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COURT OF CLAIMS
OF OHIO

IN THE OHIO COURT OF CLAIMS

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STEVEN LISS,

Plaintiff,

vs.

CLEVELAND STATE UNIVERSITY,

Defendant.

) CASE NO.: 2013-00139
)
) JUDGE PATRICK M. McGRATH
)
) MAGISTRATE HOLLY T. SHAVER
)
) PLAINTIFF'S MOTION FOR LEAVE TO
) FILE FIRST AMENDED COMPLAINT

Pursuant to Rule 15 of the Ohio Rules of Civil Procedure, plaintiff Steven Liss respectfully requests leave to file the First Amended Complaint, attached hereto as Exhibit 1.

Rule 15 provides that amendments should be freely granted. Ohio R. Civ. P. 15(A). Here, permitting the requested amendment is appropriate. The only effect of the proposed amendment is to emphasize the existing claim for Defendant's failure to re-hire or re-assign Plaintiff by adding a claim for breach of contract. Where, as here, litigation is in its early stages, including that the plaintiff's deposition has not yet been taken, courts grant leave to amend. *See, e.g., Jordan v. Cuyahoga Metro Housing Authority*, 161 Ohio App.3d 216, 223, 2005-Ohio-2443, 829 N.E.2d 1237 (8th Dist.) (holding trial court abused its discretion in denying leave to amend because there was no prejudice given that the motion was filed before the discovery cut-off).

Indeed, "[i]n order for an objecting party to prevent the amendment of a pleading under Civ.R. 15, the party must establish that he will be subject to serious disadvantage if the amendment were allowed." *City of Springfield v. Palco Inv. Co.*, 2013-Ohio-2348, 992 N.E.2d 1194, 1205, 2013 Ohio App. LEXIS 2279, ¶46 (2d Dist.) (internal quotations omitted). Here, Plaintiff is the only party to take depositions in this matter to-date, and has only taken four depositions. Defendant has not yet taken Plaintiff's deposition, and in any event, the additional topics raised in the First Amended Complaint are subsumed within Plaintiff's existing claim for

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failure to re-hire or re-assign. As such, no party will suffer prejudice from the granting of this Motion, the proposed amendment will not result in undue delay and this Motion is not brought in bad faith.

Accordingly, Plaintiff respectfully requests that the Court grant *Plaintiff's Motion for Leave to File First Amended Complaint* and grant Plaintiff leave to file the First Amended Complaint, attached hereto as Exhibit 1.

Respectfully submitted,



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CERTIFICATE OF SERVICE

A true and accurate copy of the foregoing was served via electronic and U.S. Mail, on
this 3rd day of July 2014 to:

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Attorneys for Defendant



Attorney for Plaintiff Steven Liss

IN THE COURT OF CLAIMS OF OHIO

STEVEN LISS,)
4450 Donna Drive) CASE NO.: 2013-00139
Richmond Heights, OH 44143)
) JUDGE PATRICK M. McGRATH
Plaintiff,)
) MAGISTRATE HOLLY T. SHAVER
vs.)
)
CLEVELAND STATE UNIVERSITY,)
2121 Euclid Avenue) FIRST AMENDED COMPLAINT
Cleveland, Ohio 44115,)
)
Defendant.)

JURISDICTION & VENUE

1. Plaintiff Steven Liss ("Liss") brings this action for damages against Defendant Cleveland State University ("CSU") for violations of Ohio Rev. Code § 4112.02(A) (Age Discrimination); and Ohio Rev. Code § 4112.02(I) (Retaliation).
2. This action also asserts claims against CSU for violations of 29 U.S.C. § 2611 *et seq.* (Family and Medical Leave Act) and 29 U.S.C. § 621 *et seq.* (Age Discrimination in Employment Act, as amended).
3. All administrative prerequisites have been met.
4. Liss is a citizen of the United States and a resident of Cuyahoga County, Ohio.
5. CSU is a state university located in Cuyahoga County, Ohio, and is an agent or instrumentality of the State of Ohio.
6. This Court has original jurisdiction of the claims asserted herein pursuant to Ohio Rev. Code § 2743.02.
7. This matter is timely filed, and jurisdiction and venue are proper.



PARTIES

8. Liss was employed by CSU, until his termination on or around September 5, 2012.
9. Liss is a "person," "individual" and "employee" within the meaning of Ohio Rev. Code Chapter 4112, 29 U.S.C. § 2611, *et seq.*, and 29 U.S.C. § 621, *et seq.*
10. CSU is a "person," an "individual" and an "employer" within the meaning of Ohio Rev. Code Chapter 4112, 29 U.S.C. § 2611, *et seq.*, and 29 U.S.C. § 621, *et seq.*

FIRST CAUSE OF ACTION

(Age Discrimination in Violation of O.R.C. Chapter 4112 and ADEA)

11. Liss incorporates by reference the previous paragraphs as if fully re-alleged herein.
12. Liss is an individual who is over the age of 40 and was so at all times relevant to the activities which are the subject of this First Amended Complaint.
13. Liss was qualified for the position(s) in which he was employed by CSU and the positions for which he applied, was considered, or was eligible.
14. Liss successfully performed the duties and responsibilities of the position(s) he held.
15. On or around September 5, 2012, CSU terminated Liss from his employment because of his age.
16. Because of Liss's age, CSU refused to promote, re-instate, re-hire, transfer or re-assign Liss for available positions for which he was qualified.
17. CSU did not terminate Liss's employment for any reasons related to his qualifications, work performance, behavior, or adherence to policy or procedure.
18. CSU replaced Liss with a substantially younger employee or employees, and promoted and retained substantially younger employees in positions for which Liss was more qualified.

