

3.3 FIXED-TERM EMPLOYMENT - SUPERVISORS' GUIDELINES

INTRODUCTION

These guidelines have been prepared to assist faculties and units in understanding the employment conditions that apply specifically to fixed-term staff. The guidelines cover the entitlements to notice and severance pay as well as other arrangements that apply specifically to fixed-term staff.

This information is essential for anyone involved in recruiting for, negotiating, administering or approving fixed-term appointments. Deans and Directors are responsible for ensuring that all relevant staff in the faculty or unit are aware of and become familiar with these guidelines.

The arrangements applicable to fixed-term employment at UTS are set out in the Academic Staff Agreement 2006 - Clause 38.2, the Support Staff Agreement 2006 - Clause 41.2, and the Certified Agreement (Senior Staff Group) 2004 - Clause 28.2 and Clause 29. These guidelines should be read in conjunction with the relevant clauses contained in each agreement, which can be accessed on the Human Resources website at <http://www.hru.uts.edu.au/agreements/index.html>

WHAT IS A FIXED-TERM APPOINTMENT?

A fixed-term appointment is made for a specified period. The appointment can be made on a full-time, part-time, sessional (academic staff) or part-year (support staff) basis. At the expiry of this period, a staff member's employment at the University will lapse and any further employment would involve a new contract. All written employment contracts for fixed-term staff must include the reason for the use of fixed-term employment and the starting and finishing dates.

RECRUITMENT AND APPOINTMENT OF FIXED-TERM STAFF

An appointment of more than twelve months will normally be filled through advertisement and follow standard recruitment and selection practices as outlined in the Recruitment and Selection policy. In these circumstances a letter of offer forms the written contract of employment.

An appointment of a support or academic staff member for twelve months or less may be made by invitation or nomination (that is, no advertisement is necessary), in which case there is a form based contract of employment; ie 'Employment Contract for Fixed-term Support Staff Positions' or 'Employment Contract for Fixed-term Academic Staff Positions' which can be accessed on the Human Resources website at <http://www.hru.uts.edu.au/forms/index.html>¹. In the case senior staff fixed-term positions of less than 12 months, approval to appoint without advertisement is normally obtained by completing an 'Request for Further Fixed-term Appointment Form'. HRU will then prepare a letter of offer which will serve as the written contract of employment.

Irrespective of whether a position is advertised, managers and supervisors should be aware of the University's recruitment principles, which promote fair and competitive selection practices for all types of appointments.

Managers, supervisors and internal applicants should also be aware that, in order to be eligible for a position that is only advertised internally, applicants must have been appointed

¹ The 'Employment Contract for Fixed-Term Support Staff Positions' form is currently available in carbon hard copy but this will be phased out and the form made available on-line via the website.
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to UTS via an externally competitive selection process. This may influence the decision to advertise for some fixed-term positions of any length.

For further information relating to the filling of fixed-term vacancies, please refer to Human Resources policy 3.4 Recruitment and Selection, accessible on the Human Resources website at: <http://www.hru.uts.edu.au/manual/index.html>

In accordance with clause 39 of the Academic Staff Agreement 2006 and clause 42 of the Support Staff Agreement 2006, fixed-term contracts of appointment (whether in the form of a letter of offer or form based contract of employment) must contain certain information including the term of the fixed-term employment and the reason the appointment has been made on a fixed-term basis. HRU forms have been developed to capture the required information but faculties and units are responsible for providing the information and ensuring that it is accurate.

CONTRACT LENGTHS AND RENEWALS

In making fixed-term appointments, managers and supervisors should consider both the short and long-term workforce planning needs of their work area when making a decision regarding the length of a contract. Consideration of the length of a contract is an important part of managing the renewal of contracts. Ideally a fixed-term appointment should be a single appointment for the expected duration of the position and therefore should not require renewal, however, UTS does not limit the number of renewals that may be offered. It is important that fixed-term employment is not used as a replacement for a continuing appointment if the requirements are ongoing.

If the University decides to continue an academic or support position on a fixed-term basis beyond the first fixed-term contract, the staff member in the position will be offered further employment without the need to advertise the position if the following conditions are met:

- > the staff member was employed through a merit based selection process; and
- > the staff member has performed satisfactorily in the position.

If one or both of the above conditions are not met, the University may advertise the position for appointment through a competitive selection process.

NOTICE ON EXPIRY OF A CONTRACT

What is notice?

'Notice' means advising the staff member, in writing (usually by email) and prior to the expiry of the existing contract, whether or not a further contract will be offered.

Who must receive notice?

All fixed-term staff must receive notice prior to the expiry of their contracts.

Inability to give notice

Occasionally, the University may be unable to give the required period of notice due to circumstances beyond its control (eg research funding uncertainty). If this is the case, the staff member must be advised of these circumstances in writing at the time the notice would otherwise be required and then be given notice at the earliest practicable date thereafter.

