



TRANSMITTAL LETTER

The University of North Carolina
Office of the President

Transmittal Number 41
September 20, 2005

Subject: 200.5. Initiating and Settling Lawsuits
300.2.14. Non-Salary Deferred Compensation

This letter transmits one amended policy and one newly adopted policy.

200.5 Initiating and Settling Lawsuits. This policy was amended by the Board of Governors at its meeting on September 8, 2005. Please contact Leslie Winner, Vice President and General Counsel, at 919-962-4588 with any questions.

300.2.14. Non-Salary Deferred Compensation. This policy was adopted by the Board of Governors at its meeting on September 8, 2005. Please contact Gretchen Bataille, Senior Vice President for Academic Affairs, at 919-962-4614 with any questions.

INITIATING AND SETTling LAWSUITS

By virtue of N.C.G.S. §116-3, the authority to initiate and settle lawsuits in the name of the University of North Carolina, and on behalf of the constituent institutions, lies with the Board of Governors. A constituent institution has no independent authority to initiate or settle lawsuits in its own name. Many lawsuits, however, are routine in nature and do not require the attention of the Board of Governors to approve their initiation or settlement. The Board of Governors therefore delegates the authority to initiate and settle lawsuits as follows:

1. A constituent institution may initiate a lawsuit in the name of The University of North Carolina if the amount in controversy is less than the jurisdictional amount for civil actions in Superior Court as set out in N.C.G.S §7A-243 upon the approval of the chancellor. The University of North Carolina may initiate a lawsuit concerning issues that do not arise at a constituent institution, or that arise at more than one constituent institution, if the amount in controversy is less than the jurisdictional amount for civil actions in Superior Court as set out in N.C.G.S §7A-243 upon the approval of the president.
2. The Committee on University Governance may authorize the initiation of litigation in the name of the University of North Carolina if the amount in controversy is greater than the jurisdictional amount for Civil Actions in Superior Court, or if injunctive relief is sought. A request to initiate litigation shall be made by the chancellor of a constituent institution, or by the request of the president for issues that do not arise at a constituent institution or that arise at more than one constituent institution. In an emergency, if a constituent institution or the University needs to seek an order from a court sooner than it is practical to call a meeting of the Governance Committee, the constituent institution or the University may initiate litigation on the authorization of the President or the Vice President and General Counsel of the University. The President or Vice President shall consult with the Chair of the Governance Committee before authorizing the litigation if it is practical to do so. If emergency litigation is initiated without the authorization of the Governance Committee, the President, or the President's designee, shall inform the Governance Committee about the litigation at the Committee's next regular or special meeting.
3. If a settlement of a lawsuit that has been filed by or against a constituent institution or the University of North Carolina:
 - a. Is solely for monetary relief, and if the amount that the University of North Carolina is to pay pursuant to an agreement to settle the lawsuit is less than \$75,000, or if the University is to receive a payment, and the amount claimed was less than \$75,000, then the chancellor of a constituent institution is authorized to approve the settlement. If a matter did not arise at a constituent institution or involves more than one constituent institution, the president is authorized to approve the settlement.

- b. Is solely for monetary relief, and if the amount that the University of North Carolina is to pay is \$75,000 or greater, or if the University will receive a payment, and the amount claimed was \$75,000 or greater, then the Committee on University Governance is authorized to approve the settlement.
 - c. Includes an agreement by the University, or one or more constituent institutions, to take, or refrain from taking, a specific action, and the agreement affects only the named parties in the litigation, such as actions that affect only named employees or students, then the president or the chancellor of the constituent institution may authorize the settlement agreement.
 - d. Includes an agreement by the University, or one or more constituent institutions, to take or refrain from taking a specific action which affects a group or class of people or which results in changing a University or constituent institution policy, procedure or regulation, then the Committee on University Governance is authorized to approve the settlement.
- 4. The Committee on University Governance may refer a request to initiate or settle litigation to the Board of Governors, in the committee's discretion. The president may refer a request to settle a lawsuit to the Committee on University Governance in the president's discretion. If the president makes such a referral, the Committee on University Governance is authorized to decide the matter, or it may make a recommendation to the Board of Governors.
- 5. Any settlement approved pursuant to this policy shall be reported to the Committee on University Governance and to the Board of Governors at the next regular meeting of the Board of Governors after the settlement is finalized.
- 6. The University of North Carolina may appear as *amicus curiae* in a lawsuit or judicial proceeding only after receiving the approval of the Committee on University Governance. The Committee, in its discretion, may refer the question to the Board of Governors.
- 7. A constituent institution, or a school or college of a constituent institution, may appear as *amicus curiae* in a lawsuit or judicial proceeding only after receiving the approval of the chancellor of the institution and after providing advance written notice to the president. Nothing in this section is intended to limit the ability of an individual University employee or group of employees to appear as *amicus curiae* in the individual's or employee group's name.

