 details the normal range of semester credit hour equivalencies on a per semester basis which may be assigned to Faculty members for selected non-instructional activities. If special circumstances arise, the Chancellor may request approval from the Chancellor to make modifications to the established range of semester hour equivalencies.

The reduction in the Standard Teaching Assignment is to provide Faculty who have assumed responsibilities beyond the normal expectation the time necessary to meet both their remaining teaching obligations, and the demands of their additional responsibility. Therefore, except for unusual circumstances, an overload payment will not be made in lieu of the teaching assignment reduction.

The amount of teaching assignment reductions may result in less than a full class reduction. The excess credits may be banked for future teaching assignment reductions. The total of banked teaching assignment reductions may not exceed six SCH during any semester. However, at the request of the Faculty member, any banked credits remaining at the end of the academic year may be paid in overload rather than carried over to the following year.

The list of non-instructional activities identified in Appendix 1 and the range of credit hours to be assigned to each may be modified by the Chancellor.

E. PROCEDURES:

In implementing reductions to the standard teaching assignment, the following will occur:

1. In those instances where the reduction is made as a consequence of appointment to department or division chair or other to quasi-administrative positions, selection as committee chair, or other assignments described in the categories indicated above, appropriate Community College Policies and Procedures will be invoked to accomplish the reduction. Appendix 2 details the roles, responsibilities and teaching assignment procedures for department/division chairs and discipline coordinators.
2. In those instances where the reduction is to be made at the request of the Faculty member:
 - a. Prior to the semester in which a teaching assignment reduction is to occur, the Faculty member will submit a request for a reduction in the BOR standard assignment for the coming semester through their division chair to the Dean of Instruction or the Dean of Student Services (depending upon the locus of their assignment). Each campus shall establish internal deadlines for the submission of those requests. The form for submitting the request is contained in Appendix 3.
 - b. Written department/division standards of performance for Faculty activity, and the above listed equivalencies, as may be modified, will be consulted to determine the teaching assignment.
 - c. At the end of the year, each Faculty member who has received a reduction of teaching assignment will submit a report via the department/division chair to the Dean of Instruction or the Dean of Student Services (depending upon the locus of their assignment) in which the contributions in the prior year, as they relate to the time assigned, are described. The form for submitting that report is contained in Appendix 4.
 - d. The Chancellor, or designee, will oversee the assignment reduction policies and procedures which are used in their respective college. Appeals for review of an individual Faculty member's teaching assignment may be made to the Chancellor.
3. At the end of each year, the Chancellor shall send to the Chancellor a listing of all Faculty who have received assigned time using the form in Appendix 5.

V. Other Teaching Load Reductions

A Faculty Member who teaches 15 or more SCH* in the Fall 2003 semester and any semester thereafter shall be granted a minimum three SCH teaching assignment reduction in the following semester for activities such as, but not limited to, the following:

1. curriculum development
2. curriculum revisions
3. program development
4. program revisions
5. research and development in teaching pedagogy
6. development of grant or contract proposals
7. institutional service
8. providing expert technical assistance to federal, state, county, and other agencies that serve the public and benefit the college or UH system
9. community service
10. student mentoring
11. professional development
12. mentoring junior Faculty members

In the semester immediately preceding that in which the course reduction will take place, the eligible Faculty Members shall consult with their department or division chair about the nature of the activity they intend to pursue. The purpose of this consultation is to seek alignment between the proposed activity and college or system needs. Following the meeting, a brief form shall be filed with the department or division chair documenting the agreed-upon activities.

The amount of teaching assignment reductions may result in less than a full class reduction. The excess credits may be banked for future teaching assignment reductions. The total of banked teaching assignment reductions may not exceed six SCH (Semester Credit Hours*) during any semester.

*SCH = Semester Credit Hours or equivalent contact hours. Equivalent contact hours are used for Faculty whose teaching assignments are calculated by student contact hours or a combination of both credit and contact hours, e.g., food service, nursing, laboratory, and other vocational programs.

R-6

[Duplicated text of UH Systemwide Administrative Procedures, A9.350 LEAVES]

A9.470 LEAVE SHARING

February 1996

This replaces Administrative Procedure No. A9.470 dated March 1995.

A9.470 LEAVE SHARING**1. Purpose**

To administer the Leave Sharing Program for University employees under the authority of Title 14, Subtitle 1, Chapter 8.1, Hawai'i Administrative Rules.

The Leave Sharing Program is intended to allow employees to help ease the burdens of fellow employees who would otherwise need to take time off from work without pay to recover from a serious injury or illness. Such a program shall ensure:

- a. fair treatment and freedom from coercion of employees,
- b. that there will be no undue hardship on the department's operations, and
- c. that an employee shall not directly or indirectly intimidate, threaten or coerce any other employee for the purpose of interfering with any right such employee may have with respect to donating, receiving or using shared leave under this program.

This Leave Sharing Program shall remain in effect until June 30, 1996.

2. Definitions

- a. **Direct Share Option:** A Leave Sharing Program option whereby an eligible employee specifies the eligible co-worker to whom they wish to donate shared leave.
- b. **Donation:** Vacation or sick leave credits donated by eligible employees. Donations must be made in increments of no less than one (1) hour.
- c. **Leave Bank Option:** A Leave Sharing Program option under which eligible employees donate shared leave credits to the University's Central Leave Bank without designating a specific eligible co-worker.
- d. **Serious personal injury or illness:** An acute, traumatic, or life threatening illness, injury or impairment, such as cancer, heart attack or disabling accident:
 - 1) which may be a physical or mental condition;
 - 2) which is certified by a physician, as defined under Chapter 386-1, H.R.S., Hawai'i Workers' Compensation Law, as being totally incapacitating and the cause of the employee's inability to work for at least thirty (30) consecutive calendar days, and
 - 3) which is not covered under Chapter 386, Hawai'i Workers' Compensation Law.

3. Objective

- a. To allow eligible employees the opportunity to apply for or donate to the Leave Sharing Program.
- b. To prescribe the procedures to be followed in applying for or donating to the Leave Sharing Program.

- 4) Review for eligibility and correctness all donations and requests for shared leave.
- 5) Ensure that all official leave and attendance records are properly maintained with respect to donated leave and shared leave received by recipients.
- 6) Monitor leave sharing recipient's medical condition on a monthly basis to ensure that their condition continues to be due to a serious injury or illness.
- 7) Forward appeal requests to the Leave Sharing Review Committee for review and action.

