
MEMORANDUM OF UNDERSTANDING

Frostburg State University ("FSU")

and

**the American Federation of
State, County and Municipal Employees
("AFSCME")**

Nonexempt Bargaining Unit

**Effective
September 15, 2017 to June 30, 2019**



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PREAMBLE

This Memorandum of Understanding (MOU) is entered into by Frostburg State University (Employer or University) and the American Federation of State, County, and Municipal Employees (Union or AFSCME). It is understood that the Board of Regents of the University System of Maryland (USM) must approve this MOU and that agreements on issues requiring funding or approval by the General Assembly of Maryland are tentative pending approval and funding by the General Assembly of Maryland. The provisions of this MOU shall in no way diminish or infringe any rights, responsibilities, powers or duties conferred by the Constitution of the State of Maryland, or the Annotated Code of Maryland, including State Personnel and Pensions Article (SPP), Title 3, Annotated Code of Maryland. In the event of an inconsistency between this MOU and the law, the law shall prevail.

ARTICLE 1. RECOGNITION

1.1. Exclusive Representative

The University recognizes the Union as the exclusive representative of the employees, as defined in Section 1.2 of this Article, for the purpose of negotiating collectively with the University pursuant to SPP, Title 3, with respect to wages, hours, and other terms and conditions of employment. For employees covered by this MOU, the University will not negotiate with any other Union or employee organization on matters recognized by the State Higher Education Labor Relations Board (SHELRB) as subjects of bargaining.

1.2. Definition of Nonexempt Bargaining Unit

The terms “employees,” “bargaining unit employees,” and “employees covered by this MOU” as used in this MOU shall mean all nonexempt employees in the nonexempt employees bargaining unit at FSU, exclusive of managerial, supervisory and confidential employees as certified by the SHELRB.

1.3. Job Classifications

- A. Should any new nonexempt job classification(s) be created, the Employer shall notify the Union at least 30 days prior to the intended date of implementation.
- B. If it is believed that the bargaining unit status of a classification has changed, the University or the Union, whichever is proposing the change, shall notify the other. Following such notice, if the parties are in disagreement over whether or not the classification should be included in the unit, they will meet and attempt to resolve the issue.
- C. Any unresolved dispute between the parties regarding whether or not a job classification or classifications should be included in the bargaining unit covered by this MOU may be submitted to the SHELRB by either party pursuant to its regulations. The decision of SHELRB shall be final and binding on both parties subject to any appeal rights provided by law.

ARTICLE 2. NON-DISCRIMINATION

It is the policy of the University and AFSCME to prohibit discrimination in employment against any employee because of race, age, color, religion, creed, gender, sexual orientation, country of national origin, disability, marital status, or labor organization affiliation or lack of affiliation, or any other category protected by Federal, State of Maryland, Allegany County, and City of Frostburg, law and to promote and implement a positive and continuing program of equal employment opportunity.

ARTICLE 3. MANAGEMENT RIGHTS

3.1. Scope of Rights

The Employer retains the sole and exclusive authority for the management of its operations and may exercise all rights, powers, duties, authority and responsibilities conferred upon and invested to it by all laws including, but not limited to, Title 3, SPP. It is agreed by the parties that any section of this MOU that conflicts with current law, in particular, Title 3 SPP, can be changed by the Employer after providing the Union with an opportunity to bargain over the proposed change. It is understood and agreed by the parties that, except as limited by specific sections of this MOU, the Employer possesses all other rights, powers, duties, authority and responsibilities to operate and manage all aspects of its operations, including but not limited to, its departments, agencies, and programs and carry out constitutional, statutory, and administrative policy mandates and goals, including, but not limited to, the right to:

- A. Determine the mission, budget, organization, numbers, types and grades of employees assigned, the work projects, tours of duty, methods, means and personnel by which its operations are to be conducted, technology needed, internal security practices, relocation of its facilities;
- B. Maintain and improve the efficiency and effectiveness of operations;
- C. Determine the services to be rendered, operations to be performed, and technology to be utilized;
- D. Determine the overall methods, processes, means and classes of work or personnel by which governmental operations are to be conducted;
- E. Hire, direct, supervise, and assign employees;
- F. Promote, demote, discipline, discharge, retain, and layoff employees;
- G. Terminate employment because of lack of funds, lack of work, under conditions where the Employer determines continued work would be inefficient or nonproductive, or for other legitimate reasons;
- H. Set the qualifications of employees for appointment and promotion, and set standards of conduct;
- I. Promulgate and/or implement State, USM, University or department rules, regulations, policies or procedures;
- J. Provide a system of merit employment according to the standard of business efficiency; and

- K. Take actions, not otherwise specified in this Article, necessary to carry out the mission of the Employer.

ARTICLE 4. UNION RIGHTS

4.1. Right of Access

Union representatives shall have reasonable access to areas in which employees work, with prior notice and approval by the Employer, for the purpose of administration of this MOU. It is understood that such representatives will not disturb the work of employees while visiting the Employer's facilities. Approval for access described in this section shall not be unreasonably denied.

4.2. Representation Rights

Upon request, a bargaining unit employee may have Union representation in the processing of a complaint, as provided in Article 17–Grievance Procedures, or in a disciplinary matter as provided in Article 16–Disciplinary Procedures.

4.3. Means of Communication

The Union shall be permitted to use internal University mail systems, including computer/electronic mail and fax for mailings to the employees covered by this MOU, provided that such use does not interfere with the Employer's operations and is for legitimate Union purposes. If the Employer can illustrate that the Union is not using equipment or services in a manner consistent with this section, the Employer shall notify the Union and provide the specific usage(s) it finds in violation of this section. A meeting between the Employer and the Union shall take place within two business days in which the parties shall attempt to resolve the matter. If no agreement is reached, the Employer may revoke the Union's use of the equipment and services. The Union may submit to the Grievance Procedure outlined in this Agreement the issue of whether the Employer's revocation is in compliance with this Article. Confidentiality shall be maintained subject to the Employer's security needs. Mass mailings, through the Employer's mail processing department, shall be limited to four per calendar year.

4.4. Bulletin Boards

The Employer shall provide space for a lockable bulletin board, provided by the Union, at the Physical Plant, the Hitchins Administration Building, the Guild Center, Frampton Hall, Compton Science Center, the Lewis J. Ort Library, Pullen Hall, Sand Spring, the Physical Education Center, and the Lane Center. These bulletin boards shall be for the exclusive use of the Union. The Union shall be responsible for the posting of all items on the bulletin board. Each item posted shall be dated and initialed by the Union official approving the posting. The Union shall ensure that posted items are not illegal, defamatory, factually inaccurate, partisan, or political and that no item is detrimental to the safety and security of the University. At the time of posting, the Union shall provide an informational copy of all items to the Employer. The Union may also, subject to the aforementioned limitations and in accordance with University policies on distribution of information and solicitation, display

information on any other University bulletin boards used for the dissemination of public information.

4.5. Right to Information

- A. The University shall provide to the Union the following information by electronic means: new hires, including contractual employees hired into permanent position, separations, promotions, transfers and reclassifications, for all bargaining unit employees. New hire employee information shall be provided at the beginning of each month and will include actions processed during the preceding month. Other personnel actions listed above will be provided to the Union on a quarterly basis. In addition, on a monthly basis the University shall provide the Union with an electronic spreadsheet containing all bargaining unit members and listing each member's name, job code description, internal business title, division, department, union code, and e-mail address. Notwithstanding anything to the contrary in the above provisions, the Employer shall provide employee information in accordance with the provisions of Maryland Annotated Code, State Personnel and Pensions Article, Sec. 3-2A-08.
- B. Upon request by the Union, the Employer will also provide, in accordance with the Maryland Public Information Act, any other relevant and necessary information that the Union is entitled to as the exclusive representative of bargaining unit employees.

4.6. New Employee Orientation

One Local 239 Union officer or job steward shall be granted 20 minutes during new employee orientation sessions organized by the Employer to meet with new bargaining unit employees and to make a presentation on behalf of the Union. In the event the Employer does not provide for an employee orientation, a Local 239 Union officer or job steward and the new bargaining unit employee will be allowed 20 minutes without loss of compensation, to meet during work time to discuss information pertaining to the role of the Union. The Union officer or job steward shall notify and obtain approval from his/her own supervisor as well as the new employee's supervisor. Approval of the 20 minutes of release time for the purpose stated in this section will not be unreasonably denied and in no event shall be withheld for more than five working days after notification has been provided.

4.7. Union Job Stewards

The Union may appoint or elect certain bargaining unit employees to serve as Union job stewards. There will be a total of five stewards representing employees covered by this MOU. Consistent with operational needs, the Employer will allow reasonable release time, without loss of compensation, to job stewards for the purpose of attending grievance meetings with the Employer. Typically, a complaint will have no more than one Union representative (President or job steward) in attendance at a grievance hearing. Exceptions may be granted by mutual agreement of the parties. This limitation does not apply to non-University employee staff representatives. The Union will submit a list of job stewards to the Employer within 90 days after the ratification of this MOU, and thereafter will notify the Employer in writing as to any changes to the job stewards' list.

4.8. Meeting Space

The Employer agrees to provide, at no cost to the Union, available meeting space to conduct Union related meetings provided that the Union submits a written request for the use of facilities at least five working days in advance of the date of the meeting and complies with University reservation procedures. The University will respond to a written request within two business days. When a request for use of meeting space is denied, the Employer will also follow-up with a written notification. The Employer shall not discriminate against the Union or its members when assessing the feasibility of providing meeting space for Union business, nor shall the Employer unreasonably deny a request.

ARTICLE 5. EMPLOYEE RIGHTS

5.1. In General

In addition to all rights granted under this MOU, all employees in the bargaining unit shall enjoy the protections and rights codified in Section 3-301, Title 3, of the State Personnel and Pensions, Annotated Code of Maryland. Further, Management agrees to abide by Section 3-304, Title 3, of the State Personnel and Pensions, Annotated Code of Maryland barring the University from actions to (1) interrupt or prevent the continuity of the employees' usual work for the purpose and with the intent of coercing the employees into relinquishing rights guaranteed by this title; or (2) bring economic pressure on employees for the purpose of securing the agreement of their exclusive representative to certain collective bargaining agreement terms.

5.2 Professional Working Relations

The University and the Union agree that all employees, regardless of bargaining unit or union membership standing, employee or supervisory status, shall treat each other with dignity and respect during the course of performing their professional duties for the University.

ARTICLE 6. SCOPE OF AGREEMENT

6.1. The specific provisions of this MOU supersede the corresponding specific terms of previously established policies and procedures maintained by the University. This MOU may be modified only by the written agreement of the University and AFSCME. All Board of Regents (BOR) and University policies and procedures shall remain in full force and effect unless modified specifically by this MOU or changed as provided below.

6.2. The Employer and the Union acknowledge that during the negotiations that resulted in this MOU, each had the unlimited right and opportunity to make demands and proposals with respect to any subject of bargaining as provided in SPP, Title 3, and applicable SHELRB regulations and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this MOU. The Employer and the Union agree that for the life of this MOU, each waives the right, and neither shall be

obligated to bargain collectively with respect to: 1) any subject specifically referred to in this MOU; 2) subjects on which the Union made, or could have made, proposals during bargaining, but about which no agreement was reached, so long as the Union was aware or reasonably should have been aware of the subject during the bargaining process. The parties further agree and intend that the waiver set forth herein shall be construed as consistent with the provisions of the Preamble to this MOU and enforceable.

- 6.3.** The University and the Union acknowledge their mutual obligation to negotiate as defined and limited by law and this MOU over Employer proposed changes in wages, hours and other terms and conditions of employment which affect bargaining unit employees and which are not specifically covered by this agreement and not reserved to the University as a management right. In such circumstances, the obligation to bargain is limited to those changes that will affect the working conditions of bargaining unit employees and that are subject to bargaining under applicable law. The minimum notice to the Union of the intended change in working conditions subject to this obligation is ordinarily 60 calendar days prior to the proposed implementation of the change. If required to meet a legislative mandate or an emergency situation (including an emergency fiscal management issue), management will notify the Union as soon as possible prior to the proposed implementation of the change. This notification must indicate the legislative mandate or emergency situation as well as any known timeframes in conjunction with this mandate. The Union may request bargaining within this notice period. Where the Union does not request bargaining, the University is free to implement the changes. Where the Union does request bargaining, but does not request information, the Union shall submit proposals in response to the Employer's intended changes within ten calendar days of its request to bargain, and the parties will meet promptly to discuss the changes and any proposals submitted by the Union. This ten day time limit may be extended by written agreement of the parties. It is understood and agreed by the parties that, in the event the Union requests information relevant to the proposed change(s), the timeframe associated with the submission of proposals shall commence upon the University providing to the Union the information to which the Union is entitled. The Union agrees that it will tailor its information requests so as not to unduly delay this process.
- 6.4.** The Union's ability to negotiate does not provide the Union with a "veto" power over Employer-initiated changes, and it shall not unduly delay the implementation of such changes. The University may implement the proposed changes that are subject to this process even if after good faith negotiations there has not been mutual agreement. Where bargaining is required and requested by the Union over changes necessary to meet a legislative mandate or emergency condition, the parties will negotiate in good faith, and the Employer may implement any changes necessary to meet the legislative mandate or emergency condition, including any applicable timeframes, even if no agreement is reached with the Union.
- 6.5.** This article is also subject to Article 26-Severability.

ARTICLE 7. LABOR-MANAGEMENT COMMITTEE

7.1. Purpose of the Committee

The University and the Union agree to create a Labor-Management Committee for the purpose of identifying issues of concern to either party and to jointly procure solutions to such concerns. The Committee shall also serve as a forum for discussion of any issues associated with the implementation of any aspect of this MOU. However, the Committee shall not serve as a substitute for formal negotiations when such is necessary and required.

7.2. Composition of the Committee

The University and AFSCME may appoint up to six members each to the Labor-Management committee. The committee shall meet at least once a month for the first six months and every other month, or as needed, after that. Each of the parties shall alternate as chair.

ARTICLE 8. HOURS OF WORK AND OVERTIME

8.1a. Workweek and Work Schedules

A work schedule is defined as the employee's assigned work hours, including starting and ending times during the day, and the days included in the employee's standard workweek. Unless modified by the Employer, the normal standard workweek is 40 hours per week and runs from Monday through Friday. It is understood that there may also be workweeks other than Monday through Friday in 24/7 or other special operations. The administrative workweek for purposes of reporting work time begins at 12:00 a.m. on Wednesday and ends at 11:59 p.m. on Tuesday. All overtime pay is based on the administrative workweek and the Fair Labor Standards Act (FLSA) and the provisions of Section 6 (paid leave counts as work time). There is no guarantee of the number of hours of work in a day or week.

8.1b. Work Schedule Changes

- A. The Employer has the right to implement any work schedule change it deems appropriate so long as the work schedule and employee compensation comports with the Fair Labor Standards Act (FLSA) and this MOU. When the University decides that more positions are needed on another shift or that a transfer from one shift to another is needed on a permanent basis, the University shall first ask for qualified volunteers to fill the positions or need on the other shift. If the number of volunteers is insufficient, then the University shall require the least senior qualified person in the affected classification to be transferred. In the event the Employer implements a permanent change in an employee's work schedule, the Employer will provide the affected employee with 14 calendar days advance notice.
- B. The University reserves the right to transfer employees as necessary and appropriate to resolve personnel disputes, meet specific operational needs, or carry out

disciplinary actions. Under those circumstances, Sub-sections 8.1a and 8.1c. shall not apply.

- C. Employees may request and, in accordance with operational needs and with the approval of the supervisor, be approved temporary changes in their regular work schedule including flextime, "make-up" time and shift changes.

8.1c. Housekeeping and Groundskeeping Assignments

- A. When a vacancy or transfer opportunity occurs in the Housekeeping and Groundskeeping Departments, current housekeeping and groundskeeping employees shall be notified in writing and shall have five days to bid on the vacancy or transfer. (A form shall be provided.) First consideration shall be given to interested employees in the complex/area where the vacancy/transfer opportunity exists. If the number of volunteers is insufficient, the University shall require the least senior qualified person in the department to be transferred. If the number of bids exceeds the number of vacancy/transfer opportunities, the most senior person shall be awarded the bid. In the event of a tie, the employee with the highest average PMP score over the past three years shall be awarded the bid. (For purposes of this article, seniority shall be counted as time spent in a housekeeping/groundskeeping classification.) Employees who fail to return a bid form by the posted deadline shall be counted as "not interested."
- B. This article shall apply to lateral transfers only. Promotional opportunities are governed by Article 31-Classification/Reclassification/Pay Adjustment.

8.2. Timesheets

Employees are required to record all hours worked and absences (paid and unpaid) on their timesheets.

8.3. Work Breaks

There shall normally be two paid duty-free rest periods of 15 minutes each for all full-time assignments. Rest periods shall be scheduled towards the mid-point of the first and second parts of the daily schedule. During a break period, the employee is free to move about the campus.

8.4. Lunch Break

- A. There shall be a duty-free unpaid lunch break of at least 30 minutes for employees working on assignments of eight hours or more. Lunch breaks should normally be scheduled at approximately the mid-point of the employee's regular work shift. Employees, with prior approval of the supervisor, may choose a daily schedule encompassing nine hours, which allows a 60 minute duty-free unpaid lunch break.
- B. Due to the nature of the operation, employees serving as police communication officers and tour engineers are to take up to a 30-minute paid meal break while on duty with notification to and approval of the supervisor. While attending training, employees will take an unpaid lunch break that coincides with the training schedule

except that application of this unpaid meal provision shall not result in an employee receiving less than eight hours pay for that day. Employees may not leave campus while on duty without supervisor approval and must be available to return to their job duties immediately where necessary.

8.5. Copy of Job Description

The Employer retains the right to change an employee's job-related duties. Upon initial employment and upon each significant change in duties and/or job classification thereafter, each full-time or part-time bargaining unit employee shall be furnished a copy of his/her job description. A job specification is a statement of the essential components of a job class including a summary of the work to be performed, primary job duties and responsibilities, and the minimum qualifications and requirements necessary to perform the essential functions of the job. OHR maintains USM Job Specifications for nonexempt positions. A job description is a statement of the actual duties and responsibilities that an employee performs in a particular office or department. Employee job descriptions are developed in accordance with and duties shall be within the parameters described by the USM Job Specification. Terms such as "other duties as required" shall mean job-related duties relevant to the position.

8.6. Overtime

Employees shall receive 1-1/2 times their regular rate of pay for hours worked in excess of 40 hours per workweek in accordance with the FLSA. All hours worked and paid in excess of 40 in a week must be pre-approved by the employee's supervisor. Hours worked shall include paid sick, annual, holiday, administrative, and personal leave.

8.7. Distribution of Overtime

- A. The Employer will make reasonable efforts to distribute overtime as equally as possible among all employees within a specific job classification in their respective department/office. Every supervisor or management representative responsible for the assignment of overtime shall maintain a list of all employees in his/her department/office (arranged by seniority) and an associated calendar with the dates that overtime was offered to each employee and the number of hours of overtime offered to each employee in his/her department/office.
- B. Upon request of the Union President or designee, the supervisor/management representative shall provide a copy of the overtime distribution list to the Union once during the first week of January and once during the first week in July. In the event that a certain employee(s) has been offered 16 or more hours less overtime opportunity than another employee in the same classification and department, in the preceding six-month period, (January-June; July-December), the University shall correct the imbalance by allowing the employee with 16 fewer hours, the opportunity to work the first sixteen hours of overtime available from the date the list is reviewed and notice is given to management regarding the imbalance. Discrepancies must be brought to the attention of management within seven days of submission of the list to the Union.

8.8. Overtime List

- A. Whenever practical, overtime shall be assigned on a rotating basis by seniority from an existing list containing the names of qualified full-time employees in the department who have volunteered to be placed on the overtime list and normally perform the work being assigned for overtime. Initial distribution of overtime shall be on the basis of departmental seniority with the first opportunity being offered to the bargaining unit member with the highest seniority. Thereafter, it shall be administered on a rotating basis as provided in Section 8.9. The list shall be established within 60 days after the ratification of this contract and shall be revised as necessary. The list shall be available to the Union upon request.
- B. However, due to operational needs, the Employer may assign mandatory overtime work as needed, without regard to the overtime list. Mandatory overtime would begin with the least senior qualified employee in the affected classification in the department and if more employees are needed then the next least senior qualified person and so on.
- C. In the engineering department, "tour coverage" overtime will be offered to qualified employees on a rotating basis by seniority from a volunteer list established for this purpose. Mini tours will be utilized during the week when necessary.
- D. In the Grounds Department, the Employer will make reasonable efforts to cross train employees to increase overtime eligibility.
- E. Within 60 days of the beginning of this MOU and then every November 1, the University shall ask for volunteers to operate snow plows. Qualified volunteers shall form a pool of snow plow operators. When snow plows need to be operated such work shall first be offered to motor vehicle operators followed by employees of the automotive shop. When automotive shop employees are unable to keep up with plowing operations the snow plow list shall be utilized. Unless prohibited by operational needs (ex. Mechanics needed to perform mechanical work), the University shall offer overtime in order of seniority to the snow plow operators pool. Reasonable effort will be made to keep snow plow operators pool overtime opportunities equal.
- F. The snow plow operator's pool overtime list will be kept separate from the employees' normal job classification/department overtime list.
- G. On the date when overtime is offered, employees on approved leave, military leave, layoff, long-term illness, suspension, or otherwise unavailable or absent during their normal working hours shall not be eligible for overtime opportunities and shall be treated the same as employees who have refused overtime work.

8.9. Acceptance and Rejection of Overtime

An employee who is offered an overtime opportunity and is unavailable or refuses the overtime, for whatever reason, shall be, for purposes of rotation only, charged the same as if the employee had accepted and worked the overtime offered and shall be placed at the

bottom of the list and the supervisor shall offer the overtime to the next person on the list. Upon exhausting the list, the Employer may require the least senior employee in the affected classification in the department to work the overtime. In such circumstances, the Employer will make overtime assignments in accordance with Sections 8.7 and 8.8. On the date when overtime is offered, employees on approved leave, military leave, layoff, long-term illness, suspension, or otherwise unavailable or absent during their normal working hours shall not be eligible for overtime opportunities and shall be treated the same as employees who have refused overtime work.