19. CSU has a pattern and practice of making employment decisions, such as hiring, promotion, transfer and termination decisions, on the basis of age.
20. CSU discriminated against Liss on the basis of age with respect to the terms, conditions and privileges of employment in violation of Ohio Rev. Code Chapter 4112 and 29 U.S.C. § 621, *et seq.*, including by: making age-related comments; denying him promotional opportunities given to substantially younger candidates; subjecting him and older employees to unfair scrutiny, pay and discipline; terminating his employment; retaining, hiring, and promoting substantially younger employees; and refusing to re-hire, recall, transfer or re-assign Liss to his former position or to other open positions for which he was qualified.
21. As a direct and proximate result of CSU's unlawful conduct, Liss suffered and will continue to suffer economic and non-economic damages, including, but not limited to, pain and suffering, and the loss of salary and benefits and other privileges and conditions of employment.
22. CSU's discriminatory actions against Liss in violation of the ADEA and Ohio Rev. Code §§ 4112.02(A) and (N) were willful, in bad faith, conducted with malicious purpose, or conducted in a wanton or reckless manner. CSU is liable for past and future economic and non-economic compensatory pursuant to Ohio Rev. Code § 4112.99 and 29 U.S.C. § 626(b), liquidated damages,¹ attorneys' fees and costs,² and any other legal or equitable relief that this Court deems appropriate.

¹ 29 U.S.C. § 626(b).

² 29 U.S.C. § 626(b), *incorporating* 29 U.S.C. § 216(b) ("The court in such action **shall**, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action.") (emphasis added). Additionally, notwithstanding *Drain v. Kosydar*, Franklin App. 79AP-78, 1979 Ohio App. LEXIS 10929 (10th Dist., July 31, 1979), a defendant may be liable for the plaintiff's attorney's fees and costs regardless of statutory authority upon a finding of bad-faith, malicious purpose, or wanton and

SECOND CAUSE OF ACTION
(Retaliation in Violation of O.R.C. Chapter 4112 and ADEA)

23. Liss incorporates by reference the previous paragraphs as if fully re-alleged herein.
24. Liss engaged in protected activity by complaining of discrimination and harassment on the basis of age and disability to CSU.
25. CSU failed to take prompt, remedial, and appropriate steps to address the unlawful discriminatory treatment of Liss and older workers.
26. CSU retaliated against Liss because he opposed discriminatory conduct in violation of Ohio Rev. Code Chapter 4112 and 29 U.S.C. § 623(d), including by: unfairly changing the terms, conditions and privileges of his employment; subjecting him to unfair scrutiny, pay and discipline; denying him promotional opportunities given to candidates who did not engage in protected activity; terminating his employment; retaining, hiring, and promoting employees who did not engage in protected activity; and refusing to re-hire, recall, transfer or re-assign Liss to his former position or to other open positions for which he was qualified.
27. As a direct and proximate result of CSU's unlawful conduct, Liss suffered and will continue to suffer economic and non-economic damages, including, but not limited to, pain and suffering, and the loss of salary and benefits and other privileges and conditions of employment.
28. CSU's discriminatory actions against Liss in violation of Ohio Rev. Code § 4112.02(I) and 29 U.S.C. § 623 were willful, in bad faith, conducted with malicious purpose, or conducted in a wanton or reckless manner. CSU is liable for past and future economic

reckless behavior. *See Sturm v. Sturm*, 63 Ohio St.3d 671, 675 (1992), *citing Sorin v. Board of Education*, 46 Ohio St.2d 177, 183 (1976).

and non-economic compensatory pursuant to Ohio Rev. Code § 4112.99 and 29 U.S.C. § 626(b), liquidated damages,³ attorneys' fees and costs,⁴ and any other legal or equitable relief that this Court deems appropriate.

THIRD CAUSE OF ACTION
(FMLA Retaliation)

29. Liss incorporates by reference the previous paragraphs as if fully re-alleged herein.
30. During Liss's employment, a co-worker with serious health conditions notified CSU of his need for leave to treat his conditions.
31. Liss engaged in protected activity by opposing and complaining of discrimination, interference, and retaliation against the individual who exercised or attempted to exercise rights to leave under the FMLA, 29 U.S.C. § 2611, *et seq.*
32. CSU failed to take prompt, remedial, and appropriate steps to address the unlawful discrimination, interference, and retaliation.
33. CSU retaliated against Liss because he opposed and complained of discrimination, interference and retaliation against an individual who exercised or attempted to exercise FMLA rights, in violation of 29 U.S.C. § 2695; including by: unfairly changing the terms, conditions and privileges of Liss's employment; subjecting him to unfair scrutiny, pay and discipline; terminating his employment; retaining, hiring, and promoting employees who did not engage in protected activity; and refusing to re-hire, recall, transfer or reassign Liss to his former position or to other open positions for which he was qualified.