7. Guidelines

a. Conditions for Donating Shared Leave

- 1) An employee must meet all of the following conditions to be eligible to donate shared leave credits:
 - a) Employees who earn and use sick and vacation leave shall only donate vacation leave credits, provided that the employee's vacation leave balance is not less than ten (10) days of vacation after the donation is made. Employees who do not earn vacation leave shall donate their sick leave credits, provided that the employee's sick leave balance is not less than thirty (30) days after the donation is made.
 - b) An employee must not have asked for nor accepted anything of value in exchange for the donation of leave credits.
- 2) All donated vacation or sick leave credits are irrevocable.
 - a) A vacation leave or sick leave donation shall not be refunded to the donor once it is transferred to the leave recipient or to the Central Leave Bank.
 - b) Any donated leave credits that are transferred to but not used by the eligible leave recipient shall revert to the Central Leave Bank to be available for use by other eligible recipients.
- 3) Leave shall be donated in increments of no less than one (1) hour.

b. Conditions for Receiving Shared Leave

- 1) An employee must meet all of the following conditions to be eligible to receive shared leave credits:
 - a) Has been employed at the University in a Board of Regents or Civil Service position for at least six (6) continuous months at a minimum of 0.5 (one-half) FTE.
 - b) Has exhausted or is about to exhaust all vacation leave, sick leave and compensatory time credits.
 - c) Is suffering from an acute, traumatic or life threatening personal injury or illness which caused the employee to be absent from work for at least thirty (30) consecutive calendar days within the past twelve (12) months.
 - d) Has a personal injury or illness not covered under Chapter 386, H.R.S., Hawai'i Workers' Compensation Law, or if covered, has exhausted all benefits.
 - e) Is determined to be ineligible for temporary disability benefits or, if eligible, has exhausted all benefits.
 - f) Has no disciplinary record of sick leave abuse within the past two (2) years.

- a) The employee shall complete and submit a UH Form 68 (PERS), Leave Sharing Donation Form (Attachment 1), to their immediate supervisor.
 - b) The supervisor shall review the form for correctness and forward to their Personnel/Administrative Officer within their respective unit.
 - c) The Personnel/Administrative Officer shall review the donation request in accordance with the eligibility guidelines set forth in Section 7 a. of this procedure.
 - d) If approved, the Personnel/Administrative Officer shall process the donation request in accordance with the instructions on Attachment 5. A copy of the approved UH Form 68 (PERS), Leave Sharing Donation Form (Attachment 1) shall be submitted to the Leave Sharing Review Committee and the donor once the leave donation is processed.
 - e) If the leave donation request is disapproved, the Personnel/Administrative Officer shall return the original UH Form 68 (PERS), Leave Sharing Donation Form (Attachment 1) to the respective donor's immediate supervisor along with a reason for the denial. The immediate supervisor shall return the leave donation request to the employee.
- b. Receiving Shared Leave Credits
- 1) An employee requesting shared leave may receive shared leave directly via the Direct Share Option and/or the Central Leave Bank Option. The steps which involve receiving shared leave are as follows:
 - a) The employee shall complete and submit a UH Form 69 (PERS), Leave Sharing Request Form (Attachment 2), along with a UH Form 49 (PERS), Certificate of Physician or Practitioner (Attachment 3) to their immediate supervisor.
 - b) The immediate supervisor shall review the forms for correctness and forward the request to their respective Personnel/Administrative Officer within their unit.
 - c) The Personnel/Administrative Officer shall review the forms in accordance with eligibility guidelines set forth under Section 7 b. of this procedure.
 - d) If the employee is eligible to receive shared leave, the Personnel/Administrative Officer shall follow the appropriate instructions on Attachment 6 in processing the shared leave request. A copy of the UH Form 69 (PERS), Leave Sharing Request Form (Attachment 2), along with the UH Form 49 (PERS), Certificate of Physician or Practitioner (Attachment 3), shall be sent to the employee, the employee's immediate supervisor and the Leave Sharing Review Committee within ten (10) working days after the receipt of request.
 - e) The Personnel/Administrative Officer shall monitor the number of shared leave credits used by the employee along with the number of shared leave credits available. The employee receiving shared leave credits shall continue to receive his or her current salary.
 - f) If the employee was on leave without pay status at the time the shared leave request was filed and has since been found eligible to receive shared leave credits, the Personnel/Administrative Officer shall generate a Payroll Notification Form to return the employee on paid leave status. For civil service employees, the Personnel/Administrative Officer shall notify the Personnel Management Office, Civil Service Section, in writing, to generate the State Form 5, Notification of Personnel Action, to return the employee on paid leave status. The period that the employee remains on paid status shall be dependent on the number of shared leave credits that were donated to the employee.
 - g) The number of shared leave credits received by the employee shall be dependent on the availability of leave donated and shall not be approved and processed for more than a month at a time. The recipient's sick or vacation leave balance shall not be affected as a result of receiving shared leave.

- a) A request to review the application for shared leave and the specific reasons for the reconsideration of the application,
 - b) The facts in support of the reconsideration; and
 - c) The remedy which the employee is seeking.
- 2) The Leave Sharing Review Committee shall convene within fifteen (15) days after receipt of the employee's request for review. A meeting with the employee or duly authorized representative at which time any materials, additional facts, documents or other evidence may be presented by the employee or their duly authorized representative.
 - 3) After considering the additional information, the Leave Sharing Review Committee shall render a decision. The Leave Sharing Review Committee shall be final and conclusive. Written notice of the decision to the employee shall be given within ten (10) working days from the date of the appeal meeting or at a mutually agreed later date based upon receipt of additional documentation, whichever is later.
- f. Termination of Leave Sharing Program
- 1) The Leave Sharing Program shall terminate on June 30, 1996 unless extended by the State Director of Personnel Services or repealed by law.
 - 2) If the Leave Sharing Program terminates before the end of the recipient's serious personal illness or injury, any shared leave granted to the recipient before the program's end shall remain available for use by the recipient until the termination of the serious personal illness or injury.
 - 3) Upon termination of the Leave Sharing Program, any shared leave remaining in the Central Leave Bank shall be considered forfeited and the leave bank dissolved.

4. Accumulation of Sick Leave Days

- a. Sick leave available is equal to the number of days of cumulative sick leave which has been earned by the Faculty member plus the number of days of current annual sick leave to which he is entitled. Current annual sick leave entitlement will start the month an employee begins work. (BOR 10/21/71)
- b. Sick leave which is not used during the year for which it accrues shall accumulate and be available for succeeding years. (BOR 10/21/71)
- c. Accumulation of sick leave days shall have no limitation. (BOR 10/21/71)
- d. Personnel on the nine-month salary schedule receive their annual sick leave entitlement at the beginning of the year, or a prorated amount if appointed late. Under the present academic calendar, the entitlement should be recorded during the month of August, or later if a late appointment in accordance with the prorated schedule in item #1 herein. (BMI No. 2073)
- e. Should a nine-month Faculty member terminate prior to completion of an academic year, the entitlement must be reduced by 16 hours for each month of service not completed. (BMI No. 2073)
- f. A Faculty member leaving the community college shall retain his accumulated sick leave for a period of five years, after which time, should he return to service, his sick leave status will be that of a new employee. (BOR 10/21/71)
- g. Faculty members who were transferred or were recruited from the State Department of Education retain their accumulated sick leave when they join the community colleges. (BOR 10/21/71)
- h. Faculty members who were entitled to earn and accumulate sick leave on the Manoa and Hilo campuses of the University of Hawaii retain their accumulation when they transfer to the community colleges. (BOR 10/21/71)
- i. Instructional personnel at the Manoa and Hilo campuses of the University of Hawaii do not earn formal sick leave and consequently bring no accumulation when they transfer to the community colleges. (BOR 10/21/71)
- j. When a Faculty member is granted leave of absence without pay, the sick leave accumulation up to the time of leave will be registered and credited to him/her upon return to service. (BOR 10/21/71)

