

POLICY FOR EMPLOYEES EXEMPT FROM THE STATE PERSONNEL ACT

1 Introduction:

- 1.1 **General Overview of Non-Faculty Position Categories:** EHRA Non-Faculty positions are broadly divided into three categories: Research, Instruction, and Senior Academic and Administrative Officers (SAAOs). Any position which is requested for classification to EHRA non-faculty status must be classified into one of these categories. Detailed guidance on these criteria is available at the UNC General Administration website in policy number [300.1.2](#) and [300.2.5\[G\]](#) and on this website.

In considering whether a position qualifies for a particular EHRA non-faculty classification category, an important guideline is whether at least 50% or greater of the position's primary duties and functions satisfy the job content and criteria specified by the EHRA non-faculty guidelines.

- 1.2 **Submission and Review of Requested Positions:** Information about how to submit a request to establish an EHRA position is available on the [Human Resource Services EHRA Non-Faculty website](#). It should be noted that most positions to be classified as Senior Academic & Administrative Officers (SAAO) must be approved both at the campus-level (EHRA Non-Faculty Classification Committee) and at the UNC General Administration level (EHRA Subcommittee of the HR Council, the Human Resources Advisory Board - HRAB). This necessarily involves a longer period of time than gaining approval for a Research or Instructional position. Therefore, to ensure a department does not unnecessarily invest a large amount of time going through the SAAO classification process, and thereby delaying recruitment, extra care should be exercised before presuming a position qualifies for SAAO status.

Regardless of duties, positions within the colleges designated at the Assistant/Associate Dean-level or derivations of that title are automatically afforded SAAO status. The award of such ranks however must have the approval of the Dean, the Office of the Provost & Senior Vice Chancellor and the Assistant Vice Chancellor for EHRA Administration.

Regardless of duties, positions within the University Administration designated at the Assistant/Associate Vice Chancellor-level or derivations of that title are automatically afforded SAAO status. The award of such ranks however must have the approval of the relevant Vice Chancellor and the Chancellor upon recommendation of the Assistant Vice Chancellor for EHRA Administration.

Newly created Vice Chancellor positions must be approved by our campus Board of Trustees and the UNC System President prior to any appointment being conferred (see UNC General Administration Policy Number [600.3.4](#), Section D.1.b.).

2 Scope

Scope of Category: Employment positions within Appalachian State University that are covered by these policies (hereinafter "covered positions") are those positions that are not subject to most provisions of the State Personnel Act ([General Statutes Chapter 126](#)). This policy is adopted by Appalachian State University (hereinafter referred to as "ASU") Board of Trustees pursuant to policies entitled "Senior Academic and Administrative Officers" ([300.1.1](#)) and "Employees Exempt from the State Personnel Act" ([300.2.1](#)) adopted by the University of North Carolina (hereafter referred to as "UNC") Board of Governors. If there is any discrepancy between provisions of this policy and UNC policies as originally adopted or periodically revised, UNC policies supersede this policy.

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- 1.1 The following positions **are** covered by this policy, except as otherwise stated herein:
 - 1.1.1 Senior Academic and Administrative Officers (as defined in Section I.B. and governed by Section III of the UNC policy [300.1.1](#), “Senior Academic and Administrative Officers”) in the following positions: associate and assistant vice chancellors; associate and assistant deans; and other administrative positions within the University that have been approved by the Board of Governors as Senior Academic and Administrative Officers.
 - 1.1.2 Positions within the “instructional and research staff” category under G.S. 126-5 and subject to UNC Policy [300.2.1](#), “Employees Exempt from the State Personnel Act.” that have been designated and approved by either the UNC Office of the President or Appalachian State University.
 - 1.1.3 Student Health Services Staff Physicians without faculty appointments.
- 1.2 The following positions are otherwise categorized and are **not** covered by this policy:
 - 1.2.1 All faculty positions which are subject to the ASU Faculty Manual
 - 1.2.2 Positions within Senior Academic and Administrative Officers (as defined in Section I.A. of the UNC [300.1.1](#), “Senior Academic and Administrative Officers”) category of employment subject to G.S. 116-11(4), G.S. 116-11(5), or G.S. 116-14
 - 1.2.3 Positions within the "physicians or dentists" category under N.C.G.S. §126-5 with faculty appointments
 - 1.2.4 University students who are employed incident to their status as students, as in graduate teaching assistantships or work-study positions.