³ 29 U.S.C. § 626(b).

⁴ *See* n.2, *supra*.

34. As a direct and proximate result of CSU's unlawful conduct, Liss suffered and will continue to suffer economic and non-economic damages, including, but not limited to, pain and suffering, and the loss of salary and benefits and other privileges and conditions of employment.
35. CSU's discriminatory actions against Liss in violation of FMLA, 29 U.S.C. § 2615 *et seq.*, were willful, in bad faith, conducted with malicious purpose, or conducted in a wanton or reckless manner. CSU is liable under 29 U.S.C. § 2617 for interest on the amount of losses described in the preceding Paragraph, liquidated damages, all fees and costs (including, but not limited to, reasonable attorney's fees,⁵ expert fees, and costs), and any equitable relief that this Court deems appropriate, including, but not limited to, front pay, employment, reinstatement, and promotion.

FOURTH CAUSE OF ACTION
(Breach of Contract)

36. Liss incorporates by reference the previous paragraphs as if fully re-alleged herein.
37. CSU and Liss entered into an agreement with respect to Liss's employment.
38. The employment agreement includes the terms and conditions contained in a document entitled *Professional Staff Personnel Policies* (the "Employment Contract").
39. A true and accurate copy of the Employment Contract is attached hereto as Exhibit A.
40. The Employment Contract was in effect at the time CSU terminated Liss.
41. CSU claims that Liss was laid off due to a reorganization.
42. If Liss is laid off due to a reorganization, under the Employment Contract CSU is required to, among other things, make a reasonable effort to secure alternative

⁵ 29 U.S.C. § 2617(a)(3) ("The court in such an action **shall**, in addition to any judgment awarded to the plaintiff, allow a reasonable attorney's fee, reasonable expert witness fees, and other costs of the action to be paid by the defendant.") (emphasis added).

appointments within CSU in open positions for which Liss is qualified under existing criteria. See Exhibit A at § 8.5.8.4.3(B).

43. If Liss is laid off due to a reorganization, under the Employment Contract CSU is required to, among other things, re-appoint Liss to the position should it re-open within 18 months. See Exhibit A at § 8.5.8.4.3(C).
44. CSU failed to make a reasonable effort to secure alternative appointments within CSU in open positions for which Liss is qualified under existing criteria.
45. CSU failed to re-appoint Liss to his position when it re-opened within 18 months.
46. By engaging in the actions complained of herein, including, but not limited to, failing to re-hire Liss, failing to make efforts to find Liss other positions for which he was qualified, and otherwise terminating Liss without taking the actions required under the Employment Contract, CSU has breached the Employment Contract.
47. As a direct and proximate result of CSU's breach of contract, Liss suffered and will continue to suffer damages, including, but not limited to, the loss of salary, benefits, and other privileges and conditions of employment.
48. Liss is therefore entitled to all available remedies, including, but not limited to, compensatory damages, consequential damages, liquidated damages, and/or specific performance, and any other equitable remedies the Court deems appropriate.

CONCLUSION

Plaintiff Steven Liss seeks an amount in excess of \$25,000 to fully, fairly and justly compensate him for injury, damage and loss, and respectfully prays that this Court enter judgment in his favor and award him past and future economic and non-economic compensatory damages, fringe benefits, consequential damages, incidental damages, liquidated damages,

interest, attorneys' fees, all fees and costs, and any additional equitable relief that it deems appropriate, including, but not limited to, specific performance, back pay, front pay, employment, reinstatement and promotion.

Respectfully submitted,



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CERTIFICATE OF SERVICE

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PROFESSIONAL STAFF
PERSONNEL POLICIES



***Department of Human Resources Development and Labor
Relations
January 2010***

**CLEVELAND STATE UNIVERSITY
Handbook**

8.0 Personnel Policies and Bylaws

8.5 PROFESSIONAL STAFF PERSONNEL POLICIES

Revised January 2010

Section

- 8.5.1** Professional Staff Personnel Policies
- 8.5.2** Definitions Appointments and Conditions of Employment
- 8.5.3** Appointments and Conditions of Employment
- 8.5.4** Annual Performance Evaluation



- 8.5.5 Job Classifications and Salary Adjustments
- 8.5.6 Placement on Administrative Leave
- 8.5.7 Progressive Corrective Action
- 8.5.8 Termination of Employment
- 8.5.9 Grievance Procedures
- 8.5.10 Leaves of Absence With Pay
- 8.5.11 Leaves Without Pay
- 8.5.12 Student Fee Authorization Program
- 8.5.13 Staff Development Program
- 8.5.14 Consulting and Extramural Employment
- 8.5.15 Candidacy for Public Office
- 8.5.16 Conflict of Interest
- 8.5.17 Ohio Law
- 8.5.18 Associate of the University Status
- 8.5.19 Recommendations to Prospective Employers
- 8.5.20 Severability
- 8.5.21 Review of Personnel Policies