8.10. Payment for Overtime Worked

Payment for overtime hours worked under this MOU shall be paid to the employee in accordance with the FLSA and University and Central Payroll policies and procedures and the provisions of Section 8.6 (paid leave counts as work time).

8.11. Advance Notice

The Employer shall normally provide notice of required overtime work at least 24 hours in advance of such overtime. Refusal of overtime work by employees on the basis that management did not provide advance notice within the time limits (24 hours) shall not be charged against those employees and their place on the overtime list shall remain as if no rejection of overtime occurred. The Employer retains the right under any circumstances to require the least senior qualified employee to perform the overtime work.

ARTICLE 9. WAGES

Refer to: **Appendix 1, Memorandum of Agreement. Wages, page 47.**

ARTICLE 10. OTHER COMPENSATION

10.1. Shift Differential

A. An employee who regularly works a qualifying shift is eligible for shift differential pay for hours actually worked subject to the conditions set forth below. A qualifying shift means a full-time or permanent part-time shift that starts at or after 2:00 P.M. and at or before 1:00 A.M. The rate of shift differential pay is one dollar per hour. Shift differential will be included in the regular rate calculation for the computation of overtime. The following provisions establish eligibility:

1. To qualify for shift differential, an employee must be employed on a 50 percent or more basis of full-time employment.
2. Shifts and eligibility for shift differential pay are not established by the time the employee begins to work, but rather by when an established shift starts.

3. An employee who works any part of a qualifying shift is eligible for shift differential pay on a prorated basis.
 4. Shift differential is authorized for an employee who is permanently assigned to a qualifying shift while on approved leave with pay. An employee who is on a permanent schedule of rotating shifts is eligible to claim the shift differential only for leave taken while scheduled for a qualifying shift. However, such payment of shift differential will cease after ten full workdays of continuous paid leave for which there has been a shift payment.
- B. In an overtime situation where the employee continues working from a non-qualifying shift into a qualifying shift, the employee is eligible for a shift differential for the portion of the qualifying shift in which overtime occurs.

10.2. Acting Capacity Pay

- A. When an employee is appointed to a higher-level position on a temporary basis, the employee is in acting capacity and shall be eligible for acting capacity pay beginning on the 21st consecutive calendar day of work in the acting capacity, retroactive to the first day that the employee served in the acting capacity.
- B. The employee is eligible for a salary increase of not less than six percent. Upon conclusion of the acting appointment, the employee's salary reverts to the employee's last regular salary rate in effect prior to the acting appointment, subject to adjustment for any intervening salary adjustments, other than acting capacity pay, that have occurred. An employee who is in acting appointment status must meet the minimum qualifications of the position to which he or she is appointed.
- C. Prior to accepting the acting capacity appointment, the employee shall be notified in writing of the duties expected. The performance evaluation of the employee working the duties of a higher classification shall reflect the added responsibilities the employee performed during the period of acting capacity. Employees who cannot satisfactorily perform the essential functions of the higher classification due to a lack of knowledge, skills and ability, shall be returned to their former position and shall not suffer formal disciplinary action. Employees who fail to perform the essential functions of the new position due to negligence, or any other action that would normally be cause for disciplinary action, will be subject to the same disciplinary action as an employee not on acting capacity.
- D. Acting capacity shall be paid on an hour-for-hour basis. The maximum period of acting capacity shall be limited to 12 months but may be extended by agreement of the supervisor and the employee and with the approval of the V.P. of Human Resources or designee.

10.3. Hazardous Duty Pay (Asbestos)

Employees who perform asbestos work are eligible for a salary differential equal to 50 percent of their current hourly base rate of pay for all time spent actually performing such duties. Payment of this differential shall be on an hour-for-hour basis.

10.4. On Call

A. Employees may be placed in an on-call status at the direction of the University. The following guidelines apply:

1. An employee assigned to on-call status is eligible to receive compensation in the amount of \$50 per day, plus appropriate wages for all hours worked. On-call pay shall be included in the computation for overtime wages.
2. The employee must be accessible at all times and must immediately notify his/her supervisor if inaccessible. If inaccessible, on-call pay will be forfeited.
3. An employee cannot be designated on-call for more than seven consecutive days, however he/she may be on-call for 24 hours on each of those days.
4. An employee who is assigned to on-call status and cannot be reached, or does not report within two hours of being contacted, will face disciplinary action and will not receive on-call pay for that day.
5. Employees will not receive on-call compensation if performance of the duties is an extension of the regular workday or workweek.
6. Essential employees are not automatically assigned to on-call status.
7. The University will make reasonable efforts to allocate on-call assignments among qualified eligible employees on a rotating basis.

10.5. Call Back

The University may, at its discretion, require an employee(s) to report to work in "call-back" capacity. Employees who are called to report to work on their regular day off, or that have been recalled to work after having left the Employer's premises, shall be guaranteed a minimum of two hours of pay plus travel time at the applicable rate of pay. If an employee is called back on a shift, which qualifies for shift differential pay, the employee will receive the shift differential pay. Pre-scheduled overtime or an extension of the regular work day does not constitute a call-back situation.

10.6. Report and Cancellation Pay

A. If an employee is scheduled to work a University function, or any other University special event outside of the normal work schedule and resulting in overtime, and is informed with less than 12 hours' notice, that he/she is not needed to work the function

or event, the employee will be eligible for cancellation compensation under the following terms:

If less than 12 hours of notice: two hours pay

If the employee receives no notice: four hours pay

- B. It shall be the responsibility of the employee to leave a reachable contact number and to respond to contact from the University.

10.7. Pay on Reinstatement

The University shall have the flexibility to authorize a salary for a position to be occupied by an individual eligible for reinstatement in keeping with the following provisions:

A. Reinstatement to the Same Job Class

Upon reinstatement to a position within the same job class, the individual's salary shall be no less than the salary the individual held at the time of the most recent separation from USM service.

B. Reinstatement to a Job Class with a Higher Maximum Salary

Upon reinstatement to a position within a job class that has a higher maximum salary than the job class at the time of the individual's most recent separation, the individual's salary shall be no less than the salary the individual held at the time of most recent separation from USM service, but no less than the minimum salary for the job class.

C. Reinstatement to a Job Class with a Lower Maximum Salary

Upon reinstatement to a position within a job class that has a lower maximum salary than the job class at the time of the individual's most recent separation, the individual's salary shall be no more than the salary received at the time of separation. The Vice President of Human Resources or designee shall determine the individual's salary within the range.

10.8. Pay on Completion of Probation

Upon satisfactory completion of probation, an employee shall be given an increase in pay equivalent to the merit increase approved and funded for the fiscal year in which the probationary period is completed.

ARTICLE 11. HOLIDAYS

11.1. Recognized Holidays

- A. All employees in the bargaining unit earn the following recognized holidays:

- New Year's Day
- Dr. Martin Luther King Jr's Birthday

- President's Day
 - Memorial Day
 - Independence Day
 - Labor Day
 - Columbus Day
 - Election Day (General and/or Congressional)
 - Veterans Day
 - Thanksgiving Day
 - Friday after Thanksgiving Day
 - Christmas Day
- B. In addition, employees receive three University holidays, which shall be scheduled during Winter Recess each year. The actual dates of observation for paid holidays and University holidays vary from year to year. The current year's listing of observed dates for holidays may be found on the University personnel web page and in the on-line directory.
- C. Part-time employees on at least a 50 percent basis of full-time employment shall earn holiday leave on a prorated basis.
- D. Employees covered by this MOU may also earn any other holiday that is granted to all other University employees during the term of this MOU.

11.2. Day of Observance

When a holiday falls on a Saturday, it is observed the Friday before, and when a holiday falls on a Sunday, it is observed on the following Monday. The Employer reserves the right to assign holidays and such assignment shall be in accordance with the terms of this MOU.

11.3. Holiday Pay and Substitute Holidays

Employees shall receive compensation at their regular hourly rate for every holiday the employer observes. If an employee is required to work on a holiday or a day of holiday observance, the employee will be paid at the applicable rate of pay under the FLSA for all hours worked, including overtime if applicable, and normally be granted the holiday on a different day. At the employee's option, the employee may be paid at the applicable rate of pay for all hours worked and paid a regular day's pay (normally eight hours unless a different daily schedule applies) holiday pay at the straight time rate in lieu of being granted another day off. In addition, employees who are required to work on one of the following holidays shall be paid a holiday stipend of \$100 for each listed day:

- Memorial Day
- 4th of July
- Thanksgiving Day
- Christmas Day
- New Year's Day

11.3a. Holiday Pay and Substitute Holidays – 24/7 Operations

Holidays in 24/7 operations are prescheduled based upon the workweek schedule rotation. The Employer reserves the right to assign holidays in accordance with this schedule rotation and shall make best efforts to grant the employee the day off requested, subject to operational needs. Management will work with 24/7 employees to allow them to take their pre-scheduled holidays; however, due to operational needs, an employee may be required to work on the employee's prescheduled holiday. When this occurs, the employee will be paid at the applicable rate of pay under the FLSA for all hours worked, including overtime if applicable, and normally be granted the holiday on a different day. At the employee's option, the employee may be paid at the applicable rate for all hours worked and a regular day's pay (normally eight hours unless a different daily schedule applies) holiday pay at the straight time rate in lieu of being granted another day off.

11.3b. Holiday Pay and Substitute Holidays – Procedures

- A. Employees must notify their supervisor on a form developed for such purpose of their intent to receive the holiday pay or the substitute holiday option prior to working the holiday.
- B. Employees must have supervisory approval prior to scheduling a substitute holiday. Approval shall be based on operational needs and shall not be unreasonably denied.
- C. At the time an employee is scheduled to work a holiday, the supervisor will remind the employee to choose either a substitute holiday or to request holiday pay. As stated in 11.3.b.A, a form to indicate the employee's choice will be provided.

11.4. Use of Holidays

Employees are required to use holiday leave in the month in which the holiday is scheduled/observed. Holiday and University holiday leave may not be carried on the books for use at other times.

11.5. Holiday Termination Payment

Employees, who leave their employment at the University for any reason, are entitled to be paid for any unused holiday leave that has been earned as of the date of separation. If a holiday is taken and the employee severs employment before the holiday is earned, the employee will pay back the holiday upon severance.

ARTICLE 12. LEAVES

Refer to:	Annual Leave	<i>Appendix 1, MOA, Page 58</i>
	Personal Leave	<i>Appendix 1, MOA, Page 18</i>
	Leave Reserve Fund (LRF)	<i>Appendix 1, MOA, Page 20</i>
	Family and Medical Leave Act (FMLA)	<i>Appendix 1, MOA, Page 22</i>
	Jury Service	<i>Appendix 1, MOA, Page 38</i>
	Legal Actions Leave	<i>Appendix 1, MOA, Page 39</i>
	Administrative Leave	<i>Appendix 1, MOA, Page 39</i>
	Military Leave with Pay	<i>Appendix 1, MOA, Page 40</i>
	Call-up to Active Military Duty	<i>Appendix 1, MOA, Page 42</i>
	Leave of Absence without Pay	<i>Appendix 1, MOA, Page 46</i>
	Leave for Disaster Service	<i>Appendix 1, MOA, Page 49</i>
	Accident Leave	<i>Appendix 1, MOA, Page 50</i>
	Parental Leave	<i>Appendix 1, MOA, Page 54</i>

ARTICLE 13. SICK LEAVE

Refer to: **Appendix 1, Memorandum of Agreement. Sick Leave, page 50.**

ARTICLE 14. UNION LEAVE

Refer to: **Appendix 1, Memorandum of Agreement. Union Leave, page 49.**

Article 15. Performance Evaluations

15.1. Performance Ratings

- A. Employees shall receive a written performance review at the end of their probationary period and every March/April thereafter. The purposes of the performance evaluation are to establish a communication tool to ensure that employees are performing at acceptable levels and to provide a means by which to document performance and to establish a procedure for correcting performance problems should they occur. An employee shall be rated on the achievement of performance goals and objectives established by the employee and supervisor during the annual expectations meeting as well as employee performance related to an established set of performance factors, established by the Employer and discussed with the employee at the expectations meeting. An employee shall receive one of the following ratings:

1. Outstanding
2. Above Standards
3. Meets Standards

- 4. Below Standards
 - 5. Unsatisfactory
- B. Employees, whose March/April performance review results in a rating lower than that received the previous year, shall receive a written explanation regarding what factors contributed to the lower rating.

15.2. Expectations Meeting (Establish Goals and Objectives)

- A. During March or April of each year, an employee will meet with the Department Head or designee who will be responsible for conducting the employee's performance review for the upcoming year.
- B. At the expectations meeting, the Department Head or designee and the employee will discuss the specific performance factors for which the employee will be held accountable and the employee and supervisor will establish the employee's performance goals and objectives for the upcoming year. Performance factors and performance goals and objectives should be reasonably specific, attainable, measurable, and job-related. The expectations meeting will be documented in writing and signed by both the Department Head or designee and the employee.

15.3. Probationary and Mid-Year Performance Evaluations

- A. An expectations meeting, in accordance with Article 15.2, will be held with each employee at the time of hire.
- B. When the employee's probationary period ends, the Department Head or designee, with input if applicable from the lead worker or "supervisor" to whom the employee is assigned, will prepare a written performance evaluation of the employee. The end of probationary period performance evaluation may include a self-assessment prepared by the employee, and shall address both an evaluation of the employee's performance and suggestions for ways that the employee and the Department Head or designee can work to address issues that have arisen.
- C. The employee and the Department Head or designee will meet to discuss the end of probationary period performance evaluation, and will document in writing the results of the evaluation and will include in that documentation:
- 1. Any modifications made to the employee's job description;
 - 2. Specific tasks and standards established by the employee and the Department Head or designee that will assist the employee in accomplishing the employee's overall objectives for the next evaluation period;
 - 3. Any training needs established.
- D. In addition, although optional, supervisors are strongly encouraged to conduct mid-year performance evaluations, according to the aforementioned protocol, for all employees. Where an employee receives a year-end performance evaluation that is

"Below Standards" or "Unsatisfactory" or is exhibiting performance below "Meets Standards" during the first half of the evaluation period and the employee remains employed, the Employer will conduct a mid-year performance evaluation and take other appropriate remedial measures until the employee's performance meets standards or the employee is terminated or demoted.

15.4. Year-End Performance Evaluation

- A. The end-of-year evaluation shall be based on those performance factors and goals and objectives established at the expectations meeting and shall include the following:
 - 1. An overall performance rating;
 - 2. Modification of the employee's job description (if applicable);
 - 3. Recommendations for training as appropriate.
- B. Where an employee did not have an opportunity to perform work described by a performance standard or goal and objective, that standard or goal and objective will not be considered in the year-end performance evaluation. All applicable performance factors and goals and objectives will be applied fairly and objectively. The University should take into account any equipment and resource problems, lack of training, frequency of work interruptions, and other matters outside of an employee's control when applying performance factors and goals and objectives. Time off on approved leave (sick, personal, annual, etc.) and authorized time for Union representational purposes and other authorized activities will not be considered negatively in the application of performance factors and performance goals and objectives, provided that where an employee has been placed on notice regarding a sick leave usage problem, the employee's sick leave usage may be taken into account.
- C. The performance evaluation requires a second signature. An individual superior to the individual preparing the performance evaluation and with knowledge of the department and the employee must review and approve the employee's end-of-year evaluation. This approval must be secured prior to the end-of-year evaluation meeting with the employee.
- D. The Department Head or designee shall meet with the employee, discuss the performance evaluation, and give the employee a copy of the end-of-year evaluation. The employee must sign the evaluation and a copy will be placed in the employee's personnel file.
- E. A statement of an employee's comments and/or objections to an evaluation may be attached and put in the employee's personnel file. Overall performance evaluations of "Meets Standards" or above may only be grieved through Step 2 of the grievance procedure; overall performance evaluations of "Below Standards" or below may be grieved through the entire grievance process.
- F. The Employer will not apply forced distributions or other limitations to employee ratings.

15.5. Deficient Performance

In the event management concludes that an employee's job performance is at a level that will result in an evaluation below "Meets Standards," therefore jeopardizing his/her eligibility to receive a merit increase, management will notify the employee. The employee will be given a reasonable amount of time to correct the performance deficiencies before a year-end performance evaluation is conducted unless the deficient performance warranting the denial of merit increase occurs late in the evaluation period. Failure to notify the employee pursuant to this provision shall not entitle the employee to a merit increase if the employee's performance does not warrant it.

15.6. Evaluation of the Department Head or Designee

Employees may anonymously evaluate, on an annual basis, in writing, on a form provided by the Employer, the Department Head or designee.

15.7. Performance Evaluation Pay Adjustment

Merit pay adjustments for employees with an annual rating of "Meets Standards" or above shall be governed by provisions of Article 9-Wages. Employees who receive ratings of "Below Standards" or "Unsatisfactory" are not eligible for merit increases, and may be subject to other corrective measures.

15.8 The Office of Human Resources (OHR) will work with supervisors and employees so that the processes detailed in this article are understood and carried out in a timely manner. Performance evaluations are tracked by OHR as completed and supervisors who fail to complete the process by the due date will be contacted and provisions of this article will be enforced.

ARTICLE 16. DISCIPLINARY PROCEDURES

16.1. Discipline

- A. Nonexempt employees are responsible for adhering to University rules and regulations. The parties agree to the principle of progressive discipline with the normal sequence of actions being:
 - 1. Counseling or Initial Discussion;
 - 2. Verbal Reprimand;
 - 3. Written Reprimand;
 - 4. Suspension without pay;
 - 5. Discharge from University service.
- B. The parties also recognize that depending on the severity of the offense, action may begin at any of these steps up to and including discharge

1. Investigations of alleged infractions of University rules and regulations will begin as soon as possible, but no longer than 30 days after the University has knowledge of or reasonably should have known of a work rule violation or unacceptable behavior. Disciplinary action, if warranted, will be imposed as soon as possible but no later than 30 days after completion of the investigation.
 2. The University shall provide written notice to the employee of the disciplinary action to be taken and the employee's appeal rights. Similarly situated employees will be treated similarly regarding the application of disciplinary action, but mitigating and aggravating circumstances may be considered. Any proposed disciplinary action involving suspension or discharge requires prior review by the Vice President of Human Resources or designee before it is administered to the employee. No employee shall be disciplined without cause.
 3. Upon the agreement of both Union and Management, the timeframes listed above may be extended.
- C. While not all inclusive, the following are examples of some offenses that will subject an employee to disciplinary action:
1. Poor performance of duties, including failure to follow instructions or to maintain established standards of workmanship or productivity.
 2. Insubordination or willful disobedience including refusal to accept instructions from supervisors or other proper authorities.
 3. Use of profane or abusive language on University premises, or actions that may be discourteous or harmful to others.
 4. Threats, fighting, or other physical action against another person or horseplay while on University premises, including abusive, unruly, indecent or obscene conduct.
 5. Continued absences or excessive tardiness that exhibit a pattern or trend.
 6. Failure to inform the supervisor when leaving the workstation, or failure to report back to the workstation at the scheduled conclusion of a work break or meal period.
 7. Failure of an absent employee to notify the supervisor of each day of absence unless previously excused.
 8. Failure to adhere to University or departmental safety policies or procedures, including failure to immediately report an accident on University premises involving an on-the-job injury or property damage.
 9. Unauthorized or improper use of University funds or property.

10. Being in an unfit condition to perform the duties of the job.
11. Sleeping on the job.
12. Violation of [USM VII – 1.10 Policy on a Drug and Alcohol-Free Workplace for Employees](#) and/or the Governor's Executive Order 01.01.191.16 on Substance Abuse Policy.
13. Willfully falsifying any University records.
14. Behavior that compromises another's safety or privacy, or discloses confidential University information to unauthorized persons.
15. Theft

16.2. Disciplinary Actions

- A. **Counseling or Initial Discussion:** Normally, initial disciplinary action should be in the form of an oral discussion. Supervisors should maintain a complete and accurate written notation of the counseling or initial discussion session.
- B. **Verbal Reprimand:** If the initial discussion fails to produce the desired results, a verbal reprimand is normally the next step. Supervisors should maintain a complete and accurate written notation of the reprimand and of the counseling session.
- C. **Written Reprimand:** A Written Reprimand involves both a formal interview with the employee by the supervisor and an official memorandum to the employee describing the performance or conduct-based problem.
- D. **Suspension:** Suspension means the interruption of the active employment status of an employee. A suspension may be:
 1. A disciplinary action in itself.
 2. In appropriate circumstances, an action taken pending an investigation and decision as to the extent of disciplinary action, if any, to be taken.
 3. Action taken when an employee has charges for removal pending
 4. Action taken under Section 16.1.C.1 and Section 16.1.C.3 shall result in suspension without pay. Action taken under 16.1.C.2 may result in suspension with or without pay, at the discretion of the University, depending on the nature of the incident in question. The duration of suspensions pending investigation shall be reasonably administered.
- E. **Discharge or Release:** Discharge or release means termination from employment. Discharge may occur as the final step in progressive discipline or, where warranted, as an initial disciplinary action as a result of a serious offense.

16.3. Right to Union Representation

- A. An employee shall have the right to Union representation if requested by the employee, only as provided below. There will be no exceptions to this rule.
 - 1. In any investigatory interview or discussion with an employee who is the subject of the investigation.
 - 2. At any conference where the Employer intends to discuss a proposed disciplinary action with the employee.
 - 3. At each step of the Grievance Procedure in conjunction with the disciplinary action.
- B. The foregoing does not apply to a meeting where the Employer is notifying the employee of the disciplinary action being taken. Where an employee elects to be represented by the Union in one of the circumstances set forth above, the employee is entitled to be represented by whichever Union representative is available, not a specific representative. Under no circumstances will an employee's election to be represented by the Union cause a delay in the investigatory interview, disciplinary conference, or grievance step at issue, if the delay will cause the interview, conference or grievance step to be untimely.
- C. An employee shall not have the right to a Union representative in attendance during a non-disciplinary discussion solely related to performance or during a performance review. For a performance based disciplinary action an employee may request Union representation, and once requested, the employee shall be allowed Union representation as provide in Section 16.3.A and Section 16.3.B. The right to representation does not include a criminal investigation, but the employee may request Union representation at a disciplinary hearing that results from the investigation, and once requested, the employee shall be allowed Union representation as provided in 16.3.A and 16.3.B above.
- D. An employee is required to give prompt, accurate answers to any and all questions concerning matters of official interest put to the employee by the Employer.
- E. The role of the Union representative is to assist in the clarification of questions and otherwise advise the employee of the employee's rights. Under no circumstances may the Union representative dominate the hearing or interfere with the Employer's investigative process.

