

**THE FLORIDA INTERNATIONAL UNIVERSITY BOARD OF TRUSTEES
FLORIDA BOARD OF GOVERNORS**

NOTICE OF ADOPTION OF EMERGENCY REGULATIONS

REGULATION TITLES:	REGULATION NOS.
Bargaining Unit Employee Disciplinary Actions	FIU Emergency Reg. 2005-01
Bargaining Unit Faculty and Bargaining Unit Employees Vacancies, Selection, Appointments, Promotions, Internal Promotions, Reassignments, Transfers, and Demotions	FIU Emergency Reg. 2005-02
Nonreappointment and Resignation of Non-Tenured, Bargaining Unit Faculty	FIU Emergency Reg. 2005-03
Termination for Cause and Other Disciplinary Actions for Bargaining Unit Faculty and Bargaining Unit Employees	FIU Emergency Reg. 2005-04
Separation from Employment for Non-Bargaining Unit Employees	FIU Emergency Reg. 2005-05
Disciplinary Actions for Non-Bargaining Unit Employees and Certified Law Enforcement Personnel	FIU Emergency Reg. 2005-06

**STATEMENT OF FACTS AND REASONS FOR CONCLUDING THAT THE
PROCEDURE IS FAIR UNDER THE CIRCUMSTANCES**

On June 29, 2005, The Florida International University Board of Trustees adopted the following proposed rules in accordance with the rulemaking procedure contained in the Florida Administrative Procedures Act (“APA Rulemaking Procedure”): Bargaining Unit Employee Disciplinary Actions (Rule 6C8- 4.006), Bargaining Unit Faculty and Bargaining Unit Employees Vacancies, Selection, Appointments, Promotions, Internal Promotions, Reassignments, Transfers, and Demotions (Rule 6C8-4.014), Nonreappointment and Resignation of Non-Tenured, Bargaining Unit Faculty (Rule 6C8-4.016), Termination for Cause and Other Disciplinary Actions for Bargaining Unit Faculty and Bargaining Unit Employees (Rule 6C8-4.019), Separation from Employment for Non-Bargaining Unit Employees (Rule 6C8-4.025), Disciplinary Actions for Non-Bargaining Unit Employees and Certified Law Enforcement Personnel (Rule 6C8-4.030) (collectively, “Personnel Rules”). The adoption of these Personnel Rules was part of a major revision of the University’s personnel program regarding its non-bargaining unit employees that included the adoption of new personnel polices as well as these Personnel Rules by the Board of Trustees. The University commenced implementation of the new personnel program on July 1, 2005 and full implementation was scheduled for completion no later than mid-August 2005 with the inclusion of the Personnel Rules in the Florida Administrative Code.

On July 21, 2005, the Florida Board of Governors (BOG) adopted a Regulation Development Procedure for State University Boards of Trustees (“BOG Regulation Development Procedure”), which replaced the APA Rulemaking Procedure effective immediately. According to the BOG Regulation Development Procedure, rules that were in the process of completion pursuant to the

APA Rulemaking Procedure must be adopted pursuant to the BOG Regulation Development Procedure. Further, according to the new BOG procedure, the adoption of a regulation through the normal (i.e., non-emergency) procedure will take more than 45 days, taking into account that the Board of Trustees' next regular meeting is September 19, 2005. To avoid delay in the implementation of its personnel program, the Board of Trustees must act immediately and adopt its Personnel Rules as emergency regulations so that the University may move forward with the new personnel program for non-bargaining employees. Failure to adopt the emergency regulations will result in disruption to the personnel system of the University and create confusion for employees and Human Resources administrators.

The procedure is fair under the circumstances for several reasons. These emergency regulations on personnel matters are identical in substance to the proposed Personnel Rules adopted and authorized by the Board of Trustees at its June 29, 2005 meeting. As a result, the substance of these emergency regulations has been widely noticed to the University community and the public through several notices that are required under the APA Rulemaking Procedure. These notices include a Notice of Rule Development (including the right to request a rule workshop), and a Notice of Rulemaking published after the Board's adoption on June 29, 2005 (including a right to request a rule hearing). As a result of these notices, members of the University community requested and obtained copies of the Personnel Rules. Further, at the request of employees, both a rule workshop and rule hearing were held regarding the Personnel Rules. The Board of Trustees made changes to the Personnel Rules based on comments received from employees at the rules workshop. In addition, the Personnel Rules have been approved at public meetings of the Board, initially at the May 17, 2005 meeting of the Administration and Compensation Committee, and then at the full Board of Trustees meeting on June 29, 2005.

The emergency regulations can be viewed on the website of The Florida International University Board of Trustees or by following this link, <http://www.fiu.edu/trustees/regulations.htm>.

If you would like a copy of the emergency regulations, please contact Eli Deville, Coordinator, Administrative Services, Office of the General Counsel, (305) 348-2103.

THE EMERGENCY REGULATIONS TAKE EFFECT IMMEDIATELY UPON PUBLICATION OF THIS NOTICE.