APPENDICES

Affirmative Action and Equal Employment Opportunity Statement

American With Disabilities Act Statement

Sexual Harassment Policy Statement

Your Rights Under the Family and Medical Leave Act (FMLA)

Family and Medical Leave Act Policy

Ohio Revised Code: Student or Staff Members Arrested for
Certain Offenses

Drug Free Workplace Policy

Ohio Code of Ethics Law

Guidelines on Use of University Computing Facilities

Smoke Free Environment Policy

Professional Staff Performance Appraisal Guidelines

Summary of Other Employee Benefits

*Cleveland State University is an Affirmative Action/Equal Opportunity institution.
No person will be denied opportunity for employment or education or be subject to
discrimination in any project, program or activity because of race, color, religion,
sex, sexual orientation, national origin, age, handicap, or disability, disabled veteran
or Vietnam era veteran status.*

8.5 PROFESSIONAL STAFF PERSONNEL POLICIES

8.5.1 Professional Staff Personnel Policies. [\[Back to the top\]](#)

The Policies, originally effective as of July 1, 1996, and revised in January 2010 apply to all contract Professional Staff employees of the University and all other unclassified contract personnel not included under the Faculty and Librarian Personnel Policies, or covered by the University's Collective Bargaining Agreements with the AAUP or SEIU, except that those Professional Staff employees who report directly to the President are not covered by Sections 8.5.5, 8.5.8.3, and 8.5.8.4; these Professional Staff employees serve at the will of the President.

8.5.2 Definitions. [\[Back to the top\]](#)

The following are definitions of words and phrases used in these policies.

8.5.2.1 Professional Staff – Professional Staff employees of the University and all other unclassified contract personnel not included under the Faculty and Librarian Personnel Policies, or covered by the University's Collective Bargaining Agreements with the AAUP or SEIU which includes both part-time and full-time employees:

A. Part-time - A part-time employee is one whose appointment is designated as part-time and whose regularly assigned workweek averages fewer than 40 hours per week. A part-time professional staff employee must not be assigned to work more than 32 hours on average over a fiscal year.

B. Full-time - A full-time employee is one whose appointment is designated as full-time and whose regularly assigned workweek is 40 hours per week over a period of an academic or fiscal year.

8.5.2.2 Individual Employment Contract - The document, signed by the President, or designee, which extends a specified offer of employment for a specified time period and rate of compensation.

8.5.2.3 Immediate Family - The immediate family includes mother, father, brother, sister, spouse, daughter, son, mother-in-law, father-in-law, brother-in-law, sister-in-law, daughter-in-law, son-in-law, grandparent, grandchild, stepparent, stepchild, and legal guardian or other person who stands in place of a parent.

8.5.2.4 Unit - Unit defines the area of an employee's activity, regardless of administrative level within the University. Unit refers generally to an

organizational structure; e.g. department, office, sector, or center, and normally will be under the direction of a unit head/administrator and a unit supervisor.

8.5.2.5 Salary Grade - An established pay range for each position noting the minimum and maximum salaries for the pay range.

8.5.3 Appointment and Conditions of Employment [\[Back to the top\]](#)

8.5.3.1 Appointment. Appointments will be made in accordance with the Affirmative Action Plan of the University as approved by the Board of Trustees.

Procedures for Appointment . The unit, in conjunction with the Compensation Director, develops a job description detailing the duties, responsibilities and minimal requirements/qualifications necessary to perform the functions of the position. The Compensation Director analyzes the description and assigns a salary grade to the position. The Compensation Director, or designee, in conjunction with the Classification Committee and/or the Vice President for Human Resources Development and Labor Relations, makes such actions. (See Cleveland State University Staff Compensation Program Manual for additional information). Following this process, the unit obtains Presidential, or designee approval to initiate the appointment process in accordance with the University's Affirmative Action Plan.

Employment Contract Terms . Only an authorized University administrator may provide an employee with an employment contract. Professional Staff employees shall receive appointments for a fiscal year beginning July 1 or a portion thereof, an academic year or a portion thereof, or a coaching season or a portion thereof. For fall sports, the coaching season runs from January 1 to December 31. For winter sports, the coaching season runs from May 1 to April 30. For spring sports, the coaching season runs from July 1 to June 30. Appointments will be subject to renewal or non-renewal annually. Appointments and re-appointments will not normally exceed one year. The initial contract stipulates the term of appointment, title, salary grade and salary. Every Professional Staff position must have a written job description that will be provided to the employee at the time of the initial appointment.

8.5.3.4 Professional Staff Regular and Temporary Appointment. There are two categories of appointment: Regular or Temporary.