Except as otherwise stated, these policies apply to all permanent covered positions.

3 Definitions:

4 Policy and Procedure Statements:

4.1 Administration

The Chancellor shall be responsible for the implementation of these policies and may delegate his or her authority to other identified officers of Appalachian State University as he or she deems appropriate.

4.2 Recruitment

For information regarding the policies related to recruitment for all EHRA Non-Faculty Positions, please refer to the [Recruitment and Selection Policies and Procedures for Faculty and Non-Faculty EHRA Positions](#)

For additional questions regarding the recruitment and selection process for EHRA Non-Faculty Personnel, please contact the [Office of Equity, Diversity, and Compliance](#) or the [Office of Human Resource Services](#)

4.3 Appointments to Covered Positions

- 4.3.1 Every appointment to a covered position within Appalachian State University shall be made by the Chancellor or the Chancellor’s designee, by means of a letter of appointment that fulfills the requirements of this section.

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- 4.3.2 Request to create an SAAO Position or to change an SPA position to EHRA-SAAO status.
- a. Departments desiring to create a Senior Academic and Administrative Officer (SAAO) must complete and submit the [EHRA Designation Request Form](#) it through their dean or vice chancellor to Human Resources for determination that the request meets the requirements of being classified as SAAO. A current organizational chart and an ADA checklist must accompany the request. If the position title is not on the current Human Resources approved list, HR will analyze the position's duties against the EHRA guidelines established by the Office of the President and communicate with the requesting department as necessary. HR, upon review of the request, may elect to forward it for consideration for SAAO status at the next Human Resource Advisory Board (HRAB-EHRA) meeting.
 - b. Once HR has designated the position as SAAO, [EHRA Pay Authorization](#) specifying funding source should be submitted through the appropriate Vice Chancellor, the Provost's Office, and the Budget Office. A copy of approved the [EHRA Designation Request Form](#) should be attached.
- 4.3.3 Requests to establish a Non-faculty EHRA Instructional or Research position or to change a current SPA position to EHRA instructional or research status.
- a. Departments desiring to create an EHRA non-faculty instructional or research position must complete form [EHRA Designation Request Form](#) and submit it through their dean or vice chancellor to Human Resources (HR) for approval and to ensure that the request meets the requirements of being classified as "Exempt from the Personnel Act "(EHRA). A current organizational chart and ADA checklist must accompany the request. HR will analyze the position's duties against the EHRA guidelines established by the Office of the President and communicate with the requesting department as necessary.
 - b. Once HR has designated the position as EHRA, form [EHRA Pay Authorization](#) specifying source of funds must be submitted through the appropriate vice chancellor, the provost, and the budget office. A copy of the approved form [EHRA Designation Request Form](#) must be attached.
- 4.3.4 Request to change title, department, position type, or duties of an EHRA position
- a. The [EHRA Designation Request Form](#) should be submitted through the dean or vice chancellor to Human Resources, accompanied by a current organizational chart and an ADA checklist. HR will evaluate if position's duties still meet EHRA guidelines. When approved, Form [EHRA Pay Authorization](#), specifying source of funds or account number changes should be submitted through the appropriate vice chancellor, the EHRA Resource Manager in the Provost's Office and the Budget Office.