5. Illness at the Opening of the Academic Year

- a. A Faculty member who is ill and under the care of a licensed physician at the opening of the academic year will be allowed full pay sick leave from the beginning of the academic year up to the limit of his full pay accumulated sick leave available. (BOR 10/21/71)
 - b. Upon return to work, Faculty member will be granted annual sick leave to which he/she is entitled for the balance of the year which may be applied retroactively to cover illness during the first days of the academic year. (BOR 10/21/71)
6. Leave for Physical Check-Up. Sick leave shall not be granted for a physical check-up unless it is illness-connected and required by a licensed physician in connection with treatment. (BOR 10/21/71)
7. Working Days Only to be Charged. In all cases of sick leave with pay, only actual school days will be charged against the amount of sick leave available. (BOR 10/21/71)
8. Absence During Part of the School Day. A Faculty member who leaves the campus because of illness may be considered present for the day after being on regular duty for three hours. (BOR 10/21/71)
9. Employees absent from work on account of sickness shall have charged against their sick leave allowance all working days which occur during the absence.

return from sick leave. (BMI No. 2071) For absence of more than five consecutive working days, the form must be accompanied by a statement from a licensed physician or accredited Christian Science practitioner. For absence of five consecutive days or less, the signature of a physician is not required. (BOR 10/21/71)

- b. Departmental Office or Designated College Official: After approval by the Departmental Chairperson or Designated College Official, the multi-carbon leave form should be distributed as follows: original to the UH Personnel Office, Employee Benefits Section, 1st copy to employee and 2nd copy to be maintained by the department or designated college office. The departmental/or designated college official's copy of the Leave of Absence form should be checked against the monthly machine roster, which is provided by the UH Personnel Office, to insure that the original Leave of Absence form has been processed and entered into the leave accounting system. (BMI No. 2071)
- c. UH Personnel Office: The UH Personnel Office will process all Application for Leave of Absence forms for all employees in the sick leave accrual system. The UH Personnel Office will also provide each department with a monthly machine roster reflecting all sick leave taken plus current credit balances for each Faculty member. (BMI No. 2071)

SICK LEAVE ENTITLEMENT FOR FACULTY ON 9-MONTH ACADEMIC YEAR APPOINTMENT

(Page 9 of original text of the Community College Sick Leave Policy & Procedures)

Nine-month i Cî employees earn sick leave entitlement at the rate of two (2) days per month (16 hours). Employees working less than a full month shall receive the following prorated sick leave credits:

				<u>Hours</u>
1	to	2	calendar days	0
3	to	6	calendar days	2
7	to	9	calendar days	4
10	to	13	calendar days	6
14	to	16	calendar days	8
17	to	20	calendar days	10
21	to	23	calendar days	12
24	to	27	calendar days	14
28	or	more	calendar days	16

(Schedule was prepared by UH Personnel Office)

SPECIAL INSTRUCTIONS IN HANDLING COMPUTERIZED SICK LEAVE RECORDKEEPING FOR COMMUNITY COLLEGE i Cî EMPLOYEES

1. A 9-month i Cî employee who terminates his/her job (for reasons other than death or a transfer) before the end of a calendar month is not to be credited with any sick leave earned for that month.
2. A i Cî employee who transfers or changes to an 11-month contract or to a 9-month contract will have his/her sick leave credit earned prorated as of the date of the transfer according to the 9-month or 11-month pro rata schedule.
3. The 9-month i Cî employee who terminates by reason of death during a given month will receive a prorated sick leave credit earned for that month up to the date of his/her death.
4. The 9-month i Cî employee who starts the new year's employment in the month of July will not receive his/her 18 days of sick leave credits for the coming year until the month of August, when all other regular 9-month i Cî personnel will have their 18 days for the year recorded into the computer files.
5. i Cî employees going on Leave Without Pay status during the academic year will stop earning sick leave credits as of the date of the LWOP. Upon return to duty from LWOP, sick leave credits for the remainder of the year will be recalculated according to the 9-month or 11-month pro rata schedule.
6. A first year i Cî employee who cannot report to work on the first duty day due to illness will be required to take a

Leave Without Pay - Going and Returning

- General Improvement
- Illness
- Death in the Family
- Industrial Injury
- Extended Annual Vacation for Travel
- Military Services
- Seek Political Office
- Personal Business of Emergency Nature
- Temporary Cessation of Normal Operations
- Render Services at State Legislature
- Serving on Constitutional Convention
- Professional Improvement
- Authorized Leave without Compensation
- Unauthorized Absence without Compensation
- No Prorated Summer Pay
- Changes during LWOP - (type of LWOP)
- LWOP - (type of LWOP) following Sabbatical Leave
- LWOP - (type of LWOP) following Study Leave
- Depletion of Funds

Separations

- Resignation
- Death
- Termination
- Retirement (age 64 and under)
- Retirement (age 65 and over)
- Dismissal
- Layoff

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COMMUNITY COLLEGE FACULTY (9-MONTH) SICK LEAVE SCHEDULE
 (Corrected copy as of 12/12/78)

	<u>Amount to be Credited or Subtracted</u>			
August (08)	18	days	144	hours
September (09)	17	days	136	hours
October (10)	15	days	120	hours
November (11)	13	days	104	hours
December (12)	11	days	88	hours
January (01)	9	days	72	hours
February (02)	7	days	56	hours
March (03)	5	days	40	hours
April (04)	3	days	24	hours
May (05)	1	day	8	hours
June (06)	--		--	
July (07)	--		--	

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[Duplicated text of UH Systemwide Administrative Procedures, A9.350 LEAVES]

A9.350 APPLICATION FOR TRANSFER OF VACATION AND SICK LEAVE CREDIT OR PAYMENT IN LIEU OF VACATION

September 1990

This replaces Administrative Procedure A9.350 dated July 1982.

1. Purpose.

To comply with Section 79-5 HRS, Transfer of Vacation Credits and also Title 14, Administrative Rules, Department of Personnel Services Section 8-11(d) concerning "General provisions affecting vacation and sick leaves" and other appropriate collective bargaining agreements.

2. References.

- a. Administrative Procedure A9.380, Vacation and Sick Leave System.
- b. Administrative Procedure A9.390, Vacation Credit Fund Transfer.
- c. Section 88-63 HRS, Credit for Unused Sick Leave.