How much notice must be given?

The period of notice to be given depends on the length of continuous service and is different for academic and support staff and senior staff as follows:

Support and Academic Staff

Period of continuous service	Minimum Notice*
Less than 3 years	2 weeks
At least 3 years, but less than 5 years	3 weeks
5 years or more	4 weeks

- * A staff member over the age of 45 years at the time of being given notice and with at least 2 years continuous service is entitled to an additional week's notice.

Senior Staff Group

Period of continuous service	Minimum Notice
Fixed-term appointments of more than two years	6 months
Fixed-term appointments of two years or less	3 months

What is required of faculties and units?

Managers and supervisors should discuss with fixed-term staff decisions about their future employment with the University well in advance of the expiry of their contract. In the case of senior staff discussion regarding renewal/non-renewal of fixed-term appointment must begin at least 9 months prior to the expiry of the contract (for staff on a fixed-term appointment of more than two years) and at least 6 months prior to the expiry of the contract (for staff on a fixed-term appointment of two years or less).

The Human Resources Unit (HRU) will advise faculties and units of expiring contracts on a regular basis (usually quarterly). Faculties and units will then need to communicate this information to relevant supervisors. Faculties or units will then advise HRU about whether the faculty or unit intends to offer a further contract upon expiry of the existing contract.

If an academic or support position is to continue and the staff member in the position meets the conditions for further employment (refer to section above, "Contracts and Lengths of Renewals"), the faculty or unit will complete one of the following:

- > A form based contract of employment if the new contract is for twelve months or less. This will serve as the staff member's contract of employment.
- > A 'Request for Further Fixed-term Appointment Form' if the position is for more than twelve months. This form will be used by HRU to prepare a letter of offer which will serve as the staff member's contract of employment.

If an academic or support position continues and the staff member in the position does not meet the conditions for further employment, the position must be filled through advertisement. When this occurs the faculty or unit should initiate recruitment action well in advance of the contract's expiry so that adequate notice can be provided if the staff member in the position is not appointed.

If a faculty or unit wishes to offer a further contract to a member of the senior staff, a 'Request for Further Fixed-term Appointment Form' will need to be completed.

In the absence of advice from the faculty or unit regarding a fixed-term staff member's employment, HRU will effect the termination of the staff member's employment at the end of the fixed-term appointment. The staff member will be paid out any entitlements to annual leave, long service leave and severance pay (refer to next section, "Severance Pay and Pro-rata Long Service Leave").

SEVERANCE PAY AND PRO-RATA LONG SERVICE LEAVE

When a staff member's fixed-term appointment expires, the staff member may be eligible for payment for severance and/or pro-rata long service leave.

Who is entitled to severance pay?

Only particular categories of fixed-term academic and support staff are entitled to severance pay when their contracts of employment are not renewed in circumstances where they seek to continue the employment. Severance pay does not apply under the following circumstances:

- (a) the staff member was a member of the Senior Staff Group covered by the *Certified Agreement (Senior Staff Group) 2004*

- (b) the staff member was employed on a first fixed-term contract unless the work continues to be required, but another person has been appointed, or is to be appointed, to the same or substantially similar duties; or
- (c) the staff member was replacing another staff member on leave or secondment from the workplace; or
- (d) the staff member was performing duties of a vacant position for which recruitment action has commenced; or
- (e) the staff member was on a pre-retirement contract; or
- (f) the position was one specifically designated for students; or
- (g) the staff member was engaged for up to three years in response to a sudden and unanticipated increase in student enrolments; or
- (h) the staff member was engaged for up to three years in a new organisational area to perform functions or teach in program/s that had not been performed or taught previously, the prospective need or demand for which is uncertain or unascertainable at the time of establishment of the unit; or
- (i) the staff member was specifically employed in a disestablished organisational area.

If a staff member does not meet any of the exclusions (a)-(i) above, the severance pay in the table below applies where the staff member's fixed-term appointment is:

- (a) funded from an identifiable funding source(s) external to UTS, not being funding that is part of an operating grant from the government or funding comprised of payments of fees made by or on behalf of students; or
- (b) a research only position; or
- (c) for a specific task or project.

Severance pay for the above categories of academic and support staff is calculated on the length of continuous service, as follows:

Period of continuous service*	Severance pay
Up to one year (applies only to support staff, not to academic staff)	four weeks
One year and up to the completion of two years	four weeks
Two years and up to the completion of three years	six weeks
Three years and up to the completion of four years	seven weeks
Four years and over	eight weeks

* Breaks between fixed-term appointments of up to two times per year and up to six weeks on each occasion will not constitute breaks in continuous service.

