

TO: All New, Non-Union, Non-Faculty
Professional Staff

FROM: Sherry Kauppi
Director, Human Resources

SUBJECT: Board of Control Policy 3.5.
Employment Policy for Professional Staff.

Enclosed you will find a number of documents related to a policy that changed the relationship between Michigan Tech and regular, non-union, non-faculty staff employees. The key changes are in the nature of the employment relationship between employees and the University, the establishment of a probationary period for all new employees (hired after January 1, 1999), and introduction of binding arbitration should employees choose to appeal termination from MTU. This policy does not apply to any claim of employment discrimination or Whistle Blowers Protection Act claims.

The package of documents includes the following items:

1. Board of Control Policy 3.5, approved at the September 1998 Board of Control meeting, which includes information about the probationary period for all new employees hired after January 1, 1999.
2. University Employment Policy for Professional Staff.
3. Termination Appeal Procedure.
4. The form to be used by employees in the case of a disputed termination from employment.
5. An acknowledgment form to be completed by employees after they have examined all of the material.

The purpose of this packet of information is to acquaint you of the changes that were implemented on January 1, 1999. Once you have read through the various informational documents, you can make an informed decision about your employment status.

The new policy allows individuals to elect to change their status to a SATISFACTION employment relationship (See Board of Control Policy 3.5 for complete definitions). The main point is for all employees to make a choice on this matter using the enclosed acknowledgment form. Should an employee decide they are not willing to make a choice, they automatically will be considered "at-will" and a written record indicating the employee's decision will be kept by Human Resources.

Please read this material carefully and make your choice. Send your signed form to Chris Secord in Human Resources within two weeks. If you have questions, you may contact me at 487-2280 or slkauppi@mtu.edu.

SK:cs

BOARD OF CONTROL POLICY

3.5. EMPLOYMENT POLICY FOR PROFESSIONAL STAFF

All employees of the University who complete a probationary period and who agree to arbitrate any contract claims over the termination of their employment shall be "satisfaction employees," unless they are employed pursuant to a contract, collective bargaining agreement, or the University tenure policy, or unless they are excepted as follows: Temporary employees, student employees, upper administrators (University President, Provost, Vice Presidents, Chief Financial Officer, and Vice Provosts), and probationary employees. Temporary employees, student employees, upper administrators, probationary employees, and those who do not agree to arbitrate termination claims shall be "at-will" employees.

PROBATIONARY PERIOD

All new regular employees of Michigan Technological University who are not employed pursuant to a contract, collective bargaining agreement, or the University tenure policy, shall serve a probationary period of nine (9) months. During the probationary period, employees shall be considered to be "at-will employees" and not eligible for alternative dispute resolution procedures.

TERMINATION

The termination of employees for lack of satisfactory performance after their probationary period normally shall come through progressive disciplinary procedures (see MTU Procedures Manual, 5.8). The University reserves the right to end any program or service, which may include the necessity of laying off employees for appropriate business and economic reasons. The rights of affected employees are covered by the University policy on layoffs (see MTU Procedures Manual, 5.7.4).

This policy shall be implemented by the rules and regulations promulgated by the Executive Vice President and Provost.

The initial procedures implementing this policy have been approved by the Board of Control, and there shall be no substantial changes to the procedures without approval of the Board of Control.

Procedures for Board of Control Policy
3.5. EMPLOYMENT POLICY FOR PROFESSIONAL STAFF

PROBATIONARY PERIOD PROCEDURES

The purpose of this procedure is to implement Board of Control Policy 3.5. Employment Policy for Professional Staff, which provides as follows:

All employees of the University who complete a probationary period and who agree to arbitrate any contract claims over the termination of their employment shall be "satisfaction employees," unless they are employed pursuant to a contract, collective bargaining agreement, or the University tenure policy, or unless they are excepted as follows: Temporary employees, student employees, upper administrators (University President, Provost, Vice Presidents, Chief Financial Officer, and Vice Provosts), and probationary employees. Temporary employees, student employees, upper administrators, probationary employees, and those who do not agree to arbitrate termination claims shall be "at-will" employees.

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This policy shall be implemented by the rules and regulations promulgated by the Executive Vice President and Provost.

To the extent that there is any inconsistency between this procedure and the foregoing Board policy, the Board policy will be controlling.

- A. All employees who qualify under Board of Control Policy 3.5. Employment Policy for Professional Staff, shall be covered by this Procedure. Those qualified employees who agree to arbitrate any contract claims over the termination of their employment shall serve a probationary period of nine (9) months. While this probationary period is designed to allow an assessment of a new employee's performance on the job, it is also an opportunity for supervisors to help employees succeed.
- B. During this probationary period, supervisors shall provide an orientation for the new employee and evaluate the employee's performance. Supervisors shall meet periodically with probationary employees to discuss their performance. Supervisors shall keep a written record of these meetings, using a form from the Human Resources Office. Copies shall be distributed to the employee and the Human Resources Office.
- C. By mutual written consent of the University (supervisors and the Human Resources Office) and the employee, the probationary period may be shortened and the employee moved to satisfaction status after three (3) months.