3. Objective.

To prescribe the procedure to be followed in preparing and certifying the application for transfer of vacation and sick leave credit or payment in lieu of vacation.

4. Applicability/Responsibility.

- a. This procedure is applicable to all University personnel who are on the accrual system.
- b. Vice Presidents, Chancellors, Manoa Deans and Directors or their designees are responsible for processing the necessary documentation for transfer of vacation and sick leave credits or payment in lieu of vacation.

5. Transfer, Lump-Sum Payments and Separations

- a. The employee transfers to another state or county agency and vacation and/or sick leave credits are to be transferred to the gaining organization, or
- b. The employee is eligible for and requests lump sum payment for unused vacation, or
- c. The employee transfers to a position within the University which is paid from a different fund and vacation credits (including dollar amounts) are to be transferred, or
- d. The employee terminates and has some unused sick leave credit.

6. Procedures

- a. Employees on the Vacation and Sick Leave Accrual System.
 - 1) Employees on the vacation and sick leave accrual system include civil service personnel and BOR appointees in the R, S, B, A, APT and E/M classifications.
 - 2) Transfers of vacation and sick leave and payment for accumulated vacation upon termination require the designee to prepare the Application for Transfer of Vacation and Sick Leave Credit of Payment in Lieu of Vacation, Form G-2 and Instructions (Attachment A and B), which must be signed by the employee and the Administrative Officer or fiscal officers and the Attendance and

- b) Nine-month personnel in service for the full academic year are entitled to 18 days of sick leave. Those appointed after August 31 shall have entitlement prorated as follows:

<u>First Semester</u>	<u>Days Earned</u>	<u>Second Semester</u>	<u>Days Earned</u>
August	18	Start of 2nd semester through January	9
September	17	February	7
October	15	March	5
November	13	April	3
December to end of semester	11	May	1

Note: The months have been changed from those shown in Appendix S of the Manoa/Hilo Handbook to conform to the present academic year.

- c) Employees absent from work on account of sickness shall have charged against their sick leave allowance all working days which occur during the absence. For "C" personnel on 11-month appointments, this means any regular University work day exclusive of non-duty time during the summer period. For "C" personnel on 9-month appointments, this means any regular University work day during the period beginning one week before registration for the first semester ending with the second semester's commencement, including periods when classes are not scheduled. As used in this paragraph "regular University work day" is synonymous with regular State of Hawaii work day and does not include holidays and weekends.

- d) Form G2, Application for Transfer of Vacation and Sick Leave Credit or Payment in Lieu of Vacation.

- 1) The G2 and the supporting documents should be prepared, audited and certified by the respective division as appropriate.
- 2) Prior to distribution of G2 copies, a final check to insure for accuracy shall be made. In event of an error, prepare an amended G2 and attach the incorrect copies to the amended G2 and distribute accordingly.
- 3) The respective division is to distribute documents in the following manner:

For Lump Sum Payment

- ó 1st copy to Payroll Office
- ó 2nd copy to ERS
- ó 3rd copy retained by division level (if civil service to the Civil Service Section, if E/M to the Personnel Management Office, Director's Office)
- ó 4th copy to employee
- ó 5th copy (extra)

For Sick Leave Only

- 1st retained by Division
- 2nd copy to ERS
- 3rd copy retained by division level (if civil service to the Civil Service Section, if E/M to the Personnel Management Office, Director's Office)
- ó 4th copy to employee
- ó 5th copy extra

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[Duplicated text of UH Form 1 & enlarged]

APPLICATION FOR LEAVE OF ABSENCE

DOC. NO. Item 00: Enter unique 6 digit UNIVERSITY OF HAWAII - APPLICATION FOR LEAVE OF ABSENCE

PLEASE PRINT OR TYPE

01. SOCIAL SECURITY		NO. 02. NAME (LAST, FIRST, MI)			
_____		_____ ↑ START WITH FIRST THREE LETTERS OF LAST NAME			
03. LEAVE CODE	04. TYPE OF LEAVE	01 Vacation	05 Bereavement (See Note 2)	09 LWOP-Prof Imp Leave	
		02 Sick (See Note 1)	06 Military	10 LWOP-Other (See Note 3)	
		03 Sick-Industrial Injury	07 LWOP-Maternity	11 Compensatory Time Off	
		04 Sabbatical/Prof Imp Leave with Pay	08 LWOP-Health	12 Jury/Witness Duty	
05. INCLUSIVE DATES OF LEAVE			06. USE FOR CORRECTION ONLY		
FROM ____/____/____ THRU ____/____/____			THIS	REPLACES	DOC. NO.
MONTH DAY YEAR MONTH DAY YEAR			REMARKS:		
07. WORKING HOURS TAKEN		08. EMPLOYEE'S SIGNATURE		09. REQ DATE	
____/____/____					
MM DD YY					
10. DEPARTMENT		11. SUPERVISOR'S SIGNATURE		12. DATE	

Instructions for Completing the UH Form 1 (PERS), Application for Leave of Absence. Complete the following items:

- Item 1..... Enter social security number of recipient.
- Item 2..... Enter full name of recipient (start with first three letters of last name).
- Item 3..... Enter 02 for i Sick Leave.i
- Item 4..... Enter i Sick Leave.i
- Item 5..... Enter appropriate dates to reflect the number of hours of sick leave received.
- Item 7..... Enter the number of sick leave hours to be charged.
- Item 8-11 Self-explanatory.

§398-3 Family leave requirement.

- (a) An employee shall be entitled to a total of four weeks of family leave during any calendar year upon the birth of a child of the employee or the adoption of a child, or to care for the employee's child, spouse or reciprocal beneficiary, or parent with a serious health condition.
- (b) During each calendar year, the leave may be taken intermittently.
- (c) Leave shall not be cumulative.
- (d) If unpaid leave under this chapter conflicts with the unreduced compensation requirement for exempt employees under the federal Fair Labor Standards Act, an employer may require the employee to make up the leave within the same pay period.
- (e) Nothing in this chapter shall entitle an employee to more than a total of four weeks of leave in any twelve-month period.

[L 1991, c 328, pt of §1; am L 1992, c 87, §6; am L 1997, c 383, §57]

§398-4 Unpaid leave permitted; relationship to paid leave.

- (a) Pursuant to section 398-3, an employee shall be entitled to four weeks of family leave. The family leave shall consist of unpaid leave, paid leave, or a combination of paid and unpaid leave. If an employer provides paid family leave for fewer than four weeks, the additional period of leave added to attain the four-week total may be unpaid.
- (b) An employee or employer may elect to substitute any of the employee's accrued paid leaves such as sick, vacation, personal, or family leave for any part of the four-week period in subsection (a); provided that an employer or employee may not substitute an employee's accrued sick leave in any situation under this chapter unless:
 - (1) Sick leave is normally granted for such purposes by an employer's policy or practice; or
 - (2) Upon mutual agreement by the employer and the employee.