4.4 Letters of appointment

Every letter of appointment to a covered position shall include the following:

- a. The title of the position;
- b. The initial salary;
- c. Provision for periodic review of compensation (Subject to any compensation policies adopted by the Board of Governors or the Board of Trustees.)
- d. Provisions consistent with Sections II.C. and II.D.2., below, if contingencies based on availability of funding are applicable;
- e. The annual leave entitlement of the employee;
- f. Senior Academic and Administrative Officers. Notice that the employment conferred is "employment at will" and subject to continuation or discontinuation at the discretion of the Chancellor;

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- g. Instructional or Research Positions. Notice that the employment conferred is either for a stated definite term or “employment at will” subject to continuation or discontinuation at the discretion of the Chancellor;
- h. Student Health Services Staff Physicians without faculty appointments. Notice that the employment conferred is either for a stated definite term or “employment at will” subject to continuation or discontinuation at the discretion of the Chancellor
- i. Notice that the employment is subject to these policies, as originally adopted and as they may be periodically revised;
- j. A copy of this policy shall be attached to all letters of appointment.
- k. The anti-fraudulent statement as adopted by the UNC Board of Governors and as stated in the UNC Policy Manual under policy **300.2.3[R]**, “Regulations Governing Fraudulent Job Applications” (The anti-fraud statement is included on the Candidate Profile for all EHRA applicants rather than in the appointment letter.)
- l. The Criminal Background Check statement; a copy of the Criminal Background Check Authorization shall be attached to the letter of appointment.
- m. Senior Academic and Administrative Officer (as defined in Section I.B. and governed by Section III of the UNC policy 300.1.1, “Senior Academic and Administrative Officers”) appointees only: notice that employment is subject to “Appalachian State University Policy on Administrative Separation and/or Retreat to a Faculty Position”; a copy of this policy shall be attached to the letter of appointment.
- n. Contract or letter of appointment of the Director of Athletics may be for a term of years and are governed by Policy 1100.3.

Note: A copy of each letter of appointment and curriculum vita are to be sent the HRS and made part of an employee’s personnel record.

4.5 Source of Funding

When a covered position is funded in whole or substantial part from sources other than continuing state budget funds or permanent trust accounts, the letter of appointment shall state that continuation of the employee's service in that position is contingent upon the continuing availability of funds from such other sources to support that position, shall specify the source of such funds, and shall state that the effect of such contingency may apply without the additional notice otherwise required by Sections IV.A, IV.B, and IV.C; provided, that the affected employee shall be informed at the earliest possible practicable date of the occurrence of such a funding contingency.

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4.6 Multiple Appointment Relationships

- a. When an employee is to serve simultaneously in both a covered position and a position of University employment not covered by this policy, with the result that two different prescriptions may appear to obtain with respect to a particular condition of employment or a right or responsibility of the employee, one position shall be designated in writing as the base position to determine the conditions of employment and the rights and responsibilities of the employee. If appointment to a covered position occurs subsequent to an appointment to a position not covered by this policy, the letter of appointment to the covered position shall embody the required designation of base employment; conversely, if appointment to a covered position precedes appointment to the other category of University employment, the letter of appointment or contract establishing the second employment shall embody the required designation of base employment. In either case, the designation of base employment shall specifically describe the different rights, duties, and compensation for each position and the relationship, if any, between the two positions.
- b. Any funding contingency of the type referred to in Section II.C shall be set forth separately for the covered position and for the other position, since the operation of any such contingencies may be independent.
- c. When an appointment to a covered position also includes a faculty appointment that is intended to be nominal or honorary, or to create a faculty affiliation not entailing significant duties or compensation, the term "adjunct", or similar nomenclature, shall be used to identify the faculty appointment. Such nominal or honorary (courtesy) faculty appointments do not confer any right or privileges for promotion and/or tenure.

4.7 Evaluation of Performance

Any employee in a position covered by these regulations shall receive a written review using an evaluation instrument approved by the Office of Human Resource Services on at least an annual basis unless otherwise provided in the [UNC Policy Manual](#). The written evaluation will be discussed with the employee before being placed in the personnel file. The employee should sign the evaluation instrument to indicate that the evaluation has been provided and discussed. An employee's signature does not imply agreement with the evaluation. The link to the EHRA Performance Management policy can be found on the [Human Resources Website](#).