16.4. Grievance of Disciplinary Action

All disciplinary actions against an employee, beyond counseling, are grievable.

ARTICLE 17. GRIEVANCE PROCEDURES

Refer to: **Appendix 1, Memorandum of Agreement. Grievance Procedures, pages 95.**

ARTICLE 18. PROBATIONARY PERIOD

18.1. New Employees

- A. Probationary periods shall be administered per provisions of USM VII-1.21 Policy on Probation for Regular Nonexempt and Exempt Staff Employees. The Employer agrees to provide the Union with an opportunity to comment on any proposed changes to the aforementioned policy before implementing the changes. The probationary period for newly hired and status change employees is six months. Upon the request of the Department Head or designee, the Vice President of Human Resources or designee may extend an original or status change probationary period for a period not to exceed 90 days. Employees who have completed a probationary period shall not be required to serve a new probationary period when transferring to the same position in a different department.
- B. For the purpose of this section a promotion or reclassification to a higher position within the same job family shall not be construed as a change in status.
- C. A contractual or temporary employee who is appointed as a regular employee without a break in service to the same position held during the contractual or temporary appointment will have the time spent as a contractual or temporary employee applied towards completion of their new hire probationary period. All other contractual or temporary employees who are converted to regular status will be treated as initial hires and not receive probation time credit for time spent as a contractual.

18.2. Status Change Employees

- A. An appropriate administrator may separate an employee serving a status change probationary period for cause.
- B. The appropriate administrator shall provide to the employee and the Chief Executive Officer or designee written notice of the rejection at least 30 calendar days prior to the end of the probationary period. The notice shall state the reasons for and effective date of the rejection and shall advise the employee of the right to appeal.
- C. An employee whose job class has been changed as a result of a promotion and is rejected during a status change probationary period shall be restored to his/her former position if it is vacant or held by a temporary employee.

ARTICLE 19. MISCELLANEOUS

19.1. Access to Campus Facilities

- A. Subject to University rules and regulations, employees and their dependents have access to and use of all appropriate campus facilities, including but not limited to all health and fitness facilities, sports complex, dining facilities, the library, and computer facilities that are otherwise open to employees.
- B. In the event electronic time reporting becomes mandatory for all employees, FSU will take appropriate measures to ensure that each employee has access to a computer within or in close proximity to his/her assigned work location. Employees will activate their assigned e-mail accounts.
- C. Within 30 days of the completion of negotiations for this MOU, FSU's Labor/Management Committee shall convene for the purpose of implementing this article.

19.2. Release Time for Campus-Sponsored Committees

Employees shall be allowed paid release time with the approval of the supervisor based upon operational needs to serve as members of employment-related, campus-sponsored committees to which they are appointed or elected.

19.3. Attendance at Job-Related Trainings

- A. The University makes available a full range of professional development opportunities and seminars throughout the year. All employees, with the approval of the supervisor and based upon operational need, are welcomed and encouraged to attend.
- B. Employees will be paid for time spent in University required training consistent with the provisions of this MOU and the FLSA. The Employer will make reasonable efforts to have employees attend regular training during their regularly scheduled work hours. All travel undertaken in conjunction with approved University required training must be documented by the employee and pre-approved by management. All out-of-state travel must have a pre-approved travel request form. Expenses properly incurred in conjunction with approved University required training are reimbursable to the extent allowed by and as provided by University regulations.
- E. Employees who wish to attend training unrelated to their current position may do so with the approval of the supervisor. Time spent in training not required by the University shall be recorded on the timesheet as personal or annual leave. Flextime or make-up time may be used with the previous approval of the supervisor. All flex-time and make-up time must take place in the pay week in which the training occurs.
- F. Employees working a second or third shift may request that the Office of Human Resources provide training at a time and place that accommodates their schedule.

19.4. Attendance at Job Interviews

Employees shall be allowed reasonable paid release time to attend job interviews on the University campus for University job opportunities.

ARTICLE 20. UNIFORMS AND EQUIPMENT

20.1. Uniformed Job Classifications

Where the Employer has determined that a specific job classification should wear a uniform, the Employer will determine the nature of the uniform (shirt, shirt and pants, etc.) and will provide the uniform. Where uniforms are provided, employees must wear them.

20.2. Replacement of Uniforms

The Employer shall determine a method for provision of replacement uniforms. Replacement uniforms shall be in new condition, fit properly, and be provided at no cost to the employee. Employees are responsible for maintenance and upkeep. If a uniform is damaged or lost through the fault of the employee prior to the distribution of replacement uniforms, replacement shall be at employee expense.

ARTICLE 21. INSURANCE AND BENEFITS

Refer to: **Appendix 1, Insurance and Benefits, page 48.**

ARTICLE 22. RETIREMENT

Refer to: **Appendix 1, Retirement, page 49.**

ARTICLE 23. TUITION REMISSION

23.1. Tuition remission shall be administered by FSU consistent with FSU Procedure and [USM VII-4.10 Policy on Tuition Remission and Tuition Reimbursement for Regular and Retired Nonexempt and Exempt Staff and Faculty Employees of the University System of Maryland](#) and [USM VII-4.20 Policy on Tuition Remission for Spouses and Dependent Children of USM Employees and Retirees](#) and/or any USM successor tuition remission policies that may be adopted during the duration of this MOU.

23.2. In the event that during the duration of this MOU, the Board of Regents adopts a policy, which rescinds or modifies in whole or in part the afore-referenced tuition remission policies, the University may implement those changes after consultation or bargaining, if required, with the Union. The parties further agree that the University's tuition remission program must at all times comply with applicable law and that the University may implement any modifications necessary to come into compliance with applicable law. Where the modifications or changes that the University intends to implement are subject to

the obligation to bargain collectively under *SPP 3-101 et. seq.*, the process outlined in Article 6 - Scope of Agreement of this MOU applies.

ARTICLE 24. HEALTH AND SAFETY

24.1. General Duty

The Employer and all employees covered by this MOU shall comply with all safety rules and regulations established by the Employer, as well as all applicable safety-related laws and regulations.

24.2. Unsafe Conditions

Where an unsafe condition is alleged to exist, the affected employee shall first notify his/her immediate supervisor who shall take whatever necessary corrective action the supervisor deems appropriate. Employees are encouraged to bring forth their safety concerns and are not subject to adverse actions for doing so. Where the matter is not resolved to the satisfaction of the employee, the matter will be submitted to the University's Safety Officer for review. The Safety Officer will advise the employee of the results of his investigation and any corrective action taken, or proposed to be taken, within 30 days of receiving notice of the employee's concern. Nothing in this Article requires the Employer to take any specific corrective action– proposed by an employee. However, corrective actions shall be implemented in accordance with the judgment of the University.

24.3. Joint Health and Safety Committee

As a way to prevent injuries and maintain safe and healthy working conditions in the workplace, the Employer and the Union agree to maintain the campus-wide Health and Safety Committee comprised of representatives from all areas of the campus community. The Union shall select a total of four representatives from the clerical staff (one), housekeeping staff (one), and trades and labor pool staff (two) to act as representatives to the Health & Safety Committee. The Health and Safety Committee shall be the primary advisory group on matters pertaining to accident and injury prevention, reduction, and management. The committee shall be chaired by the University Safety Officer and shall meet once a month.

24.4. Duties of the Health and Safety Committee

A. The Health and Safety Committee is responsible for:

1. Recommending that adequate health and safety rules and regulations are implemented and monitored.
2. Reviewing and monitoring potential risks and hazards that exist in the work environment, including unsafe work practices, and making recommendations for their elimination or reduction.
3. Monitoring and evaluating the need for health and safety training for employees.

4. Reviewing accident records and statistics in order to determine the need for corrective action.
5. Promoting health and safety education.
6. Reviewing the availability and adequacy of first aid supplies and equipment and recommending improvements as necessary.
7. Maintaining and reviewing minutes of all committee meetings.

24.5. Investigative Reports

The committee shall be entitled to copies of any investigative report produced by any State, County or Federal agency or any report prepared by any member or sub-committee of the Committee as a result of investigating any situation described under Section 24.4 above.

24.6. No Loss of Compensation

Members of the Health and Safety Committee will receive paid administrative leave while performing approved duties associated with the responsibilities of the Committee, and/or attending training or conferences required by the Employer. All time spent by the employee on Committee Activities must be consistent with operational needs and pre-approved by the employee's supervisor.

24.7. Personal Protective Clothing and Equipment

The Employer shall provide personal protective clothing and equipment (not including safety shoes) that, as determined by the Employer, is required by applicable state laws and regulations. In the event the Employer requires an employee to wear safety shoes on the job, the Employer, upon proof of purchase shall, on an annual basis, reimburse the employee for the cost of one pair of safety shoes as identified by the Employer. Effective with July 1 of the first fiscal year covered by this MOU, the Employer shall reimburse each employee covered by this MOU and working in the following USM job classifications: Manual Labor, Physical Plant Operations, Materials Management, Environmental Health & Safety, and Motor Vehicle Operations, up to \$50 annually for expenses incurred for the purchase of an approved work shoe/boot, provided the employee provides the Employer an itemized receipt for the expense for which the reimbursement is sought. The Employer will make available non-prescription safety glasses to employees who are required to wear them as part of their job and will provide a cell phone, pager, panic button or other safety device to second and third shift housekeepers working alone in campus buildings.

24.8. Communicable Diseases

Employees will be provided with information on all communicable diseases to which they may have routine workplace exposure. Training by a certified entity shall be provided, at least once a year, to educate employees in the area of recognition and prevention of such diseases and blood borne pathogens. The training shall be based on the standards established by OSHA.

24.9. Hepatitis B

Employees who have any contact with blood and other body fluids shall be offered Hepatitis B vaccination at the Employer's expense.

24.10. Cardiopulmonary Resuscitation (CPR) Training

Employees assigned to job classifications where, as determined by the Employer, training in CPR may be a valuable skill, shall be offered CPR training.

24.11. Asbestos

All employees who work with or around asbestos shall have the proper required training and personal protective equipment. When an asbestos hazard is discovered, employees shall be immediately notified of the existence and location of the hazard and the Employer shall take precautionary measures to protect the employees from exposure. The Employer shall conduct periodic inspection and monitoring to detect the presence of asbestos at least once a year.

24.12. Medical Monitoring

Medical Monitoring shall be provided for Level II Asbestos Workers according to the schedule set by the Maryland Asbestos Program. Medical monitoring shall also be provided as specified in the Frostburg State University Chemical Hygiene Plan, Blood Borne Pathogens Plan, and the Respiratory Program.

24.13. Inspection by Governmental Agencies

A copy of any investigation report prepared by any government agency, which conducted an investigation on the premises of the Employer, shall be furnished to the Union upon request.

ARTICLE 25. NO STRIKES AND NO LOCKOUTS

25.1. Strikes

Consistent with *State Personnel and Pensions Article Section 3-303*, employees are prohibited from engaging in any strike. The Employer may take disciplinary action, including termination of employment, against any employee who participates in a strike. "Strike", as defined in *Section 3-303*, means any concerted action to impede the full and proper performance of employment duties in order to induce, influence, coerce, or enforce demands for a change in wages, hours, terms, or other conditions of employment, and includes a total or partial refusal or failure to report to work; refusal or failure to perform employment duties; withdrawal from work; work stoppage; or, work slowdown. The Union agrees that it will not engage in or encourage any strike activity and agrees that it shall take all necessary steps to obtain immediate compliance with this Article by employees covered by this MOU. The Union is subject to all penalties and remedies under law for a violation of this Article or *Section 3-303*.

25.2. Lockouts

Consistent with *State Personnel and Pension Article Section 3-304*, the University may not engage in any lockout. "Lockout", as defined in Section 3-304, means action taken by the University to interrupt or prevent the continuity of the employees' usual work for the purpose and with the intent of coercing the employees into relinquishing rights guaranteed by Title 3 of the State Personnel and Pensions Article, or any action taken by the University to bring economic pressure on employees for the purpose of securing the agreement of their exclusive representative to certain collective bargaining agreement terms.

ARTICLE 26. SEVERABILITY

This MOU is subject to all applicable laws. Should any part of this MOU be declared invalid by operation of law, the part at issue will be unenforceable and the remainder of the MOU shall not be affected but shall remain in full force and effect. In the event a provision is thus rendered invalid, upon written request of either party, the Employer and the Union shall meet promptly and attempt to negotiate a substitute for the invalid provision.

ARTICLE 27. LAYOFF AND RECALL

27.1. Layoff Notice

When the University decides to layoff an employee or employees, a notice shall be given to the affected employee(s) and the Union at least 90 calendar days in advance of the effective date of such layoff. Notices of layoff shall be in writing and shall be acknowledged in writing by the employee. The written notice shall include the reason for the layoff (i.e., position abolished, discontinued or vacated because of a lack of supporting funds, program change, change in departmental organization or stoppage or lack of work). The Employer may place an employee who receives a notice of layoff on administrative leave for any portion of the 90-calendar day notice period. Administrative leave will not be unreasonably denied.

27.2. Order of Layoff

- A. The University shall determine in which classifications layoffs will occur. Layoffs will occur by division. Within each classification affected, layoffs shall occur in the following order:
 - 1. All regular status employees serving an original probationary period in the classification and division in which the layoff is to occur; then
 - 2. All regular status employees who have completed an original probationary period, in the classification and division in which the layoff is to occur, in order of seniority, with the employee having the lowest number of seniority points being laid off first.

27.3. Seniority Points

A. The formula for establishing seniority points shall be as follows:

1. One point shall be given for each complete month of credited service for the following:
 - a. University System (and/or predecessor organizations) and State service including service as medical system University personnel as defined in the *Education Article, Section 13-1B-01(r)*
 - b. Service with the division where the layoff is to occur: and
 - c. Service in the job classification and its job series where the layoff is to occur.
2. For creditable service of less than a complete month, the employee shall be credited with .032 points for each day of creditable service.
 - For part-time employees, creditable service shall be determined by the funded percentage of the position.
3. The combined total of all points shall determine the order of layoff. If two or more employees in the same classification have the same number of seniority points, the Divisional Vice President, with approval of the Chief Executive Officer, will determine the employee(s) to be retained based upon a reasonable written evaluation of the specific objective skills, knowledge, and abilities of each employee, prepared by the Division Head or Chairperson.

27.4. Displacement Rights

Employees covered by this MOU who are notified that they are being laid off may elect to exercise displacement rights as provided herein. An employee's election to exercise displacement rights must be made by giving written notice to the Office of Human Resources within 15 calendar days of the notice to the employee of the layoff.

- A. An employee in a position which is to be abolished, discontinued, or vacated shall be allowed to displace another employee with less seniority in the same job classification, or, if not available either
 1. Progressively to each lower classification in the same job series; or
 2. In any other classification in which the employee held satisfactory regular status.
- B. The displacement as applied in 27.4.A, shall be limited to the division in which the employee is employed at the time that the notice of layoff is given.
 1. An employee who elects not to displace another employee or who is ineligible to displace another employee in accordance with this Section shall be laid off.

2. An employee who is displaced under this Article is subject to the terms and conditions of this Article.

27.5. Recall List

- A. An employee who is laid off shall be recalled for reappointment following a layoff if, within two calendar years from the effective date of layoff, the specific position from which the layoff occurred is reestablished provided the employee continues to meet the minimum qualifications for the job. For purposes of the job classifications unique to the Physical Plant Department, (e.g., housekeeper, groundskeeper, or maintenance aide), the term "specific position" includes any job in the respective classification in which the layoff occurred. For all other job classifications in the Physical Plant or any other department, "specific position" means the actual position from which the employee was laid off.
- B. For a period of three calendar years from the effective date of the layoff the employee will be notified of job vacancies at the University and, if interested, shall be granted interviews for appointment to vacancies in the classification in which the employee was laid off, any lower classification in that job series, any classification for which the employee has completed an original probationary period, or any other position vacancy for which the employee meets the minimum qualifications.
 1. Notice of recall from a layoff shall be sent to the employee by certified mail, return receipt requested.
 2. The recalled employee shall have up to ten workdays following receipt of the recall notice to notify the University of their intention to return to work.
 3. The recalled employee shall have up to 21 workdays following receipt of the recall notice to actually return to work.

27.6. Severance Package

Laid off employees who are eligible may receive the following severance package:

- A. Tuition Remission:
 1. Employees who are laid off, and have completed less than ten years' service with the University and who are receiving tuition remission at the time of layoff may complete the semester in which the lay-off occurs at whatever qualifying institution they are attending at that time, and they may receive tuition remission for one additional full-time semester or two additional part-time semesters, not to exceed a total of 18 credit hours, at FSU campuses only.
 2. Employees who are laid off, who have completed ten years' service with the University and who are receiving tuition remission at the time of layoff, may complete the semester in which the lay-off occurs at whatever qualifying institution they are attending at that time, and they may receive tuition remission for two

additional full-time semesters or four additional part-time semesters, not to exceed a total of 36 credit hours, at FSU campuses only.

3. For purposes of this Section, full-time shall be considered 12 credit hours or more. Part-time shall be considered to be less than 12 credit hours.
4. The tuition remission benefit described in this Section is for the employee only, with the exception that any employee dependent enrolled in coursework in the semester in which the employee is laid-off and receiving tuition remission may continue to receive tuition remission for the balance of that semester.

B. Employment Assistance

1. The Office of Human Resources will be available to assist employees laid off with the following:
 - a. Developing a resume
 - b. Composing a cover letter
 - c. Interviewing skills
 - d. Conducting a job search
 - e. Employment agency contacts
 - f. Recommended readings
2. The Office of Career Services offers at no cost to the employee:
 - a. Individual Career Counseling
 - b. Job/Internship Posting & Searches
 - c. Resource Library
 - d. On campus recruitment and interviews
 - e. Career Fairs
 - f. Resume and cover letter assistance
 - g. Mock Interviews
 - h. Free access to College Central
3. Laid off employees may use the University's computer labs, facsimile machines and copiers for purposes of developing a resume and conducting job searches. Employees availing themselves of these services agree to comply with all University rules and regulations.

Article 28. Contracting Out

28.1. Bargaining Unit Work

- A. The Employer retains the right to contract out services that are performed or that could be performed by employees covered by this MOU. The University understands that the Union opposes the contracting out of public services. Where the Employer decides to contract out a service that is performed by employees covered by this MOU, the

Employer will provide the Union with written notice of its decision no less than 60 days before the effective date of the service contract. The notice shall include the following:

1. A statement of what efforts will be made by the University to place affected employees in University positions that are vacant at the time of notice;
 2. A statement of what employment possibilities are available with the contractor; and
 3. A statement of which employees, if any, will be laid off as a result of the contracting out of the services. Employees who are laid off are subject to Article 27 – Layoff and Recall.
- B. The parties specifically agree that this Article is intended to state the complete obligation of each party with regard to bargaining over the effects of a decision by the Employer to contract out.

ARTICLE 29. PARKING

29.1. Parking

Employees covered by this MOU will pay a parking fee for the right to utilize campus parking facilities. Parking spaces are not guaranteed and employees shall use parking spaces on a first come first serve basis. Employees parking on campus facilities shall follow applicable parking rules and regulations.

29.2. Changes to Fee Structure

- A. Should the University determine that it is necessary to adjust parking fees for employees during the term of this MOU, it will provide the Union with at least 45 calendar days' notice from the intended date of implementation of the proposed increase in fees. During the 45-calendar day's period, the Union may request bargaining and may submit a request for information useful in its preparation for bargaining of parking fees. The University shall provide the information requested by the Union as soon as practicable within a period of ten working days. Upon receipt of the information requested by the Union, the Union may submit proposals in response to the Employer's intended changes within 15 working days from the date it received the information from the University.
- B. The parties will meet within ten working days, or sooner by mutual agreement, to negotiate over the proposed changes in parking fees. The parties agree to make every effort to reach agreement within 45 calendar days. Should the parties fail to reach agreement, either party may invoke fact finding procedures as prescribed in Subtitle 5, Collective Bargaining Process, §3-501 of the State Personnel and Pensions – Annotated Code of Maryland. The parties agree that following invocation of the fact-finding process, they will engage in a good faith effort to conclude the process on an

expedited basis with the objective of obtaining the written recommendations of the selected Fact Finder within 30 days of the date on which the process was initiated.

ARTICLE 30. PERSONNEL FILES

30.1. Official Personnel File - Definition

A. There shall be one official personnel file for each employee, which file shall be maintained in the Department of Human Resources. The official personnel file may include, but will not be limited to the following documents:

1. Employment application and/or resume.
2. College transcripts.
3. Job description or Position Information Form (PIF).
4. Records relating to hiring, promotion, demotion, transfer, reassignment, layoff, compensation, education and training.
5. Letters of recognition.
6. Disciplinary documents.
7. Performance evaluations (PMPs).
8. Documents relating to separation from employment.

B. All records in the official personnel file are available for the employee's review.

30.2. Confidentiality

A. Official personnel files are confidential to the employee and the University. They will not ordinarily be released to anyone outside the University unless the employee supplies a signed written authorization releasing the file (or a part of it), or unless required by law.

B. All requests for verification of employment for current or former employees are to be directed to the Vice President of Human Resources or designee.

C. Working copies of personnel files may be kept in the office of the Department Head or designee.

D. The employee or the employee's authorized representative is permitted to make a copy of a document in his/her personnel file.

30.3. Review of Official Personnel File

Employees who wish to view their personnel record must make an appointment with OHR. Employee requests for an appointment to view their official personnel file will not be unreasonably denied. All files shall be reviewed in the OHR in the presence of the Vice President of Human Resources or designee. At the time of review, employees may be required to initial and date all records in the file. Employees will be advised of any and all derogatory information that is placed in his/her personnel file, and any derogatory material shall be initialed and dated by the employee to acknowledge that he/she was provided a copy of the document in question. The employee's initials indicate only that he or she received a copy of the document, and shall not be construed as consent to its contents.

30.4. Disciplinary Documents

After 12 months without any further disciplinary action and upon written request of the employee, counseling session memos and verbal warnings shall be expunged from the employee's official personnel file.

