

March 18, 2015

MEMORANDUM

TO: State Board of Regents
FROM: David L. Buhler
SUBJECT: Elimination of Policy R845, Guidelines for Payment in Lieu of Notice Policy

Issue

Regent Policy R845, *Guidelines for Payment in Lieu of Notice Policy*, has recently been reviewed by the Office of the Commissioner, the Utah Attorney General's Office, and USHE institutional personnel. This review is part of the continuing review of all Regent Policies.

Background

A discussion involving the USHE Presidents and regarding potential language changes to Regent Policy R845 was held at a recent Council of Presidents meeting. Ultimately, the Presidents felt the campuses could adequately, and perhaps even more effectively, manage any *payment in lieu of notice* situations without an umbrella Regent policy. From a legal standpoint, Assistant Attorney General Kevin Olsen is fine with the elimination of this policy as well. A copy of the policy as presently it reads, is attached to this agenda item for reference purposes only.

Commissioner's Recommendation

The Commissioner recommends that the Regents eliminate policy R845, *Guidelines for Payment in Lieu of Notice Policy*, effective immediately.

David L. Buhler
Commissioner of Higher Education

DLB/GLS/KVO/CRW
Attachment

R845, Guidelines for Payment in Lieu of Notice Policy¹

R845-1. Purpose: To provide guidelines to the institutions for the development of policy on the terms and conditions of payment in lieu of notice when it is necessary for an institution to effect a reduction in work force, or to terminate a regular staff member for reasons other than cause, and the procedures by which such payment in lieu of notice is initiated and processed. Each institution shall adopt or amend policy and procedures as necessary to comply with these guidelines.

R845-2. References

- 2.1. Policy and Procedure R831, Minimum Requirements for Non-Faculty Staff Employment Grievances Policy.
- 2.2. Policy and Procedure R841, Guidelines for Disciplinary Sanctions of Staff Personnel Policy.
- 2.3. Policy and Procedure R843, Guidelines for Reduction in Force Policy.

R845-3. Definitions

3.1. **Staff Member:** a classified or professional employee in a non-faculty position who receives compensation for work or services from funds controlled by the institution, regardless of the source of the funds, the duties of the position, the amount of compensation paid, or the percent of time worked. There are two categories of Staff Member subject to this policy:

3.1.1. **Regular Staff Member:** a staff member whose employment is defined by the institution as being of a continuous nature, initially funded for a non-temporary period, who has successfully completed the probationary period. This includes classified, professional and administrative personnel, but may exclude certain executive personnel as defined by the institution. Normally, a regular staff member is one assigned to work 75% or more (or such lesser percent as set by institutional policy) in a position expected to last more than 12 months (or such lesser period as set by institutional policy.)

3.1.2. **Part-Time, Temporary or Probationary Staff Member:** a staff member assigned to work less than full-time, or in a position considered temporary or expected to be of short duration, as defined by the institution; or a newly hired employee in a regular position but still in the probationary status. Normally, a part-time staff member is one assigned to work less than 75% (or such lesser percent as set by institutional policy) a temporary position is one not expected to be available after 12 months (or such lesser period as set by institutional policy.)

3.2. **Payment in Lieu of Notice:** a payment made to regular staff members who are placed on layoff status for reasons other than cause and without being given the required advance notice of termination. Payment in lieu of notice will be paid in addition to accrued salary, wages, and unused vacation time.

R845-4. Guidelines

¹ Adopted January 9, 1987. Amended September 16, 2005.

4.1. Notice of Termination: When it is necessary for the institution to effect a reduction in work force, or to terminate a regular staff member for reasons other than cause, each nonexempt regular staff member who is to be laid off will ordinarily be given written notice of termination at least two calendar weeks before the effective date of such termination. For exempt regular staff members, the notice will be given at least four calendar weeks before the effective date of termination.

4.2. Payment in Lieu of Notice: If the required advance notice is not given, or is given for a shorter period than provided under subsection 4.1, payment in lieu of notice will be given.

4.3. Eligibility:

4.3.1. An employee is not eligible for payment in lieu of notice if (a) he or she is a part-time, temporary or probationary staff member, or (b) the termination is for cause.

4.3.2. Payment in lieu of notice is not available to employees whose termination is voluntary.

4.4. Effect of Payments: Payment in lieu of notice is not considered part of the regular rate used to compute overtime payments due upon termination, and cannot be used to reduce any other payments due to the employee, such as accrued overtime, and accrued but unused vacation time. Payment in lieu of notice will be considered for the purpose of FICA and income tax withholding, and may, subject to institutional policy and practice, but is not required to be considered for the purpose of institutional benefits and may, subject to institutional policy and practice, but is not required to extend the employment period to the end of the applicable notice period.