OP 70.31: Employee Conduct, Discipline, and Terminations

DATE: January 27, 2012

PURPOSE: The purpose of this Operating Policy/Procedure (OP) is to establish policy regarding classified, professional, administrative, and executive employee conduct, discipline, and terminations.

REVIEW: This OP will be reviewed in March of even-numbered years by the managing director of Human Resources and the managing director of Equal Employment Opportunity with recommended revisions forwarded to the chief of staff to the president.

POLICY/PROCEDURE

1. Definition of Terms

   a. Voluntary Termination - The resignation or other voluntary removal of an employee from the service of the university when the removal is initiated by the employee

   b. Involuntary Termination - The involuntary removal of an employee from the service of the university

   c. Employee - Any person paid with university funds. This includes members of the faculty at all ranks and holding any appointment.

Applicability

All provisions of this policy apply to all university employees except:

(1) Employees who have a written contract approved by the Board of Regents, chancellor, or president for which they have the legal authority to enter: and

(2) Tenured faculty members whose termination will be controlled by the tenure policy (OP 32.01) and for whom the “at will” employment provisions herein do not apply.

2. Employee at Will

   a. Employment at Texas Tech is governed by the employment at will doctrine. Employment is for an indefinite duration and can be terminated at any time, with or without cause and with or without notice, by either Texas Tech or the employee. Nothing in this or any other Texas Tech operating policy and procedure constitutes an employment agreement, either expressed or implied, a contract, a contractual relationship, a guarantee of continued employment, or a property right. No one can execute a contract of employment except the Board of Regents acting as a whole, the chancellor, or the president of the university and any such contract must be within their legal authority and must be in writing.
b. Although Texas Tech is an at will employer, it seeks to define and exemplify standards of conduct and requires employees to function in accordance with this policy.

3. Faculty

In the case of non-tenured and non-tenure track faculty members, all disciplinary procedures other than non-renewal of appointment, termination, or denial of tenure will be governed by this OP.

4. Employee Conduct

a. Colleges and universities that are tax-supported must function in accordance with the public trust and the actions of faculty, staff, and students within them must be consistent with the execution of that trust. A violation of the standards established in this policy may result in the assessment of a penalty ranging from a verbal counseling to termination from Texas Tech.

b. A breach of trust and/or misconduct includes, but will not be limited to, the following offenses:

1. Academic dishonesty such as giving or receiving aid on a test, examination, quiz, or other academic assignment;

2. Plagiarism;

3. Forgery, alteration, or unauthorized use of university documents, records, timesheets, or identification materials;

4. Knowingly furnishing false information to the university, including information contained in or in support of an application for employment, promotion, or transfer;

5. The use of force, violence, verbal threat, physical conduct, or other methods that obstruct the functions of the university, which include teaching, research, administration, public service, presentations by guest lecturers and speakers, and other authorized activities, or that threaten or endanger the health or safety of any person;

6. Theft of or damage to university property including, but not limited to, equipment, tools, and fixtures, or of a member of the university community or campus visitor;

7. Unauthorized entry to, use of, or possession of university facilities or property;

8. Unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance, or any substance the possession or distribution of which is regulated by federal or Texas law;

9. Behaving in a disorderly manner, use of slurs or hostile epithets, use of abusive or profane language, lewd, indecent, or obscene conduct on university-owned or controlled property or at a university-sponsored or supervised function;

10. Failure to comply with the lawful directions of university officials where such directions are issued in the performance of their duties, including following university or departmental policies and procedures;
(11) Use of university funds for any purpose other than outlined in the legislative guidelines or university or departmental guidelines;

(12) Use of a university-owned vehicle for any reason other than conducting official university business;

(13) Use of university-owned property to access lewd, indecent, obscene, or racially discriminatory materials;

(14) Use of university-owned property to participate in criminal or illegal activity;

(15) Use, possession, or distribution of alcoholic beverages or illegal drugs, including misuse of prescription drugs, while on duty or reporting to work under the influence of such substances;

(16) Illegal or unauthorized use or possession of weapons, firearms, ammunition, fireworks, explosives, noxious materials, incendiary devices, or other dangerous substances;