[L 1991, c 328, pt of §1; am L 1995, c 154, §5]

[§398-5] Notice.

In any case in which the necessity for family leave is foreseeable, the employee shall provide the employer with prior notice of the expected birth or adoption or serious health condition in a manner that is reasonable and practicable.

[L 1991, c 328, pt of §1]

§398-6 Certification.

- (a) An employer may require that a claim for family leave be supported by written certification.
- (b) For the birth of a child, certification shall be issued by a health care provider or the family court. For the placement of a child for adoption with the employee, certification shall be issued by a recognized adoption agency, the attorney handling the adoption, or by the individual officially designated by the birth parent to select and approve the adoptive family.
- (c) When leave is to care for a child, spouse, or parent who has a serious health condition, certification shall be issued by the health care provider of the individual requiring care. Certification shall be considered sufficient if it provides information as required by the director.

[L 1991, c 328, pt of §1; am L 1995, c 154, §6]

collective bargaining agreements, to the extent that the contracts and agreements provide greater protections than those afforded under this chapter.

- (c) To the extent the provisions of this chapter contradict or otherwise conflict with any contract rights or collective bargaining agreements in existence as of the date of this Act, the provisions that provide greater benefits to the employees shall control.

[L 1991, c 328, pt of B1]

[B398-11] Rules.

Subject to chapter 91, the director may adopt rules necessary for the enforcement and administration of this chapter. The rules shall have the force and effect of law.

[L 1993, c 152, B1]

[PART II.] ENFORCEMENT

[B398-21] Filing of complaint.

- (a) Any individual claiming to be aggrieved by an alleged unlawful act may file with the department a verified complaint in writing.
- (b) The attorney general or the department, in like manner, may file a complaint on behalf of an individual.
- (c) A complaint may be filed on behalf of a class by the attorney general or the department.
- (d) No complaint shall be filed after the expiration of ninety days after the:
 - (1) Date of the alleged unlawful act; or
 - (2) Date of discovery by the employee of the alleged unlawful act; however, in no event shall such a complaint be filed after the expiration of one hundred eighty days of the alleged unlawful act.
- (e) After the filing of any complaint, the attorney general or the department, as applicable, shall serve a copy of the complaint upon the employer.

[L 1995, c 154, pt of B3]

[B398-22] Predetermination settlement.

At any time after the filing of a complaint, but prior to a determination by the department that this chapter has been violated, the parties may agree to resolve the complaint through a predetermination settlement.

[L 1995, c 154, pt of B3]

[B398-23] Investigation and conciliation.

- (a) The department may investigate and conciliate any complaint filed under this chapter.
- (b) Every employer shall furnish or provide to the department access to records, documents, and other material to determine compliance with this chapter. The department shall have the right to examine, photograph, or copy the material and interview witnesses at the place of employment or business during regular working hours with respect to any matter under this chapter.
- (c) The department may require by subpoena the attendance and testimony of witnesses and the production of all records, payrolls, correspondence, documents, and other material relative to any matter under investigation.

- (b) Relief under this section may include:
- (1) The amount of any wages, salary, employment benefits, or other compensation denied or lost to the employee by reason of the violation; or
 - (2) In a case in which wages, salary, employment benefits, or other compensation have not been denied or lost to the employee, any actual monetary losses sustained by the employee as a direct result of the violation, such as the cost of providing care, up to a sum equal to four weeks of wages or salary for the employee.
- (c) An employer may be liable for an additional amount as liquidated damages equal to the sum of the applicable amount in subsection (b)(1) and (2); provided that if an employer who has violated this chapter proves to the satisfaction of the department or the court that the act or omission that violated this chapter was in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation of this chapter, the department or the court may reduce the amount of the liability to the applicable amount determined under subsection (b)(1) or (2).

[L 1995, c 154, pt of §3]

[§398-27] Notice of right to sue and employee remedies.

- (a) The department may issue a notice of right to sue. Within ninety days after the receipt of a notice of right to sue, the complainant may bring a civil action under this chapter. The department may intervene in a civil action brought pursuant to this chapter if the case is of general importance.
- (b) An action by an employee to enforce the provisions of this chapter may be maintained in any court of competent jurisdiction by any one or more employees for and in behalf of oneself or themselves, or the employee or employees may designate an agent or representative to maintain the action.
- (c) The court in any action brought under this section, in addition to any judgment awarded to the plaintiff or plaintiffs, shall allow costs of action, including costs of fees of any nature, and reasonable attorney's fees, to be paid by the defendant.
- (d) The court also may provide injunctive relief in appropriate circumstances.

[L 1995, c 154, pt of §3]

[§398-28] Compliance review.

The department may investigate whether the terms of an agreement, settlement, order, or decision are being complied with by the employer. If the employer is not in compliance, the department shall take appropriate action as provided under this chapter.

[L 1995, c 154, pt of §3]

[§398-29] Penalty.

Any employer who intentionally resists, prevents, impedes, or interferes with the department in the performance of duties pursuant to this chapter, or who in any manner intentionally violates this chapter, shall be guilty of a petty misdemeanor.

[L 1995, c 154, pt of §3]

- (2) If the University decides not to secure a patent for an invention which is a result of personal or private research but has been submitted to the President voluntarily by the inventor for possible development and patent under University auspices as hereafter noted.
- (d) In all cases of waiver of rights, the University shall relinquish its rights to the inventor by written waiver signed by the President of the University or by a designated agent. If the final unappealed decision of the committee is that such invention was the result of personal or private research, such decision may be used by the inventor as evidence in establishing the priority of the invention. Any person aggrieved by the decision of the President, may appeal to the President of the University. The decision by the President shall be final within the University administrative framework.

[Eff. JUN 22 1981] (Auth: HRS §304-4) (Imp: HRS §304-4)

§20-3-3 Inventions Resulting from Personal or Private Research.

The University shall have no vested interest in inventions clearly resulting from personal or private research and developed by an inventor on personal time, without cost or expense to the University. Such inventions may be voluntarily offered by the Faculty member to the President for the possible securing of a patent and for subsequent developing, processing and exploitation under University aegis. If such offer is accepted by the President, the inventor shall assign his rights to the University of Hawai'i Research Corporation and shall thereafter receive seventy-five percent of the net profits if any (amount received by the corporation, less costs) derived from any exploitation of the patent.

[Eff. JUN 22 1981] (Auth: HRS §304-4) (Imp: HRS §304-4)

§20-3-4 Inventions Resulting from Research Supported by State Funds.

Inventions resulting from research wholly supported by State funds shall become the property of the University of Hawai'i. Staff members shall assign their rights to the University of Hawai'i Research Corporation and shall be entitled to receive fifty percent of the net profits (amount received by the corporation, less costs) derived from any exploitation of the patent.

