

Separation From the University

Resignation

Retirement

Non-reappointment of Probationary (Tenure-track) Faculty Members and Faculty on Rolling Contracts

At times California Lutheran University or individual faculty members may find it necessary to sever their contractual relationship. To protect the interests of both parties, categories of separation are here defined and the policies and procedures related to each are set forth.

Types of separation are:

A. Resignation

B. Retirement

C. Non-reappointment of Probationary Faculty

D. Termination

E. Suspension or Dismissal for Cause.

Resignation

A faculty member may resign effective at the end of an academic year. Professional ethics and responsibility require, however, that notice be given in writing at the earliest opportunity, but not later than the deadline to respond to an offer of reappointment for the coming year. Extension beyond this deadline may be requested of the President in writing and shall be granted at the President's discretion. Failure to give written acceptance of reappointment by the deadline, or by an extended deadline approved by the President, will constitute resignation. However, the Academic Affairs Office will make reasonable efforts to contact any faculty member who fails to respond to an offer of reappointment in order to avoid inadvertent resignation.

Retirement

The Board of Regents has established a retirement program for faculty. The currently approved program includes the following provisions:

- As required by federal law, there is no mandatory retirement age.
- Tenure ends at the time of retirement. However, faculty service may be extended by mutual agreement on a term-contract basis.
- Each full-time faculty member who is considering retirement is eligible to receive a one-time stipend for the purpose of obtaining professional financial planning service.

Non-reappointment of Probationary (Tenure-track) Faculty Members and Faculty on Rolling Contracts

The term non-reappointment means that the University has decided not to renew a faculty appointment at the conclusion of the stated contract term. Although probationary appointments and rolling contracts are usually subject to renewal, the University is under no obligation to renew such appointments if adequate notice is given. Termination of probationary appointments and rolling contracts at the end of the term specified in the contract may be effected by the college without cause, but shall not be effected because of the exercise of any of the faculty member's rights. Non-reappointment is different from "Termination" and "Dismissal for Cause" in Section 4. below, which are both severance actions.

1. Criteria for Non-reappointment

Criteria for non-reappointment may include, but are not necessarily limited to, the following:

- A. unsatisfactory performance of the faculty member's appointment responsibilities as set forth in Section Two. IV. and as evaluated according to the procedures of the appropriate subsections of Section Two.VII.;
- B. changes in the institution's academic program;
- C. performance and/or qualifications which, although satisfactory, will not enable the institution to achieve its educational objectives and standards;
- D. incongruence between the teaching interests of the faculty member and the educational goals of the University;
- E. full staffing at the tenure level in the areas of the candidate's principal competence or specialty;
- F. budgetary constraints such as declining enrollment, changes in enrollment patterns or overstaffing;
- G. financial exigencies;
- H. conduct that seriously impairs a professional working relationship with members of the academic unit such that the functioning of the unit is impaired.

2. Procedures for Non-reappointment

Decisions regarding the non-reappointment of a probationary or rolling contract faculty member will be made by the President upon recommendation by the Vice President for Academic Affairs, who in turn secures the advice of the ART Committee.

Since a notice of non-reappointment is not a dismissal for cause, it is not necessary for the University to set forth its reasons in the notice of non-reappointment. However, if the probationary faculty member wishes to know the reasons for non-reappointment, the request should be made in writing to the Vice President for Academic Affairs, who will honor the request.

3. Notice

A. Probationary Faculty

Notice of non-reappointment of probationary faculty must be given in writing:

- i on or before March 1 of the first academic year of service if the initial appointment is not to be renewed, or at least three months prior to the expiration of an initial, one-year appointment, if it expires during an academic year;
- ii on or before December 15 of the second academic year of service if the appointment is not to be renewed, or at least six months prior to the expiration of the appointment if it expires during an academic year; or
- iii at least 12 months prior to the time of the expiration of the appointment if the faculty member is in the third or more year of a probationary academic appointment.

B. Faculty on Rolling Contracts

Faculty on three-year rolling contracts are always in the first year of a three-year appointment. Thus, if a decision not to renew a rolling contract is made, the faculty member has two years remaining before the expiration of the appointment.