(17) Acts or communications that are intended to harass, intimidate, humiliate, or retaliate against a member of the Texas Tech community or campus visitor;

(18) Gambling or wagering while on university-owned property or at a university sponsored event;

(19) Intentional sounding of a false fire alarm or false emergency call, issuing a bomb threat, constructing mock explosive devices, or tampering with or removing fire equipment or emergency signs;

(20) Failure to meet financial obligations due Texas Tech;

(21) Unauthorized use of the name, logotype, or symbols of Texas Tech;

(22) Intentionally or recklessly misusing, destroying, or damaging university-owned property or the property of others;

(23) Excessive tardiness or absence;

(24) Insubordination, as in showing contempt or disrespect for authority through verbal or written communication or behavior;

(25) Failure to meet acceptable job performance standards or reasonable expectations, including productivity or quality established for the assigned position;

(26) Failure to respond when on call outside regular work schedule;

(27) Unauthorized absence from work or failure to provide a valid reason for an unscheduled absence or tardiness. Failure to report to work on a single occasion may result in disciplinary action up to and including termination. However, in all instances, failure to report to work or notify the supervisor for three (3) consecutive work days will be considered job abandonment and will result in immediate termination;

(28) Refusal to submit to alcohol or drug testing as outlined in OP 70.35;
(29) Willful, deliberate, or repeated violation of university safety rules including, but not limited to, refusal or failure to wear university-provided safety and protective apparel and/or equipment; failure to follow safety guidelines or instructions; repeated incidents of unsafe acts resulting in property damage or injury to self or others;

(30) Nepotism in violation of Chapter 03, Regents’ Rules;

(31) Violation of university antidiscrimination policies or state or federal laws;

(32) Failure to protect confidential information;

(33) Failure to report to the supervisor while on leave, as instructed or in accordance with university policy.

c. Criminal Conviction or Probation - Each faculty, staff, and/or student employee is required to notify the university of any criminal conviction or probation or suspended sentence, whether from a conviction or deferred adjudication, no later than five days after such conviction, deferred adjudication, suspended sentence, or probation, other than for routine traffic offenses, unless one of the employee’s job duties includes or involves use of a university vehicle, in which case these also must be reported. Failure to notify the university in a timely manner will constitute misconduct.

d. Ethical Behavior - The ethics policy for Texas Tech employees, OP 10.11, sets also forth requirements regarding:

1. Standards of conduct
2. Principles of ethical behavior
3. Conflict of interest
4. Travel
5. Benefits, gifts, and honoraria
6. Political activities
7. Use of authority
8. Sexual harassment
9. Nepotism
10. Affirmative Action
11. Private use of university facilities, equipment, supplies, and services

e. An employee may not have any material interest in or engage in any business or professional activity or incur any obligation that is in substantial conflict with the proper discharge of duties in the university's interest. Specifically, no employee shall:

1. Accept or solicit any gift, favor, or service that might reasonably tend to influence the employee in discharging official duties or that the employee knows, or should know, is being offered with the intent to influence the employee’s official conduct;

2. Accept employment or engage in any business or professional activity in which the employee might reasonably expect would require or induce the employee to disclose confidential information acquired by reason of the official position;

3. Accept other appointments or any employment or compensation that could reasonably be expected to impair the employee’s independent judgment in the performance of official duties;
(4) Make personal investments that could reasonably be expected to create a substantial conflict between the employee's private interest and the public interest; or

(5) Intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised official powers or performed official duties in favor of another.

f. Funds administered by the university, regardless of their source or character, must be used by an employee for duly authorized university business, projects, and programs.

g. None of the moneys under Texas Tech control shall be used for influencing the outcome of any election or the passage or defeat of any legislative measure. This prohibition shall not be construed to prevent any official or employee of the state from furnishing to any member of the legislature or committee, upon request, or to any other state official or employee, or to any citizen information in the hands of the employee or official not considered under law to be confidential information. Any action taken against an employee or official for supplying such information shall subject the person initiating the action to immediate dismissal from state employment.

h. No funds under the control of Texas Tech may be used directly or indirectly to hire employees or in any other way fund or support candidates for the legislative, executive, or judicial branches of government of the state of Texas or the government of the United States.