This policy does not apply to administrative proceedings. The chancellors and president are authorized to initiate administrative proceedings and to settle administrative proceedings in which the University or a constituent institution is named as a party.

This policy applies to the University of North Carolina Health Care System, to the UNC Physicians and Associates, and to the ECU Medical Faculty Practice plan except as otherwise provided in Policy §§1200.4 and 1200.5 and except as otherwise provided by State law, including G.S. §116-219 *et seq.*

NON-SALARY AND DEFERRED COMPENSATION

A. Non-salary compensation.

1. Irrespective of the campus' status regarding management flexibility in personnel, all constituent institutions and the General Administration shall have a policy concerning the granting of non-salary compensation for all personnel exempt from the State Personnel Act except for the chancellor and the president. The policy shall either provide specified non-salary compensation to a defined category of employees uniformly or shall require approval by the board of trustees or Board of Governors upon recommendation by the chancellor or president, respectively, regarding non-salary compensation granted to an individual employee before non-salary compensation is provided.

Each policy that provides specified non-salary compensation to a defined category of employees shall set out what types of non-salary compensation the campus or General Administration will provide, and the criteria for awarding such compensation. The awarding of non-salary compensation may be based on any reason or reasons considered relevant to attracting or retaining a faculty and staff of the highest possible quality. Decisions concerning non-salary compensation shall not be based in whole or in part upon discriminatory factors of the employee's race, color, national origin, sex, age, religion, creed, disability, or veteran status.

2. The funding source for non-salary compensation shall not be State funds, and non-salary compensation may be provided directly by an associated foundation if permitted by policy. An exception permitting non-salary compensation to be funded from State funds may be approved by a board of trustees or the Board of Governors only when permitted by the Office of State Budget and Management. Any club membership for an employee or the granting of special campus services or benefits must be job related, and the club must have a policy prohibiting discrimination against groups protected by federal and North Carolina law. Non-salary compensation shall be appropriately reported to federal and state tax agencies.

The hiring approval process may include payment of moving expenses in accordance with authority from the Office of State Budget and Management. The decision of whether to include payment of moving expenses in an employment offer may be delegated no lower than the Provost/Vice Chancellor level or Vice President level.

3. Provision of housing, when occupancy of the housing is required as a part of the job, reimbursement of professional- or work-related travel, and the provision of equipment to perform the work of the position, even if used at home, including computers, cellular phones, personal data assistants (PDA), pagers and similar work related items, are permissible and are not considered "non-salary compensation" as used in this Policy.

B. Delayed or Deferred Salary/Compensation

The State of North Carolina and the University of North Carolina offer employees options for deferred compensation and insurance. Unless expressly approved by the Board of Governors, constituent institutions and the General Administration may not provide any other employer-paid options for deferred compensation or other delayed compensation to its employees.

For purposes of this policy, delayed and deferred salary or compensation shall be broadly defined to include, but are not limited to, any employer payment or contribution paid 1) directly to an employee, 2) to the employee's account or plan, or 3) to a person acting in a capacity similar to a trustee for the employee, which is paid later than the regular or next subsequent payment cycle, except for an error that is promptly corrected upon discovery. Delayed and deferred salary/compensation also includes traditional 457 deferred compensation plans, any retirement plans or accounts, annuities, and life insurance accumulating any cash value. Delayed and deferred compensation also include both tax qualified and non-qualified plans, and any other similar form of payment, whether tax sheltered or not.

This policy does not prohibit a campus from making any permitted employer contribution to the Optional Retirement Program or the Teachers' and State Employees' Retirement System.

C. Non-salary or deferred compensation of Chancellors and President

Other than a State provided car or a car of comparable value, a chancellor's or the president's residence as provided for in Policy 300.1.5, work related club memberships, reimbursement of moving expenses upon initial employment as a chancellor or president, and benefits uniformly provided to all employees exempt from the State Personnel Act, only the Board of Governors may approve non-salary or deferred compensation for a chancellor or the president. The funding source for non-salary compensation for a chancellor or the president, other than that specified in this paragraph, shall not be State funds, but an exception may be approved by the Board of Governors. Club memberships may never be paid using State funds.

D. Employees exempt from this policy

Members of faculty medical practice plans, such as physicians, dentists, and veterinarians, are exempt from this policy. Athletic directors and head coaches remain subject to Policy 1100.3 and its guideline, and are exempt from this policy.

E. Review and Approval

Campus policies on non-salary and delayed/deferred salary/compensation must be submitted as a part of the campus request for management flexibility to appoint and fix compensation. Campuses already granted management flexibility in personnel shall submit their policies to the General Administration for review. Subsequent changes to the policies must be submitted for review by the General Administration prior to submission to the campus Board of Trustees for approval. In some cases, policies with extensive revisions will be reconsidered by the Committee on Personnel and Tenure of the Board of Governors.