[Eff. JUN 22 1981] (Auth: HRS §304-4) (Imp: HRS §304-4)

§20-3-5 Inventions Resulting from Research Supported by an Outside Agency.

Inventions resulting from research supported by an outside agency, either wholly or in part, shall be governed by the provisions of the agreement covering the work. In the absence of such provisions, the invention shall be regarded as deriving from the category of State or University supported research.

[Eff. JUN 22 1981] (Auth: HRS §304-4) (Imp: HRS §304-4)

§20-3-6 Copyrights.

This policy is designed to cover copyright of books or other similar materials, and of materials in all forms copyrightable under the laws of the United States or international copyright agreements.

Except for works produced or written for hire, any publishable material produced by a member of the Faculty or staff of the University shall be the exclusive literary property of the author. The author may obtain copyright or dedicate his work to the public as he chooses, subject to any restrictions imposed by sponsoring or funding agencies not under University control.

Works produced or written for hire are defined as manuscripts or materials produced by persons who are engaged by the University specifically to produce such manuscripts or works, or released from other work to produce such materials. The University shall be the sole proprietor of any work done for hire, and may make such disposition of resultant manuscripts as it may choose. Borderline determinations should be documented, when desired, in accordance with the foregoing patent policy. Should any controversy concerning this policy committee of the University which will make a recommendation for action to the President.

[Eff. JUN 22 1981] (Auth: HRS §304-4) (Imp: HRS §304-4)

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[Duplicated text from UH Systemwide Executive Policies, Executive Policy # Administration]

E5.500 ADMINISTRATION OF THE PATENT AND COPYRIGHT POLICY

March 1985

A. INTRODUCTION

Section 5-3(f) of the University of Hawai'i Board of Regents Bylaws and Policies establishes the University Patent and Copyright Policy.

Because it is desirable and expedient for the University of Hawai'i to provide uniform rules and procedures for the regulation and administration of intellectual property rights generated by the activities of its Faculty, employees and others associated with the University, the following objectives, policies and procedures are established for the University's administration of the Patent and Copyright Policy.

B. OBJECTIVES

1. To define, clarify and protect the rights and equities of inventors and authors, the University, the Research Corporation of the University of Hawai'i, any governmental or private sponsor of research, and the public, with respect to inventions and original works, by providing for just and equitable recognition of the legitimate interests of each of the above in such inventions and works.
2. To encourage broad utilization of the results of University research and to provide a vehicle for the transfer of new technology and ideas from the University to the community at large, by permitting exploitation (both commercial and otherwise) in the public interest and for the public benefit, in a manner consistent with the integrity and objectives of the academic process, including the goal of public dissemination of the results of research.
3. To stimulate innovative and creative scholarship, research and writing and its recognition, by facilitating where appropriate the receipt of fair economic rewards there for in the form of royalty payments to inventors and authors from licensees (in the case of inventions) and publishers (in the case of written or similar works).
4. To protect and benefit scholars and researchers in the University by promoting recourse to the patenting and copyright process and by providing information, support and liaison concerning the procedures and problems involved therein.
5. To encourage and assist scholars and researchers in identifying potentially patentable discoveries, to require prompt and early reporting thereof to the President and to promote scholarly publication concerning such discoveries in a manner that does not prejudice the obtaining of a patent.
6. To devise and promulgate clear and practicable regulations, procedures and forms for the reporting and disclosure of original works that may be copyrightable, discoveries that may prove patentable and the timely prosecution of patent applications in appropriate cases.
7. To provide for the patenting or licensing or both of any invention or the copyrighting and licensing or both of any work, where appropriate, through the President or a patent management organization or publishing entity designated by that Committee.
8. To protect the rights, as agreed, of any government or private sponsor of research in any invention or work that may be generated by such research, and to ensure compliance with the other terms of any such research grant.
9. To protect the rights of the University in inventions or other original works which result from the use of University funds or facilities by Faculty, employees, students or trainees.

4.10 To do all things necessary to achieve the objects of the Patent and Copyright Policy, without being limited by the specific powers and duties enumerated above.

5. Appeals from Decisions of PCC:

Any person aggrieved by any decision of the PCC may appeal to the President of the University or his designated representative. Such appeal shall be in writing, shall state the grounds of appeal and shall be submitted to the President or such representative within THIRTY (30) days after notification of the ruling of the Committee. The decision of the President or his designee shall be final and binding.

D. PATENTS

1. When University has Exclusive Patent Rights:

Subject to the provisions of the Policy with respect to relinquishment of rights and royalty sharing, the University shall have exclusive patent rights and title in and to any invention or discovery which emerges from any research, development or other program funded by the University, or is conceived or developed wholly or partially at the expense of the University or with the aid of its equipment, facilities or personnel.

2. When Inventor has Exclusive Patent Rights:

The University shall relinquish all rights to the inventor in the following cases:

- 2.1 If the invention or discovery is adjudged by the PCC to have been made by the inventor independently of any contractual obligations to the University and without using University equipment, facilities or funds provided by the University or an outside sponsor.
- 2.2 If the invention or discovery is a result of permissible consulting activities without any use of University facilities or of funds derived from the University or an outside research sponsor.
- 2.3 If the invention or discovery was made with the aid of University facilities or funds, but the PCC, with the written approval of the President or his designated agent decides to waive the University's rights or equity therein.

3. Procedure for Reporting Inventions:

All employees of the University, nonemployees who use University research facilities and those who receive grant or contract funds through the University shall promptly report and fully disclose any ideas for and/or reduction to practice of a potentially patentable invention or discovery to the PCC. The following procedure shall apply to such report and disclosure:

- 3.1 The report and disclosure shall be submitted in writing at the earliest opportunity to the departmental head or immediate supervisor and shall include a written statement certifying whether the potentially patentable invention or discovery was the result of private research done independently of any contractual obligations to the University and without using University equipment, facilities or funds, or whether it was the product of research done with the benefit of such assistance or with the aid of any outside research sponsor.
- 3.2 The departmental head or immediate supervisor to whom the report and disclosure are submitted shall review them and shall forward them to the PCC within THIRTY (30) days after receipt, together with a written opinion regarding the accuracy of the originator's statement submitted pursuant to Paragraph 3.1 and the reasons for such opinion.
- 3.3 The Chairman of the PCC may in his discretion authorize an originator to submit the report, disclosure and required statement directly to the PCC without referring it to the departmental head or supervisor, if he is satisfied that good grounds exist for dispensing with such reference.
- 3.4 The Chairman and members of the PCC shall take adequate steps to assure and preserve the confidentiality of all invention disclosure documents.

