

### **Candidacy for Elective Office; Office Holding (Elective and Appointive Public Office)**

The Board of Governors adopts the following policy for University employees concerning candidacy for and holding public office (elective and appointive).

I. This policy applies to all University employees who are exempt from the State Personnel Act (Chapter 126 of the General Statutes) pursuant to G.S. 126-5(c1).<sup>1</sup>

A. **Employee Responsibilities.** An employee who intends to become a candidate for election or appointment to any public office, or to hold any public office, is responsible for knowing and complying with the policy set forth herein, in addition to any other applicable policies, regulations, and guidelines including, but not limited to, policies and regulations concerning Political Activities of Employees, Conflict of Interest and Commitment, and External Professional Activities for Pay.

B. **Campus Responsibilities.** Each chancellor must assure that employees understand well in advance both the procedures to be followed in pursuing, as well as the possible employment implications of their involvement, in political candidacy and public office holding. Such measures shall include: (1) publication of a notice, of the type established by the president, to be included in documents that prescribe the terms and conditions of employment for each category of covered University employment, e.g., faculty handbooks and/or tenure policies, employment manuals for nonfaculty employees (employees subject to the State Personnel Act are not covered by the policy); and (2) distribution in advance of each pending political season, of reminders of policy requirements to which employees are subject. This reminder may be distributed electronically, by paper, or other methods.

C. **Definitions.** The definitions set forth in subpart I.B. of Section 300.5.1 of the UNC Policy Manual are incorporated herein by reference. In addition, for purposes of this policy:

1. "Appointive public office" means a public office filled or obtained by means other than an election.
2. "Compensation which is more than nominal" means with reference to part-time public office (other than membership in the General Assembly) actual annual compensation or expected annual compensation, whichever is greater, in excess of \$10,000, excluding direct reimbursements for expenses incurred by the office holder incident to holding office, whether such expenses are calculated on a per diem basis or on an actual-expense basis.
3. "Conflict of interest" means situations in which financial or other personal considerations, circumstances, or relationships may compromise, may involve the potential for compromising, or may have the appearance of compromising a employee's objectivity in fulfilling their University duties or responsibilities, including research, service, and teaching activities and administrative duties.
4. "Conflict of commitment" relates to an individual's distribution of time and effort between obligations to University employment and participation in other activities outside of University employment. A conflict of commitment occurs when the pursuit of such outside activities involves an inordinate investment of time or is conducted at a time that interferes with the employee's fulfillment of University employment responsibilities.

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<sup>1</sup> For employees subject to the State Personnel Act (SPA), activities related to public office holding are governed by policies adopted by the Office of State Human Resources (OSHR) pursuant to its authority under Chapter 126 of the North Carolina General Statutes.

5. “Elective public office” means a public office filled or obtained through the results of an election.
6. “EPA nonfaculty employee” means an individual who is employed in a position covered by Section 300.2.1 of the UNC Policy Manual.
7. “Full-time employee” means an individual who is employed by the University at least three-quarter (3/4) time, including faculty who are employed on a nine-month per calendar year basis.
8. “Major public office” means (a) any public office requiring full-time service, regardless of the amount of compensation; (b) any public office requiring service on a part-time basis for which the compensation is more than nominal; and (c) membership in the North Carolina General Assembly.
9. “Minor public office” means any public office that is not a major public office.
10. “Part-time employee” means an individual who is employed but who is not a full-time employee.
11. “Public office” means any national, state, or local governmental position of public trust and responsibility, whether elective or appointive, which is created, prescribed, or recognized by constitution, statute, or ordinance (other than within the University of North Carolina).
12. “Senior academic and administrative officer (SAAO)” means an individual who is employed in a Tier I or Tier II position covered by Section 300.1.1 of the UNC Policy Manual.

II. Minor Public Offices. An employee who assumes, or becomes a candidate for election to, a minor public office shall be subject to the requirements of this subpart.

A. No Presumption of Conflict of Commitment. The candidacy by an employee for election to a minor public office, or the assumption by an employee of a minor public office, whether appointive or elective, is presumed not to create a conflict of commitment with respect to the responsibilities owed by the employee to the University.