4. Appeals

In cases where faculty believe that their non-reappointment has been discriminatory, arbitrary, or capricious, they may commence a grievance in accordance with procedures established in Section Two. IX. of this handbook. The burden of proof shall be on the faculty member.

5. Termination

Termination is a severance action by which the University terminates the services of a ranked faculty member before the expiration of his or her current contract, without prejudice as to his or her performance. Reasons for termination are: mental or physical disability; reduction of student interest or changes in the University's educational program; declared financial exigency; and dismissal for cause.

A. Mental or Physical Disability

i Conditions

Termination of a term, probationary or continuous appointment before the expiration of the contract because of a mental or physical disability for which no reasonable accommodation can be made will be based on clear and convincing evidence that the faculty member cannot continue to fulfill the terms and conditions of the appointment.

ii Procedure

- a. Upon being advised by a faculty member, the department chair, or the dean of the school or college that a situation exists that might warrant termination because of long-term physical or mental disability, the Vice President for Academic Affairs will secure written statements and recommendations on this matter from the dean of the school or college, the department chair, and, if possible, the faculty member involved. The University may not compel the disclosure of medical records as a condition of employment. Any disclosure of medical records by the faculty member shall be voluntary.
- b. If, after review of all information gathered, the Vice President for Academic Affairs concludes that a long-term mental or physical condition exists that will cause the faculty member to be unable to continue to fulfill the terms and conditions of the appointment, the Vice President for Academic Affairs will give the faculty member involved or his or her representative a written statement of his or her intent to take this action with reasons, framed with reasonable particularity. The decision to terminate will be reached only after appropriate consultation and after the faculty member concerned, or someone representing the faculty member, has been informed of the basis of the proposed action and has been afforded an opportunity to present the faculty member's position and to respond to the evidence. The Vice President for Academic Affairs will also provide the faculty member with information about the University's long-term disability insurance coverage, if applicable.
- c. Following the Vice President's for Academic Affairs notice of intent to terminate, the faculty member may request a review. The faculty member will present the request for such a review in writing to the ART Committee within 14 days of his or her receipt of the written notification of intent. The committee will review the written record and render an opinion as to whether the intended termination is appropriate and necessary within 21 calendar days of receipt. The opinion will be given in writing to the faculty member, the Vice President for Academic Affairs, and the President of the University, without the opinion being binding upon the President. The President will make the final decision regarding termination.
- d. If the faculty member is dissatisfied with the President's decision to terminate, he or she has the right to a full hearing before the Grievance Committee. The request must be presented in writing to the Grievance Committee within 14 calendar days of receipt of the notification commencing with Step III of the Grievance Procedure. The Grievance Committee's decision may be appealed to the President. The President's decision may be appealed to the Executive Committee of the Board of Regents. (See Section Two.IX.)

- e. A faculty member whose tenure or contract is terminated for reasons of medical disability will be compensated under the provision for disability insurance and retirement.

B. Reduction of Student Interest or Changes in the University's Educational Program

i Conditions

California Lutheran University may find itself in a situation in which, for bona fide reasons of good management, it may need to reorder academic program priorities and to eliminate faculty positions, an entire program, or an academic department. The conditions for such action normally entail decline in student interest and enrollment, academic program changes in response to student demand and the strategic plan, or reallocation of academic resources in order to maintain and improve financial stability.

Termination of faculty members on term or probationary contracts because of reduction in student interest or changes in the University's educational program should normally be made at the expiration of the contract, with appropriate notice. (See Section VIII.C.3. above.)