- 7.1 Such members shall notify his Dean or Director in writing of the nature of the outside employment and the extent of the patent rights to be granted to the outside employer.
- 7.2 The Dean shall forthwith submit the notification to the Chairman of the PCC, together with his written recommendation thereon.
- 7.3 Unless the Chairman of the PCC notifies the member to the contrary in writing within THIRTY (30) days of the submission of the request, the University shall be deemed to have waived its rights to any invention or discovery made during the outside employment described in the request to the extent necessary to give effect to the grant of the patent rights therein described.
- 7.4 If the Chairman of the PCC objects in writing within the aforementioned period of THIRTY (30) days, the member shall not enter into the proposed employment agreement insofar as it provides for or contemplates the grant of patent rights to the outside employer with respect to any invention or discovery made by the member while in the employ of the University and in which the University has any rights under this Policy.

8. Criteria Governing Outside Commercial Sponsorship of Research:

Contracts and other arrangements between the University and outside commercial sponsors of research must comply with the following criteria:

- 8.1 Research investigators and the University shall be free to disseminate and publish the results of sponsored research, provided that in order not to jeopardize applications for patents the University may agree that any proposed publication will be submitted to the sponsor with notice of intent to submit for publication and that unless the sponsor in writing requests a delay within TWO (2) months from the date of such notice, the investigators or the University shall be free to proceed with immediate publication. However, if the sponsor requests a delay, the submission of the manuscript will be withheld for the period requested, but in no event for longer than SIX (6) months from the date of the notice of intent to submit for publication and only in order to permit the sponsor to prepare and file the necessary application.
- 8.2 The University shall retain the right to take title to any patentable inventions or discoveries arising from the undertaking of sponsored research, except that the University may grant an exclusive license to the sponsor for a period not exceeding EIGHT (8) years and bearing a royalty to be agreed upon, or may grant a royalty-free license if the University has incurred no substantial expense and such a license is deemed appropriate.
- 8.3 Any agreement or arrangement with the commercial sponsor shall not impose any restrictions upon the University in conflict with its established policies and practices, but shall permit performance of the research or other investigation in the same manner and subject to the same administrative requirements applicable to research financed with the University's own funds.

E. COPYRIGHTS

1. Scope:

The Policy covers books or other written materials, as well as other original works of authorship in the various forms copyrightable under the copyright laws of the United States and international copyright conventions.

2. Rights of Faculty and Staff:

Except in the case of works written or produced for hire, and subject to any restrictions imposed by outside sponsoring or funding organizations, a member of the Faculty or staff of the University who writes or produces any work shall have exclusive rights thereto, including the ownership of copyright therein.

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[Duplicated text of the UH Systemwide Administrative Procedures, A5.500, ACADEMIC AFFAIRS]

A5.500 PROCEDURES FOR INVENTION IDENTIFICATION, DISCLOSURE, AND REPORTS UNDER STATE FUNDING

March 1985

1. Purpose.

The University Patent and Copyright Policy contains clauses relating to the respective rights of the University with respect to inventions developed under research projects funded by the State. It is essential that the Principal Investigator be thoroughly familiar therewith, and comply promptly with the procedural requirements relating to invention identification, timely disclosure and reporting.

2. Objective.

The general procedures outlined below should be followed to assure uniformity and responsiveness in the handling of such inventions.

3. Applicability.

These procedures apply to all inventions conceived and/or developed under State funding.

4. Procedure.

The Principal Investigator (P.I.) shall maintain laboratory notebooks or equipment records as are reasonably necessary to document the conception and/or the first actual reduction to practice of inventions, and to show that the procedures for identifying and disclosing inventions are followed. These records shall be available upon request of the University and its duly appointed representatives.

- a. The P. I. shall furnish the Office of Research Administration with an invention disclosure. The disclosure shall be submitted in writing at the earliest opportunity to the departmental head or immediate supervisor and shall include a written statement certifying whether the potentially patentable invention or discovery was the result of private research done independently of any contractual obligations to the University and without using University equipment, facilities or funds, or whether it was the product of research done with the benefit of such assistance or with the aid of any outside research sponsor.
- b. The departmental head or immediate supervisor to whom the disclosure is submitted shall review it and shall forward it to the PCC within THIRTY (30) days after receipt, together with a written opinion regarding the accuracy of the originator's statement submitted pursuant to Paragraph (1) and the reasons for such opinion.
- c. The Chairman of the PCC may at his discretion authorize the originator to submit the disclosure and required statement directly to the PCC without referring it to the departmental head or supervisor if he is satisfied that good grounds exist for dispensing with such reference.
- d. The Chairman and members of the PCC shall take adequate steps to assure and preserve the confidentiality of all invention disclosure documents.
- e. The originator shall be notified of meetings of the PCC and may attend the meetings at which his disclosure will be considered.
- f. The PCC shall within NINETY (90) days of the submission of the disclosure and required statement notify the President of the University, or his designated agent, the originator and the departmental head or immediate supervisor of its decision with respect to the disposition of the matter and the respective rights or equities of any interested parties.

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[Duplicated text of UH Systemwide Administrative Procedures, A5.500, ACADEMIC AFFAIRS]

A5.501 PROCEDURES FOR COPYRIGHTS OF WORK PRODUCED FOR HIRE

March 1985

1. Purpose.

The University Patent and Copyright Policy contains provisions in respect to the ownership of any copyright on materials produced as a result of work for hire. It is essential that all employees of the University and non-employees who have been specifically commissioned by with and comply promptly with the procedural requirements described below.

2. Objective.

The general procedure outlined below should be followed to assure uniformity and responsiveness in the handling of such material.

3. Applicability.

The Policy covers books or other written materials, as well as other original works of authorship in the various forms copyrightable under the copyright laws of the United States and international copyright conventions.

4. Definition.

A work written or produced for hire is defined as:

- a. A work commissioned by the University and prepared by an employee who is hired or assigned by the University specifically to produce such work.
- b. A work prepared by a person who is not a regular employee of the University but who is specifically commissioned by the University to produce it pursuant to a signed written agreement which provides that the work shall be considered a work for hire.

5. Rights in Works for Hire.

With respect to works for hire, the University shall have exclusive rights, including the copyright, but subject to any contrary terms of the employee's employment agreement and any restrictions contained in any contract with or grant from an outside sponsor, the Faculty or staff member who prepared or produced the work shall be entitled to receive such proportions, as the PCC in its discretion may determine, of the net royalties (gross receipts less all costs), if any, which may be derived from the sale or licensing of such work. However, such sale or licensing shall be within the sole discretion of the University, which shall be under no obligation to develop royalties therefrom.

6. Procedure.

- a. A Faculty or staff member who writes or produces a work which he or she intends to publish or exploit commercially shall notify the PCC in writing through the departmental head or immediate supervisor of such intention, providing appropriate details of the work and the circumstances of its preparation and seeking a determination from the PCC as to whether the work is or is not a work for hire.
- b. The departmental head or immediate supervisor to whom the report is submitted shall review it and shall forward it to the PCC within THIRTY (30) days after receipt, together with a written opinion regarding the accuracy of the originator's statement submitted pursuant to Paragraph (1) and the reasons for such opinion.
- c. The originator shall be notified of meetings of the PCC and may attend the meetings at which his report will be considered.