ARTICLE 31. CLASSIFICATION/RECLASSIFICATION AND PAY ADJUSTMENT

31.1. Posting

With the exception of entry-level positions, nonexempt vacancies will be advertised internally only for a minimum period of five work days. Only Frostburg State University employees are eligible to apply for internal postings. At the conclusion of the internal posting period, the Office of Human Resources (OHR) will review the applicant pool and make a determination as to whether or not the position will be advertised externally. Under special circumstances, at the request of the department head and with the concurrence of the Vice President of Human Resources or designee, a position may be posted internally and advertised publicly concurrently.

31.2. Employee Eligibility

- A. Employees who wish to pursue an internal promotional opportunity must satisfy the following qualifications:
 - 1. Maintain a performance level of meets standards or better;
 - 2. Meet the minimum qualifications as outlined in the employment ad and/or job specification; and
 - 3. Have at least one year of continuous service in their current position.
 - 4. Follow appropriate application procedures as detailed in the position posting.
- B. Meeting minimum qualifications does not guarantee an internal applicant an interview.
- C. If an internal candidate is not selected for interview or hire, he/she may request and shall be granted a meeting with the Vice President of Human Resources or designee to discuss the decision.

31.3. **Classification**

Each employee in the bargaining unit shall, based on objective criteria, be assigned to the classification that most accurately reflects the employee's actual duties and responsibilities.

31.4. **Reclassification**

The minimum percentage increase for a reclassification shall be as set forth by [USM VII-9.20 Policy on Pay Administration for Regular Nonexempt Staff Employees](#) which is currently six percent.

31.5. **Grievances**

Employees who believe that they are performing duties and responsibilities outside their classification that would justify a pay raise and have been denied reclassification, shall have the right to file a grievance at any time. A back-pay award shall be limited to one year prior to the filing of the grievance.

ARTICLE 32. DURATION, RENEWAL AND REOPENER

*Refer to: **Appendix 1, Memorandum of Agreement. Page 46.***

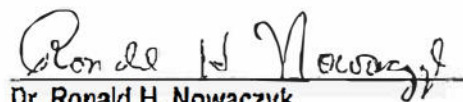
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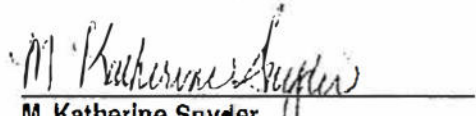
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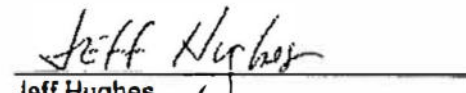
AMERICAN FEDERATION OF
STATE, COUNTY & MUNICIPAL
EMPLOYEES


Robert L. Caret
Chancellor, University System of Maryland


Patrick Moran
President, AFSCME MD, Council 3

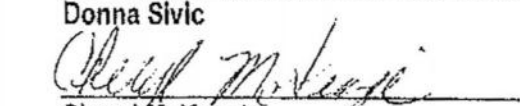

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AFSCME LOCAL 239
NONEXEMPT BARGAINING TEAM


Ian Reikle

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APPENDIX 1

MEMORANDUM OF AGREEMENT (MOA) AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES (AFSCME) AND UNIVERSITY SYSTEM OF MARYLAND COALITION (NON-EXEMPT UNITS) (USM)

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DURATION [USM COALITION (NON-EXEMPT UNITS)/AFSCME MD MOA] [Revised Language]

Section 1. Duration

This MOA between AFSCME MD and the USM Coalition shall become effective when all conditions precedent to its effectiveness have been met and shall extend to June 30, 2019. When effective, the relevant terms of this MOA shall be incorporated into the respective, individual Memorandum of Understanding (MOU) between each member of the USM Coalition (Non-Exempt Units) and AFSCME MD and shall establish 11:59 p.m. on June 30, 2019 as the common expiration date for each such Agreement.

Section 2. MOA New Matters of Negotiations Reopener

No provisions of this MOA shall operate as a waiver of either Party's right to request bargaining during the term of this Agreement over subject matters that become permissible matters of bargaining after its effective date. All other terms and conditions of the MOA covering the period July 1, 2016 – June 30, 2019 shall remain in full force and effect, except as provided herein.

ARTICLE 32 - DURATION, RENEWAL (MOU) [Revised Language]

Section 1. Duration

This MOU shall become effective when all conditions precedent to its effectiveness have been met. No portion of this MOU shall be implemented until all of its provisions are effective. No provision of this MOU has retroactive application unless required by law. This MOU expires at 11:59 p.m. on June 30, 2019. The Parties shall ensure that their respective ratification processes are completed as promptly as possible after the conclusion of negotiations.

Section 2. Renewal

Should either Party desire to renew this MOU, they may only do so by providing written notification of its intent to do so to the other Party by August 1, 2018. After notification is provided, the Parties shall then commence negotiations for a successor MOU, during the last year of this MOU at dates and times agreed to by the Parties. The Parties agree that each side will exchange their complete package of proposals for changes to the MOU no later than August 15, 2018 and that negotiations for a successor MOU will commence in the first week of September, 2018 unless otherwise mutually agreed by the Parties.

Section 3. New Matters of Negotiations Reopener

No provisions of this MOU shall operate as a waiver of either Party's right to request bargaining during the term of this Agreement over subject matters that become permissible matters of bargaining after its effective date. All other terms and conditions of the MOA covering the period July 1, 2016 – June 30, 2019 shall remain in full force and effect, except as provided herein.

WAGES AND COMPENSATION [USM Coalition (Non-Exempt Units)/AFSCME MD MOA] [Revised Language]

Section 1. FY2017 Merit Pay Adjustments

Effective July 1, 2016, a Merit Pay Adjustment of 2.5% shall be added to the base pay of each employee who has achieved "meets standards" or better on his/her last performance rating. If the merit adjustment would cause an employee's pay rate to exceed the maximum pay rate for the employee's pay grade range, the employee's pay rate will be adjusted to the maximum of the pay range and the remainder of the merit adjustment shall be provided in the form of a one-time, lump sum payment which shall not be included in the employee's base pay. The lump sum shall be paid as soon as practical following July 1, 2016.

Section 2. Compensation Reopener for FY2017

The Parties agree to reopen negotiations concerning the FY2017 Merit Pay Adjustment at the request of either the USM Coalition or AFSCME, if negotiations are reopened between AFSCME and the State of Maryland as to the amount and/or effective date of the FY2017 salary increments provided for in the applicable collective bargaining between AFSCME and the State.

Section 3. MOA Limited Reopeners FY2018 and FY2019

The Parties will reopen negotiations under this MOA beginning in the first week of September 2016 and 2017, respectively, for the sole purpose of seeking to reach agreement as to what COLA, if any, and what Merit Pay Adjustments, if any, and what funding conditions and requirements for both items shall be included in the USM budget request submitted to the Governor for FY2018 and FY2019. All other terms and conditions of the MOA covering the period July 1, 2016-June 30, 2019, shall remain in full force and effect, except as otherwise provided herein.

Section 4.

Any bonus, COLA or Merit Pay Adjustment provided for above shall be subject to the General Assembly's prior approval and funding and all controlling directions or restrictions imposed by the Governor or General Assembly.

ARTICLE 9 - WAGES (MOU) [Revised language]

Section 1. FY2017 Merit Pay Adjustments

Pursuant to the terms of the current MOA between the USM Coalition (Non-Exempt Units) and AFSCME MD, each bargaining unit employee will receive the following:

Merit Pay Adjustment: Effective July 1, 2016, a Merit Pay Adjustment of 2.5% shall be added to the base pay of each employee who has achieved "meets standards" or better on his/her last

performance rating. If the merit adjustment would cause an employee's pay rate to exceed the maximum pay rate for the employee's pay grade range, the employee's pay rate will be adjusted to the maximum of the pay range and the remainder of the merit adjustment shall be provided in the form of a one-time, lump sum payment which shall not be included in the employee's base pay. The lump sum shall be paid as soon as practical following July 1, 2016.

Section 2. Compensation Reopener for FY2017

The Parties agree to reopen negotiations concerning the FY2017 Merit Pay Adjustment at the request of either the USM Coalition or AFSCME, if negotiations are reopened between AFSCME and the State of Maryland as to the amount and/or effective date of the FY2017 salary increments provided for in the applicable collective bargaining between AFSCME and the State.

Section 3. Limited Reopeners FY2018 and FY2019

Pursuant to the terms of the current MOA between the USM Coalition (Non-Exempt Units) and AFSCME MD, that MOA will be subject to reopening for the sole purpose of negotiating an agreement as to what COLA, if any, and what Merit Pay Adjustment, if any, and what funding conditions and requirements for both items shall be included in the USM budget request submitted to the Governor for Fiscal Years 2018 and 2019 respectively. Subject to approval and funding by the General Assembly and controlling directions or restrictions imposed by the Governor or General Assembly, COLA and/or Merit Pay Adjustments for FY2018 and/or FY2019 agreed upon by the USM Coalition (Non-Exempt Units) and AFSCME MD pursuant to the aforementioned reopener provisions shall be incorporated into this MOU.

Section 4.

Any bonus, COLA or Merit Pay Adjustment provided for above shall be subject to the General Assembly's prior approval and funding and all controlling directions or restrictions imposed by the Governor or General Assembly.

ARTICLE 21 - INSURANCE AND BENEFITS (MOU) **[Status Quo]**

Employees covered by this MOU who are otherwise eligible may participate in the health and other insurance plans as offered by the State of Maryland and the University System of Maryland, as they may exist from time to time, on the same basis and subject to the same terms and conditions including the payment of all applicable premiums, co-pays, deductibles and other fees and expenses as established for other University and State employees.

ARTICLE 22 - RETIREMENT (MOU)
[Revised Language]

Employees covered by this MOU who are otherwise eligible may participate in the Maryland State (Employees' and Teachers') Retirement Systems and the Maryland State (Employees' and Teachers') Pension Systems, as appropriate, subject to all of the terms and conditions of those Systems and their respective Plans, including any modifications made to those Systems and Plans during the term of this MOU. In addition, consistent with the provisions of HB 926 (2016 General Assembly Session), employees who may become subject to this MOU as a result of amendments to regulations governing the Fair Labor Standards Act or other laws, shall continue to participate in the USM Optional Retirement Plan. All disputes or grievances regarding the Retirement and/or Pension Systems shall be resolved in accordance with the procedures specified in the plan or by applicable law.

ARTICLE 14 - UNION LEAVE (MOU)
[Status Quo]

- A. AFSCME MD may request that bargaining unit employees be released from their normal duties for the purpose of participating in approved union activities.
- B. The total amount of union leave granted at any Institution during a fiscal year may not exceed one day for every twenty-five (25) of its bargaining unit employees of that Institution as of July 1 of the current fiscal year, provided that a minimum of eight (8) days union leave will be granted by the University each fiscal year covered by this MOU. No employee outside of the bargaining unit will be counted in the leave calculation under this Article.
- C. All requests for union leave shall be submitted to the head of the institution's Office of Human Resources in writing by Council 3 fifteen (15) working days in advance of the day on which the leave is to begin and shall include:
 - 1. A general description of the activity and its purpose;
 - 2. The date and location of the activity;
 - 3. The name(s) of the employee(s) for whom union leave is being requested.

Where the leave request is for eight (8) hours or less, the minimum notice required is seven (7) working days.

- D. After verifying the validity of the request with a staff union representative and the accuracy of the time being requested, the head of the institution's Office of Human Resources may approve union leave if the employee's services can be spared without impairing the services of the department(s) involved and union leave is available pursuant to Section B of this Article. Approval of leave under this section shall not be unreasonably denied.

- E. If the employee organization needs to substitute an employee or employees for those previously granted union leave, or substitute new dates, such requests will be submitted as soon as possible to the head of the institution's Office of Human Resources for approval. Such substitutions may be approved if the substitution will not impair the services of the unit. Approval of substitutions or dates shall not be unreasonably denied.
- F. AFSCME Maryland Convention: In years when the AFSCME Maryland local convention takes place, each Institution will provide paid leave for actual time used by one (1) bargaining unit employee to attend that convention on days which the attendee would otherwise be regularly scheduled to work their regular work day. The total number of hours of paid leave time which the bargaining unit employee shall be provided for actual attendance at the AFSCME Maryland local convention shall not exceed eight (8) hours per day at the straight time rate of pay.

ARTICLE 13 - SICK LEAVE (MOU)

[Revised Language]

I. Purpose and Applicability

This Article governs the accrual and use of sick leave for all employees covered by this MOU. When a provision of this Article provides an employee with the eligibility to use sick leave that is also covered by the Family and Medical Leave Act (FMLA), the sick leave and the leave under the FMLA run concurrently. Also, employees must use their accrued sick leave in accordance with the specific provisions of this Article and exhaust all accrued annual leave and personal leave prior to using unpaid FMLA leave.

II. General

- A. Sick leave is paid leave granted to employees in an effort to provide some protection against the loss of earnings due to absences for health reasons.
- B. A full-time employee shall earn sick leave at the rate of fifteen (15) workdays per year. Employees who are appointed at least 50% time shall earn sick leave on a pro rata basis. Sick leave is accumulated and carried forward from year to year without limit.
- C. An employee may use on a continuous basis earned leave (sick, annual and personal leave), advanced sick leave, extended sick leave, leave granted through the leave reserve fund, or unpaid family medical leave, as needed for personal illness or for parental leave, subject to the requirements and criteria of the USM "Policy on Parental Leave and other Family Supports for Staff" (VII-7.49) ("Parental Leave Policy").
- D. An employee may request that his/her illness, injury, or disability occurring during a period of annual or personal leave be charged to sick leave. Verification of such

illness, injury, or disability may be required by the Office of Human Resources as provided in Section IV of this article.

- E. Sick leave shall be granted by the President or designee when an employee is absent because of:
1. Illness, injury, or disability of the employee.
 2. A pre-scheduled and approved, or emergency medical appointment, examination, or treatment for the employee with an accredited, licensed or certified medical provider listed in Section IV.C. of this article that cannot be scheduled during non-work hours.
 3. Illness or injury in the employee's immediate family and medical appointments, examinations or treatments for the immediate family member with an accredited, licensed or certified medical provider listed in Section IV.C. of this article that cannot be scheduled during non-work hours.
 - a. Immediate family as used in this section of this article shall mean a spouse, child, step-child, grandchild, mother, father, mother-in-law, father-in-law, brother, sister, grandparent, brother-in-law, sister-in-law, or legal dependent of the employee irrespective of residence. Use of sick leave shall also be granted to care for any other relative who permanently resides in the employee's household for whom the employee has an obligation to provide care.
 - b. The President or designee may require an employee to provide certification by a medical provider listed in Section IV.C of this article to demonstrate this obligation or to authenticate the need for the employee to care for the ill family member.
 4. Death of a relative.
 - a. For the death of a close relative, the President or designee shall grant the use of up to three (3) days of accrued sick leave. If the death of a close relative requires an employee to travel requiring staying away from home overnight, upon request the President or designee shall grant the use of up to a maximum of five (5) days of accrued sick leave for this purpose.
 - b. Close relative as used in this section of this article shall mean a spouse, child, stepchild, mother, father (or someone who took the place of a parent), mother-in-law, father-in-law, grandparent of the employee or spouse, grandchild, son-in-law, daughter-in-law, brother, sister, brother-in-law, sister-in-law, or other relative who permanently resided in the employee's household.
 - c. The President or designee shall grant the use of up to a maximum of one (1) day of sick leave for reasons related to the death of the employee's or his/her spouse's aunt, uncle, niece, nephew.

5. Pregnancy-related disabilities, childbirth, and immediate recovery there from.
 - a. A female employee may request the use of accrued sick leave for any period of time related to temporary disability during pregnancy or related to childbirth and immediate physical recovery there from.
 - b. A female employee planning to request the use of sick leave for the purposes listed in this subsection shall be governed by the provisions of this article.
 - c. The employee shall keep the President or designee informed of any changes to her condition which affect the length of time that she will need to be away from work.
6. Birth of a child or placement of a child with the employee for adoption. Accrued sick leave may be used to care for a child following the birth of a child or placement of the child with the employee for adoption, subject to the provisions of the USM Parental Leave Policy.
- F. An employee who returns to regular USM service within three (3) years of separation shall have the unused sick leave earned during the prior service restored, provided the employee returns to a position eligible to earn sick leave.
- G. The order of leave exhaustion will be: 1) accrued sick, annual, personal and holiday leave; 2) advanced sick leave; 3) leave reserve fund; and 4) extended sick leave (for the illness of an eligible employee only).

III. Directed Use of Sick Leave/Medical Examinations

- A. The President or designee, in accordance with the provisions of this MOU dealing with Family and Medical Leave, may direct an employee to use accrued sick leave if he/she determines that an employee is unable to perform the essential responsibilities of his/her position due to illness, injury or disability.
- B. While either in active work status or on any type of employee-related sick leave, an employee may be required to undergo a medical examination(s) and evaluation(s), and may be required to provide verification of fitness for duty, as directed by the President or designee to ascertain whether the employee is able to regularly and routinely perform the responsibilities of his/her position.
 1. If the examination is conducted by a certified medical provider selected by the USM Institution, the Institution shall bear the costs of such medical examination. The employee may, however, see his/her own physician at the employee's own cost.
 2. If the examination(s) reveal(s) that an employee is unable to regularly and routinely perform the responsibilities of his/her position, action may be

taken by the President or designee in accordance with policies on voluntary separation, termination, reasonable accommodation, modified duty or disability retirement, if applicable.

3. In cases where there is a conflict between the evaluation, prognosis, diagnosis or recommendation of the employee's personal health care provider and the certified medical provider selected by the USM Institution, the President or designee may choose which health care provider's report to follow or may require subsequent medical examinations and evaluations in deciding what steps should be taken regarding the employee's sick leave status or continued employment. If subsequent medical examinations and evaluations are required, the expense of such shall be borne by the USM institution the employee's medical provider and the University's medical provider shall by agreement select the third medical provider who will render an opinion. In the event they are unable to reach agreement on a third medical provider, the third provider will be selected by the University. In selecting the third provider, the University shall not select a provider that has been under contract, or that at the present time is under contract with the University. The decision of the President or designee regarding the employee's fitness for duty will take into account the medical opinions rendered. The decision of the President or designee is final.

IV. Verification of Absences Charged to Sick Leave

- A. In order to verify that the employee's use of sick leave is in accordance with this Section, to assure medical attention for an employee or to prevent the abuse of sick leave usage, the University President or designee may require an employee to submit verification of the reason for the use of accrued sick leave, advanced or extended sick leave.

- B. Verification of Illness for Absences of Five (5) or More Consecutive Days may include but may not be limited to:

The University may require an employee to provide an original certificate of illness or disability in cases where an absence is for five (5) or more consecutive workdays. The certificate required by this Section shall be signed by a certified medical provider as defined in Section IV.F below.

- C. Verification of Illness for Absences of Less than Five (5) Consecutive Days

The University may require an employee to submit an original certificate of illness or disability for absences of less than five (5) consecutive days on the following conditions:

1. Where an employee has a consistent pattern within a twelve (12) month period of maintaining a zero or near zero sick leave balance without documentation of the need for such relatively high utilization.
2. Where an employee has unusual absence patterns such as Monday/Friday, or the day before and/or the day after a holiday.
3. Where an employee has five (5) or more occurrences of undocumented sick leave usage within a twelve (12) month period.
4. Where an employee has three (3) or more occurrences of undocumented sick leave usage of two (2) or more consecutive days in a twelve (12) month period.

D. Procedures for Certification Requirement

Prior to imposing a requirement on an employee for documentation of sick leave use, under Section C above, the University shall orally counsel the employee that future undocumented absences may trigger a requirement for certification of future occurrences of sick leave. If the employee has another undocumented absence after such counseling, the University may, subject to the concurrence of the Office of Human Resources, then put the employee on written notice that he/she must certify all sick leave usage for the next six (6) months if the undocumented absence accumulated in accordance with this Section IV. At the conclusion of the six (6) months, the certification requirement will be rescinded provided the employee has complied with the certification requirement and is in compliance with this Article. If the employee has not complied with the certification requirement and is not in compliance with this Article, the requirement shall be extended for six (6) months from the date of the lack of compliance with the requirement. Although a requirement for certification is not a disciplinary action, an employee may grieve allegations of misapplications of this procedure. Failure of the employee to provide certification as described in this Section may subject the employee to disciplinary action.

E. Verification may include but may not be limited to:

1. A written statement from the medical provider (as listed in Section IV.F. of this Article) indicating that the employee is required to be absent from work due to illness;
2. The duration of absence from work;
3. Prognosis of employee's ability to return to work;
4. Title and original signature of an accredited, licensed or certified medical provider;

5. Documentation of the birth or adoption of a child, if sick leave is requested under the Parental Leave Policy, and
 6. Any other information necessary to verify that the employee's use of sick leave is in accordance with this Article. Such information does not need to include information about the specific illness or health condition of the employee.
- F. Medical verification as outlined in this Article may be obtained from an accredited Christian Sciences practitioner, or by the appropriate of any of the following licensed or certified medical providers:
1. Physician;
 2. Physical Therapist;
 3. Clinical Psychologist;
 4. Dentist;
 5. Oral Surgeon;
 6. Chiropractor;
 7. Podiatrist;
 8. Certified Nurse Practitioner;
 9. Certified Nurse-Midwife; or
 10. Licensed Certified Social Worker-Clinical.

V. Advanced Sick Leave

- A. An employee who sustains a temporary, recoverable illness, injury or serious disability, or is eligible for parental leave, may request advance use of sick leave subject to the following two conditions:
- The employee shall:
1. have exhausted all other types of accrued leave; and
 2. have performed at a "meets standards" or better level of performance and have not been placed on a sick leave certification requirement as provided in Section IV or been disciplined for a sick leave related offense during the past twelve (12) months.
- B. Advanced sick leave is not an entitlement. The granting of requests for advanced sick leave is at the discretion of the President or designee.
- C. Advanced sick leave shall not be granted in instances where the illness or injury or disability occurred on the job, and the employee has been granted accident leave or temporary total disability benefits by the Workers' Compensation Commission.
- D. Written requests for advanced sick leave shall be submitted to the President or designee and shall be supported by written verification by an accredited, licensed, or certified medical provider or appropriate documentation of the birth or adoption

of a child, if the employee is requesting parental leave, as outlined in Sections IV. E and IV. F of this Article.