i. None of the funds under Texas Tech control shall be expended in payment of the salary for full-time employment of any state employee who is also the paid lobbyist of any individual, firm, association, or corporation. None of the funds under Texas Tech control shall be expended in payment of the partial salary of a part-time employee who is required to register as a lobbyist by virtue of the employee's activities for compensation by or on behalf of industry, a profession, or association related to operation of the agency or institution for which the person is employed. A part-time employee may serve as a lobbyist on behalf of industry, a profession, or association so long as such entity is not related to the agency with which he or she is employed.

j. None of the moneys under Texas Tech control shall be paid to any official or employee who violates any of the provisions of this section.

k. An employee must operate university-owned vehicles only to conduct official university business. Use of these vehicles for any political campaign or for personal reasons is specifically prohibited.

l. Each employee of the university will be furnished a copy of the above conduct guidelines as part of the Employee Affidavit and shall be required to abide by its terms as a condition of employment.

7. Discipline

a. General Policy

Each administrative officer has the authority and responsibility to establish and maintain an effective, efficient, and orderly workforce of employees. However, when an employee's performance or conduct is not in keeping with the behavior standards expected of a university employee, the administrative officer has the responsibility to investigate the situation so that facts are known and to take actions that provide a means of correction. A Supervisor's Guide
to Employee Conduct, Discipline, and Separations is available to assist each administrative officer in the exercise of this charge.

The university encourages, but does not require, the use of a positive discipline system designed to give the employee a reasonable opportunity to improve deficiencies and maintain satisfactory work performance.

It is not necessary to progress through each of the steps in sequence. Some situations may necessitate repetition of certain steps while other situations may call for skipping steps. Each employee situation should be considered based on the facts of the situation. Nothing in this policy relating to discipline gives any employee a property or other right to any step in the counseling or positive discipline plan, nor does it in any way limit the university rights to terminate an employee for any reason or no reason at all, as long as it is not a reason prohibited by law.

b. Counseling and Positive Discipline

Counseling and positive discipline are used to encourage the correction of deficiencies by providing the employee with knowledge of the deficiencies, with recommended actions that will correct the deficiencies, and with an opportunity to take the actions recommended. Positive discipline may include:

(1) Verbal Counseling

If an employee is exhibiting minor deficiencies, verbal counseling may be used to establish an understanding of the work and/or behavioral standards expected by the supervisor. In the event the job performance or behavior does not improve, a summary of the verbal counseling may be used to support further disciplinary action.

(2) Written Letter of Reprimand

If it is determined that an employee has failed to respond to the verbal counseling, or if the infraction is of a more severe nature that would warrant stronger disciplinary action, a written letter of reprimand may be given to the employee. The letter should include specific details of less than acceptable performance or conduct, list any previous discussions or actions regarding the situation, and clearly state expectations with detailed time frames for correction. The employee may file a letter of response to the supervisor with a copy to Human Resource Services to be placed in his or her personnel file.

(3) Administrative Leave

(a) Administrative Leave With Pay

If a supervisor deems it necessary to release an employee from the workplace pending an investigation or decision regarding a suspected offense, the employee may be placed on leave from duty with full pay for a prescribed period of time. The employee will remain subject to return to duty at any time during the administrative leave with pay.

(b) Disciplinary Leave Without Pay
If misconduct or adverse behavior has continued after disciplinary counseling or letters of reprimand, a disciplinary leave without pay may be imposed. For offenses that violate major rules of conduct, leave without pay may be justified without prior disciplinary steps. The leave without pay may range from the balance of a shift to several days.

Disciplinary leave without pay must have prior written concurrence of the assistant vice president for human resources administration, a vice president or the provost/senior vice president, or the president prior to the implementation of the leave. Additionally, if the suspended employee is a member of a protected class under state or federal anti-discrimination laws, prior approval of the managing director of the Equal Employment Opportunity Office is required.

d. Demotion or Reclassification

An administrative officer may request a demotion or reclassification of an employee in order to reassign the employee to a position where the needs of the department may be met. This may or may not be for disciplinary reasons. A recommendation shall be submitted to the managing director of Human Resource Services providing information to support the action. Written approval of the appropriate vice president or the provost/senior vice president and the managing director of Human Resource Services is required prior to any commitment being made and prior to the effective date of the proposed change of status. Prior approval of the managing director of the Equal Employment Opportunity Office is required if the demoted employee is a member of a protected class under state or federal law.