TERMINATION APPEAL PROCEDURE

A. **Purpose and Scope**

In the event an eligible employee has a complaint about his or her termination from employment, it will be resolved in accordance with this appeals procedure (hereafter "Termination Appeal Procedure" or "Procedure").

The Termination Appeal Procedure has been established to provide an exclusive, final and binding method to resolve all contract claims, controversies or complaints arising out of or relating to an employee's termination from employment by the University. For purposes of the Procedure, termination from employment shall mean an involuntary and permanent separation from employment by the University and shall include any actual or constructive dismissal, discharge, firing or release.

Notwithstanding the foregoing, decisions to terminate employment for business or economic reasons may not be challenged through the Termination Appeal Procedure.

B. **Eligibility**

All regular full-time and regular part-time employees who have completed the probationary period with the University and who are not covered by a contract, collective bargaining agreement, or the University tenure policy shall have the right to use this Procedure.

C. **Steps**

Step 1: Internal Review. The first step in the Termination Appeal Procedure is a review by the Director of Human Resources. An employee who has been terminated from employment, and who desires to challenge the termination, must submit a request for review of the termination to the Director of Human Resources by completing Part 1 of the Termination Appeal Form provided by the University. Part 1 of the Termination Appeal Form must be fully completed and signed and must state every reason why the employee contests the termination and must specify the relief sought by the employee. The Termination Appeal Form must be delivered to the Director of Human Resources or must be postmarked within fourteen (14) calendar days of the date of termination. The Termination Appeal Form may be obtained from the employee's manager or the Human Resources Department at Room 200 of the Administration Building.

The Director of Human Resources or his or her designee, will investigate the circumstances surrounding the termination and may meet with the employee, if it is deemed necessary, to discuss and/or attempt to resolve the employee's complaint. After investigation, the Director of Human Resources will answer the employee's complaint on Part 2 of the Termination Appeal Form. The answer will be personally delivered or postmarked no later than twenty-eight (28) calendar days after the receipt of Part 1 of the Termination Appeal Form. If mailed, the answer will be mailed certified mail, return receipt requested, to the address designated by the employee on the Termination Appeal Form.

Step 2: Arbitration. The second and final step in the Termination Appeal Procedure is arbitration. If the employee is not satisfied with the results of the review of the Director of Human Resources, the employee must elect to arbitrate the termination. The employee must give written notice to the Director of Human Resources of the employee's election to arbitrate the termination by completing and signing Part 3 of the Termination Appeal Form. Part 3 of the Termination Appeal Form must be delivered to the Director of Human Resources or must be postmarked no later than fourteen (14) calendar days after the date the results of the review were personally delivered or mailed to the employee.

If for any reason the employee does not receive a written answer from the Director of Human Resources within twenty-eight (28) calendar days of the date Part 1 of the Termination Appeal Form was mailed or personally delivered to the Director of Human Resources by the employee, the relief sought by the employee shall be deemed to have been denied. The employee may accept the decision of the Human Resources Director and drop the appeal or may continue to the next stage and elect arbitration. The employee should deliver written notice to the Director of Human Resources no later than forty-two (42) calendar days after the date the employee mailed or personally delivered Part 1 of the Termination Appeal Form. If for any reason the University does not receive a written answer from the employee within forty-two (42) days, the University shall assume the employee desires to elect arbitration.

If an employee elects arbitration, the University and the employee shall submit the case to arbitration in accordance with and subject to the following:

- a. The Director of Human Resources will promptly deliver or mail a list of 5 names of arbitrators to the employee. The list shall be comprised of the names of the arbitrators on one of the standing panels of arbitrators in use by the University and the collective bargaining representative for bargaining unit employees or from the Michigan Panel of the National Academy of Arbitrators.
- b. Within fourteen (14) calendar days of the date the list was mailed, the employee or the employee's representative must meet or confer with the Director of Human Resources, or his or her designee, to choose an arbitrator from the list. If no agreement is reached, the parties shall engage in alternative striking until one arbitrator remains. The employee shall have the first strike.
- c. Once an arbitrator has been chosen, the case shall be arbitrated in accordance with the Voluntary Labor Arbitration Rules of the American Association, except as herein modified.

D. Standards to be Applied by the Arbitrator

The jurisdiction of the arbitrator shall be limited to complaints protesting termination from employment. The arbitrator shall determine whether the University terminated the employee because it was no longer satisfied with the employee's performance. The arbitrator must consider and rule on every issue which was specified on the Termination Appeal Form or which was presented at the arbitration hearing and which was not resolved prior to arbitration.

In reaching a decision, the arbitrator shall interpret, apply and be bound by any applicable University handbooks, rules, policies and procedures. The arbitrator shall have no authority, however, to add to, detract from, change, amend or modify any law, handbook, rule, policy or procedure in any respect. Nor shall the arbitrator have authority to consider or decide any matters which are the sole responsibility of the University in the management and conduct of its business.

E. **Form of Award**

The arbitrator shall submit to the parties a written award signed by the arbitrator. The award shall specify the elements of the basis for any monetary award. The award shall be accompanied by a written opinion signed by the arbitrator which shall include findings of fact and, where appropriate, conclusions of law.