In order to terminate a faculty member with a continuous (tenure) contract or before the expiration of a term or probationary contract, there must be a bona fide reduction of student interest rather than a cyclical or temporary variation of student interest in the courses, and/or a formal restructuring of the academic program of the University, including discontinuance of a program or field of study.

ii Procedure

a. Determining Faculty Reductions

The decision to discontinue a program and to terminate a contract before its expiration because of reduction in student interest or academic program restructuring rests with the President upon a recommendation from the Vice President for Academic Affairs. Before notice of termination is given to a faculty member, the Vice President for Academic Affairs must make a formal presentation to the Educational Policies and Planning Committee, identifying the specific factors, providing supporting evidence from program review, enrollment, data or documented market factors. The EPPC should evaluate the evidence, consider the long-term effects of the proposed changes on the University's curriculum and strategic planning goals, and provide their recommendation regarding further action to the Vice President for Academic Affairs and the President. The President makes the decision and gives notice to the affected faculty.

b. Order of Termination

Decisions about which individual appointments are to be terminated will be guided by the following considerations: In all cases of necessary faculty reductions, non-tenured faculty members in a department will be released before tenured faculty members, except in circumstances where a serious distortion in the academic program would result. If tenured faculty must be released, the following factors will be considered in determining which faculty members are to be released: education and professional credentials, the length of the faculty member's service to the University, the quality of the faculty member's service to the University, the essential academic needs of each potentially affected department within the University, and the abilities of the individual faculty member in relation to the needs of the University and the potentially affected departments.

c. Notice and Compensation

Probationary faculty who are to be terminated must be given notice according to the regular guidelines for probationary faculty (Section Two. VIII.C.). Notification of termination of faculty members with a continuous (tenure-track) contract or before the expiration of a term or probationary contract shall be three months prior to contract expiration for first year faculty and six months prior to contract termination for second-year faculty. Faculty who have served more than two years must be given one full year of notice. In the absence of appropriate notice, one year's salary must be given.

d. Appeals Process

Following a notice of the intention to terminate a contract because of a reduction of student interest and/or consolidation of a program, the faculty member has the right to a full hearing before the Grievance Committee. The request must be presented in writing to the Committee within 14 calendar days of receipt of the notification commencing with Step III of the Grievance Procedure. The Grievance Committee's decision may be appealed to the President. The President's decision may be appealed to the Executive Committee of the Board of Regents. (See Section Two. IX.D.3.c.2[e].)

e. Reemployment

When a tenured faculty member is to be terminated for curricular reasons, the President will attempt to place that faculty member in an existing vacant position for which the faculty member is qualified. When, in the opinion of the President, placement within the institution is not a viable alternative, the institution will assist the faculty member in finding employment outside the University. The final decision on relocation is within the discretion of the President.

When a tenured faculty member is terminated for curricular reasons, the position will not be filled by a new appointee with the same areas of specialization as the terminated faculty member within a period of three years unless the terminated faculty member has been offered, in writing, reappointment to the position at the previous rank and salary held, with the addition of an appropriate increase that would constitute the raise that would have been awarded during the period that the faculty member was not employed by the University.

C. Reduction Under Conditions of Declared Financial Exigency

i Definition

It is presently University policy and practice to involve the faculty and Board of Regents in planning and budgeting, and it is therefore likely that a financial problem would be clear to all as it developed. The involvement of the faculty in the budget and planning process, the faculty's representation on the Budget Committee, and the regular reporting activity of the President and the CFO enable some of the faculty to be aware of the general financial condition of the University. The fact that the faculty chair is a member of the Board of Regents is another instance of faculty participation in University financial review. Nonetheless, it is possible that unforeseen and unpredictable developments could create a financial exigency not anticipated or expected by many of the faculty. Therefore, the following statement of policy attempts to prepare in advance the procedures for responding to financial problems that require a reduction in faculty.