e. Final Letter of Warning

For repeated minor offenses or a serious infraction, an employee may be issued a final letter of warning. This may also be issued when disciplinary leave without pay is imposed.

f. Involuntary Termination

It is recommended that termination from employment for disciplinary reasons normally be preceded by counseling, written letters of reprimand, and/or leave without pay. However, when the supervisor believes that the employee’s behavior will not improve and that the employee ultimately will not be a productive employee, termination without prior disciplinary action may be warranted. Termination without prior warning may also occur when continuation of employment would be detrimental to normal departmental operation. In some cases, wages in lieu of notice may be given, but it is not warranted in all circumstances. All such payments must be approved in advance by the assistant vice president for human resources administration.

A written explanation of the action recommended and the letter of termination to the employee must be submitted and approved by the appropriate vice president or the provost/senior vice president, and the assistant vice president for human resources administration before an employee is terminated. Prior approval of the managing director of the Equal Employment Opportunity Office is required if the terminated employee is a member of a class protected by state or federal antidiscrimination laws.

Nothing in these termination procedures precludes a manager from terminating an employee for any reason or no reason at all.
The determination of eligibility for re-hire will be made by the assistant vice president for human resources administration. If the employee is classified as upper administration, the provost/senior vice president or the president will be the authority who determines re-hire eligibility.

8. Reduction in Force

Recommendations for reorganization or reduction in staff within offices, departments, divisions, schools, and colleges will require written approval of the appropriate vice president or the provost/senior vice president, and the managing director of Human Resource Services prior to any notification to an employee. Positions may be deleted and/or employees terminated as a result of reorganization or staff reduction. A position will be deleted based on the importance of the job to the mission of the unit or university.

The selection of individual employees to be retained or terminated will take into consideration the critical nature of the job to the mission of the university, performance, military return to work protection, and the ability to do the work remaining. The selection of individuals to be terminated shall not be made on the basis of race, color, religion, sex, age, disability, national origin, veteran status, or genetic history. The Office of Equal Employment Opportunity should be consulted in all reductions in force.

If the lack of work or funds is temporary (i.e., less than one year), the employee, at the university’s discretion, may be offered the opportunity to take a leave without pay instead of being terminated or placed on leave without pay under the provisions of this policy.

For joint TTU/TTUHSC employees, a decision by TTU to reduce funding to a position will not obligate TTUHSC to increase its funding to compensate for the reduction, or vice versa.

A written explanation of the action recommended and the letter of termination to the employee must be submitted and approved by the assistant vice president for human resources administration through normal administrative channels before an employee is terminated or placed on a leave without pay due to lack of work or funds. Provisions of this policy are not applicable to financial exigency.

9. Exhaustion of All Available Leaves

If an employee is absent from work and has exhausted all leaves available to the employee, the department will terminate the employee.

10. Resignation

An employee may resign in good standing by submitting reasons for resignation to the supervising administrative officer at least two calendar weeks prior to the effective date of the resignation.

If an employee is subject to termination, he or she may be given the opportunity to resign in lieu of termination, but it is not a requirement.

11. Grievance

Any employee of the university may present a complaint or grievance to higher authority without retaliatory action being taken against him/her in accordance with the policy governing appeals.
and grievances (see OP 70.10 for non-faculty employees and OP 32.05 for faculty employees). A termination cannot be grieved unless the employee has reason to believe the action taken is prohibited by law.

12. Notice

Nothing in this policy or disciplinary procedure limits the university’s right as an at will employer to terminate an employee for any reason or no reason at all.

13. Forms

All related forms are available on the Human Resources website:
http://www.depts.ttu.edu/hr/forms.asp

14. Authoritative Reference

Texas Government Code Section 556.004
Texas Government Code Section 572.051
Section 03.01.1, Regents’ Rules

15. Right to Change Policy

Texas Tech University reserves the right to interpret, change, modify, amend, or rescind this policy, in whole or in part, at any time without the consent of employees.