F. **Relief**

If the arbitrator finds for the University, the employee's termination must be upheld and the arbitrator shall have no power to reduce the termination to some lesser disciplinary action.

If the arbitrator finds that the employee was not terminated in accordance with Board policy, the arbitrator may grant the employee back pay and reinstatement to the position he or she previously held or shall order the University to either offer the employee reinstatement to a position comparable to the one previously held by the employee or, in lieu of reinstatement, to pay the employee a monetary award equal to the present value of the employee's future wage loss provable with reasonable certainty.

In any award of back pay, the arbitrator shall deduct any lawful setoffs for the employee's interim earnings, for any other sums paid in lieu of employment during the period after discharge, and for any amount attributable to a proven failure by the employee to mitigate the damages.

G. **Costs**

The fees and expenses of the Arbitrator shall be borne by the University.

H. **Transcript of Proceedings**

Either party may request that a transcript be made of the arbitration proceedings. The party requesting the transcript shall bear the full cost of the transcript, unless the other party also requests a copy of the transcript, in which event the parties shall divide the cost equally.

I. **Witnesses**

An employee who is called as a witness shall not suffer loss of pay for the time spent in the arbitration hearing when the hearing is held during the employee's regular work schedule. The expenses of any non-employee witness shall be borne by the party calling the witness.

J. **Representation**

If the employee desires to have legal counsel present at the actual arbitration hearing, the University will also be represented by legal counsel.

K. **Attorney Fees**

Neither party shall be liable for the payment of expenses or fees charged to the other party by an attorney or other representative who assists the party or participates in any way in the Termination Appeal Procedure.

L. **Time Limits**

The time limits contained herein may be extended only by the mutual written agreement of the parties. Failure of the employee to meet the time limits, or agreed upon extensions, for filing a request for review, or meeting to choose an arbitrator shall be deemed to be a binding agreement by the employee to settle all of the employee's claims in accordance with the latest decision of the University and shall constitute a failure to exhaust the Termination Appeal Procedure.

M. **Exclusive Remedy, Effect of Arbitration and Condition Precedent**

The Termination Appeal Procedure is intended to be the sole and exclusive remedy and forum for all claims arising out of or relating to an employee's termination from employment and the decision and award of the arbitrator is intended to be final and binding between the parties as to all claims arising out of or relating to an employee's termination from employment which were or could have been raised at any step in the Termination Appeal Procedure. The decision and award of the arbitrator is also intended to be enforceable in any court of competent jurisdiction.

In the event a court of competent jurisdiction should determine that the Termination Appeal Procedure is not the sole and exclusive remedy and forum for some or all of an employee's claims and/or that the decision and award of the arbitrator, if any is not final and binding between the parties as to some or all of the employee's claims, it is intended that exhaustion of the Termination Appeal Procedure be a condition precedent to the institution or maintenance of any legal, equitable, administrative, or other form proceeding by an employee for all claims arising out of or relating to the employee's termination from employment.

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Termination Appeal Form ★

Request for Internal Review

Name of Employee filing appeal: _____

Department: _____ Date: _____

Classification: _____

Reason for contesting the termination: _____

Specific relief requested: _____

Signature of Employee: _____ Date: _____

Signature of Director, Human Resources: _____ Date received: _____

Investigation and Response

Director of Human Resources response: _____

Signature of Director, Human Resources: _____ Date: _____

Request for Arbitration

Accept decision Request for arbitration

Signature of Employee: _____ Date: _____

★ For further information, refer to the Board of Control Policy 3.5, Employment Policy for Professional Staff

12/98

Step	What	Initiated By Whom	To Whom	Communication tool	Time Frame
Step 1	Request for Internal Review	Affected Employee	Director of Human Resources	Termination Appeal Form	Within 14 calendar days after the date of termination
	Investigation and response	Director of Human Resources	Affected Employee	Termination Appeal Form	No later than 28 calendar days after receipt of Termination Appeal Form
Step 2	Request for Arbitration	Affected Employee	Director of Human Resources	Termination Appeal Form	No later than 14 calendar days after the date of the results of the review were provided.
	Develop List of Arbitrators	Director of Human Resources	Affected Employee	List of five names of arbitrators	Promptly delivered
	Selection of Arbitrator	Affected Employee (or representative)	Director of Human Resources	Meeting	Within 7 calendar days of the date the list was mailed

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ACKNOWLEDGMENT OF RECEIPT OF UNIVERSITY'S TERMINATION APPEAL PROCEDURE

I acknowledge receipt of the University's Termination Appeal Procedure. I have read and understood the above. I agree to follow the University's Termination Appeal Procedure, and recognize that I will be treated as a satisfaction employee upon completion of any necessary probationary period.

Employee Name: _____
(Please Print)

Employee Signature: _____ Date: _____

I DO NOT accept the University's Termination Appeal Procedure and understand that I will remain an "At Will" employee.

Employee Name: _____
(Please Print)

Employee Signature: _____ Date: _____