"Financial exigency" is understood to be an urgent need to reorder financial obligations in order to restore or preserve financial ability. "Financial ability" means that ability to provide from current income, both cash and accrued, the funds necessary to meet current expenses, including debt payments and sound reserves, without invading or depleting capital. The exigency must be bona fide, must affect the University as a whole, and may be declared only when short-term and limited solutions are not sufficient, and only after alternatives consonant with sound management have been explored or attempted.

ii Procedure for Declaring Financial Exigency

- a. The President will propose a declaration of financial exigency to the Budget Committee. The President and the CFO will present to this committee the information that indicates that financial exigency may need to be declared.
- b. After examining this information carefully, the Budget Committee will present a written response and a recommendation to the President as to whether a condition of financial exigency should be declared. The Budget Committee will be given free access to all financial records of the University.
- c. If, after receiving the recommendations of the Budget Committee, the President determines that a condition of financial exigency should be declared, the faculty must be notified. The President must present the proposal to a meeting of the faculty, including evidence that a bona fide financial exigency exists, that the decision has been made in good faith, and that alternative solutions have been adequately explored.
- d. The Executive Committee of the Board of Regents will then review the Budget Committee's report and the President's recommendation.
- e. After completing all of the above steps, the President, with the concurrence of the Executive Committee of the Board of Regents, may present the proposal to the Board of Regents and call upon the board to declare a financial exigency to exist.
- f. If the Board of Regents concurs with the proposal, the board declares financial exigency.

iii Development of Steps to End Financial Exigency

If financial exigency is declared, the Budget Committee will be responsible for recommending a package of budgetary reductions sufficient to end the condition as quickly as possible. This committee will seek information and advice from departments, committees, and officers of the University to enable it to make sound judgments about the impact of alternatives on the functions and programs of the University.

After receiving the report of the Budget Committee, the President will recommend to the Executive Committee of the Board of Regents a package of budgetary adjustments that will end the condition of financial exigency as quickly as possible. The board will then adopt a financial exigency plan that will thereafter remain in effect until it is revised by the board or the period of financial exigency is declared ended by the board.

iv Procedure for Termination

a. Notice

All faculty and all administrators shall be notified immediately of the possibility of non-reappointment for reasons of financial exigency.

Notification of termination of a faculty member's contract shall be three months prior to contract expiration for first-year faculty and six months prior to contract termination for second-year faculty. Faculty who have served more than two years must be given one full year of notice or in the absence of appropriate notice, one year's salary.

b. Order of Termination

Decisions about which individual appointments are to be terminated because of financial exigency will be guided by the following considerations: In all cases of necessary faculty reductions, non-tenured faculty members in a department will be released before tenured faculty members except in circumstances where a serious distortion in the academic program would result. If tenured faculty must be released, the following factors will be considered in determining which faculty members are to be released: education and professional credentials, the length of the faculty member's service to the University, the quality of the faculty member's service to the University, the essential academic needs of the University of each potentially affected department, and the abilities of the individual faculty member in relation to the needs of the University and the potentially affected departments.

c. Determination of Faculty Reductions

1. The Vice President for Academic Affairs will recommend individual terminations to the ART Committee.
2. The faculty member must be notified of the proposal to be presented to the ART Committee affecting him/her and has the right to examine the information presented to the ART Committee.
3. The ART Committee will make a recommendation regarding termination to the President.
4. The President makes the final decision regarding terminations and notifies faculty members of terminations in writing.

d. Appeals

Following notice of termination because of financial exigency, the faculty member has the right to a full hearing before the Grievance Committee. The request must be presented in writing to the Grievance Committee within 14 calendar days of receipt of the notification. The Grievance Committee's decision may be appealed to the President. The President's decision may be appealed to the Executive Committee of the Board of Regents. (See Section Two. IX.D.3.c.2[e])

e. Continuation of Benefits

For one year after termination, or until the terminated party becomes eligible for health insurance with a new employer, whichever comes first, the University shall provide health and major medical insurance for the terminated party and his or her family on the same basis as that fringe benefit was available to the faculty member prior to termination. If the terminated party qualifies for early retirement and enters that program, then he or she shall be entitled to the health and other benefits of early retirement as set forth in the University retirement program in effect at that time.

f. Re-employment

When a tenured faculty member is to be terminated for financial exigency, the President will attempt to place that faculty member in an existing vacant position for which the faculty member is qualified. In instances where, in the opinion of the President, placement within the institution is not a viable alternative, the institution will assist the faculty member in finding employment outside the University.

