

**VII-1.40 – POLICY ON CONTINGENT STATUS EMPLOYMENT FOR NONEXEMPT AND EXEMPT STAFF EMPLOYEES**

(Approved by the Board of Regents December 13, 1996; Amended on February 9, 2001; Amended on July 10, 2002; Amended on October 22, 2004; Amended on October 9, 2015; Amended on June 21, 2019.)

**I. PURPOSE**

Establishes a USM policy on the appointment and compensation of individuals for Contingent Status employment including, in some instances, the provision of certain benefits.

**II. DEFINITIONS**

- A. **Contingent Category I:** Any Contingent Status employee whose written agreement (contract) is for a term of six months or less regardless of the percentage of time worked and regardless of whether it is seasonal or intermittent in nature (works “if and when needed”).
- B. **Contingent Category II:** Any Contingent Status employee whose written agreement (contract) is for more than six months, but no more than 12 consecutive months; and is on a fulltime basis or on a part-time basis of 50% or more of fulltime employment; and is not seasonal or intermittent in nature.
- C. **Contingent Status Employment:** A Non-Regular Status of employment for Nonexempt or Exempt Staff positions in the USM.
- D. **Contingent Status Employee:** A person (non-faculty employee) who:
  - 1. Pursuant to a written agreement, provides personal services to an institution for pay;
  - 2. Is not employed as a Regular Status employee in a budgeted position;
  - 3. Whose compensation, terms and conditions of employment are governed by this policy and a written contract and not by the USM policies generally applying to Regular Status Nonexempt and Exempt staff; and
  - 4. Has an employer-employee relationship with the institution in which the institution furnishes necessary supplies and equipment, and a place to work; has the right to control and direct the details, means and results of the performance of the services; and has the right to discharge the person from employment.
- E. **Family Member:**
  - 1. The employee’s:

- a) Child, adopted child, foster child, or stepchild; a child for whom the employee has legal or physical custody or guardianship; or a child for whom the employee stands *in loco parentis*, regardless of the child's age;
  - b) Legal guardian;
  - c) Grandparent, adopted grandparent, foster grandparent, or step grandparent;
  - d) Grandchild, adopted grandchild, foster grandchild, or step grandchild;
  - e) Sibling, adopted sibling, foster sibling, or step sibling; or
  - f) Spouse; and
2. The employee's or spouse's:
    - a) Parent, adoptive parent, foster parent, stepparent; or
    - b) An individual who acted as the parent, or stood *in loco parentis*, when the employee or spouse was a minor.

### **III. TERMS AND CONDITIONS**

- A. All Contingent Status employees:
  1. Must meet the minimum qualifications for the position;
  2. Shall be paid at a rate that at least meets the minimum of the pay range for the position's job class. Other compensation changes must be made in accordance with the Chancellor's Salary Guidelines;
  3. Shall not have any grievance rights under any State, University System of Maryland, or Institutional policy, unless such policy specifically provides otherwise;
  4. Shall not be entitled to participate in the State Pension System or the USM Optional Retirement Program;
  5. Shall be covered by applicable Federal and State of Maryland Equal Employment Opportunity and Affirmative Action laws and other applicable USM employee protection policies; and
  6. Will be considered for a regular status vacancy in the same or a similar classification, if they should decide to apply.
- B. Each written agreement (contract) for a Contingent Status employee shall specify:

1. The appropriate contingent category: Category I or Category II. If it is a Category I appointment, it shall specify whether it is Seasonal or Intermittent or percentage of time worked;
2. The salary/hourly rate of pay;
3. The duration of the contract, including a provision that both the employee or employer have the right to terminate the agreement for any reason following notice as specified in the agreement;
4. The duties to be performed; and
5. The specific benefits and rates of leave accrual provided.

#### **IV. CATEGORIES OF CONTINGENT STATUS EMPLOYMENT**

Agreements for contingent status employment shall not be offered on terms which are not included in one of the two categories of contingent status employment as follows:

##### **A. Contingent Category I Employees:**

1. Shall not be required to be hired through competitive recruitment or selection;
2. Shall not be entitled to receive fringe benefits except as required by the Patient Protection and Affordable Care Act (PPACA) and the Maryland Healthy Working Families Act;
3. May have their contract renewed indefinitely by executing new contracts of up to six months at a time for 49% or less of fulltime employment. However, if they have contracts of 50% or more of fulltime employment lasting for a period of six consecutive months, they shall be eligible for contract renewal to a lifetime maximum of 12 months under Contingent Category I in that position;
4. Shall not be entitled to receive service credit for the time served in this category unless they have worked 50% or more of fulltime, on a consecutive basis, immediately preceding appointment to a Regular Status position through a competitive process. The term "service credit" is not applicable to any retirement rights; and
5. Shall have the mandatory payroll deductions and mandatory employer paid subsidies as described in Sections V.A.6 and V.A.7 below.