Severance pay in the table below applies where an academic or support staff member's fixed-term position cannot be categorised in terms of external funding, research or specific task or project (ie (a)-(c) above) or the exclusions (ie (a)-(i) earlier in this section). However, such severance pay will apply only to fixed-term appointments which commence after the date of lodgement of the Academic Staff Agreement (2006) and the Support Staff Agreement (2006); that is, 17 August 2006.

Period of continuous service	Severance pay
Up to one year (applies only to support staff, not to academic staff)	four weeks
One year and up to the completion of two years	four weeks
Two years and up to the completion of three years	six weeks
Three years and up to the completion of four years	seven weeks
Four years and up to the completion of five years	eight weeks
Five years and up to the completion of six years	nine weeks
Six years and up to the completion of eight years	ten weeks
Eight years and up to the completion of ten years	eleven weeks

Ten years and over	twelve weeks
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Who is entitled to be paid for long service leave at the conclusion of fixed-term employment at UTS?

Like continuing staff, all fixed-term staff who have ten years continuous service are entitled to receive payment for accrued long service leave when their employment with UTS concludes.

In limited circumstances they may also be eligible for payment in lieu of pro-rata long service leave if they have between five and ten years of continuous service. This applies under the following circumstances upon expiry of a fixed-term employment:

- > the support or academic staff fixed-term staff member is entitled to severance pay in accordance with the table directly above. In this circumstance the pro-rata long service leave is calculated on the basis of the staff member's continuous service from 17 August 2006.
- > the member of the Senior Staff Group has been employed on one or more fixed-term appointments.

Further information about the other circumstances under which pro-rata long service leave applies are set out in the Long Service Leave Guidelines.

What if the staff member is offered further employment but does not want it?

If the staff member does not accept an offer of further employment, then there is no entitlement to severance pay or pro-rata long service leave, where applicable. Severance pay and pro-rata long service leave upon expiry of a fixed-term appointment only apply where a staff member seeks to continue the employment.

Can severance payments be deferred?

The University can defer severance payments for up to four weeks if there is a possibility that the staff member may be offered further employment within six weeks of the expiry of his or her contract. The University will also defer payment of the staff member's entitlements to annual and long service leave, where applicable. The University must advise the staff member of this in writing to be able to defer these payments.

What is required of faculties and units?

The reason for an appointment being made on a fixed-term basis must be identified on the appointment form (which will be used by HRU to prepare the letter of offer of employment) or form based contract of employment for a fixed-term staff member. This information is used to determine whether the staff member is entitled to severance pay and/or pro-rata long service leave and the amount of severance pay and/or pro-rata long service leave. It is therefore important that faculties and units take care to accurately identify the reason for a fixed-term appointment from the outset of an appointment. If there is any uncertainty about the reason for the fixed-term appointment or if more than one reason applies then assistance should be sought from your HR Partnership team.

If there is an entitlement to severance pay, the payment will be processed and charged to the cost centre in which the staff member was employed. Faculties and units need to be aware of, and plan for, the potential financial implications of severance pay. They also need to be aware that, where a staff member has been unable to take accrued annual leave during the period of employment, this will also be paid out on separation. Any long service leave payment to the staff member is paid from central funds.

Liability for service attributed to fixed-term employment with another faculty or unit.

Usually, a fixed-term staff member will be engaged within one cost centre for the duration of their employment with UTS and liability for severance pay is clear. There are occasions, however, where the staff member obtains immediate subsequent employment in another cost centre. In this case, responsibility for severance pay is deferred to the subsequent employing cost centre as the prior service may be taken into account when calculating any future entitlement to severance pay.

In the absence of any alternative arrangements, the most recently employing faculty or unit will generally be liable for the total amount of severance pay owing to the staff member, including any component attributed to service with another faculty or unit. However, there is scope to negotiate some other arrangement with the former employing faculty or unit. This needs to be done at the stage that the employment moves from one cost centre to another.

Staff Services in HRU can provide information regarding an appointee's prior service with the University and an estimate of any future severance pay liability on request.

FURTHER INFORMATION

If you have any queries regarding the use of fixed-term employment at UTS, please contact your HRU Partnership Team.

APPROVALS

EFFECTIVE DATE	24 August 2006		
REVIEW DATE	Mid 2008 (for process changes)		
ACCOUNTABLE OFFICER	Director, Human Resources Unit		
CURRENT INCUMBENT	Jennifer Gilmore		
IMPLEMENTATION OFFICER	Senior Workplace Relations & Policy Specialist, HRU		
CURRENT INCUMBENT	Lisa Carroli	CONTACT NO	Extension 1079

REVISION/MODIFICATION HISTORY

Date	Version	Current title	Summary of changes	Approved/rejected	Approval authority	Resolution or file number
24/08/06	1	3.3 Fixed-term Employment (Supervisor' Guidelines)	Updated to align with 2006 collective agreements and current process.	Approved	Director, HR	99/1086