4.8 Discontinuations of Employment in Covered Positions

- 4.8.1 Employment within a covered position that is established by the letter of appointment to be an employment at will is subject to discontinuation at any time at the discretion of the Chancellor or the Chancellor's designee; provided, that such a discontinuation (as distinguished from discharge for cause, Section IV.C.) shall be subject to advance timely notice of discontinuation or the payment of severance pay, in calendar days, as follows:
 - a. During the first year of service, not less than 30 days prior to discontinuation of employment or the payment of severance pay for 30 days;
 - b. During the second and third years of service, not less than 60 days' notice prior to discontinuation of employment or the payment of severance pay for 60 days; and

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- c. During the fourth and all subsequent years of continuous service, not less than 90 days' notice prior to discontinuation of employment or the payment of severance pay for 90 days.

The Chancellor may provide the employee with a combination of notice and severance pay that totals the required number of days. The determination of whether the employee shall receive notice of discontinuation of the appointment or severance pay or a combination of the two, shall be in the sole discretion of the Chancellor.

4.8.2 Termination of employment due to financial exigency, program curtailment, or program elimination

Employment within a covered position that is established by the letter of appointment to be for a stated definite term may be terminated prior to expiration of the stated term because of:

- a. Demonstrable, bona fide, institutional financial exigency; or
- b. Major curtailment or elimination of program.

"Financial exigency" is defined to mean a significant decline in financial resources of the University that compels a reduction in the University's budget. The determination of whether a condition of financial exigency exists or whether there will be a major curtailment or an elimination of a program shall be made by the Chancellor, with advance notice to and approval by the President and the Board of Governors. If the financial exigency or curtailment or elimination of a program is such that the contractual obligation to an employee within a covered position cannot be met, the employment of the individual may be terminated, subject to the following notice requirements in calendar days:

- a. During the first year of service, not less than 30 calendar days' notice prior to termination;
- b. During the second and third years of employment, not less than 60 calendar days' notice prior to termination; or
- c. During the fourth and all subsequent years of service, not less than 90 calendar days' notice prior to termination.

4.8.3 Discharge for Cause

Any employee occupying a covered position may be discharged for stated cause. Discharge for cause is to be distinguished from discontinuation with notice (Section IV.A), automatic expiration of term (Section IV.D), and termination (Section IV.B). Stated causes for discharge shall include, but not necessarily be limited to, incompetence, unsatisfactory performance, neglect of duty, or misconduct that interferes with the capacity of the employee to perform effectively the requirements of his or her employment. Discharge for cause is to be preceded by written notice of intent to discharge and is subject to invocation by the affected employee of the review procedures of Section V of this policy. When an employee occupying a covered position has been notified of the intention to discharge him or her for cause, the Chancellor may suspend the employment at any time and continue the suspension until the Chancellor makes a decision concerning discharge; such suspension during this time period shall be with full pay. If the final Chancellor decision is to discharge the employee, then the employee may be discharged without further pay without regard as to whether or not there is an appeal to the Board of Trustees or the Board of Governors in accordance with Section 611 of *The*

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Code of the University of North Carolina [hereafter referred to as "The Code"]. No provision of this Policy shall be interpreted to extend an employee's right to pay beyond the expiration of the employee's term of appointment while an appeal is pending under this Policy.

4.8.4 Expiration of Term Appointment

- a. Senior Academic and Administrative Officers. Employment within an SAAO position covered by this policy that is established by the letter of appointment dated prior to December 1, 2004, to be for a stated definite term expires automatically at the conclusion of the stated term; however such an appointment may be renewed at the option of the employer on an employment at will basis, by a new letter of appointment satisfying the requirements of Section II., above.
- b. Instructional or Research Staff or Staff Physicians. Employment within a covered position that is established by the letter of appointment to be for a stated definite term expires automatically at the conclusion of the stated term; such an appointment may be renewed at the option of the employer, by a new letter of appointment satisfying the requirements of Section II., above.