8.5.3.4.1 Regular Appointment . Regular Appointments are identified as Regular Base-Funded or Regular Funds-Available.

8.5.3.4.1.1 Regular Base-Funded. Regular Base-Funded are appointments to positions that are funded by Instruction and General, General Fee or Auxiliary funds. The position is assumed to be continuing. The individual occupying the position is designated as full-time or part-time. Corresponding employment contracts may be renewed or non-renewed annually. All notices for non-renewal of Regular Based-Funded

Appointments shall be issued in accordance with the provisions of 8.5.8.3.

8.5.3.4.1.2 Regular Funds-Available. Regular Funds-Available are appointments to positions that are not funded by Instruction and General, General Fee or Auxiliary funds. The position is not assumed to be continuing; continuation is contingent upon funds availability. Consequently, employment contracts/letters indicate specific starting and ending dates. The individual occupying the position is designated as full-time or part-time.

Employees hired into Regular Funds-Available positions are not eligible to be treated according to the provisions of 8.5.8.3 and 8.5.8.4. Contracts for Regular Funds-Available appointments shall include a statement of these facts.

8.5.3.4.2 Temporary Appointment. Individuals hired for a specific project or hired for a similar task on an intermittent basis over an extended period of time (duties that occur sporadically) are categorized as Temporary. Employment is contingent upon project need, intermittent workload peaks and funding availability; consequently there is no expectation of continued employment. Employment contracts shall be either annual, as needed hourly or salaried and shall indicate specific starting and ending dates that are tied to a specific project. Although the time period may not extend beyond one year, the Department of Human Resources Development and Labor Relations and the Director of Affirmative Action may grant time extensions, if the extension relates directly to the original project.

Temporary Professional Staff members are not subject to the provisions of sections 8.5.8.3 and 8.5.8.4. Contracts for temporary positions shall include a statement of these facts.

8.5.3.5 Job Titles and Descriptions. Job titles and descriptions provide functional meaning and organizational consistency throughout the University.

Every full- and part-time Professional Staff position must have a written job description appropriate to the position and title that will be provided to the employee at the time of the initial appointment and will be reviewed annually at the unit level according to established performance evaluation procedures

as outlined in section 8.5.4 below. The employee, immediate supervisor and unit administrator must review the job description annually. The job description will include title, major duties and responsibilities, minimum job requirements, preferred requirements (if any), supervisory and budgetary responsibility, reporting relationships, salary grade, and other pertinent information, as determined by the Director of Compensation.

8.5.3.6 Personnel Files and Contents. The official personnel file is maintained in the Department of Human Resources Development and Labor Relations. The official personnel file for each employee will contain the following, if available:

A . Letter of Application and all materials requested or received by the University from persons other than the applicant in connection with the employee's original employment, including official academic transcripts;

Offer of Appointment and initial date of employment; employee's contract(s), and letters of continuation;

Job description(s);

Documents relating to position classification, grade, and length of time in position;

Documents pertaining to reclassifications or transfers;

Documents pertaining to salary recommendations;

Documents pertaining to the employee's professional activities and accomplishments;

Performance evaluations and reviews;

Disciplinary actions and information pertaining to disciplinary actions;

Information pertaining to extended leaves; and,

Information pertaining to separation from employment.

All personnel files in the University are public information. The Professional Staff member, the staff member's supervisor, University Legal Counsel, Affirmative Action and University Police may view the personnel file without written request. However, access to other employees or the public will be provided only upon written request to Human Resources. The Professional Staff

member whose file is being viewed will be notified of the request in writing.

Other personnel related files containing benefits information, workers' compensation, medical, FMLA, or ADA information will not be maintained in the official personnel files and will not be available for public inspection.

8.5.3.7 Joint Appointments. Persons with appropriate qualifications may be given a joint appointment to the faculty and the Professional Staff. In such cases, appointment procedures for both faculty appointment and Professional Staff appointment must be followed. Upon appointment, such persons will enjoy the procedural rights of the Professional Staff as to their Professional Staff employment so long as their contract for executive, professional, or administrative work is in effect.

This section does not prohibit the granting of academic tenure to personnel on joint appointments involving an academic department.

Adoption of these Professional Staff Policies shall not divest a person of any tenured faculty status acquired prior to adoption.

8.5.3.8 Nepotism . The appointment, classification and promotion of all Professional Staff employees shall be based solely on appropriate qualifications and performance. Relationship by family, marriage, or partnership shall constitute neither an advantage nor a deterrent to appointment in the University provided the individual meets and fulfills the appropriate appointment standards. It is not the intent of this policy to encourage the employment of relatives within the same unit, but rather to re-emphasize the concept that the selection of personnel shall be solely on the basis of merit in accordance with the State of Ohio Conflict of Interest statutes.

The University, either on a full-time or part-time basis, may employ members of the same immediate family so long as neither family member is responsible for the decision to hire, supervise, direct, evaluate or recommend merit increases for the other.

8.5.4 Annual Performance Evaluations [\[Back to the top\]](#)

8.5.4.1 General. For full- and part-time employees the unit administrator will use written performance evaluation as the basis for personnel decisions such as merit increase in salary or re-appointment. The performance of assigned duties shall be reviewed and signed each year by the staff member's immediate supervisor and the administrator to whom the supervisor reports.