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[Duplicated text of UH Systemwide Administrative Procedures, A5.500, ACADEMIC AFFAIRS]

**A5.502 PROCEDURES FOR INVENTION IDENTIFICATION, DISCLOSURE AND REPORTS UNDER
EXTRAMURAL CONTRACT PATENT CLAUSES**

March 1985

1. Purpose.

Extramural contracts and grants usually contain patent clauses relating to the respective rights or options available to the parties in respect to inventions developed thereunder. If a contract or grant contains such a clause, it is essential that the Principal Investigator be thoroughly familiar therewith, and comply promptly with the procedural requirements relating to invention identification, timely disclosure and reporting; otherwise the patent rights available to the University, and the continuing contract or grant relationship between the contracting agency and the University may be placed in jeopardy.

2. Objective.

The general procedures outlined below should be followed to assure uniformity and responsiveness in the handling of such inventions. As used herein the words "contract" also refers to "grant".

3. Applicability.

These procedures apply to all inventions conceived and/or developed under extramural funding.

4. Procedure.

The Principal Investigator (P.I.) shall maintain laboratory notebooks or equipment records as are reasonably necessary to document the conception and/or the first actual reduction to practice of inventions, and to show that the procedures for identifying and disclosing inventions are followed. These records shall be available upon request of the funding agency, or the University and their duly appointed representatives.

a. The P. I. shall furnish the funding agency through the Office of Research Administration:

- (1) A complete technical disclosure for such invention within the period specified in the contract, usually within six (6) months after conception or first actual reduction to practice, whichever occurs first in the course of the contract but in any event prior to any sale, public use, or publication of such invention. The disclosure shall identify the contract and inventor(s), and be sufficiently complete in technical detail, and appropriately illustrated by diagram to convey a clear understanding of the purpose, and physical, chemical, biological, or electrical characteristics of the invention.
- (2) Interim reports, as required in the contract [usually at least every twelve (12) months from date of contract]; a form similar to the attached Exhibit A, or the appropriate form specified by the funding agency, may be used for this purpose. It should list inventions during that period and certify that all inventions have been disclosed, or that there are no inventions.
- (3) A final report, as required in the contract [usually within three (3) months after completion of the work]; Exhibit A, or the appropriate agency form, may be used for this purpose.
- (4) As required by OMB-Circular A-124, the Office of Research Administration will disclose each subject invention to the Federal agency (when the project is federally funded) within two months after the inventor discloses it in writing to the President.
- (5) The President will recommend to the Chancellor who will elect in writing whether or not to retain title to any such invention by notifying the Federal agency funding the project within twelve (12) months of disclosure to the Committee.

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[Duplicated text of UH Systemwide Administrative Procedures, A.9000, GENERAL]

A9.075 PERSONNEL RECORDS

July 1998

This replaces Administrative Procedure No. A9.075 dated June 1990.

GENERAL

A9.075 PERSONNEL RECORDS - BOR APPOINTEES**1. Purpose**

To implement a uniform system for the maintenance of the official personnel records for BOR appointees. In accordance with the 1986 delegation of authority to approve certain personnel actions, the official personnel files of BOR appointees, with the exception of BOR appointees in undelegated organizational units and Executive and Managerial BOR appointees, were transferred from the Office of Human and Material Resources (formerly known as Personnel Management Office) to the respective administrative units.

2. Objectives

To establish procedures for the maintenance of official personnel files and to identify the documents to be included therein.

3. Applicability/Responsibility

This instruction applies to personal records of all BOR employees appointed pursuant to Chapter 304, H.R.S., which includes but is not limited to Faculty, lecturers, casual hires, Administrative, Professional and Technical (APT), Executive and Managerial employees. This instruction does not apply to personal records of student employees or civil service employees.

4. Procedures

- a. The Chief Executive Campus Officer or official designee shall designate custodians of the official personnel records who shall be responsible for keeping these files accurate, complete, up-to-date, and in accordance with applicable provisions of the appropriate collective bargaining agreements.
- b. The personnel files shall contain the following documents:
 - 1) Letter of hire/offer and acceptance of employment.
 - 2) Curriculum vitae, APT application (UH Form 64), and letters of recommendations.
 - 3) Personnel action documents (i.e., PNF, UH Form 6).
 - 4) Approval documents of appointments, changes in appointments, approval of tenure (e.g., notice of renewal, approval of appointment/reappointment).
 - 5) Documents relating to benefits:
 - a) Tax Deferred Annuity (optional) Considerations
 - If placed in the personnel file, access to personnel file is governed by Chapter 92-F, HRS (e.g., do not provide TDA agents with access to the folders; separate TDA agreements for disclosure to TDA agent).

Ensure that any of the above records are transferred to an employee's new administrative unit if necessary (e.g., leave share records as the maximum amount of leave share received is monitored for the duration of employment with the University).

- d. The personnel documents described in subsection b should be contained in the folder in reverse chronological order (i.e., most current on top).
- e. Personnel files should be maintained in locked filing cabinets in areas/rooms which are accessible to only authorized individuals. All employees should be instructed on the confidentiality of personnel files by their respective Chief Executive Campus Officer or official designee.
- f. The following shall be implemented where applicable in the usage and maintenance of personnel files:
 - 1) Applicable provisions in the various collective bargaining agreements relating to access to and maintenance of personnel files.
 - 2) Chapter 92-F, H.R.S., relating to confidentiality, access and disclosure of personal records. Refer also to the Uniform Information Practices Act (UIPA) Reference Manual and to the Office of Information Practices' (OIP) Guidelines on the Disclosure of Personnel Records.
 - 3) The process of responding to a subpoena of personnel records.
 - 4) Records retention rules and policies specified by EEO/AA guidelines, the University Records Manager, and collective bargaining agreements.
 - 5) The State's Procedures for Transfer of Records to the State Records Center and University Administrative Procedure A8.555, "Records Management."
- g. Transfer within UH System. When an employee moves to another administrative unit, the official custodian of personnel records of the former unit will send the employee's personnel file to the new unit. The file will be transferred as follows:
 - 1) Letter of transmittal and acknowledgment of receipt (Attachment A).
 - 2) File will be enclosed in sealed envelope labeled "CONFIDENTIAL" and addressed to the official custodian of personnel records in the receiving unit, and sent via U.S. mail or personal delivery.
- h. Resignation/Retirement/Termination. Three years after an employee resigns, retires, or is terminated from employment, the official custodian of personnel records of the administrative unit will transfer the personnel file to the State Records Center for storage in accordance with the State's Procedures for Transfer of Records to the State Records Center and University's Administrative Procedure A8.555, "Records Management."
- i. Return to UH Employment. When a former employee returns to employment, the employee's personnel records shall be recalled from the State Records Center pursuant to the State's Procedures for Recall or Request for Records and the University's Administrative Procedure A8.555, "Records Management."