If the employer intends not to renew the employment, the following pertains:

- a. To an employee with a term of one year or less, no notice of intent not to renew shall be required;
- b. To an employee with a term of more than one year but less than four years, notice of intent not to renew shall be transmitted in writing at least 60 calendar days prior to the expiration date of the term; or
- c. To an employee with a term of four years or more, notice of intent not to renew shall be transmitted in writing at least 90 days prior to the expiration date of the term.

Failure to provide written notice as required in subsections b. and c. shall result in the automatic extension of employment for a period, respectively, of either 60 days or 90 calendar days, beyond the scheduled expiration date of the term.

4.9 Reviews

Reviews for employees in covered positions shall be conducted in accordance with the ASU Review Process and Procedures for EHRA Non-faculty Employees. Decisions reached pursuant to such review procedures concerning the discontinuation, expiration of term appointment, or terminations of employment with notice may be had in accordance with the provisions of Section 611 of *The Code*.

4.10 Equal Employment Opportunity

It is the policy and intention of Appalachian State University that there be equal employment opportunity and freedom from unlawful discrimination in all employment within Appalachian State University as set in section 103 of *The Code*. Employment in covered positions shall be conducted in accordance with all provisions of state or federal law or regulations prohibiting any such discrimination, and in accordance with applicable affirmative action plans.

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4.11 Protected Activity

Employment in covered positions shall not be adversely affected by the exercise of rights guaranteed by the First Amendment to the United States Constitution or by Article I of the North Carolina Constitution; provided, that employees in covered positions shall be subject to any limitations on political activity established by Article 5 of G.S. Chapter 126. The Board of Governors' policies concerning political activity, Policy §300.5.1., *et seq.*, as they may be revised from time to time, shall apply to positions covered by those policies.

4.12 Holiday and Leave Entitlement

4.12.1 Holidays: Employees in positions covered by these regulations shall be subject to the same State-prescribed holidays given ASU employees subject to the State Personnel Act.

4.12.2 Annual Leave: Effective July 1, 2001 "Year" is defined as a calendar year (January 1-December 31).

- a. Basic Leave Policy: The amount of annual leave to which a permanent full-time employee (1.00 FTE) in a position covered by these regulations shall be entitled to accrue is 24 workdays per year. Annual leave is accrued at a monthly rate and is adjusted proportionately for permanent part-time employees who work halftime or more (.50 - .99 FTE). The monthly earnings amount is equal to one-twelfth of the annual rate for each month the employee works or is on approved leave with pay. Monthly leave is earned when an employee works or is on approved leave with pay at least half the working days of a month. The scheduling of an employee's annual leave shall be subject to the approval of the employee's supervisor. With respect to an incumbent employee who is earning more than 24 days per year as of the date this policy becomes effective, such employee shall be entitled to continue to earn leave at their current rate.

The maximum number of unused days of annual leave that may be accrued and carried forward from one year to the next shall be 30 workdays. Annual leave in excess of 30 days will be automatically converted to sick leave at the end of the calendar year.

- b. In the case of an employee who has been denied from using annual leave by his or her supervisor (due to scheduling conflicts or other job-related reasons) and, as a result, the employee has over 30 days of leave accrued, the Assistant Vice Chancellor for EHRA Administration, in consultation with the employee and supervisor, shall decide whether to 1) allow the employee to carry forward any such days, 2) allow the days to convert to sick leave (if allowable under employee's retirement program), or 3) pay out the employee for all or a portion of the unused leave.
- c. When such an employee with accrued annual leave is separating from the University, he or she may be required to use all or some portion of his or her accrued leave rather than receive a full leave payout at the discretion of his or her supervisor.
- d. Transfer of Accrued Annual Leave

Upon discontinuation of employment from the employing institution, the employee may either elect a payout of accrued annual leave [see subsection 4., below] or transfer the remaining balance of any unused annual leave to another State or local governmental agency, subject to the receiving agency's approval.