The Department of Human Resources Development and Labor Relations is responsible for the development, approval and provision of guidelines and forms as well as training for the evaluation process. Detailed guidelines regarding the Performance Appraisal process can be found by referencing the Cleveland State University Performance Management System Supervisor's Guide. The evaluation should result in a statement applicable to continuation. Written performance evaluations should be based on the written job description and should:

- A. Document job performance during the evaluation period;
- B. Recognize relevant achievements, strengths and capabilities;
- C. Identify weaknesses that should be addressed during the next evaluation period;
- D. Articulate the types of contributions that will lead to greater professional growth, recognition and rewards;
- E. Specify future objectives and expectations; and,
- F. Include optional employee comments.

8.5.4.2 Responsibilities .

8.5.4.2.1 Annual Review. The annual performance review will be completed prior to March 1st for the previous year (January 1 - December 31). Special provisions will be made for Professional Staff members who have been employed for less than one year at the time of annual review. Evaluators are responsible for monitoring performance throughout the year, especially for new employees.

8.5.4.2.2 Implementation. The unit administrator is responsible for implementing the annual performance review process in conjunction with the guidelines and policies established in The Cleveland State University Performance Management System Supervisor's Guide and for maintaining proper files.

8.5.4.3 Appeal of Performance Evaluation Statements . A Professional Staff member who disagrees with the outcome of the performance evaluation may appeal, in writing, to the next administrative level above the primary evaluator. The appeal must be made within fifteen (15) working days after receipt of the written evaluation, and the administrator who receives the appeal must complete the review. The Professional Staff member may request, in writing, a meeting with the administrator who will complete the review within 15 working days after the appeal is received. The Professional Staff employee may ask that documentation from the appeal become part of the permanent record of the performance evaluation.

For additional guidance, refer to Appendix section, "Professional Staff Performance Appraisal Guidelines".

8.5.5 Job Classifications and Salary Adjustments [[Back to the top](#)]

Job classifications and salary adjustments are administered in accordance with the Cleveland State University Staff Compensation Program Manual, a copy of which may be obtained from the Department of Human Resources Development and Labor Relations or may be viewed at www.csuohio.edu/HRD.

8.5.6 Placement on Administrative Leave [[Back to the top](#)]

A Professional Staff employee may be placed on administrative leave with pay pending a hearing when the President of the University, or designee determines that the continued presence of the employee on the campus constitutes a substantial interference with the orderly functioning of the University or of an area, unit, department or college of the University.

8.5.7 Progressive Corrective Action [[Back to the top](#)]

The purpose of progressive corrective action is to impress upon the employee the need to improve behavior or performance, when necessary. Progressive corrective action is not required but, to the extent practicable and appropriate, it is encouraged. Progressive corrective action may include oral and written warnings or letters of reprimand. Nothing herein shall limit the right of the University to bypass progressive corrective action and immediately suspend or dismiss a Professional Staff member for any offense that, in the University's sole discretion, is of such a serious nature that use of progressive corrective action is not appropriate or warranted.

8.5.8 Termination of Employment [[Back to the top](#)]

The employment of a Professional Staff employee may terminate through resignation, retirement, non-renewal, layoff, or dismissal for just cause.

8.5.8.1 Resignation . Professional Staff have an obligation to provide the University a written notice of intent to resign. Notice should be given to the immediate supervisor and forwarded to the appropriate administrative officer at least thirty (30) days, or less if mutually agreed upon by the supervisor and the employee, before voluntary termination of service.

8.5.8.2 Retirement . There is no mandatory age for retirement. A Professional Staff member planning to retire should give written notice of intent to his/her immediate supervisor at the earliest date possible, but not less than thirty (30) days before termination of service.

8.5.8.3 Non-Renewal . Procedures for Initiation and Notification for Non-Renewal of Regular Base-Funded Appointments.

8.5.8.3.1 Employees hired into Funds-Available and Temporary positions are not eligible to be treated according to the provisions of this Section 8.5.8.3.

8.5.8.3.2 Recommendation for non-renewal of a Regular Base-Funded appointment of a full- or part-time Professional Staff member can be initiated by any of the staff member's supervisors or superiors.

8.5.8.3.3 Recommendations for non-renewal will be made to the President and will be accompanied by documentation of support or lack of support from the appropriate administrative officers.

8.5.8.3.4 Such recommendations will be sent to the President on or before the following dates:

- A. March 1 for a Professional staff member holding a first contract of professional service at the University for non-renewal of the contract.
- B. January 1 for a Professional Staff member holding a second or subsequent contract of professional service at the University for non-renewal of the contract.
- C. By December 1 for an intercollegiate coach holding a coaching season contract for the fall season.
- D. By April 1 for an intercollegiate coach holding a coaching season contract for the winter season.
- E. By June 1 for an intercollegiate coach holding a coaching season contract for the spring season.

8.5.8.3.5 If the President concurs with the recommendation(s) of non-renewal, the President shall direct that a notice of non-renewal be sent by regular and certified mail to the Professional Staff member's home address which is on file with the University. Such notice shall be deposited in the mail within one month of the dates above (by April 1, February 1). It is the Professional Staff member's responsibility to regularly update the University with address change information.