When a tenured faculty member is terminated for financial exigency, the position will not be filled by a new appointee with the same areas of specialization as the terminated faculty member within a period of three years unless the terminated faculty member has been offered, in writing, reappointment to the position at the previous rank and salary held, with the addition of an appropriate increase that would constitute the raise that would have been awarded during the period that the faculty member was not employed by the University.

g. New Appointments

New appointments to vacated or new faculty positions will not be made during the period of financial exigency except on the basis of overwhelming need and after review and recommendation by the ART Committee.

D. Suspension or Dismissal for Cause

Suspension or dismissal for cause is a severance action by which California Lutheran University terminates its contract with the faculty member for just cause. Dismissal will not be used to restrain a faculty member's academic freedom or other rights as a citizen. Any faculty contract is subject to action under this section.

i Criteria for Dismissal Action

Just cause for dismissal must be directly and substantially related to the fitness of a faculty member to continue in his or her professional capacity, and shall be determined in each instance by the President in accordance with the procedures outlined below.

In any case involving suspension or dismissal for cause, the burden of proof that just cause exists shall be on the University, which proof shall be by clear and convincing evidence in the record considered as a whole. Dismissal proceedings may be instituted on the basis of the following grounds:

- a. professional incompetence;
- b. continued neglect of faculty responsibilities as set forth in this handbook despite oral and written warnings;
- c. serious personal misconduct;
- d. deliberate and serious violation of the rights and freedom of fellow faculty members, administrators, or students;

- e. conviction of any felony;
- f. conviction of a crime directly related to the faculty member's fitness to practice his or her profession;
- g. theft or willful destruction of property;
- h. serious failure to follow the canons and professional ethics of one's discipline and those set down in Section Two.III.C. of this handbook;
- i. falsification of credentials and experience;
- j. failure to meet the performance standards of the institution as set forth in Section Two.VII. of this handbook after oral and written warnings;
- k. use of or acting under the influence of intoxicating beverages or illegal drugs while on duty;
- l. sexual harassment of a student or University employee.

ii Suspension or Dismissal Procedural Steps

- a. When reason arises to question the fitness or behavior of a tenured faculty member or of a non-tenured faculty member whose appointment has not expired, the Vice President for Academic Affairs will discuss the matter with the faculty member in personal conference. A written record summarizing the significant results of that meeting will be sent to the faculty member by the Vice President for Academic Affairs. Formal procedures should be initiated only after reasonable efforts to resolve the matter informally have failed to achieve a mutually acceptable determination.
- b. If a resolution of the matter by mutual consent does not result from the initial informal administrative steps described above, the Vice President for Academic Affairs will send a written statement of his or her intent to take this action with reasons, framed with reasonable particularity. Because of the nature of dismissal, no fixed time can be specified for notice; however, such action is usually not taken without prior discussions with and written warnings to the faculty member.
- c. Prior to the implementation of the dismissal, the data supporting the adequate cause for such action will be presented in writing to the ART Committee by the President or his or her designee. If the ART Committee has engaged in post-tenure review of the faculty member and in monitoring a development plan, the FADC will serve as the initial review committee. The committee will obtain a written or oral statement from the faculty member (depending on which is preferred by the faculty member) with regard to the charges, and any other data the committee deems pertinent. The committee as a whole will consider the evidence and render an opinion. The opinion will be given to the faculty member and to the President without the opinion being binding upon the President.
- d. The President will notify the faculty member in writing of his or her final decision to implement or not implement the dismissal.
- e. The President's decision may be the basis of a formal grievance before the Grievance Committee, in accordance with the definition established in Section Two.IX.B.2. of this handbook.

iii Alternatives to Dismissal

Appropriate administrative sanctions may be used with faculty members as an alternative to the termination of contract. These sanctions may include but are not limited to the following:

- a. warning;
- b. written reprimand;
- c. restitution, i.e., payment for damage done to individuals or to the University;
- d. monetary fine;
- e. loss of prospective benefits for a stated period of time, i.e., suspension of regular or merit increases in salary;
- f. reduction in salary for a stated period of time;
- g. suspension from service for a stated period of time without other prejudice