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Upon appointment to ASU, an employee may request to transfer the remaining balance of any unused annual leave, subject to a maximum of 30 days, from another UNC constituent institution or State or local governmental agency. The approval of the request to transfer leave is subject to the employing department's acceptance of the fiscal responsibility.

e. Advancement of Annual Leave

Subject to the approval by the employee's supervisor, an employee may be advanced the amount of leave that can be accrued during the remainder of the calendar year. If an employee separates from the University and has taken more annual leave than has been accrued, the University will determine the amount of leave that the employee must repay to the University and make deductions from the employee's final salary check accordingly.

f. Payout of Accrued Annual Leave

An employee in a covered position who has accrued unused annual leave upon discontinuation of employment from the University and who either does not elect or is not eligible to transfer such accrued leave to another State or local governmental agency, shall be paid for such unused annual leave.⁶ The amount paid to an employee who has been employed an aggregate of 24 months or less by one or more State or local governmental agencies is equal to one day for each month worked less the number of days of annual leave taken during the employment period. An employee who has been employed for more than 24 months shall be paid subject to a maximum of 30 such days. EHRA employees who change employment status to a non-leave earning position not covered by this policy shall receive a payout of accrued annual leave. ⁹

- 4.12.3 Sick Leave, Family and Medical Leave, Family Illness Leave Act, Civil Leave, Military Leave, Community Service Leave, and Special Annual Leave Bonus: Employees in positions covered by these regulations shall be subject to the same policies concerning sick leave, family and medical leave, family illness leave, civil leave, military leave, community service leave, and special annual bonus leave as may be prescribed for employees subject to the State Personnel Act. With respect to sick leave, subject to approval by the employee's supervisor, an employee may be advanced the amount of sick leave that can be accrued during the remainder of the calendar year.
- 4.12.4 Leave of absence without pay: Employees in covered positions may request leave of absence, without pay, subject to approval of such leave by the Chancellor or his or her designee.
- 4.12.5 Educational entitlement: Employees in positions covered by these regulations may be offered the same educational entitlements as may be prescribed for other university employees subject to the State Personnel Act, including tuition waivers and the Academic Assistance Program. Employees in covered positions are entitled to the same opportunities as other University employees to invoke the privilege of tuition waiver conferred by UNC Policy 1000.2.2.
- 4.12.6 Voluntary Shared Leave : Permanent employees with appointments of three-quarter (.75 FTE) or more shall be subject to the same provisions concerning shared leave as are applicable to employees subject to the State Personnel Act with the exception that the donation and acceptance of such leave shall be computed on the basis of days rather than hours.

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4.13 Statutory and Other Rules of Employment

- 4.13.1 Privacy of personnel records: Employees in covered positions enjoy the protections of and are subject to the provisions of Article 7 of G.S. § 126, entitled "The Privacy of State Employee Personnel Records."
- 4.13.2 Employment preference for veterans: Employees in covered positions enjoy the protections of and are subject to the provisions of G.S. § 128-15, which provide for preference in employment for veterans of United States military service and their spouses and widows or widowers.
- 4.13.3 Employment of related persons: Employees in covered positions are subject to the UNC policy concerning employment of related persons, Policy § 300.4.2 as it may be revised from time to time.
- 4.13.4 Retirement: Employees in covered positions may retire in accordance with the provisions of Chapter 135 of the North Carolina General Statutes.

5 Additional References

- 5.1 Office of Human Resources: www.hrs.appstate.edu
- 5.2 Office of Equity Diversity and Compliance: www.edc.appstate.edu
- 5.3 Appalachian State University Policy Manual: www.policy.appstate.edu
- 5.4 General Administration EHRA Information: www.northcarolina.edu/hr/hr_council/EHRA_Res_Info.htm
- 5.5 Office of State Personnel: www.osp.state.nc.us

6 Authority

7 Contact Information

- 8 **Effective Date:** These policies will be become effective upon approval by the Chancellor and the ASU Board of Trustees. The policies may be revised from time to time, with subsequent changes to selected portions of the policies effective on the dates indicated herein.

9 Revision Dates