8.5.8.3.6 The Professional Staff member holding a second or subsequent contract of professional service at the University is entitled to be apprised of the reasons for non-renewal and may request a review of the decision through the grievance procedures as provided in section 8.5.9.

8.5.8.3.7 If a notice of non-renewal is not sent by the dates provided in section 8.5.8.3.5 above, the Professional Staff member shall receive an additional contract of at least six months duration except as otherwise provided by sections 8.5.8.4 and 8.5.8.5 or Ohio law.

8.5.8.4 Layoff. Termination of Professional Staff employees prior to, during, or at the end of an appointment period may occur because of a financial emergency or because of reorganization. Such a termination of appointment shall be designated a layoff.

8.5.8.4.1 Layoff Due To Financial Emergency. Layoff of a Professional Staff employee may occur when deemed necessary by the President due to a financial emergency as declared by the Board of Trustees. Upon occurrence of the layoff, the individual's personnel file shall designate that the layoff was due to financial emergency.

8.5.8.4.2 Layoff Due To Reorganization. Layoff of Professional Staff employees at the University may occur when a reorganization is deemed necessary due to a budget or program decision requiring program discontinuance, curtailment, or redirection, and when such a reorganization plan is approved by the President. Upon occurrence of the layoff, the individual's personnel file shall designate that the layoff was due to reorganization.

8.5.8.4.3 A Professional Staff employee laid off due to financial emergency or reorganization shall be accorded the following rights and privileges:

- A. The unit head must provide documentation to justify the layoff of the Professional Staff member(s) under this section. Such documentation must be forwarded to the appropriate Vice President or the Provost for approval to proceed, and a copy must be sent to the attention of the Vice President for Human Resources Development and Labor Relations. If the release is initiated at the Vice President or the Provost level, all appropriate documents shall be forwarded to the President for approval to proceed. The individual shall be notified in writing of the decision to effectuate his or her release. Such notice shall be provided as far in advance of the release date as possible.
- B. The Department of Human Resources Development and Labor Relations shall make a reasonable effort to secure alternative appointments within the University in open positions for which the affected individual is qualified under existing criteria.
- C. If, within a period of eighteen months from the date of the layoff of a Professional Staff employee, the President determines that the Professional Staff employee's position should be reopened, then re-appointment shall first be offered to the laid off employee. The offer shall be sent to the last known mailing address of the employee and he or she shall have a reasonable time, not to exceed fifteen (15) days, within which to accept or decline the offer of re-appointment.
- D. The individual being laid off shall be entitled to a hearing in accordance with the procedures provided in section 8.5.9, Grievance Procedures. Such a hearing may occur subsequent to layoff, if emergency circumstances preclude a prior hearing.

8.5.8.5 Dismissal .

8.5.8.5.1 Dismissal for Just Cause. Professional Staff may be dismissed for just cause. Just cause shall include, but not be limited to, Items A-J below:

- A. Unsatisfactory performance or neglect of assigned duties and responsibilities.
- B. Violation of recognized standards of professional conduct and performance.
- C. Personal conduct that impairs the individual's proper fulfillment of assigned duties and responsibilities.

Personal conduct that violates state or federal law, including but not limited to drug and alcohol abuse, trafficking in illegal drugs, sexual, ethnic, racial or religious harassment or any other harassment prohibited by law.

Personal conduct that impairs the employer's pursuit of its goals or mission.

Interfering with the normal operations of the University.

Conviction of a crime of violence as defined in Division (I)(1) of Section 2901.01 of the Ohio Revised Code, or a substantially equivalent offense under municipal ordinance, which is committed on or affects persons or property on the University's campus, or any other crime that adversely affects performance of job duties and responsibilities.

Concealing, falsifying, altering, misusing or removing records, including electronic data records.

Engaging in a demonstration or protest on University property in violation of law or of the University's Policy on Demonstrations.

Fraudulent credentials.

8.5.8.5.2 Recommendations for dismissal for causes listed in Section 8.5.8.5.1 shall be sent by the unit head to the appropriate Vice

President or the Provost with the appropriate documentation attached. Such documentation must be forwarded to the appropriate Vice President or the Provost for approval to proceed and a copy must be sent to the Office of the Vice President for Human Resources Development and Labor Relations. If the dismissal is initiated at the Vice President or the Provost level, all appropriate documents shall be forwarded to the President with a copy to the Vice President for Human Resources Development and Labor Relations for approval to proceed.

8.5.8.5.3 Procedures for Initiation and Notification of Dismissal of Professional Staff Employees. If the President accepts the recommendation for dismissal, written notification of dismissal must be sent by the President to the Professional Staff member by registered and regular mail. Dismissal shall not occur until the Professional Staff employee has been given ten (10) working days' notice to request an appeal hearing by the President or assigned designee.

8.5.9 Grievance Procedures [\[Back to the top\]](#)

It is mutually understood that the prompt presentation, adjustment and/or answering of grievances is desirable in the interest of sound relations between employees and the University. The prompt and fair disposition of grievances involves the important and equal obligations and responsibilities, both joint and independent, on the part of both the University and the grievant to protect and preserve the Grievance Procedure as an orderly means of resolving grievances.