DATE OF PUBLICATION: August 5, 2005.

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FIU Emergency Reg. 2005-05 Separation from Employment for Non-Bargaining Unit Employees

(1) Policy.

University employees are considered “at will.” Employment at will is presumed to be voluntary and indefinite for both the employee and the University. The employee-employer relationship may be terminated at any time with or without cause. Terminations based on discriminatory reasons are prohibited. Any separation of employment shall be in consultation and with the approval of the Vice President for Human Resources or his/her designee, or the Provost or his/her designee in the case of the non-bargaining unit faculty member.

(2) Definitions.

(a) Employee – For purposes of this Regulation, “employee” means all University employees except certified law enforcement personnel (not including the Director of Public Safety) employed by the University Police Department who have passed their probationary period, registered nurses and nurse practitioners employed by University Health Services (not including any Director for University Health Services) who have passed their probationary period, and tenured faculty.

(b) Separations of Employment – Includes termination, resignation, job abandonment, and layoff.

(c) Termination -- Occurs when an employee is permanently separated from University employment with or without cause. Termination may be preceded by corrective action. Unsatisfactory performance or misconduct may warrant immediate dismissal.

(d) Nonreappointment – termination of a non-bargaining non-tenured unit faculty member without cause.

(e) Resignation - Occurs when an employee initiates a termination by notifying the immediate supervisor of his/her intention to resign.

(f) Job Abandonment - Occurs when an employee is absent without approved leave for three (3) or more consecutive scheduled workdays. Such action represents an abandonment of position, and the employee will be automatically terminated. If the employee’s absence is for reasons beyond the control of the employee and the employee notifies the University as soon as practicable, the University will review the circumstances surrounding the absence on an individual basis to determine if it is to be considered abandonment of position.

(g) Layoff - Terminations of employment due to layoff of a non-bargaining unit employee are governed by University policy.

(3) Notice to Employees; Resignation.

(a) Employees will be given a notice period of fourteen (14) days if the separation from employment is due to layoff. If the separation from employment is due to termination without cause, employee shall be given a notice period of four (4) weeks after one year of employment, plus two weeks for every year of employment thereafter up to a maximum of twelve (12) weeks.

(b) Exception. The notice period for termination of employment without cause for employees who were in the Administrative and Professional (A&P) pay classification prior to July 1, 2005 and had a minimum of ten (10) consecutive years of full-time employment with the University as of June 30, 2005, shall be six (6) months notification, prior to terminating their employment relationship. .

(c) Employees will give two weeks written notice of resignation. A resignation may not be rescinded by the employee without concurrence of the University.

(4) Notice for Non-Tenured, Non-Bargaining Unit Faculty.

(a) Faculty members, except those described in sub-paragraph (b) below are entitled to the following written notice of nonreappointment.

1. If the faculty member has less than three (3) years of continuous University service, a notice period of one semester;
2. If the faculty member has three (3) or more years of continuous University service, a notice period of two semesters.

(b) Exception. The notice provisions of this paragraph do not provide rights to:

1. Summer appointments;
2. Faculty members who are funded from contracts, grants and/or sponsored research funds as they are governed by the terms and conditions of employment of their contract or grant; or
3. Faculty members who are appointed as visitors or who are appointed to multi-year appointments.

(5) Upon notice of termination without cause pursuant to paragraph (3) above or notice of nonreappointment pursuant to paragraph (4) above, the University shall decide at its sole option, whether to:

- (a) Allow the employee to continue to work at the University during the

notification period in the same position or in a different position,

(b) Place the employee on leave with pay during the notification period,

(c) Pay the amount due to the employee in salary during the notification period as a lump sum payment and cease employment of the employee immediately, or

(d) Take a course of action that is a combination of any of the above.

(6) Special Provisions Regarding Separation from Employment for Tenured, Non-Bargaining Unit Faculty

(a) Notwithstanding anything to the contrary in this Regulation, separation from employment for tenured faculty include resignation, job abandonment, and layoff as defined in paragraph (2) above, and termination as defined in sub-paragraph (b) below.

(b) For purposes of this paragraph, termination is defined as permanent separation from University employment for just cause.

(c) For purposes of this paragraph, just cause is defined as incompetence or misconduct.

(d) Notice of Termination for Tenured Faculty.

1. Tenured faculty shall be given written notice at least six (6) months in advance of the effective date of such termination.

2. Exception. In cases where the Provost or his/her representative determines that a faculty employee's actions adversely affect the functioning of the University or jeopardize the safety or welfare of any employee, or students, the Provost or his/her representative may give less than six (6) months notice.

(7) A non-bargaining unit faculty member who wishes to resign has the professional obligation, when possible, to provide the University with at least one semester's notice upon resignation. All consideration for tenure and reappointment shall cease. A resignation may not be rescinded by the non-tenured bargaining unit faculty without concurrence of the University.

(8) Applicability. This Regulation does not apply to bargaining unit faculty and bargaining unit employees.

Authority: 1001.74(19), FS.