##### **B. Contingent Category II Employees:**

1. Are required to be hired through competitive recruitment and selection;
2. Shall be entitled to receive at least the minimum benefits as specified in this policy (Section V.A);

3. Subject to paragraph IV.B.6, may have their contract renewed by executing new contracts of up to one year at a time;
4. Shall be entitled to service credit for the time served in this category, if appointed, without a break in service, as a Regular Status employee. The term “service credit” is not applicable to any retirement rights;
5. Shall be given a written performance evaluation under the USM’s Performance Management Program guidelines (USM-BOR VII-5.20);
6. May be eligible for employment status conversion:
  - a) After three consecutive years of service in the Contingent Category II at the same institution, Contingent Category II employees who remain employed by the institution shall be converted to a Regular Status position, subject to all the policies and procedures of Regular Status employees.
  - b) This provision does not apply to employees in positions funded through a Research/Service Grant or Contract, or through Clinical Revenue; Athletic Coaches; employees on internships; and those employees who have chosen not to be converted to Regular Status employment; and
7. Who are converted to Regular Status without a break in service will have contingent time served in the current position counted toward probationary period.

**V. BENEFITS**

A. The minimum benefits to be provided to Contingent Status employees, on an annual basis, are listed below. These benefits shall be pro-rated for contracts of less than one year and for less than fulltime employment.

1. Basic Leave Benefits

Contingent Category II employees are eligible for paid leave, as follows:

- a) Five (5) days of annual leave; the following eight (8) holidays: New Year’s Day, Martin Luther King Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, the Friday after Thanksgiving Day, and Christmas Day; and three (3) days of sick and safe leave (“SSL”).
- b) Annual leave and SSL are available to the extent accrued and available, and may be used for the following purposes:

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- i. To care for or treat the employee's mental or physical illness, injury, or condition;
  - ii. To obtain preventive medical care for the employee or the employee's Family Member;
  - iii. To care for a Family Member with a mental or physical illness, injury, or condition;
  - iv. For maternity or paternity leave within six months of the birth or adoption of a baby; or
  - v. The absence from work is necessary due to domestic violence, sexual assault, or stalking committed against the employee or the employee's Family Member, and the leave is being used:
    - 1) To obtain for the employee or the employee's Family Member medical or mental health attention related to the domestic violence, sexual assault, or stalking;
    - 2) To obtain for the employee or the employee's Family Member services from a victim services organization related to the domestic violence, sexual assault, or stalking;
    - 3) To obtain for the employee or the employee's Family Member legal services or proceedings related to or resulting from the domestic violence, sexual assault, or stalking; or
    - 4) During the time that the employee has temporarily relocated due to the domestic violence, sexual assault, or stalking.
  - c) Leave for jury duty as called to serve or other leave for which the institution has granted approval.
  - d) Additionally, individual contracts shall address whether leave that is not used by the end of the contract term can be carried over to another contract; whether the institution shall pay the employee for it, with the exclusion of SSL; or whether it is forfeited.
  - e) Institutions shall keep a record of an employee's accrued but unused SSL balance on the effective date of separation. If the employee is re-hired in the USM within 37 weeks after leaving the employment of an institution, any accrued but unused SSL that was available immediately prior to separation shall be restored. Any such leave may only be used in accordance with USM policy.
2. Health Insurance Program and Prescription Plan

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Certain Contingent Category I and II employees may participate in the State Health Insurance programs and Prescription Plan that are available to State employees. Participation shall be in accordance with regulations of the State Department of Budget and Management and any applicable Federal rules and regulations.

### 3. USM or Institution-Sponsored Insurance Programs

Contingent Category II employees may participate in USM or Institution sponsored insurance programs (e.g., long-term disability; life insurance; health insurance) by paying 100% of the premiums directly to the provider.

### 4. Tuition Remission

Contingent Category II employees may participate, at their home institution only, in the USM's Tuition Remission program.

### 5. Tax Deferred Programs

Contingent Category I and II employees may participate in Supplemental Retirement plans that are approved by the State of Maryland and USM, and as permitted by law and regulations.

### 6. Mandatory Payroll Deductions

Contingent Category I and II employees shall have the required mandatory deductions via payroll deduction, e.g., Maryland and Federal Income Tax withholding, and Federal Insurance Contributions Act (FICA) which includes Social Security and Medicare.

### 7. Mandatory Employer Paid Subsidies

Contingent Category I and II employees shall have the required mandatory employer paid subsidies, e.g., Unemployment Insurance, Workers Compensation Insurance, and FICA contributions, which include Social Security and Medicare.

## B. Negotiable Benefits

At the discretion of the employing institution, a Contingent Category II employee may be offered benefits supplemental to the minimum benefits listed in Section V.A. above consistent with those available to Regular Status employees in a similarly situated job class and employment category.

## C. Other

Contingent Category I and II employees may participate in other programs with voluntary deductions, e.g., charitable contributions; State Employees Credit Union (SECU).

**VI. USM REPORTING REQUIREMENT**

In order to monitor the use of this policy, the USM requires the President of each institution to report on an annual basis the usage of contingent employment at their institutions. The report format shall be provided by the USM-HR Office to the Presidents.

**IMPLEMENTATION PROCEDURES**

Each President shall identify his/her designee(s) as appropriate for this policy, develop procedures as necessary to implement this policy, communicate this policy and applicable procedures to his/her Institutional community, and post it on its institutional website.