E. Sick leave may be advanced as follows:

1. In the first year of service, advanced sick leave will be prorated based upon the employee's length of service at the time it is requested.
2. Thereafter, advanced sick leave is advanced at the rate of fifteen (15) working days per year of service to a maximum of sixty (60) working days in any one calendar year.

F. The use of advanced sick leave constitutes a debt for which payment shall be enforceable upon the employee's return to work or upon the employee's separation from employment, whichever is earlier. Upon return to work the minimum rate of payback for advanced sick leave shall be at one-half the rate that sick leave and annual leave is earned. An employee may elect to pay back advanced sick leave by applying any earned leave or by reimbursing the USM with cash.

G. Annual, sick and holiday leave earned, and personal leave credited while on advanced sick leave shall be applied as earned/credited.

H. The President or designee may refer an employee who is on advanced sick leave as follows:

1. The employee may be referred to a USM Institution-named certified medical provider paid for by the Institution for periodic examinations to determine the nature and extent of the illness, the employee's progress toward recovery, the length of time necessary for recovery, and an estimated date of return to work.
2. If there is a conflict between the employee's physician and the USM Institution-named physician, the provisions of Section III.B.3 shall apply.

VI. Extended Sick Leave

A. An employee who sustains a temporary, recoverable illness, injury or serious disability or is eligible for parental leave, may request extended sick leave, subject to the three following conditions:

The employee shall:

1. have been in USM and/or State service for at least five (5) years;
2. have exhausted all types of accrued leave and advanced sick leave; and

3. has performed at a “meets standards” or better level of performance and has not been placed on a sick leave certification requirement as provided in Section IV. or been disciplined for a sick leave related offense during the past twelve (12) months.
- B. Extended sick leave is not an entitlement. The granting of requests for extended sick leave shall be at the discretion of the President or designee.
 - C. The maximum cumulative total of extended sick leave available to an employee in USM or State service is twelve (12) work months (52 work weeks).
 - D. Annual, sick and holiday leave earned, and personal leave credited while on extended sick leave shall be applied as earned/credited.
 - E. Written requests for extended leave shall be submitted to the Office of Human Resources and shall be supported by written verification by an accredited, licensed or certified medical provider as outlined in Sections IV. A and IV.F of this Article.
 - F. The President or designee may refer an employee who is on extended sick leave as follows:
 1. The employee may be referred to a USM Institution-named certified medical provider paid for by the Institution for periodic examinations to determine the nature and extent of the illness, the employee’s progress toward recovery, the length of time necessary for recovery, and an estimated date of return to work.
 2. If there is a conflict between the employee's physician and the Institution-named physician, the provisions of Section III.B.3 shall apply.

VII Pilot Program

- A. For a pilot period of two years (From July 1, 2016 to June 30, 2018), an employee may be approved for the use of advanced sick leave and up to 15 days leave from the leave reserve fund for the documented critical illness of a member’s spouse, minor child, or other immediate family member who resides with the employee and for whom the employee has primary care-giving responsibilities. Critical illness will be defined as a life-threatening or disabling medical condition or injury.
- B. The expansion of advanced sick leave and leave reserve fund will be reviewed by the USM during the second year of its implementation and may be suspended by the USM if the results of that evaluation indicate that the measures have substantially impaired institution operations or been subject to significant abuse by employees.

ANNUAL LEAVE

I. Earned Leave

- A. Nonexempt Staff Employees – Regular full-time Nonexempt Staff employees will earn annual leave on a biweekly basis according to the following schedule.
 - 1. Beginning with the Date of Employment through completion of the 1st year: 11 days
 - 2. Beginning with the 2nd year through completion of the 2nd year: 12 days
 - 3. Beginning with the 3rd year through completion of the 3rd year: 13 days
 - 4. Beginning with the 4th year through completion of the 4th year: 14 days
 - 5. Beginning with the 5th year through completion of the 10th year: 15 days
 - 6. Beginning with the 11th year through completion of the 20th year: 20 days
 - 7. Beginning with the 21st year and thereafter: 25 days
- B. Regular Status part-time Nonexempt Staff employees working 50% or more will earn Annual Leave on a pro-rated basis. Employees working less than 50% of full-time are not eligible to earn leave.
- C. Leave can be used to the extent it is accrued and available.

II. Leave Accumulation

- A. Annual leave with pay shall be available only to the extent earned, provided that the dates of such leave have been approved in advance by the employee's supervisor.
- B. A maximum of 400 hours (50 work days) of annual leave may be carried into a new calendar year by all Regular full-time employees; this maximum will be pro-rated for part-time employees working 50% or more.

III. Leave Advancement

- A. With the approval of the head of the institution's Office of Human Resources or designee, an employee may be advanced 5 days of annual leave provided that no other leave, including personal leave, compensatory leave or sick leave is available to the employee and is appropriate to the purpose of the leave.
- B. The head of the institution's Office of Human Resources or designee shall approve the advanced annual leave, provided that it will not significantly impair operations in the employee's unit, and that the employee has demonstrated a substantial need for such leave.

IV. Payment for Denied Annual Leave

- A. At the request of the employee, at the end of a calendar year, a supervisor will, through appropriate channels, recommend to the institution's President or designee that an

employee who has been denied requested leave for reasons of institution business necessity on at least two occasions shall be either:

1. Paid for days of denied annual leave lost pursuant to Section III of this policy; or
 2. Provided an extended period of up to 60 additional days to use the denied leave that would otherwise be lost at the end of the calendar year.
- B. Such payment may be made only when the employee has submitted two or more timely written requests to use annual leave during the calendar year and such requests have been denied in writing for administrative reasons. The supervisor shall provide any such denial in writing and shall state the administrative reasons for such denial.
- C. The supervisor's recommendation for payment for lost annual leave shall be accompanied by copies of the written requests, denials and explanations of why the lost annual leave was denied during the calendar year.
- D. Payment is limited to unused annual leave that is in excess of the maximum accumulation and that is lost by the employee at the end of the calendar year. The amount of annual leave for which payment may be made shall be decreased hour for hour by the amount of compensatory leave used during the calendar year.
- E. Under extenuating circumstances, a supervisor may recommend the payment of denied annual leave to be lost at the end of a calendar year, even if the procedural requirements of this section are not fully met.

V. IMPACT OF CHANGES IN EMPLOYMENT STATUS

A. FULL-TIME TO PART-TIME STATUS

1. An employee who experiences a status change from full-time to part-time status shall retain existing accrued annual leave balance at the time of the status change.
2. An employee shall retain all accrued Annual Leave upon a change to part-time status. At the discretion of the institution, such accrued leave may be either:
 - a. Used by the employee during the course of their employment in part-time status;
 - b. Paid to the employee at the time of conversion to part-time status; or
 - c. Held in abeyance until the employee either:
 - i. Separates from employment, at which time it will be paid to the employee; or
 - ii. Returns to full-time employment.

3. Subsequent leave accruals and maximum accumulations are based on proportion of full-time status and will be subject to the maximum accumulation provisions outlined in Section III of this policy.

B. ELIGIBLE TO INELIGIBLE LEAVE ACCRUAL STATUS

An employee shall retain all accrued Annual Leave upon a change to status to a position in which the employee is not eligible to accrue leave. At the discretion of the institution, such accrued leave may be either:

1. Used by the employee during the course of their employment in a status for which they are otherwise ineligible to accrue leave;
2. Paid to the employee at the time of conversion to leave-ineligible status; or
3. Held in abeyance until the employee either:
 - a. Separates from employment, at which time it will be paid to the employee; or
 - b. Returns to leave-eligible status.

C. LEAVE TRANSFER

1. Employees who transfer to another USM institution or State of Maryland agency will have their unused annual leave accrued as of the date of separation from the University transferred to that institution/state agency unless there is a break in service of 30 days or more.
2. Employees in a regular position with a State of Maryland Agency who accept a regular position at a USM Institution without a break in service shall have their unused annual leave accrued as of the last day of employment at the State of Maryland agency transferred to the USM institution.

D. SEPARATION FROM SERVICE

Employees who leave the University System of Maryland, except under circumstances outlined under VI.C., are entitled to compensation for any unused annual leave that has been credited and available for use as of the date of separation.

E. RATE OF ANNUAL LEAVE EARNINGS UPON RETURN TO USM/STATE SERVICE

1. RETURN TO USM/STATE SERVICE

An employee who is entering or returning to USM service is entitled to credit towards the rate of annual leave earning for previous USM and/or state service regardless of the length of the absence, if the service included at least 180 days of continuous and satisfactory performance in an allocated position.

2. RETURN TO USM SERVICE AFTER A LEAVE OF ABSENCE WITHOUT PAY

An employee who returns to service upon the conclusion of a leave of absence without pay (LWOP) will earn annual leave at the same rate in effect at the time the leave of absence without pay began.

3. RETURN TO USM SERVICE UPON REINSTATEMENT:

An employee returning to USM service with an authorized status of reinstatement within three years of separation will earn annual leave at the same rate in effect at the time of separation from active service.

PERSONAL LEAVE

I. DEFINITIONS

“Calendar year” means the period beginning January 1 through December 31.

“Leave cycle” means the period encompassing the beginning and end of established USM payroll cycles in which leave is accrued.

“Leave year” means the final payroll cycle identified by institutions for the purpose of crediting new allotment of personal days.

“Availability schedule” means the effective date in the new calendar or leave year by which Personal Leave Days must be used or lost.

II. ALLOTMENT

All full-time Nonexempt Staff employees shall receive three days (not to exceed 24 hours) of personal leave on January 1 in each calendar year. Part-time employees working 50% or more shall receive personal leave on a pro-rated basis.

III. USAGE

- A. Personal leave must be used by the end of the first pay period which ends in the new calendar year. Any personal leave that is unused as of that time shall be forfeited by the employee and shall be contributed to the USM Leave Reserve Fund, in accordance with BOR VII-7.11 Policy on Leave Reserve Fund for Nonexempt and Exempt Staff Employees. No employee shall be paid for unused personal leave. Each institution shall determine the availability schedule for new allotment of personal leave days.
- B. The use of personal leave shall require prior notification to the employee’s supervisor.

IV. TRANSFER/SEPARATION

- A. Employees that transfer to another USM Institution will have any unused personal leave credited as of the date of separation from the University transferred to the new institution or agency.
- B. Employees that transfer to another State of Maryland agency will have any unused personal leave reported for credit as of the date of separation and will be subject to established personal leave allocations for the State of Maryland. Additional personal leave, minus USM balances already utilized, may be granted upon transfer to another State of Maryland agency, dependent upon established allocation requirements at the time of transfer.
- C. If available personal leave has been utilized upon transfer to another USM institution, additional personal leave shall not be granted upon appointment to the new institution.
- D. There shall be no payment for unused personal leave upon separation from university employment.

LEAVE RESERVE FUND (LRF)

Personal leave unused by an employee shall be remitted to the Leave Reserve Fund to be available for University employees. The Leave Reserve Fund provides paid leave to full-time and part-time employees who become temporarily medically disabled. A person authorized to act on the employee's behalf may make the leave request on behalf of the employee when the employee is unable to do so.

An employee wishing to receive leave under this policy shall submit a request directly to the Office of Human Resources at the institution where the employee works. The request may be submitted by using the "USM Leave Reserve Fund Request" form, or by a written request containing the following information:

- Employee's name;
- Name of institution;
- Employing department;
- Employee's position title, USM service date and number of months of creditable service;
- Amount of leave and specific dates requested; and
- Physician's certification of temporary disability which includes the physician's judgment as to when the employee may reasonably be expected to return to work – a prognosis, not diagnosis, or appropriate documentation of the birth or adoption of a child, if the employee is requesting parental leave. (This information should be kept confidentially at the institution and not forwarded to the USMO-HR.)

If the institution's Office of Human Resources determines that the employee is eligible to apply for leave from the LRF, it will forward the request for leave to the USMO-HR within five (5) working

days following receipt of the request from an employee. The USMO-HR office will issue a response within five (5) working days after its receipt of a request for leave.

An employee who is determined to be ineligible for leave from the LRF by his/her Institution's Office of HR, or whose request for leave is denied by the USMO-HR, shall have the right to file a grievance concerning that determination in accordance with Section 13-201 et seq., of the Annotated Code of Maryland Education Article. Such a grievance shall be initiated at Step Two of that grievance procedure within five (5) days after receipt of the written determination of the Institution's Office of HR or the USMO-HR which is the subject of the grievance. In the case of a grievance concerning the denial of a request for leave by the USMO-HR, the written decision by the President or President's designated representative shall be rendered after consultation with the Chancellor or the Chancellor's designated representative.

I. DEFINITIONS

"LRF" means the University System of Maryland Leave Reserve Fund, which consists of employees' personal leave that is unused at the end of each calendar year.

"TEMPORARY MEDICAL DISABILITY" means that the employee has a reasonable expectation of returning to work.

"CREDITABLE SERVICE" means service required for computing the amount of any benefits.

"PARENTAL LEAVE" means the eight (8) week period of assured paid leave available to staff employees under the USM "Policy on Parental Leave and other Family Supports for Staff" (VII-7.49).

II. GENERAL

The employee, or someone on the employee's behalf, may submit to the head of the institution's Office of Human Resources of the USM institution at which the employee is employed, a written request to use leave from the LRF, together with documentation that the employee has:

- A. Completed at least one year of service with the University System of Maryland;
- B. Met the requirements of this policy to establish:
 - 1. A temporary medical disability which is authenticated by a licensed or certified medical provider in accordance with established leave authorization procedures, and by the institutional or State Medical Director; and when the employee has a reasonable expectation of return to work; or
 - 2. Eligibility for Parental Leave under USM Policy VII-7.49;
 - 3. Exhaustion of all available leave, as stated in the Sick Leave Article, Section II. G.; and
 - 4. A satisfactory record of sick leave use and work performance.

In addition, each request must specify the number of days requested and must provide a justification for the number of days requested. The maximum number of days which may be requested from the LRF shall not exceed one (1) day for each month of creditable service, as defined by the Maryland State Retirement and Pensions Systems.

III. INSTITUTION APPROVAL

The President or designee of the institution shall determine whether the requirements of this policy (Section III) have been met, and, if so, shall approve the request for the use of the LRF. Based upon the employee's justification for the request, the President or designee may approve the number of days requested or may approve some lesser number of days. The head of the institution's Office of Human Resources shall forward the approved requests to the USM Human Resources Office staff.

IV. ADMINISTRATION OF THE USM LEAVE RESERVE FUND

- A. The Associate Vice Chancellor for Human Resources (AVC for HR) shall administer the LRF. Based on information submitted with the request, the AVC for HR shall verify the employee's eligibility to use leave from the LRF and may return to the President or designee any request of an employee whose eligibility the AVC for HR deems questionable. The AVC for HR shall accept the final determination of the President or designee as to the employee's eligibility.
- B. Once the employee's eligibility has been established, the AVC for HR shall determine the amount of leave to be granted to the employee based on guidelines established by the Chancellor. Such guidelines may establish a cap on the number of days granted to any one employee and may include other provisions designed to fairly distribute among eligible employees the days available in the LRF. Within these guidelines, the AVC for HR shall transfer leave from the LRF to the eligible employee.
- C. The AVC for HR may not transfer leave from the LRF to an employee after the date on which the employee's disability retirement, granted by the Board of Trustees of the State Retirement Systems, is effective.

Beginning in March, 2016, upon written request from AFSCME MD, the USM (USMO-HR) on behalf of the USM Coalition will furnish the Union annually a report containing the following information for the preceding Calendar Year:

- 1. For each Coalition Institution, the number of FLSA classified Non-Exempt employees whose requests for LRF usage were approved and the total number of hours and minutes approved.
- 2. For each Coalition Institution, the number of FLSA classified Non-Exempt employees whose requests for LRF usage were denied.

FAMILY AND MEDICAL LEAVE (“FMLA” LEAVE)

This type of leave is based on federal law as described in the Family and Medical Leave Act of 1993 (FMLA). The University shall make FMLA leave available to employees in accordance with the FMLA and USM policies.

FMLA leave is not a separate form of accrued leave, like sick or annual leave. FMLA leave allows a qualifying employee to take employment-protected leave (by first using available sick and annual leave and then unpaid leave) for up to twelve (12) weeks for any of the following reasons.

- 1) To care for the employee’s child after birth, or placement for adoption or foster care;
- 2) To care for the employee’s spouse, son, daughter, or parent who has a serious health condition;
- 3) For a serious health condition of the employee, including pregnancy and recovery time, that renders an employee unable to perform his or her job; or
- 4) Any other reasons stated in USM Policy VII-7.50.

The National Defense Authorization Act requires the USM to provide additional FMLA leave benefits for Staff employees with family members in the military.

1. Certain family members may use up to twenty-six (26) weeks in a twelve (12) month period to care for an ill or injured service member under certain conditions.
2. Certain family members may use their twelve (12) week FMLA entitlement for certain qualifying exigencies.

To qualify for FMLA Leave:

- 1) The employee must have worked for the University for at least twelve (12) months, and
- 2) The employee must have worked at least 1040 hours in the twelve (12) months immediately proceeding the date the leave is to commence.

In addition to USM Policy VII-7.50, the Sick Leave Article contains specific provisions dealing with Family and Medical Leave.

I. TERMS AND DEFINITIONS

The following terms and definitions shall apply for purposes of this article:

- A. **Accrued Leave** - Earned and unused annual leave, certain holiday leave, sick leave available for use under the sick leave article, compensatory leave, and unused personal leave.
- B. **Alternative Position** - A position to which an eligible employee may be temporarily reassigned during a period of intermittent Family and Medical leave (FML) and/or working a reduced schedule. The alternative position shall have equivalent benefits and pay as the position from which the eligible employee was reassigned.

- C. Care - "to take care of" or "to care for". The term care is intended to be read broadly to include both physical and psychological care. The language applies to the period of inpatient care and home care as well.
- D. Child (except for military FML requests) - A person who is the son or daughter of an eligible employee and who is under eighteen (18) years of age; or, eighteen (18) years of age or older and incapable of self-care because of a mental or physical disability during the period of the serious illness. The son(s) and/or daughter(s) may be the biological, adopted, step or foster child(ren) of the eligible employee. The term "child" shall also include someone who is the legal ward of the eligible employee or someone for whom the eligible employee has provided sufficient, notarized affidavit(s) and proof of financial dependence that he/she is standing in loco parentis.
- E. Covered Active Duty - in the case of a member of a regular component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country; and in the case of a member of a reserve component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country under a call or order to active duty under a provision of law referred to in Section 101(a)(13)(B) of title 10, United States Code.
- F. Covered Family Members of Covered Servicemembers (Military Leave Only) - Care by an USM employee, for a Covered Servicemember who becomes ill or injured as a result of service in the military, who is a:
 - 1. Spouse; and/or
 - 2. Parent; and/or
 - 3. Child (including adult children); or
 - 4. if none of the above is available, the Next Of Kin.
- G. Covered servicemember –
 - 1. a current member of the Armed Forces (including a member of the National Guard or Reserves) who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or
 - 2. a covered veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves), and was discharged or released under conditions other than dishonorable at any time during the 5-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran.
- H. Eligible Employee - An employee who has been employed for a total of at least twelve (12) months as a USM or a State of Maryland employee; and who has worked for at least one thousand and forty (1,040) hours during the twelve (12) month period immediately prior to

the beginning date of the leave as a USM or State of Maryland employee. For part-time employees on at least a 50% basis, the minimum number of hours required for eligibility shall be prorated. For convenience, within the text of this policy the term "employee" instead of "eligible employee" shall be used.

