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DATE: September 9, 2009
TO: System Governance Council
FROM: Mark Hamilton, President
RE: Nonretention Resolution

A handwritten signature in black ink, appearing to read "Mark Hamilton".

Administration, including the chancellors, have invested considerable energy in examining the issues raised in System Governance Council's resolution regarding nonretention. We appreciate the thoughtful and measured tone of the resolution and are responding with our commitment to improve the transparency and consistency of termination processes.

Staff, through governance, will be kept informed of important considerations and generally applicable procedures. The information provided will and must be consistent with privacy rights of individual employees and preservation of the university's legal position. In addition administration will:

- Refine guidelines for use and implementation of nonretention to ensure as much consistency as possible, keeping in mind that rigid procedures are not possible;
- Maintain the existing distinctions between termination for cause and nonretention, which include the following:
 - Nonretention is a **status** that does not reflect discredit, and does not result in ineligibility for University employment. However, nonretention should require reference checks before re-employment by the university. (I join the chancellors in calling for careful reference checking before extending offers of employment to **any** applicant for employment.);
 - The employee, and the University, can and will tell prospective employers that the employee was nonretained and that nonretention does not reflect discredit;
 - Nonretained employees receive notice or pay-in-lieu of notice;
 - Because providing specific reasons for nonretention may require the employee to disclose those reasons to prospective employers and result in claims that the university terminated the employee for cause, specific reasons will not be discussed unless the employee accepts the risks or contests the nonretention;
- Continue efforts to ensure safe and respectful terminations, while recognizing that termination is an inherently stressful process for all involved;
- Pursue ongoing training of supervisors to improve the hiring process and reference checking, prudent and efficient use of the probationary period, and performance management, including training, expectation setting, and constructive feedback; and
- Consult with governance and other groups regarding ways to improve processes.

Here are some considerations we found important in reviewing this issue:

- Termination requests are initiated by a supervisor. They may be subject to approval by the supervisor's supervisor, and are reviewed by campus HR, with advice from SW HR and GC;
- Termination for cause is not always practical or possible, even when there are performance issues. For example, termination for cause may require imposing discipline repeatedly, and increasing the severity of the discipline from warnings to reprimands and suspensions. The employee, co-workers, and work unit will be stressed and disrupted by this process, and poor performance or behavior may actually deteriorate;
- Nonretention is relatively rare, and is initiated about as often as disciplinary termination, keeping in mind that a disciplinary termination may be resolved as a nonretention;
- Nonretained employees have every reason to say that they had no idea that there were any problems, and to suggest that they would prefer termination for cause. At the same time, there are good reasons for supervisors and employees not to discuss specific reasons for any termination;
- Nonretention may be contested through the grievance process, and on to court. Any improper motive or violation of law, policy and regulation may be addressed. Few nonretentions are grieved;
- Resources spent on litigation cannot be spent on education and required support services. Judicious use of the appropriate tools has significantly reduced litigation expenses.

Because we all have an obligation to manage public resources effectively, the University will continue to terminate employment in a variety of ways, including through termination for cause and through nonretention, as appropriate.

cc: Chancellors
Beth Behner, Chief Human Resource Officer