If a complaint involves alleged discrimination or harassment based on the Professional Staff member's race, sex, religion, disability age, national origin, sexual orientation, or Vietnam era veteran status, then the Professional Staff member shall discuss such complaint with the Affirmative Action Director as a means of achieving an informal resolution of the complaint. If informal resolution is not possible, the individual alleging discrimination or harassment may file a formal written complaint with the Affirmative Action Office. The Affirmative Action Office will then conduct a thorough investigation and discuss its findings, conclusions, and proposed action with the complainant, forwarding a copy of the findings, conclusions, and proposed action to the President. If the complainant is not satisfied with the resolution by the Affirmative Action Office, he or she may seek relief through direct appeal to the President within ten (10) days of the receipt by the complainant of the findings, conclusions, and proposed actions of the Affirmative Action Office.

When other types of complaints arise, the Professional Staff member shall attempt to resolve the issue with his or her immediate supervisor through discussion, mutual understanding, and documentation if appropriate.

8.5.9.1 Dismissals as described in Section 8.5.8.5 of these policies are not subject to the provisions of this Section. A dismissal hearing may be requested in accordance with Section 8.5.8.5.3 of these policies.

8.5.9.2. Classification determinations by the Director of Compensation are not subject to the provisions of this Section. For classification appeals, Professional Staff members may utilize the appeal process set forth in the Professional Staff Compensation Program Manual.

8.5.9.3 Procedures . The following procedures should be followed:

8.5.9.3.1 A grievance, under this procedure, may be brought by any Professional Staff employee.

8.5.9.3.2 A grievance is a dispute or difference between the Professional Staff employee and the University concerning the hours and working conditions set forth in these policies and the interpretation and/or application and/or compliance with any provision of these

policies, including their administration, process, and any associated actions.

8.5.9.3.3 Grievance Steps and Process. No parties may have legal representation present at any step in the grievance process. When grievances arise, the following procedure shall be observed.

Step 1 A written grievance must be filed with the employee's immediate supervisor within twenty (20) working days of the event upon which the grievance is based. Within ten (10) working days after the filing of the grievance, a meeting will be scheduled between the supervisor and the aggrieved employee. The employee may invite a support person of his/her choice to attend the meeting. Following the meeting, the supervisor shall issue a written answer to the grievance within ten (10) working days.

Step 2 If the grievance is not satisfactorily settled in Step 1, the employee may appeal the Step 1 answer to the supervisor's immediate supervisor within ten (10) working days after receipt of the Step 1 response. Such appeal shall be in writing with a copy to the Office of the Vice President for Human Resources Development and Labor Relations. The supervisor's immediate superior shall schedule a grievance meeting with the employee within ten (10) working days. The employee may invite a support person of his/her choice to attend the meeting. Following the meeting, the supervisor's immediate superior shall issue a written answer to the grievance within ten (10) working days.

Step 3 If the grievance is not satisfactorily settled in Step 2, the aggrieved Professional Staff employee may file an appeal with the Vice President for Human Resources Development and Labor Relations within ten (10) working days after the receipt of the Step 2 decision. The appeal must be in writing. The Vice President for Human Resources Development and Labor Relations will schedule a grievance meeting with the supervisor and aggrieved employee as outlined above within ten (10) working days after the receipt of the appeal and will render a written decision within ten (10) working days after the close of the meeting. The employee may invite a support person of his/her choice to attend the meeting. A copy of the written decision will be sent to the grievant.

8.5.10 Leaves of Absence With Pay [\[Back to the top\]](#)

8.5.10.1 Vacation Leave . Professional Staff with full-time calendar year appointments will earn vacation leave at the rate of 1.83 days per month of full-time service or a total of twenty-two (22) workdays per year. Professional Staff with full-time academic year appointments will earn vacation on a pro-rated basis. Professional Staff appointed at less than one-half time will not earn vacation leave. Professional Staff appointed to a part-time position of one-half time or more will earn vacation leave on a prorated basis.

8.5.10.1.1 Vacation Requests. Vacation leave shall be available to the employee to the extent earned provided that the employee's supervisor or unit head approves the dates for such leave in advance.

8.5.10.1.2 Annual Carryover Limit. Staff members are expected to use accrued vacation leave periodically. Vacation leave accumulation may not exceed 44 days at any time within a fiscal year. On June 30th of each year, no more than 30 days may be carried forward to the next fiscal year. The Vice President for Human Resources Development and Labor Relations may, in extenuating circumstances, grant an exemption to the carryover limitation upon the written request of the Professional Staff member and with support from the Professional Staff member's immediate supervisor.

8.5.10.1.3 Payout Upon Termination. At termination of employment, payments for unused vacation leave to a maximum of twenty-two (22) days shall be made.

8.5.10.1.4 Reporting Procedures. The University has established a time reporting procedure administered by the Payroll Office for the purpose of recording the use of vacation leave.