- I. Equivalent Position - A position at the institution to which an employee may be restored upon the completion of the FML. The equivalent position shall have equivalent benefits, pay, and other terms and conditions of employment as the position from which the employee took leave.
- J. Exigency Leave - There are eight different circumstances that will qualify as an "exigency" for military FML:
 - 1. Issues arising from a military member's short notice deployment [call to covered active duty on seven (7) or fewer calendar days notice prior to the date of deployment];
 - 2. Military events and related activities (official ceremonies, programs or events sponsored by the military), or family support or assistance programs and informational briefings sponsored or promoted by the military, military service organizations, or the American Red Cross that are related to the covered active duty or call to covered active duty of a military member;
 - 3. Childcare and related activities arising from the covered active duty or call to covered active duty status of a military member (including but not limited to arranging for alternative childcare, providing childcare on a non-routine, urgent, immediate need basis, enrolling or transferring a child in a new school or day care facility, and attendance at certain meetings at a school or a day care facility if they are necessary due to circumstances arising from the covered active duty or call to covered active duty) of a covered military member;
 - 4. Financial and legal arrangements (to make or update legal and/or financial arrangements for the covered military member's absence or act as his/her representative before a government agency);
 - 5. Attending counseling provided by someone other than a health care provider for oneself, for the covered military member, or for a child of the covered military member, the need for which arose from the covered active duty or call to covered active duty of the covered military member;
 - 6. Rest and recuperation leave of up to fifteen (15) days to spend with a covered military member (for each instance of short-term temporary leave rest and recuperation during a deployment);

7. Attending Post-deployment activities (including arrival ceremonies, reintegration briefings and other official ceremonies or programs sponsored by the military for a period of 90 days following the termination of the covered military member's covered active duty status, and issues arising from the death of a covered military member);
 8. Providing parental care necessitated by the absence of the covered active duty of a military member whose parent is incapable of self-care.
 9. Additional activities (provided that the institution and employee agree that such activities shall qualify as an exigency and agree to both the timing and duration of leave).
- K. Health Care Providers - Are Doctors of Medicine or Osteopathy, Podiatrists, Dentists, Clinical Psychologists, Optometrists, Chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist), nurse practitioners and nurse midwives, clinical social workers and physician assistants who are authorized to practice by the State of Maryland, Christian Science Practitioners listed with the First Church of Christ Scientist in Boston; and Licensed Clinical Professional Counselors.
- L. Immediate Family Member – Is the employee's parent(s), spouse, or child (ren), or legal dependent(s).
- M. In Loco Parentis - "In the place of a parent; instead of a parent; charged, factitiously, with a parent's rights, duties and responsibilities." Any employee claiming an in loco parentis relationship with a child, or any employee claiming to be the child of an in loco parentis relationship may be requested to provide documentation of such relationship.
- N. Institution – Is the employing USM institution; the USM institution from which the employee is taking leave.
- O. Key Employee - A salaried employee who is among the highest paid ten (10) percent of all the employees employed by the institution within 75 miles of the employee's workplace.
- P. Military Member – An eligible employee's spouse, son, daughter, or parent who is on Covered Active Duty.
- Q. Next of Kin – Is the nearest blood relative other than the covered servicemember's spouse, parent or child in the following order of priority:
1. A blood relative who the covered servicemember has specifically designated in writing as his or her nearest blood relative for purposes of military caregiver leave under the FMLA;
 2. Blood relatives who have been granted legal custody of the covered servicemember by court decree or statutory provision;
 3. Brothers and sisters;

4. Grandparents;
 5. Aunts and uncles;
 6. First cousins.
- R. Parent – Is the employee's biological, adoptive, step or foster mother or father, or someone who stood in loco parentis to the employee when the employee was a child. This term does not include parents “in law.”
- S. Parent of a covered servicemember – Means a covered servicemember’s biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the covered servicemember. This term does not include parents “in law.”
- T. Parental Care – Care provided to the military member’s parent, who must be incapable of self-care and must be the military member’s biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the military member when the member was under 18 years of age.
- U. Restoration - As used within the FMLA and used within this policy, restoration is an institutional guarantee that at the conclusion of the FML the employee will be returned either to the same position from which he/she took leave, or to an equivalent position within the same job classification.
- V. Serious Health Condition - Is an illness, injury, impairment, or physical or mental condition of the employee or an immediate family member, or that involves either inpatient care as defined in 29 CFR §825.114 or continuing treatment by a health care provider. With respect to the employee, a serious health condition means that the employee must be incapacitated from performing the essential functions of his/her position.
- W. Examples of serious health conditions applicable to the employee or the employee's immediate family member include, but are not limited to: heart conditions requiring heart bypass or valve operations; most types of cancer; back conditions requiring extensive therapy or surgical procedures; severe respiratory conditions; appendicitis; emphysema; spinal injuries; pneumonia; severe arthritis; severe nervous disorders; injuries caused by serious accidents; ongoing pregnancy, miscarriages, complications or illnesses related to pregnancy, such as severe morning sickness, the need for prenatal care, childbirth, and recovery from childbirth. Additional examples are an employee or immediate family member whose daily living activities are impaired by such conditions as Alzheimer's disease, stroke, or clinical depression, who is recovering from major surgery, or who is in the final stages of a terminal illness. It also includes chronic medical conditions such as asthma, epilepsy which may cause episodic periods of incapacity.
- X. Serious Injury or Illness -
1. In the case of a current member of the Armed Forces (including a member of the National Guard or Reserves), means an injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member’s active duty and was aggravated by service in line of

duty on active duty in the Armed Forces) and that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating; and

2. In the case of a covered veteran, means an injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) and that manifested itself before or after the member became a veteran.
- Y. Spouse – A husband or wife as defined or recognized under state law for purposes of marriage in the state where the employee resides, including common law marriage and same sex marriage.
- Z. Twelve- (12-) Month Period - Shall be defined in the institution's implementation procedures to indicate whether the twelve (12) months are based on a calendar year or a "rolling twelve-month period" for uniform treatment of all employees at that institution.

II. REASONS FOR LEAVE

- A. Employees are entitled to take FML for the following reasons:
1. the birth of the employee's child,
 2. the placement of a child with the employee for adoption or foster care,
 3. the need to take care of the employee's child within a twelve (12) month period from birth or placement,
 4. the need to take care of the employee's immediate family member who has a serious health condition,
 5. the serious health condition of the employee, that makes the employee unable to perform any one of the essential functions of the employee's job,
 6. the need to take care of a covered servicemember's serious injury or illness, and
 7. exigencies arising out of covered military active duty and call-up to covered active duty of a military member (the employee's spouse, son, daughter, or parent)
- B. Additionally, requests for leave to take care of the employee's school-age child under the age of fourteen (14) during school vacations may be granted to the extent that the leave does not create a hardship with respect to the operational needs and work schedules of the applicable institutional unit.

III. FAMILY AND MEDICAL LEAVE ENTITLEMENT

- A. Employees are entitled to a maximum of twelve (12) workweeks (60 days) of FML within a twelve- (12-) month period. FML can be taken continuously or, under certain circumstances, on a reduced FML work schedule, or intermittently over the course of a twelve- (12-) month period. FML entitlement shall not be carried over from a twelve- (12-) month period to the subsequent twelve- (12-) month period.
- B. The actual FML entitlement shall be based on the employee's percentage of full time work for the twelve- (12-) month period immediately prior to the beginning date of the FML; and shall be integrated with the amount of other leave taken for FML -related reasons during the twelve- (12-) month period within which the FML is to begin.
- C. Employees who regularly worked full-time (40 hours per week) are entitled to a maximum of twelve (12) workweeks (60 days/480 hours) of FML in a twelve- (12-) month period. Employees who worked part-time (less than 40 hours per week), on at least a 50% basis, are entitled to a prorated share of the twelve (12) week/sixty (60) day/480-hour maximum.

IV. MILITARY FML ENTITLEMENT

- A. Military Caregiver Leave - An employee who is the spouse, child, parent or next of kin of a covered servicemember may use up to 26 workweeks of unpaid leave in a single 12-month period to care for a covered servicemember with a serious injury or illness.
- B. Exigency Leave - An employee with a spouse, child or parent who is a military member on Covered Active Duty or notified of an impending call or order to covered active duty status may use up to 12 workweeks of unpaid leave to address certain qualifying exigencies arising out of the fact that the employee's spouse, child, or parent is on Covered Active Duty or notified of an impending call or order to covered active duty status. Qualifying exigencies may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, attending post-deployment reintegration briefings, and providing parental care necessitated by the absence of the covered active duty of a military member whose parent is incapable of self-care.

V. INTEGRATION OF OTHER LEAVE TAKEN WITH FAMILY AND MEDICAL LEAVE ENTITLEMENT

- A. Actual FML entitlement shall be based on the employee's use of other leave during the twelve- (12-) month period within which the FML begins. The employee's use of the following types of leave shall be deducted from the actual FML entitlement:
- B. Any prior FML taken within the applicable year
- C. Sick leave withdrawn from the USM Leave Reserve Fund within the applicable year
- D. Accrued, Advanced and/or Extended sick leave used within the applicable year

- E. Accident leave used within the applicable year
- F. Any type of paid or unpaid leave for reasons related to family and medical circumstances taken within the applicable year.

VI. INTERMITTENT OR REDUCED LEAVE

- A. In the case of a documented medical necessity, an employee shall be entitled to intermittent leave and/or a reduced schedule that reduces regular hours per workday or workweek for purposes of the employee's or the immediate family member's serious health condition. The employee shall make a reasonable effort to schedule intermittent leave or leave on a reduced schedule so as not to disrupt the operations of the institution's applicable unit.
- B. Employees may be granted leave that reduces regular hours per workday or workweek for reasons of child birth, placement with the employee of a child for adoption or foster care, or care for a newborn child to the extent that the intermittent or reduced leave does not represent an undue hardship to the operations and work schedules of the applicable institutional unit.
- C. The President or designee may temporarily reassign an employee on intermittent or reduced FML to an alternative position that better accommodates planned reduced work schedules or intermittent periods of leave.

VII. SPOUSES EMPLOYED BY THE SAME USM INSTITUTION AND UNIT

- A. If spouses work at the same USM institution or in the same institutional unit, each spouse shall be entitled to a separate, individual, maximum family and medical leave eligibility amount.
- B. The amount of leave for which one spouse may be eligible, or the amount of leave used by one spouse shall not limit or enhance the leave amount or the leave usage of the other spouse.
- C. Spouses shall be entitled to take leave simultaneously or in succession and in any portion of their respective individual maximum for reasons of a serious health condition of the employee and for the serious health condition of the employee's immediate family members. Requests for simultaneous FML by spouses employed by the same institutional unit may be granted for reasons of child birth, placement with the employee of a child for adoption or foster care, or care for a newborn child, to the extent that simultaneous leaves do not create a hardship with respect to the operational needs and work schedules of the applicable institutional unit.

VIII. COMPENSATION DURING LEAVE

FML is an unpaid leave. However, an employee shall not be granted unpaid FML unless the employee has first exhausted all of the employee's paid leave available for use under USM leave policies and procedures.

IX. JOB PROTECTION

- A. Except as provided in X. B., C., D., and F., employees returning to work at the conclusion of a FML shall be restored to their former position with the pay, benefits and terms and conditions of employment that they enjoyed immediately prior to the FML.
- B. An employee is not entitled to restoration if the President or designee determines that the employee had been hired for a specific term or only to perform work on a specific project defined in writing and the term or project is over and the institution would not otherwise have continued to employ the employee.
- C.
 - 1. If at any point prior to or during the FML the President or designee determines that the employee's former position cannot be held available for the duration of the leave, the President or designee, at the conclusion of the leave, shall restore the employee to an equivalent position.
 - 2. If the determination of an inability to hold the former position available occurs after the FML begins, the President or designee shall immediately notify the employee in writing of details associated with the decision and the details of the equivalent position to which the employee will be restored. The employee shall have the right to return within fifteen (15) working days from receipt of such notice to keep his/her former position.
- D. If there are reductions in the work force while the employee is on FML and he/she would have lost his/her position had he/she not been on leave, then except as provided under USM Policy on Layoff and USM Policy on Reinstatement, there is no obligation to restore the employee to his/her former or equivalent position.
- E. If there are increases or decreases in pay, benefits, or other terms and conditions of employment while the employee is on FML and he/she would have had his/her pay, benefits, or other terms and conditions of employment changed were he/she not on leave, then except as provided under applicable USM policy, the employee shall be restored consistent with current, applicable, appropriate pay, benefits and other terms and conditions of employment.
- F. Restoration of Key Employees
 - 1. If it is necessary to prevent substantial and grievous economic injury to the employing USM institution, the President may deny restoration to a key employee, provided that the employee was notified of his/her status as a key employee at the time the FML was requested or commenced, whichever was earlier.

2. If the President or designee believes that restoration may be denied to a key employee, then at the time the FML is requested (or when leave commences, if earlier) or as soon as practicable thereafter, the President or designee shall provide the key employee with written notification of the potential terms, conditions and consequences of the leave. Notification shall include at least the following: a) notification of the fact that he/she qualifies as a key employee; and b) potential consequences with respect to restoration and maintenance of health benefits. Failure to provide such timely written notice shall result in the loss of the right to deny restoration to a key employee even if substantial and grievous economic injury will result from such restoration.
3. As soon as the President or designee makes a good faith determination, based on the facts available, that substantial and grievous economic injury to the institution will result if the key employee who has requested or who is using FML is restored, the employee shall be given written notice either in person or by certified mail of the following: a) that FML cannot be denied; b) notification of the President /designee's intention to deny restoration upon completion of the FML; and c) an explanation of why restoration will result in substantial and grievous economic injury.
4. When practicable, the President shall provide the notice described in X. F. 3. at least one calendar week prior to the employee starting the leave. If such notice is provided after the leave commences, then the President also shall provide the employee a period of at least fifteen (15) working days from receipt of the notice to return to his/her position.
5. If a key employee does not return to work in response to the notification of intent to deny restoration, the employee continues to be entitled to maintenance of health benefits through the scheduled leave and the institution cannot recover its share of premiums unless and until the employee gives notice that he/she does not wish to return to work or the institution actually denies restoration at the conclusion of the leave.
6. After notice to a key employee has been given that substantial and grievous economic injury will result if the employee is restored to employment, an employee is still entitled to request restoration at the end of the leave period even if the employee did not return to work in response to the President /designee's notice. Based on the facts at that time, the President or designee must then determine whether there will be substantial and grievous economic injury from restoration. If it is determined that substantial and grievous economic injury will result, the President or designee shall notify the employee in writing (in person or by certified mail) of the denial of restoration.

X. STATUS OF BENEFITS WHILE ON FAMILY AND MEDICAL LEAVE

- A. An employee who is granted an approved FML under this policy shall continue to be eligible for all employment benefits that he/she enjoyed immediately prior to the FML.

- B. An employee on FML for reasons noted in Section III. A. may elect to continue institution-subsidized health care benefits during the period of leave. The President or designee shall provide advance written notice to the employee of the terms and conditions under which premium payments are to be made by the employee. The subsidy shall cease if an employee gives notice that he/she no longer wishes to return to work. The institution shall recover its share of health premiums during unpaid FML if the employee fails to return to work, or returns to work but fails to stay thirty (30) calendar days, unless the reason for not returning or staying is due to the continuation, recurrence or onset of a serious health condition or other circumstances beyond the employee's control.
- C. An employee on FML for reasons noted in Section III. B. may elect to continue health care and other benefits, as permitted by law or regulation, by paying the full cost of the benefits, including the share ordinarily paid by the institution.
- D. Except as noted in Section X., Job Protection, upon return from leave an employee shall be restored with all the rights, benefits and privileges enjoyed prior to the leave.
- E. While on any unpaid portion of an FML, an employee shall not earn or accrue any additional leave or seniority credits.
- F. An employee may elect to purchase service credit at the time of retirement for prior leaves without pay that are qualified by the Maryland State Retirement and Pension Systems. Upon approval of a leave without pay, an employee shall follow the institution procedure to assure that this option may be exercised.

XI. EMPLOYEE NOTICE REQUIREMENTS

Regardless of the reason for the FML an employee shall give at least thirty (30) calendar days notice and provide the appropriate medical certification or legal certification of adoption (as soon as practicable) or foster child placement, before taking FML. When the need for leave is not foreseeable, an employee shall give notice as soon as practicable but no less than two (2) working days of learning of the need for leave. If this is not possible due to a medical emergency, then the employee or the employee's designee shall give written notice and provide the appropriate certification as soon as practicable.

XII. INSTITUTION NOTICE REQUIREMENTS

- A. **Eligibility Notice**
When an employee requests FML, or when the institution acquires knowledge that an employee's leave may be for an FMLA-qualifying reason, the institution must notify the employee of the employee's eligibility to take FMLA leave within five (5) business days, absent extenuating circumstances. Notification of eligibility may be oral or in writing.
- B. **Rights and Responsibilities Notice**
Institutions shall provide written notice detailing the specific expectations and obligations of the employee and explaining any consequences of a failure to meet these obligations. This notice shall be provided to the employee each time the eligibility notice is provided.

C. Designation Notice

1. When the institution has enough information to determine whether the leave is being taken for an FMLA-qualifying reason (e.g., after receiving a certification), the institution must notify the employee in writing whether the leave will be designated and will be counted as FMLA leave within five business days absent extenuating circumstances. If the institution has sufficient information to designate the leave as FMLA leave immediately after receiving notice of the employee's need for leave, the institution may provide the employee with the designation notice at that time.
2. If an institution does not designate leave as required in XII.C.1., the institution may retroactively designate leave as FMLA leave with appropriate notice to the employee provided that the institution's failure to timely designate leave does not cause harm or injury to the employee.

XIII CERTIFICATION

A. Medical Certification For Serious Health Conditions of Employee or Family Member

1. For leaves related to serious health conditions and to child birth, the employee shall provide medical certification(s) from the employee's or family member's health care provider. The employee shall have fifteen (15) calendar days to obtain the medical certification unless not practicable to do so despite the employee's diligent good faith efforts. Such certification shall include but not be limited to:
 - a. The name, addresses, telephone number, and fax number of the health care provider and type of medical practice/specialization.
 - b. A diagnosis of the nature and extent of the condition giving rise to the use of FML.
 - c. Approximate date condition commenced and its probable duration.
 - d. A statement or description of appropriate medical facts regarding the patient's health condition for which FML is requested, including a regimen of continuing treatment to be prescribed.
 - e. The duration of absence from work,
 - f. In the case of the employee's serious health condition, certification that the employee is unable to perform the essential functions of his/her position and prognosis of the employee's ability to return to his/her position,
 - g. In the case of the employee's need to care for a seriously ill family member, information sufficient to establish that the family member is in need of care and an estimate of the frequency and duration of the leave required to care for the family member.

- h. In cases of a request for intermittent leave, information sufficient to establish the medical necessity for such intermittent reduced schedule leave and an estimate of the dates and duration of such treatments and any periods of recovery.
- 2. The President or designee may require a second medical opinion at the institution's expense. In the case of conflicting opinions, the opinion of a third health care provider, agreed upon by both employee and the President or designee and obtained at the institution's expense, shall be final. The second and third opinions shall not be provided by individuals who are employed on a regular basis by the institution.
- 3. The President or designee may require reasonable recertification as the FML continues, and may require an employee to provide periodic progress reports as to the serious health condition for which he/she is taking leave and the employee's ability to return to work at the end of the leave. Recertification shall not be requested more often than every thirty (30) calendar days unless the employee requests an extension of FML, changed circumstances occur during the illness or injury, or the institution receives information that casts doubt upon the continuing validity of the most recent certification. Medical certification of fitness to return to work that includes medical limitations and their expected duration shall be requested in writing by the President or designee prior to the employee's return to work.

B. Medical Certification for a Covered Servicemember

For military leave to care for a covered servicemember, the Department of Defense (DOD) healthcare providers, a healthcare provider from the U.S. Department of Veterans Affairs (VA), and DOD Tricare Network and non-network authorized healthcare providers are considered "authorized healthcare providers." The USM may not utilize the second opinion or recertification process for this leave entitlement. Should an extension of leave be required, additional certification may be requested.

- C. Consistent with FMLA and other applicable laws, all medical-related documentation will be kept confidential and maintained in a file separate from the employee's official institutional personnel file.

XIV. SCHEDULING OF TREATMENT IN INSTANCES OF SERIOUS HEALTH CONDITIONS

- A. In instances of the serious health condition of a family member or of the employee himself or herself, and in keeping with the requirements of the appropriate health care provider, the employee shall make reasonable efforts to schedule any medical treatments so as not to disrupt unduly the operations of the applicable institutional unit.
- B. During the course of the treatment and as the President or designee deems appropriate, the employee may be requested to provide certification from the appropriate health care

provider of the unavailability of treatment during non-work time, or at times that are less disruptive to the operations of the employee's unit.

XV. PROVIDING INFORMATION ABOUT FML

Regardless of the reason for the leave, an employee shall provide complete, accurate and timely information related to a request for, continuation of, modification(s) to, and return from an FML.

XVI. ABUSE OF FML

The President or designee shall review, investigate and resolve suspected cases of bad faith, fraud or abuse of the FML program. Cases of bad faith, falsification of documents, or fraudulent information related to the FML provided to the institution, or other abuses of the FML program, may result in but are not limited to: revocation of the leave, refusal to restore, recovery of institutional costs for paid-time leave and insurance benefits premiums, and disciplinary action up to and including termination.

XVII. EARLY RETURN FROM LEAVE

An employee interested in returning to work from a FML prior to the agreed upon end of the leave date shall provide the President or designee with a written request at least thirty (30) calendar days prior to the date on which the employee is interested in returning. The President or designee shall make a good faith effort to restore the employee to his/her former or an equivalent position as soon as possible at the employee's request but no later than the thirty (30) calendar day notice provided by the employee.

XIII. EXTENSIONS OF LEAVE

Employees may extend the date of return from an FML to the extent that they have FML entitlement available. A request for an extension of FML shall be considered under this policy as if it was an initial request.

XIX. FAILURE TO RETURN FROM LEAVE

- A. An employee who will not be returning to the institution at the conclusion of a leave shall notify the President or designee in writing as soon as practicable. In the absence of written notification, failure to return from leave shall be interpreted as a resignation.
- B. If applicable, any benefit entitlements based upon length of service shall be calculated as of the employee's last paid day.
- C. Institution costs of any payments made to maintain the employee's benefit coverage when on unpaid FML shall be recovered if an employee fails to return to work as described in Section IX.B.

The President or designee may request certification of reasons for the employee's failure to return to work.

XX. MISCELLANEOUS

- A. The President or designee is under no obligation to immediately restore an employee whose return from leave does not coincide with the normal operating schedule of the institution or the normal work schedule of the employee's unit, or restore an employee whose return date is inconsistent with the terms and conditions of the employee's appointment.
- B. Entitlement to begin FML for reasons of child birth, placement with the employee of a child for adoption or foster care, or care for a newborn child expires by no later than the 364th day after the date of birth or placement. Any such FML must be concluded within this one-year period.
- C. When FML is taken by an employee on probation status, the probationary period shall be adjusted upon the return of the employee by the length of time used for FML.
- D. Either the employee or the institution may initiate a period of FML.
- E. Reasonable documentation relating to an employee's request for FML may be requested.

JURY SERVICE

An employee who is selected for jury duty shall notify the immediate supervisor of this selection without delay. An employee, regardless of shift assignment, who is on jury duty shall be permitted to be absent without loss of pay or charge to any leave for the day(s) of jury service. Upon request, the employee shall be responsible for providing documentation which verifies attendance. If, after reporting for jury duty, it is determined that the individual's services are not required and the individual is dismissed for the day, then the individual, time permitting, is required to return to the job.

LEGAL ACTIONS LEAVE

GENERAL

- A. An employee who is summoned to appear in a court action, before a grand jury, before an administrative agency, or for a deposition, and is neither a party to the action nor a paid witness, may be absent from the job without loss of pay or charge to any leave.
- B. If an employee is a paid witness in such an action, the absence may be charged to appropriate leave, or the employee may be granted a leave of absence without pay if the employee does not have sufficient leave to cover such an absence. If the employee merely receives the nominal court witness payment, the employee may endorse the check to the institution and not have the period charged against leave.

- C. In either case, upon request the employee shall provide documentation to verify attendance.

ADMINISTRATIVE LEAVE

I. EMERGENCY CONDITIONS:

Administrative Leave may be granted when emergency conditions exist. (See the BOR VI-12.00 Policy on Emergency Conditions: Cancellation of Classes and Release of Employees).