B. Resolution of Potential Conflicts in Particular Cases. If the president (with respect to senior academic and administrative officers (SAAO) and employees of General Administration) or the chancellor (with respect to other employees of the constituent institution, other than senior academic and administrative officers) believes that a material conflict of commitment may exist in a particular case, the president or the chancellor may direct the employee subject to this subpart to submit a petition in accordance with subpart III.B. of this policy, and refer the petition to either the Board of Governors or the appropriate board of trustees for resolution.

C. Prompt Reporting of Payments Required. An employee who files as a candidate for or intends to assume or accept appointment to a public office subject to this subpart must file promptly with his or her immediate supervisor a written statement setting forth the amount of any payments to which the holder of such office is entitled as officeholder.

III. Major Public Offices. An employee who assumes, or becomes a candidate for election to, any major public office shall be subject to the requirements of this subpart.

A. Conflict of Commitment Presumed. An employee who assumes, or announces his or her candidacy for election to, a major public office, is presumed to create a conflict of commitment that interferes with the employee's satisfactory performance of University employment obligations. That presumption is irrebuttable with respect to any full-time employee who assumes any full-time public office. Such conflicts shall be addressed as follows:

1. Candidacy for major public office. An employee shall resolve conflicts about candidacy in advance of becoming a candidate by:

a. Resigning from University employment; or

b. Submitting a petition in accordance with subpart III.B., in which the employee (1) requests and is granted an appropriate unpaid leave of absence from University employment; or (2) rebuts the presumption of conflict by demonstrating to the satisfaction of the University that there in fact will be no conflict between campaign activity and University employment. If the employee by petition is able to establish to the satisfaction of the University that, contrary to the presumption, such candidacy in fact will not create a conflict of commitment which interferes with responsibilities owed the University, the resignation requirement shall not be applicable. If consistent with the presumption the resignation requirement is found to be applicable, the employee may be granted a full or partial leave of absence from University employment, with corresponding suspension of or reduction in pay, to be coextensive with the period of candidacy.

2. Service in full-time public office by full-time employees.

a. Full-time public office. Upon assuming any public office requiring full-time service, a full-time employee will be deemed to have resigned his or her University employment, unless prior to assuming office the full-time employee submits a petition in accordance with subpart III.B., through which the employee requests and is granted a full leave of absence, without pay. Such a leave of absence may be granted at the option of the University if it is deemed practicable by the University and may not exceed two years in any case.

b. Part-time public office for which compensation is more than nominal; membership in the General Assembly. Upon assuming part-time public office for which the compensation is more than nominal, or upon assuming office as a member of the General Assembly, a full-time employee must resign from University employment, unless prior to assuming office such employee submits a petition in accordance with subpart III.B., through which the employee: (1) requests and is granted an appropriate leave of absence; or (2) rebuts the presumption of conflict by demonstrating that there in fact will be no conflict between office holding and University employment. If the employee by petition is able to establish to the satisfaction of the University that, contrary to the presumption, holding such public office in fact will not create a conflict of commitment which interferes with responsibilities owed the University, the resignation requirement shall not be applicable. If consistent with the presumption the resignation requirement is found to be applicable, the employee may, if deemed practicable by the University, be granted a full or partial leave of absence from University employment, with corresponding suspension of or reduction in pay, applicable to the period for public service. If a full leave of absence is deemed necessary and is granted, it shall not exceed two years in any case. If a partial leave of absence is deemed necessary and is granted, the period of leave shall be at the discretion of the University.

3. Service in public office by part-time employees.

a. Full-time public office; membership in the General Assembly. Upon assuming full-time public office, or upon assuming office as a member of the General Assembly, a part-time employee must resign from University employment, unless prior to assuming office such employee submits a petition in accordance with subpart III.B., through which the employee: (1) requests and is granted an appropriate leave of absence; or (2) rebuts the presumption of conflict by demonstrating that there in fact will be no conflict between office holding and University employment. If the employee by petition is able to establish to the satisfaction of the University that, contrary to the presumption, holding such public office in fact will not create a conflict of commitment which interferes with responsibilities owed the University, the resignation requirement shall not be applicable. If consistent with the presumption the resignation requirement is found to be applicable, the employee may, if deemed practicable by the University, be granted a full or partial leave of absence from University employment, with corresponding suspension of or reduction in pay, applicable to the period for public service. If a full leave of absence is deemed necessary and is granted, it shall not exceed two years in any case. If a partial leave of absence is deemed necessary and is granted, the period of leave shall be at the discretion of the University.

b. Part-time public office for which compensation is more than nominal. A part-time employee who assumes a part-time public office for which compensation is more than nominal shall be subject to the requirements of subpart II of this policy.

B. Petition. Prior to assuming a major public office, or announcing his or her candidacy for election to a major public office, an employee shall submit a petition using the form/format prescribed by the president.

1. Submission and resolution of petitions.

a. Petitions by senior academic and administrative officers, and by all other employees if the petition concerns candidacy for or service in the General Assembly, shall be addressed to and resolved by the Board of Governors,<sup>2</sup> shall be transmitted through the president, and shall be accompanied by a recommendation from the appropriate chancellor in any case pertaining to an institutional employee. If the petition pertains to a chancellor, it shall be accompanied by a recommendation of the board of trustees.

b. Petitions by University employees other than senior academic and administrative officers, with the exception of petitions concerning candidacy for the General Assembly, shall be addressed to and resolved by the appropriate board of trustees and shall be transmitted through the chancellor. With respect to each such decision rendered by a board of trustees, the chancellor shall transmit to the Committee on University Governance of the Board of Governors a report, containing such information as the committee may specify, concerning the action of the board of trustees.

2. Timely presentation of petitions. An employee shall file a petition well in advance of the period of employment that would be affected by assuming major public office or announcing candidacy for major public office. The petition should be filed in accordance with the timeframes set forth in regulations established by the president,

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<sup>2</sup> Pursuant to N.C. Gen. Stat. § 116-11(13), and notwithstanding *The Code* or any other Board of Governors policy, the Board of Governors has delegated certain authorities to the president of the University. See Policy 200.6, *Delegation of Authority to the President of the University*, adopted November 11, 2006.

except where the president (for petitions under III.B.1.a.) or the chancellor (for petitions under III.B.1.b.) determines that filing the petition in accordance with the deadline is impracticable and that the University's interests will not be materially impaired by a later filing.

a. Candidacy for public office. With respect to an employee who intends to announce as a candidate in a race that requires a May primary contest, any petition submitted to rebut the presumption of conflict of commitment should ordinarily be filed with the appropriate governing board by no later than November 1 in the year preceding the May primary election. With respect to an employee who intends to stand for election in November, any such petition should ordinarily be filed with the appropriate governing board by no later than July 1 of the election year.

b. Appointment to public office. The advance notice provided to the prospective appointee is frequently not sufficient to permit compliance with the petition schedule established by the Board. Accordingly, subject to all other board requirements controlling public office holding, if circumstances do not permit a prospective appointee to file a required petition on the schedule otherwise prescribed for prospective office holders, the petition may be submitted to and resolved by the officer or agency responsible for the class of employment of which the petitioner is a member, viz., the president for senior academic and administrative officers, and the chancellor for faculty and EPA nonfaculty personnel. In such cases, however, it remains University policy that the prospective appointee will lose University employment if he or she assumes the appointive office before receiving an affirmative response from the alternative decision-maker. Thus, even under this expedited procedure, in some cases the prospective appointee may have to defer acceptance of the appointment beyond the normal starting date for the public office. When this alternative procedure is used, the chancellor in each instance shall report the action taken to the Committee on University Governance through the president.

3. Showings necessary to rebut presumption of conflict. An employee who wishes to campaign for or assume a major public office and simultaneously maintain his or her full-time University employment must demonstrate that, contrary to the presumption established by the policy, no conflict of commitment in fact will occur.