II. FOR ATTENDANCE AT EMPLOYEE ORGANIZATION EVENTS:

- A. Any employee organization which is permitted to collect dues by payroll deduction may request that its member employees be released from their normal duties for the purpose of participating in approved organization activities.
- B. The total amount of Administrative Leave granted to employees of any employee organization at any institution during a fiscal year may not exceed one day for every 20 employees of that organization who have dues collected by payroll deduction as of July 1 of that fiscal year.
- C. All requests for Administrative Leave shall be submitted to the head of the institution's Office of Human Resources 30 calendar days in advance of the event and shall include:
 - 1. A general description of the event and its purpose;
 - 2. The date and location of the event;
 - 3. The names of employee members for whom Administrative Leave is being requested.
- D. After verifying the validity of the request and the accuracy of the time being requested, the head of the institution's Office of Human Resources may approve administrative leave if the employee's services can be spared without impairing the services of the department(s) involved.
- E. If the employee organization needs to substitute employee members for those previously granted administrative leave, or substitute new dates, such requests will be submitted to the head of the institution's Office of Human Resources for approval. Such substitutions may be approved if the substitution will not impair the services of the unit.

III. ADMINISTRATIVE LEAVE FOR OTHER PURPOSES:

The President or designee may approve a request for administrative leave or may require an employee to take administrative leave for any purpose considered to be in the best interests of the institution.

MILITARY LEAVE WITH PAY

I. GENERAL

A. Military Training leave

An employee who is a member of the organized militia, of the Army, Navy, Air Force, Marine or Coast Guard Reserve, shall be entitled to a leave of absence for military training for a period of not more than 15 work days (pro-rated for part-time personnel) in any calendar year without loss of pay or charge to any leave.

B. Active Military Duty

An employee who is called-up to active military duty during a national or international crisis or conflict shall follow USM policy VII-7.24 Call-Up To Active Military Duty During A National or International Crisis for USM Nonexempt and Exempt Staff. Commencing July 1, 2003, to the extent that there is any inconsistency between Section II of USM Policy VII.7.24 and Section II.C. of this Policy (VII-7.23), Policy VII-7.23 shall take precedence.

C. Military Administrative Leave

An employee who is on active military duty, or activated for military duty on or after July 1, 2003, shall provide military orders that contain the employee's name, dates for activation, and purpose/type of activation and shall be entitled to receive Military Administrative Leave as follows:

1. Before starting an employee on Military Administrative Leave, the employee shall use the 15 days of Military Training Leave provided under section II.A., above.
2. An employee eligible to receive Military Administrative Leave under this section shall elect to use either Military Administrative Leave or paid accrued leave (Annual, Personal and/or Holiday Leave only).
3. The amount of compensation, while on Military Administrative Leave, shall be the amount, if any, by which the employee's USM base salary exceeds the employee's active duty base salary paid by the Federal Government. The employee shall continue to earn Annual, Personal, Holiday and Sick Leave on a prorated basis for only the hours paid by the State during this period of military duty.
4. The USM Administrative Leave-Active Military Duty worksheet shall be used to calculate the number of leave hours to be paid to the employee. The employee shall be notified in writing of the number of leave hours to be paid each pay period.
5. The employee shall submit an initial and a final copy of his/her military pay stub or other official military personnel record which includes a current date and his/her military base pay rate.

6. Payroll deductions shall be made in the following order:

- a. taxes
- b. liens and levies
- c. deferred compensation
- d. other deductions

In the event that the new USM compensation is insufficient to cover all selected deductions, this ranked order shall be followed. The employee should make changes to his/her payroll deductions as appropriate for the new USM compensation amount.

- 7. State health benefits (Medical, Prescription and Dental) may be continued at no cost to the employee for the duration of his/her active military duty status. There shall be no deductions for State Retirement contributions. Employees shall be billed directly by the State for Life Insurance, Personal Accidental Death and Dismemberment, Long-Term Care Insurance, and Flexible Spending Accounts, in order to continue these benefits.
- 8. Military Administrative Leave will cease on the termination date of the employee's original (or subsequently submitted extended) military orders or upon deactivation, whichever is earlier.
- 9. It is the employee's responsibility to notify his/her supervisor of the termination date of the active military duty. If the employee fails to notify his/her supervisor of the deactivation, and or chooses not to return to University employment, the employee shall be responsible for reimbursement for the paid leave used while not on active duty status and may be subject to disciplinary action. The period an individual has to report back to work after military service is based on USERRA /US Department of Labor regulations.

CALL-UP TO ACTIVE MILITARY DUTY DURING A NATIONAL OR INTERNATIONAL CRISIS OR CONFLICT

I. CONTINUATION OF HEALTH BENEFITS

A. Military Reserves – Paid Leave

- 1. Upon call-up to active military duty during a national or international crisis or conflict, an employee shall submit a copy of the military orders to his immediate supervisor and may elect to use accrued leave to remain on the payroll. In the absence of such an election, or upon the exhaustion of accrued leave, the employee shall be placed on Leave Without Pay Status.

2. While on the active payroll, a reservist shall have the same benefit deductions, unless the reservist files an Active Employee Enrollment Form to cancel any or all benefits within 60 days of entry into Active Duty. A copy of the military orders must be submitted with the Active Employee Enrollment Form. If the Active Employee Enrollment Form is not completed to cancel any or all deductions, the same deductions shall continue as long as the employee remains on active payroll.
3. Personal Accidental Death and Dismemberment (PA&D) plan shall not provide benefits to anyone injured in military service. Benefits shall be provided, as appropriate, to a spouse or child if the employee has family coverage. A military reservist with PA&D "individual" coverage should cancel deductions while on paid leave status, as PA&D plan shall not honor any claims for the employee while on military duty. The employee can elect to continue PA&D "Family" coverage.
4. While on active military service, any medical care provided to the employee is through the military. All of the State medical plans have blanket exclusions for medical care rendered while a person is on active duty while serving in the military; this is a standard exclusion clause.
5. Dependents of military personnel on active duty are automatically covered by TRICARE, a federal military health program. An employee called to active duty may elect to discontinue state health benefits coverage for his or her dependents, relying upon TRICARE for dependent health care coverage. In the alternative, the employee may elect to continue state health benefits coverage for his or her dependents. As the dependents are not on active military duty, the state health benefits coverage shall be the primary coverage for these dependents.

B. Military Reserves - Leave without Pay

1. If the military reservist goes on a Leave Without Pay status, the employee may elect to continue benefits as a "Military LAW" employee. The employee should complete Form 46 Qualified Leave of Absence Request or Notification of Military Service Entry. If the employee wishes to continue benefit coverage, a Direct Pay Enrollment Form must also be completed. The Institution Benefits Coordinator and Fiscal Officer should complete the agency verification portion of the form.
2. Subsidization for Health, Prescription and Dental Plans: While on active military duty, the employee contribution and State contribution for health benefits shall continue if the reservist elects to continue health, prescription and dental plans. Accordingly, the employee shall not be billed for these three types of benefits plans, if they choose to continue them while on Military LAW. Therefore, it is critical that the Fiscal Officer completes the fiscal designation portion of the form, as the USM shall be charged for the full amount of the premiums (employee plus State portions) for the health, prescription and dental plans.

3. Employee-Pay-All Plans (State Life Insurance, Flexible Spending Accounts, PA&D, State Long Term Care, USM Life Insurance, USM Long Term Disability, etc.). These types of benefits plans are "Employee-Pay-All" and are not subsidized. An employee who elects to continue these benefits shall be billed by the State and coupons shall be provided for payment to the State. State Long-Term Care, USM Life Insurance and USM Long Term Disability continuation payments shall be paid directly to the vendor. The premium payments while on the Military LAW will be post-tax and will not affect the employee's W-2 status.
4. When active duty is completed and the employee returns to USM employment, the employee must file an Active Employee Enrollment Form (with the discharge papers attached to the form) within 60 days of the discharge date to start benefit deductions from his/her University paycheck.

II. STATE RETIREMENT AND PENSION SYSTEMS

- A. All employees called up for military service should complete MD Retirement Agency Form 46, "Qualified Leave of Absence Request or Notification of Military Service Entry." If a member has already been called up and cannot complete the form, the USM institution can submit it on behalf of the called-up employee.
- B. If an employee returns to work within one year of release from active duty and did not accept other permanent employment, the employee will be reinstated in the pension/retirement system and will receive service credit for the term of the military service. The employee does not need ten years of creditable service to claim service for military action that interrupts membership. The employee shall submit Form 43, "Claim of Retirement Credit for Active Duty Military Service" with the proper military documentation when the employee returns to work.
- C. Service credit will be given for up to five years of military service that interrupts membership. This is in addition to the five years for military credit for service prior to membership.
- D. An employee is not required to make up missed contributions. The member's missed contributions and institution's contribution costs are included in the annual valuation done by the actuary to determine the cost to institutions.
- E. Filing Date for Form 46, "Qualified Leave of Absence Request or Notification of Military Service Entry.":
 1. Military Leave Without Pay - the filing date on Form 46 shall be the date that the employee begins active duty.
 2. Military Leave With Pay - the filing date on Form 46 shall be the date that the employee has exhausted all accrued leave and begins Leave Without Pay.

F. Military Reserves –Killed in the Line of Duty or Disability while on Leave With Pay

An employee who is killed in the line of duty or who sustains serious injuries, making it impossible for the member to return to work, and such death or injury occurs while on Leave With Pay Status, is entitled to the same death and disability benefits as an active employee. Surviving beneficiaries shall receive a lump sum payment of the annual salary plus contributions or, if the spouse law comes into effect a monthly check for life. If disabled during active duty military service, an employee still on Leave With Pay Status, may file for an ordinary disability benefit but not an accidental disability benefit.

G. Military Reserves – Disability or Killed in the Line of Duty while on Leave Without Pay

An employee killed in the line of duty, or who sustains serious injuries making it impossible to return to work, and such death or injury occurs while on Leave Without Pay Status, will not receive a death benefit or have the right to file for a disability benefit from the State Retirement Agency. If the employee should die, only the employee's contributions with interest will be paid to the beneficiary.

III. OPTIONAL RETIREMENT PROGRAM – LEAVE WITH AND WITHOUT PAY

- A. The activation date of approved military leave should be the date that the employee is activated.
- B. As a condition of membership in the Optional Retirement Program, no death benefit or right to file for a disability benefit from the State Retirement Agency is available.
- C. While still on the payroll, institution contributions to the employee's ORP and State service credit shall continue.
- D. No State service credit shall accrue, nor shall institution contributions be made, while the employee is on Leave Without Pay. Upon return to work, USM institution contributions shall resume.

IV. USM TUITION REMISSION BENEFIT

- A. An employee who is currently in a degree-seeking program and using tuition remission may continue to use tuition remission if called to active duty and stationed locally.
- B. An eligible spouse/dependent currently in a degree-seeking program and using tuition remission may continue to use tuition remission.
- C. If an employee is killed in the line of duty, spouse/dependent tuition remission benefits shall be provided in accordance with the USM Policy on Tuition Remission for Spouse and Dependents.
- D. If an employee does not return to USM service, tuition remission for the employee, spouse and dependents shall terminate.

V. REPORTING BACK TO WORK

The period an individual has to report back to work after military service is based on USERRA/US Department of Labor regulations.

LEAVE OF ABSENCE WITHOUT PAY

I. ELIGIBILITY

- A. Granting of requests for a leave of absence without pay shall be at the discretion of the President or designee after consideration and determination of the following:
 - 1. The employee shall:
 - a. hold a regular full-time or regular part-time (50% or more) position, and
 - b. have completed a total of at least twelve (12) months of service at the USM institution from which the employee wishes to take leave, and
 - c. have a satisfactory record of work performance, and
 - d. not have a record of abuse of accrued leave usage.
 - 2. Granting of the request shall:
 - a. not disrupt or interfere with the operations or work schedules of the institution or institutional unit.

II. DURATION OF LEAVE WITHOUT PAY

All regular employees may request a full or partial leave of absence without pay up to a maximum of a two-year (24 month) period in accordance with the provisions of this policy.

III. REASONS FOR LEAVE WITHOUT PAY

- A. A leave of absence without pay may be requested by an eligible employee for reasons such as:
 - 1. loan of an employee to another governmental agency, higher education institution or related organization;
 - 2. outside employment that would lessen the impact of a potential layoff or a layoff;
 - 3. professional activities related to academic research, advanced study, career development, or other professional activities that are determined by the

institution's President or designee to be of benefit to the University System of Maryland or system institution;

4. anticipated low demand for the employee's services during slow periods in the institution's or unit's operations (seasonal leave), or
5. other activities as determined to be appropriate by the President.

IV. JOB PROTECTION

- A. Unless otherwise agreed to by the employee and the President or designee, a leave of absence without pay granted within the provisions of this policy assures the employee a right to return to the same position or to another equivalent position within the same department having the same pay, benefits, other terms and conditions of employment, status and responsibilities as the former position upon expiration of the leave.
- B. If during the leave the President or designee determines that the position cannot be held available, the employee shall be provided written notification of the decision and shall be provided information regarding the equivalent position to which the employee will be returned upon expiration of the leave. The employee shall have the right to return to work within fifteen (15) working days from receipt of such notice in order to keep the position from which the leave taken.
- C. If there are reductions in the work force while the employee is on leave and the employee would have lost the position had leave not been taken, then except as provided under USM BOR VII-1.30 Policy on Layoff for Nonexempt Staff Employees or BOR VII-1.32 Policy on Layoff and Recall of Regular Exempt Staff Employees and BOR VII-9.61 Policy on Reemployment and Reinstatement for Regular Nonexempt and Exempt Staff Employees, an employee has no rights under this policy to be returned to the former or to an equivalent position.
- D. If there are increases or decreases in pay, benefits, or other terms and conditions of employment while the employee is on leave that would have affected the employee had leave not been taken, then except as provided under applicable USM policy, the employee shall be returned to employment consistent with current applicable, appropriate pay, benefits and other terms and conditions of employment.
- E. An employee on leave of absence without pay shall not return from leave prior to the agreed upon expiration of the leave without written approval of the President or designee.

V. STATUS OF BENEFITS WHILE ON LEAVE

- A. All benefits, including health care and service credit for retirement and other purposes, shall be suspended for the period of the leave of absence without pay. However, an employee on leave of absence without pay for more than thirty (30) days may elect to

continue health care and other benefits, as permitted by law or regulation, by paying the full cost of the benefits, including the share ordinarily paid by the institution.

- B. An employee who elects to discontinue health benefits may not re-enroll in the State of Maryland health benefits program within the same benefit year without certification that the employee has been enrolled in another health plan during the period of leave.
- C. Under exceptional circumstances and on a case by case basis, the President or designee may approve the continuation of the institution's subsidy for health care benefits if the reason for the leave is determined by the President or designee to be of benefit to the USM institution. Institution costs of any payments made to maintain the employee's health benefit coverage while on a leave of absence without pay shall be recovered if the employee fails to return from leave.

VI. COMPENSATION DURING LEAVE

This MOU governs unpaid leaves of absence; however, depending upon the reason for the leave request, the President or designee, may require that accrued sick leave, annual leave, personal leave, holiday leave or compensatory leave (in the case of non-exempt employees) be used prior to granting LWOP.

VII. PROVIDING INFORMATION ABOUT LEAVE

The employee shall provide complete, accurate and timely information related to the request for, continuation of, modification(s) to, and return from leave.

VIII. FAILURE TO RETURN FROM LEAVE

An employee who will not be returning to the institution at the conclusion of a leave shall notify the President or designee in writing as soon as practicable. In the absence of written notification, failure to return from leave shall be interpreted as a resignation.

IX. MISCELLANEOUS

- A. Upon request of the President or designee, an employee granted a leave of absence without pay shall provide progress reports and/or verification that the conditions of the leave are being/were met.
- B. Service credit shall not be granted to an employee on a leave of absence without pay.
- C. An employee may elect to purchase service credit at the time of retirement for prior leaves without pay that are qualified by the Maryland State Retirement and Pension Systems. Upon approval of a leave without pay, an employee shall follow the institution procedure to assure that this option may be exercised.
- D. When LWOP is approved for employees who are on probation status, the probation period shall be adjusted upon the return of the employee by the length of time used for LWOP.

LEAVE FOR DISASTER SERVICE

I GENERAL

A. Requirements for Leave with Pay

On request, an employee may be entitled to disaster service leave with pay if:

1. the employee is certified by the American Red Cross as a disaster service volunteer; and
2. the American Red Cross requests the services of the employee during a disaster that is designated at Level II or above in the regulations and procedures of the National Office of the American Red Cross, or
3. At the discretion of the President or designee, and subject to any requirements established by the Institution, the President may approve disaster service leave for an employee whose services are requested by another bona fide service organization.

B. Amount of Leave Allowed

An employee may use up to 15 paid days of disaster service leave in any 12-month period only after obtaining approval from the employee's appointing authority. The institution may deny the leave if the denial is based on the anticipated impact on the operational needs of the institution. Employees who are appointed to work less than 100% but at least 50% time may use disaster service leave on a pro rata basis.

C. Employment Status for Purposes of Certain Claims

For purposes of Worker's Compensation and the Maryland Tort Claims Act, while an employee is using disaster service leave, the employee is deemed not to be a State employee.

ACCIDENT LEAVE

I. DEFINITIONS

Accidental Injury – a work-related personal injury that would be compensable according to the Maryland Workers' Compensation Act.

Average Weekly Wage – the average of the employee's weekly wage for the 14 weeks immediately prior to the accident.

Temporary Total Benefits - monetary compensation for time lost from work due to work-related accidents or injuries for employees (a) not eligible for accident leave or (b) when

eligibility for accident leave has expired. Temporary total benefits are paid by the State of Maryland's Workers Compensation insurer, not the University, and must be requested by the employee.

II. APPLICABILITY

- A. Only leave-eligible employees in Regular status who work 50% FTE or more shall be eligible for accident leave.
- B. Accident leave will be provided if:
 - 1. The accident is determined to be compensable according to the Maryland Workers' Compensation Act, and
 - 2. A physician examines the employee and certifies that the employee is disabled because of the injury.
- C. An employee receiving work-related accident leave shall continue to accrue leave and other benefits based on pay status and shall not be denied health care benefits with the subsidy allowed by the state solely because of the use of accident leave.

III. ACCIDENT LEAVE BENEFITS

- A. Accident Leave is leave paid at two-thirds (2/3) of the employee's regular salary, but is exempt from federal and state taxes.
- B. Medical and Hospital Expenses

Medical and hospital expenses shall be paid on behalf of an injured employee according to the Workers' Compensation Act, if the accident is determined to be compensable by the Workers Compensation Commission or the WC Insurer.

IV. ADMINISTRATION

A. Reporting of Injury

1. Employee's First Report of Injury

The injured employee or someone on the employee's behalf shall provide the following to the employee's supervisor or the institution's designated office:

- a. oral or written notice immediately after the injury occurs; and
- b. within three working days after the injury occurs, a physician's written certification that the employee is disabled by the injury.

2. Supervisor's Report

Upon having knowledge of an employee injury, the supervisor of the injured employee shall immediately notify the institution's designated office and forward to that office within 2 days following the injury a Supervisor's Report of Employee's Injury.

3. Institution Reports

The designated office, upon receipt of the supervisor's report, shall:

- a. file an Institution's First Report of Injury with the State of Maryland's Workers Compensation Insurer (WC Insurer)..
- b. inform the injured employee or someone on the employee's behalf of the employee's right to file a claim with the Workers' Compensation Commission; and
- c. determine if the injury would likely be compensable under the workers compensation statute.

B. Medical Evaluation

The WC Insurer or the institution, or both, may refer an injured employee to a physician(s) for periodic examination to determine the nature and extent of the injury, the employee's progress toward recovery, the length of time necessary for recovery, and an estimated date of return to work. An institution referring an employee to a physician shall file with the WC Insurer a report stating the circumstances of referral and the physician's prognosis.

C. Use of Leave Other Than Accident Leave

Prior to receipt of a determination of compensability from the WC Insurer, an employee must be placed on accident leave and the institution may not approve use of other leave unless there is a reasonable basis for believing that the injury is non-compensable. Only if the injury is believed to be non-compensable, may the institution place the employee on sick, annual or other available leave prior to receipt of a determination by the WC Insurer. If an employee exhausts all available accident leave and the medical certification specifies that the employee is unable to return to work because of the work-related injury, an institution may require an employee to seek temporary total disability payments under the workers' compensation act.

V. DURATION OF LEAVE

A. Period of Accident Leave

Having made the determination that the injury would likely be compensable under the Workers' Compensation statute, the institution shall grant Accident Leave to an employee beginning on the first day of absence from work because of the disability. Accident Leave shall be terminated on the earlier of (1) the date that the employee is able to return to

his/her official duties, or modified duties designated by the institution, as certified in writing by a physician; or (2) six months from the original date of disability.

B. Leave for Continuing Treatment

If the employee returns to his/her official duties, or modified duties designated by the institution, prior to six months following the date of the disability, Accident Leave may be granted for continuing treatment of the original injury, as certified in writing by a physician selected or accepted by the institution, for a period up to six months from the original date of disability.

C. Additional 6 Month leave

Accident leave may be granted for up to an additional six months if a physician selected or accepted by the institution certifies that the employee continues to be disabled and no decision has been reached by the Workers' compensation commission on the employee's claim. When an employee continues to use accident leave beyond a six-month period, the timekeeper shall record the accident leave as Accident Leave With Pay on the first day immediately following the end of the initial six month period from the original date of disability. Accident leave with pay beyond six months is additionally exempt, by federal law, from Social Security taxes.

VI. DETERMINATION OF NONCOMPENSABILITY

A. Notice of Compensability

Notwithstanding the above provisions Sections VI.A, B and C, Accident Leave shall terminate on the date the institution receives notice that the injury has been determined to be noncompensable from (1) the Workers' Compensation Commission; or (2) in the absence of a determination from the Workers' Compensation Commission, from the Injured Workers' Insurance Fund.

B. Reimbursement by Employee to Institution

If the institution receives notice of noncompensability as specified under paragraph A above, the institution shall correct the employee's leave record to reflect a conversion of any Accident Leave that was granted in advance of the notice to leave with pay or, if the employee does not have accrued leave with pay, to leave without pay. The employee shall be obligated to reimburse the institution for any Accident Leave advanced under this policy for an injury that is subsequently determined to be noncompensable.

VII. TEMPORARY TOTAL BENEFITS

- A. An injured employee will only be entitled to temporary total benefits for loss of wages according to the Workers' Compensation Act (herein referred to as "temporary total benefits"), after all available accident leave has been used.