For purposes of this policy it is assumed that each University employee, including members of the faculty, is obligated to be on duty for a minimum eight-hour day and forty-hour week. In conventional employment contexts, entailing a standard eight-hour workday, an employee will be expected to limit campaign and office-holding activities to evenings and weekends in order to satisfy employment obligations. Faculty members, however, typically follow schedules that vary from day to day and, indeed, from week to week in accruing their forty or more hours per week of employment activity. Such variety reflects, among other factors, their scheduled teaching and counseling hours, the demands of their research projects, the time dedicated to classroom preparation, the requirements of institutional service through committee memberships, and study and travel associated with contributions to the profession, as in visiting lectureships, professional meetings, and reviews of the work of other scholars and programs. Thus, there is no "standard workday" among the professoriate. The need for flexibility in scheduling the component faculty endeavors of teaching, research, and service is universally recognized. Yet, for purposes of this board policy certain shared assumptions must be identified to help quantify employment obligations.

Unless there is clear demonstration to the contrary, it will be assumed that the work day for professors is the conventional one that falls between the hours of 8 a.m. and

5 p.m. However, an individual faculty member may seek to demonstrate that his or her full-time employment schedule for a given semester in fact does not or need not conform to the presumed norm and, accordingly, that times other than evenings and weekends properly would be available for campaign activity. Thus, a petition to the governing board in support of efforts to rebut the presumption of conflict would have to begin with a representation about what basic periods of time would be devoted to campaigning and why such a proposed schedule would not conflict with the forty or more hours per week of his or her University job. The unalterable premise is that the employee must meet the full requirements of employment while campaigning or serving in office, not that he or she will be permitted to reduce in any way his or her full-time University service in order to engage in candidacy for or service in public office. A satisfactory showing therefore must quantify the distribution of time between employment time and personal time devoted to candidacy and office holding, as required in the petition form prescribed by the president.

C. Conditions Imposed Incident to Permitting Maintenance of Full-Time Employment. If the governing board determines that an employee has successfully rebutted the presumption of conflict, the permission to continue full-time University employment during service in or candidacy for public office may need to be attended by special conditions. For example, the employee may be required to maintain a daily log of time devoted to campaign activity, subject to periodic inspection by the employee's supervisor. By way of further example, in arranging the division of time between University duties and campaigning or office holding, a member of the instructional faculty should not be permitted to reschedule class meeting times or office hours for counseling students, if students thereby would be inconvenienced. In summary, there is a need for responsible academic administrators to monitor closely a faculty member's compliance with the terms of the understanding reached with the governing board.

D. Leaves of Absence during Candidacy or Service in Public Office.

1. In general. If a University employee concludes or a governing board determines that engaging in a contemplated political campaign or serving in public office will prevent the employee from meeting full-time employment responsibilities, the employee may request a leave of absence, either partial or full, with corresponding reduction in or suspension of pay. The presentation of petitions in support of a request for such leave must follow the same schedule as prescribed above for efforts at rebuttal of presumed conflicts, viz., by November 1 with respect to May primary contests and July 1 for the general election. In fact, if an employee seeks to be excused from the resignation requirement by rebutting the presumption of conflict, his or her petition on that subject should be accompanied by a petition for leave, to address the contingency of a finding by the governing board that the presumption has not been rebutted. The president will provide a model petition form to be used by University employees to describe the nature and extent of leave requested, with accompanying representations from the chancellor and other responsible administrators about the feasibility of the proposal, from the institution's perspective, e.g., whether it would be possible to satisfactorily cover the duties of the employee while he or she was absent. If an employee seeks a partial leave of absence, the type of quantification effort described above, with respect to rebuttal of a presumed conflict, would be necessary. A listing of duties to be performed and duties not to be performed would be required, which would account for the total full-time employment responsibilities of the employee; and, derivatively, a judgment then could be made about what percentage reduction in salary would be required.

2. Faculty requests for partial semester leave. Faculty employment is distinguishable from other types of University employment. Other types of University employment are not necessarily keyed to the semester-based provision of educational services to students. Thus, the absence of such employees for intervals of several weeks or several months during a semester might not have the same potentially negative effects

on students as would the comparable absence of faculty members. (For these other employees, however, a similar consideration would apply to employment duties which fall routinely at particular times of the calendar year.)

A faculty member who is assigned a course to teach for a semester will likely not be permitted to discontinue the instruction of that course (actual teaching hours and directly related instructional responsibilities, such as advising enrolled students) part way through the term by using a substitute teacher.