- B. Temporary total benefits are paid at the rate of two-thirds (2/3) of the employee's average weekly wage and provide compensation to the temporarily disabled employee until the medical provider states that he/she may return to work. Temporary total benefits are paid by the WC Insurer and are exempt from Federal and State tax, including Social Security Tax.
- C. An employee on temporary total benefits is placed on a Leave Without Pay because of an On-The-Job Injury. The institution will continue to pay the institution subsidy for the plans in which the employee was enrolled at the time of the accident, and the employee will be responsible for his/her regular premiums.
- D. The institution shall approve the employee's use of other available leave with pay, including sick leave, annual leave, personal leave, compensatory leave and holiday leave, only after the employee has exhausted all available accident leave and received all temporary total (or partial) benefits for which he is eligible.
- E. In the event an employee uses sick leave for the time period for which he subsequently is awarded benefits pursuant to the Workers' Compensation Act, the institution authorizes use of the sick leave with the understanding and agreement that:
 - 1. It constitutes an advance payment of temporary total or temporary partial disability benefits due under the Maryland Workers' Compensation Act; and
 - 2. The State's obligation to pay temporary total (or partial) disability benefits under the Workers' Compensation Act shall be offset on a dollar for dollar basis by the gross amount of payments received by the employee while on sick leave for the same period of time.
- F. After the injured employee has used all available accident leave, temporary total benefits and accrued leave, the employee will be placed on a Leave Of Absence Without Pay. This leave without pay shall expire once the employee has used a total of two years of leave, both paid and unpaid.

VIII. SUBROGATION

If someone other than the employee or the institution causes an injury for which work-related accident leave is taken, the institution, after notice to the injured employee, shall be subrogated to the rights of the employee to the extent of any compensation paid or owed. If (1) within 90 days after the employee receives such notice from the institution, the employee fails to enforce a claim against the third person, or (2) within a reasonable time after giving the institution notice of an intent to enforce the claim against such third person the employee fails to take action to enforce the claim, the institution, in its own name and for its own benefit may bring or join in an action against such third person.

PARENTAL LEAVE

[Status Quo]

To support employees in balancing professional and family demands during and after the birth or adoption of a child, each eligible employee is assured a period of up to eight (8) weeks (i.e., forty (40) work days) of paid parental leave to care for a new child, as follows:

- A. **Nature of Leave:** The parental leave period will consist of any form of annual, sick, personal, holiday or leave reserve fund leave accrued or otherwise available to the employee under this Agreement and USM policies, to be supplemented as necessary by the Institution with additional paid leave days to attain an eight (8) week period of paid parental leave.
- B. **Applicability:** The eight (8) week paid leave assurance is available during a six (6) month period surrounding:
 - 1. The birth of a newborn;
 - 2. The recent adoption of a child under the age of six (6); and
 - 3. At the discretion of the Institution's President or designee and subject to any limitations established by the Institution, the assumption of other parenting responsibilities, such as foster parenting or legal guardianship of a child under the age of six (6).
- C. **Eligibility:** The paid leave assurance will apply as follows:
 - 1. Leave shall be pro-rated for eligible .50 or greater Full Time Equivalent staff.
 - 2. If a child's parents are employed by the same Institution, both may be eligible for paid parental leave up to the eight (8) week maximum as follows:
 - a. Both parents may use accrued annual, sick or personal leave concurrently with the birth of a child or adoption of the child under age six (6);
 - b. A parent may use additional guaranteed paid leave under this policy only during a period when that parent is the child's primary caregiver.
 - 3. An employee shall be eligible for assured minimum paid parental leave after one (1) year of employment with the Institution, except to the extent that Institution's policies permit a lesser eligibility period.
 - 4. An employee may be eligible for paid parental leave under this policy on one occasion in a given twelve (12) month period, and on two separate occasions during the duration of the staff member's employment within the USM. Any additional periods of paid parental leave require the approval of the President, or the President's designee.

5. The employee must have a satisfactory record of sick leave usage and work performance.

**ARTICLE 17 - GRIEVANCE PROCEDURE (MOU) – Current through the 2016 General Assembly Session
[Status Quo]**

GENERAL

In the event of an alleged violation or disagreement over any of the provisions of this MOU, a bargaining unit employee represented by AFSCME MD, which shall be the exclusive employee organization to represent the employees, shall have the right to file a grievance in accordance with Section 13-201 et seq., of the Annotated Code of Maryland Education Article, a copy of which is set forth below for convenient reference.

Title 13, University of Maryland – General Provisions: Subtitle 2. University of Maryland Classified Employee Grievance Procedures

§ 13-201. Definitions

- (a) *In general*- In this subtitle, the following words have the meanings indicated.
- (b) *Day*- "Day" means, except as otherwise provided, a working day, Monday through Friday, regardless of work schedule, weekend work, or midweek days off.
- (c) *Grievance*- "Grievance" means any cause of complaint arising between a classified employee or associate staff employee and his institution on a matter concerning discipline, alleged discrimination, promotion, assignment, or interpretation or application of University rules or departmental procedures over which the University management has control. However, if the complaint pertains to the general level of wages, wage patterns, fringe benefits, or to other broad areas of financial management and staffing, it is not a grievable issue.

§ 13-202. (Omitted)

§ 13-203. Steps in grievance procedure

- (a) ***Availability of procedure; number of steps***- If, following informal discussion with the supervisor, a dispute remains unresolved, the grievance procedure is available. There are three steps in the grievance procedure.
- (b) (1) **Step One**: Step one is the initiation of a complaint. Grievances shall be initiated within thirty (30) calendar days of the action involved, or within thirty (30) calendar days of the employee having reasonable knowledge of the act, unless these time limits are further delimited as stated in § 13-205. Appeals within the grievance procedure shall be timed from receipt of the written opinion of management or from when such opinion is due, whichever comes first. An aggrieved employee or the employee's designated representative may present

the grievance in writing to the department head or chairman or designee for formal consideration. If the grievance is presented to the department head or chairman or designee, within five (5) days after the receipt of the written grievance a conference shall be held with the aggrieved or the employee's designated representative and within five (5) days after the conclusion of the conference a decision shall be rendered in writing to the aggrieved or the employee's designated representative. If the aggrieved employee is not satisfied with the decision rendered at this step, the employee or the employee's designated representative may appeal in writing to step two within five (5) days.

(2) Both employee and department head or chairman or designee shall continue to review the matter, either privately or with the help of others in the employee's immediate work unit who are directly involved in the grievance. Each department head or chairman or designee shall use judgment in keeping superiors informed of the status of each grievance and, if necessary, request guidance, advisory committees, or other assistance consistent with departmental policy. If either the employee or the department head or chairman or designee feels the need for aid in arriving at a solution, the campus personnel department may be requested to provide resource staff or any other available resource personnel may be invited to participate in further discussions. The addition of such participants does not relieve the department head or chairman or designee and the employee from responsibility for resolving the problem.

- (c) **Step Two:** The appeal shall be submitted to the president of the constituent Institution or the president's designated representative within five (5) days after the receipt of the written decision at step one. The president or the president's designated representative shall hold a conference with the aggrieved or the employee's designated representative within ten (10) days of receipt of the written grievance appeal and render a written decision within fifteen (15) days after the conclusion of the conference.
- (d) **Step Three:** In the case of any still unresolved grievance between an employee and the constituent Institution, the aggrieved employee, after exhausting all available procedures provided by the constituent Institution, may submit the grievance to either arbitration or to the Chancellor who may delegate this responsibility to the Office of Administrative Hearings in accordance with Title 10, Subtitle 2 of the State Government Article. In either case, the appeal shall be submitted within ten (10) days after the receipt of any written decision pertaining to that grievance and issued by the constituent Institution. If the grievance is arbitrated, the Parties shall select an arbitrator by mutual agreement. If they are unable to reach a mutual agreement, an arbitrator shall be supplied by the American Arbitration Association by their procedures. Any fees resulting from arbitration are assessed by the arbitrator equally between the two Parties. The arbitration award is advisory to the Chancellor or administrative law judge, as appropriate, and an additional appeal or hearing may not be considered. The Chancellor or administrative law judge, as appropriate, shall make the final decision that is binding on all Parties.
- (e) **Authority of Chancellor or administrative law judge-** The Chancellor or administrative law judge, as appropriate, shall have the power to award back pay in any grievance and the president of the constituent Institution shall enforce such order. In any reclassification case in which the Chancellor or administrative law judge, as appropriate, or his designated representative, determines that an employee has been misclassified, the Chancellor or

administrative law judge, as appropriate, may, in his discretion, award back pay to the employee for a period not to exceed one (1) year prior to the initial filing of the grievance.

(f) ***Coercion, discrimination, interference, reprisal and restraint prohibited-***

(1) During any stage of a complaint, grievance, or other administrative or legal action that concerns State employment by a full-time or part-time employee of an Institution, or by a temporary or contractual employee of an Institution, the employee may not be subjected to coercion, discrimination, interference, reprisal, or restraint by or initiated on behalf of an Institution solely as a result of that employee's pursuit of a grievance, complaint, or other administrative or legal action that concerns State employment.

(2) An employee of an Institution may not intentionally take or assist in taking an act of coercion, discrimination, interference, reprisal, or restraint against another employee solely as a result of that employee's pursuit of a grievance, complaint, or other administrative or legal action that concerns State employment.

(3) An employee who violates the provisions of this subsection is subject to disciplinary action, including termination of employment.

§ 13-204. Decisions

A decision may not be made at any step of the grievance procedure that conflicts with or modifies a policy approved by the Board of Regents of the University or with any applicable statute or with any administrative regulation issued under appropriate statutory authority or that otherwise delimits the lawfully delegated authority of University officials unless prior approval has been obtained from the responsible official.

§ 13-205. Suspensions pending removal; involuntary demotions; rejection on probation; disciplinary suspension

- (a) ***Suspensions pending removal-*** Within five (5) days from the date on which the employee receives the charges for removal as evidenced by the return receipt or other evidence of delivery of the charges to the employee an employee who is suspended under charges for removal may request an opportunity to be heard in his own defense. Within thirty (30) days if possible after receipt, the president or the president's designated representative shall investigate the charges and give the employee an opportunity to be heard. Testimony shall be taken under oath and both the department head or chairman or designee and the employee have the right of representation by counsel and the right to present witnesses and give evidence. Within fifteen (15) days following the conclusion of the conference, the written decision shall be rendered to the employee. In the case of appeals from charges pending removal, the department head or chairman or designee may request through appropriate channels the Attorney General's representative to the University to serve as counsel. In case no hearing is timely requested, the Campus Director of Personnel shall act upon the charges or order such other actions as are indicated by the findings in the case. If a hearing is timely requested and the removal is upheld, step three of the grievance procedure shall be available

to the removed individual. The appeal shall be submitted within ten (10) days after receipt of the written University decision.

- (b) ***Involuntary demotions-*** Within five (5) days, an employee who is notified of demotion may file a written answer with the president or the president's designated representative and request an investigation of the demotion. Within twenty (20) days, if possible, after receipt, the president or the president's designated representative shall investigate the demotion and give the employee an opportunity to be heard. Within fifteen (15) days following the conclusion of the investigation, the written decision shall be rendered to the employee. If an investigation is timely requested and the demotion is upheld, step three of the grievance procedure is available to the demoted employee. The appeal shall be submitted within ten (10) days after receipt of the written University decision.

(c) ***Rejection on probation-***

(1) **Rejection on Original Probation:** Within five (5) days of the notice of rejection, an employee who is rejected on original probation may file a written request with the president or the president's designated representative for a hearing. Within twenty (20) days, if possible, after receipt, the president or the president's designated representative shall conduct a hearing. Within fifteen (15) days following the conclusion of the hearing, the written decision shall be rendered to the employee. If the hearing is timely requested and the rejection is upheld, step three of the grievance procedure is available. The appeal shall be submitted within ten (10) days after receipt of the written University decision. Rejection for cause is not required in the case of an employee rejected on original probation.

(2) **Rejection on Promotional, Transfer, or Horizontal Change Probation:** Within five (5) days of receipt of the recommendation of the department head or chairman to reject, an employee who is promoted and then rejected within the probationary period for the new class and for whom a vacancy in the former class is not available may file an answer with the president or the president's designated representative and request an investigation of the proposed rejection. Within twenty (20) days, if possible, after receipt, the president or the president's designated representative shall investigate the proposed rejection. The same rule applies to an employee who has completed a probationary period in one classification and makes a horizontal change to a new classification, and is rejected in the new classification or who transfers to another department in the same classification and is rejected. Within fifteen (15) days following the conclusion of the investigation, the written decision shall be rendered to the employee. If the investigation is timely requested and the rejection is upheld, step three of the grievance procedure is available to the rejected employee. The appeal shall be submitted within ten (10) days after receipt of the written University decision.

(d) ***Disciplinary suspension-***

(1) This subsection does not apply to suspensions pending charges for removal.

(2) Alleged infractions shall be investigated by the responsible supervisor or administrator or designee at the earliest opportunity following knowledge of it, and the investigation shall be promptly completed. All suspensions of employees shall be implemented within three (3) days of

the alleged infraction or knowledge of the alleged infraction by the responsible supervisor or administrator. All suspension days shall be consecutive.

(3) The employee or the employee's designated representative may submit a written appeal on a disciplinary suspension to the president or the president's designated representative within five (5) days of notification of the suspension, or the employee or the employee's designated representative may appeal the suspension within three (3) days of notification of the suspension to the department head or chairman or designee. The department head or chairman or designee shall hear the case within three (3) days from the receipt of the written appeal. If the appeal is unheard or unanswered as a result of management delay, the employee shall be reinstated with full back pay.

(4) If the suspension is upheld by the President or the President's designated representative, step three of the grievance procedure is available to the employee. If the employee chooses to appeal to the department head or chairman or designee, any further appeals shall precede through steps two and three of the grievance procedure.

(e) *Preliminary hearing-*

(1) If an employee is suspended without pay pending a hearing on disposition of charges for removal, the President or the President's designated representative shall notify the employee in writing of the reasons for the suspension at the time of the notice of the suspension.

(2) Within five (5) working days of the notice of suspension, the employee may request in writing that the President or the President's designated representative, in addition to conducting a hearing on the merits, conduct a preliminary hearing to determine whether or not the employee may continue to work with pay pending the disposition of the charges.

(3) The President or the President's designated representative shall conduct a preliminary hearing within five (5) working days after the president or the president's designated representative receives in writing the request from the suspended employee for the preliminary hearing.

(4) The preliminary hearing shall be limited to the issues of:

- (i) Whether suspension without pay is necessary to protect the interests of the University of Maryland or the employee pending final disposition of the charges; and
- (ii) Whether other employment and status alternatives should be considered.

(5) At the preliminary hearing, the employee may:

- (i) Rebut the reasons given for the suspension;
- (ii) Allege mitigating circumstances; and
- (iii) Offer alternatives to the suspension, including:
 - 1. Return to the position with pay;
 - 2. Transfer to another position with pay; or
 - 3. Suspension with pay.

(6) Within five (5) days after the preliminary hearing is completed, the President or the President's designated representative shall render a written decision that is conclusive as to the issue of whether or not the employee may continue to work with pay pending the disposition of the charges.

§ 13-206. Miscellaneous provisions

- (a) In cases of appeal to an arbitrator, each Party is responsible for any expense incurred in the preparation and presentation of its own case and for any record or transcript it may desire.
- (b) Upon the formal or informal initiation of a grievance an employee designated as a grievance procedure representative shall not suffer any loss of pay for investigating, processing or testifying in any step of the grievance procedure. Release time from normal work schedules is to be granted all witnesses to attend grievance hearings. Expenses incurred in connection with attendance by employees at grievance hearings shall be borne by the employee's department.
- (c) Similar grievances may be consolidated and processed together as a single issue. Where a number of individual grievances have been reduced into a single grievance, not more than three employees selected by and from the group may be excused from work to attend a grievance meeting called by the responsible administrator at step one and not more than five employees at steps two and three unless, at any step, prior permission is granted by the person hearing the grievance.
- (d) Employee complaint forms shall be available in the campus personnel department. The University form shall be used.
- (e) It is the responsibility of the head of each organizational unit to assure that each employee understands the channels of communication and appeal, specifically who is the department head or chairman and who acts in their absence.
- (f) An employee may not leave the post of duty to engage in grievance handling without the knowledge of and permission from the designated supervisor.
- (g) A formal grievance may be filed by the aggrieved employee; the request to appeal a grievance must bear the signature of the employee or the employee's representative at each step of the procedure.
- (h) A record of each grievance and its disposition shall be furnished to the employee involved. A file copy of each grievance shall be maintained at the last step at which the grievance was processed, and an additional copy shall be filed with the campus personnel department which shall be available to the employee or the employee's representative.
- (i) At any point in the grievance procedure, the employee may elect to obtain, change, or dismiss the representative by providing a written notice to the person hearing the grievance. However, the action does not allow the grievant to return to a previous step in the procedure.

- (j) A hearing officer may exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence or witnesses.
- (k) Each step of the grievance procedure shall be processed as quickly as practicable within the specified time limits. Failure to appeal at any step constitutes acceptance. Failure to answer is a denial to which an appeal may be made. By mutual agreement, the time limits and/or steps may be waived.
- (l) It is the responsibility of each Party to the grievance procedure at each step of the procedure to duplicate the grievance form prior to filing it with the institution or returning it to the employee and to retain one copy of the form.
- (m) A grievance may start with a complaint or request by a permanent or temporary employee.
- (n) An employee may be represented at every step of the grievance procedure by a Party or organizational representative.
- (o) An employee shall receive a copy of this grievance procedure upon employment at the University.
- (p) Both Parties shall make an effort to resolve the grievance at the lowest possible level.
- (q) All grievance hearings shall be open hearings unless either Party requests that the hearing be closed.
- (r) At any step of the grievance procedure, either Party may require that witnesses be excluded from the hearing room until called.
- (s) Any Party who elects to use this procedure for resolution of a problem is presumed to agree to abide by the final disposition arrived at in this procedure and the final disposition may not be subject to review under any other procedure within the University.
- (t) Any question concerning the timeliness of a grievance or whether a complaint is subject to the grievance procedure shall be raised and resolved promptly, unless the person hearing the grievance or appeal determines that the decision on a motion to dismiss will be deferred pending a hearing on both the merits and the motion.

§ 13-207. Sovereign immunity; satisfaction of awards

- (a) ***Defense of sovereign immunity unavailable-*** The defense of sovereign immunity may not be available to the University, unless otherwise specifically provided by the laws of Maryland, in any administrative, arbitration, or judicial proceeding held pursuant to this section, or the personnel policies, rules, and regulations for classified employees of the University System of Maryland involving any type of employee grievance or hearing, including, but not limited to charges for removal, disciplinary suspensions, involuntary demotions, or reclassifications.

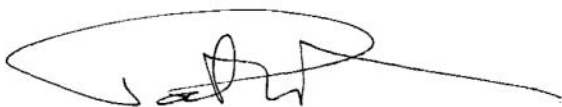
- (b) **Funds provided for satisfaction of awards-** The Governor shall provide in the annual State budget adequate funds for the satisfaction of any final monetary or benefit award or judgment that has been rendered in favor of the employee against the University in any administrative, arbitration, or judicial proceeding.
- (c) **Awards which have not been satisfied-** Awards under this section that have not been satisfied pursuant to subsection (d) of this section, shall be reported to the Comptroller of the Treasury, who shall maintain and report annually to the Governor an accounting of existing awards. Upon appropriation of funds by the legislature, the Comptroller of the Treasury shall satisfy existing awards in order of date of award.
- (d) **Timeliness of satisfaction-** If the University has sufficient funds available to satisfy any award under this section at the time the award is rendered, the award shall be satisfied as soon as practicable but not more than twenty (20) days after the award becomes final.

This Agreement between the Universities and Colleges of the USM Coalition (Non-Exempt Units) and the American Federation of State, County and Municipal Employees, Maryland ("AFSCME MD") containing Articles and certain Side Letters to be included in the individual Memoranda of Understanding between each University of the USM Coalition and AFSCME MD is made and entered into on the date set forth below:

For AFSCME MD:


Ronald Barillas, Chief Negotiator

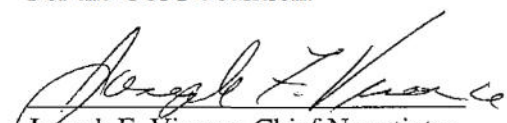
Date _____



Patrick Moran, AFSCME Council 3 President

Date 9.14.2016

For the USM Coalition:


Joseph F. Vivona, Chief Negotiator

Date 9-13-16

USM REFERENCES

The parties have agreed to list certain references to policies and procedures in this Appendix. The parties specifically agree and understand that publication of these policies and procedures here is not intended to, and does not, make these policies and procedures part of this MOU.

[USM VI-12.00](#) *Policy on Emergency Conditions: Cancellation of Classes and Release of Employees*

[USM VII – 1.10](#) *Policy on a Drug and Alcohol-Free Workplace for Employees*

[USM VII-1.21](#) *Policy on Probation for Regular Nonexempt and Exempt Staff Employees*

[USM VII-1.30](#) *Policy on Layoff for Nonexempt Staff Employees*

[USM VII-1.32](#) *Policy on Layoff and Recall of Regular Exempt Staff Employees*

[USM VII-4.10](#) *Policy on Tuition Remission and Tuition Reimbursement for Regular and Retired Nonexempt and Exempt Staff and Faculty Employees of the University System of Maryland*

[USM VII-4.20](#) *Policy on Tuition Remission for Spouses and Dependent Children of USM Employees and Retirees*

[USM VII – 7.11](#) *Policy on Leave Reserve Fund for Regular Status Nonexempt and Exempt Staff Employees*

[USM VII-7.23](#) *Policy on Military Leave with Pay for Nonexempt and Exempt Staff Employees*

[USM VII-7.24](#) *Policy on Call-Up to Active Military Duty during a National or International Crisis or Conflict for Nonexempt and Exempt Staff Employees*

[USM VII-7.49](#) *Policy on Parental Leave and Other Family Supports for Staff*

[USM VII-7.50](#) *Policy on Family and Medical Leave for Nonexempt and Exempt Staff Employees*

[USM VII-9.20](#) *Policy on Pay Administration for Regular Nonexempt Staff Employees*

[USM VII-9.61](#) *Policy on Reemployment and Reinstatement for Regular Status Nonexempt and Exempt Staff Employees*