A faculty member who anticipates running for an elective office or serving in public office should broach this issue well in advance of the semester during which such activity will occur and to seek a full or partial leave for all of that semester, rather than for just a portion of the semester. Under such an approach, the institution would have appropriate lead time to assign instructors to the courses in question, students would know in advance the identity of and could make an advertent choice about whether to enroll in a course to be taught by a particular instructor, and there would be no mid-term adjustments confronting students who did enroll in a course.

#### IV. Consequences of Failure to Comply with Required Procedures.

This policy is designed to accomplish a timely resolution of questions about an employee's proposed involvement in activities that could conflict with University employment responsibilities. The purpose is to avoid, through advance planning, any situation in which an employee might neglect his or her duty and thereby disrupt service to students and other beneficiaries of the University enterprise, with consequent need for disciplinary action against the culpable employee. The system established by the board permits both the employee and the employer to identify potential problems in advance and to craft reasonable accommodations. Thus, it is essential that the procedures called for in the policy be observed carefully.

An employee who fails or refuses to observe the procedural requirements of the policy has violated the terms and conditions of his or her employment and is subject to disciplinary action. With the establishment of appropriate measures for providing notice of the policy requirements, all covered employees will be presumed to know their obligations under the policy.

##### A. With Respect to Office Holding.

1. If a full-time employee is elected or appointed to a full-time public office, his or her University employment ends automatically ("will be deemed to have resigned") upon the assumption of that office. The automatic termination of employment may be avoided only if the employee, prior to assuming the office, has sought and obtained permission for a leave of absence, not to exceed two years in duration. Since the relevant provisions of the policy are self-executing, there is no occasion for disciplinary action in such a case.

2. If a University employee (full-time or part-time) is elected to or assumes office as a member of the General Assembly, or if a full-time employee is elected to or assumes a part-time office for which compensation is more than nominal, holding the office is presumed to conflict with the satisfactory performance of University employment obligations, and the employee is obligated to resign upon assuming that public office. The required resignation may be avoided only if the employee, prior to assuming the office, follows prescribed procedures that result either in a finding that in fact there will be no conflict created by simultaneous office holding and University employment or, alternatively, in the approval of a requested leave of absence. If an employee fails to follow the prescribed procedure or declines to resign after failing to rebut the presumed

## APPENDIX V

The UNC Policy Manual

300.5.2

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conflict or after being denied a leave of absence, disciplinary action may be brought against him or her for violation of the terms and conditions of his or her employment.

B. With Respect to Candidacy. Under the terms of the board policy, if a candidacy for election to public office entails a presumed conflict with University employment, the affected employee is required to resign when he or she becomes a candidate. Resignation from employment may be avoided only if the employee, prior to becoming a candidate, follows prescribed procedures that result either in a finding that in fact there will be no conflict or, alternatively, in the approval of a requested leave of absence. If an employee fails to follow the prescribed procedure or declines to resign after failing to rebut the presumed conflict or after being denied a leave of absence, disciplinary action may be brought against the employee for violation of the terms and conditions of his or her employment.

### V. Other Matters.

A. Appeals. With respect to any decision reached by a board of trustees as prescribed in Section III of this policy, an employee aggrieved by the decision may appeal to the Board of Governors only on the basis of that such decision was contrary to clearly established controlling law or policy. Any such appeal shall be addressed to the chancellor for transmission to the president, who in turn will transmit the appeal to the Board of Governors.

B. Effective Date. The requirements of this policy shall be applicable prospectively only, on and after the date of adoption by the Board of Governors. No change in the employment status of an employee who was an incumbent in a public office as of the adoption date of this resolution shall be required under the terms of this resolution for the balance of the term of office being served on the effective date of this resolution.

C. Policies of Constituent Institutions. The board of trustees of each constituent institution shall adopt policies governing public office holding by employees. Policies adopted or substantively amended by a board of trustees regarding public office holding by employees shall be effective upon approval by the president.

D. Relation to State Laws. The foregoing regulations as adopted by the Board of Governors are designed to supplement, and do not purport in any way to supplant or modify, those statutory enactments which may govern or limit the political activities of employees of the State of North Carolina.

E. Regulations and Guidelines. These policies shall be implemented and applied in accordance with such regulations and guidelines as may be adopted from time to time by the president.