Classified Employee Reduction in Force, Reassignment, and Layoff

1 General Information.
1.1 Scope: This policy applies to classified employees and establishes procedures to be followed in the event of retrenchment of classified positions due to financial exigency, etc.
1.2 Authority: West Virginia State Code §18B-1-6, §18B-7-1, §18B-9-2; Higher Education Policy Commission Series 8, Personnel Administration.
1.3 Passage Date:
1.4 Effective Date:
1.5 Controlling over: Marshall University and Marshall Community and Technical College.

2 Definitions.
2.1 Classified Employee: Any regular full-time or regular part-time employee of a governing board who holds a position that is assigned a particular job title and pay grade in accordance with the personnel classification system established by Higher Education Policy Commission rule. See West Virginia State Code §18B-9-2 and Higher Education Policy Commission Series 8, Personnel Administration.
2.2 Financial Exigency: A financial condition at the employing institution wherein there are insufficient funds in the personal services budget(s) to allow the continued employment of all employees who were employed immediately prior to the condition of financial exigency. Financial exigency is a specific condition which must be declared by the President of the institution.
2.3 Layoff: The non-disciplinary separation from employment arising from the elimination of the individual's employment position. The elimination of such position may arise from a circumstance of financial exigency or from program cessation or reorganization.
2.4 Pay Grade: The range of compensation values for a job defined by a series of step values as set forth in Higher Education Policy Commission Series 8, Personnel Administration.
2.5 Program Cessation/Reorganization: Program cessation describes the situation wherein an operational unit (office, department, program, school, or college) is closed and its services eliminated. Reorganization describes the situation where an operational unit (office, department, program, school, or college) is changed with respect to its mission, organizational structure, scope of operation, and/or physical facilities in order to improve services, increase efficiency, etc.
2.6 Seniority: Seniority as used in this policy refers to the Seniority Date as maintained in the employment records in the Banner HR® data system, modified as necessary to reflect only permanent service in West Virginia public higher education per the provisions of West Virginia State Code §18B-7-1(b).
2.7 Seniority-Based Displacement (Bumping): A process described in West Virginia State Code §18B-7-1(b) wherein a classified employee subject to layoff may in certain circumstances displace another classified employee at the same employing institution who has the least seniority in the same pay grade that the employee slated for layoff is employed in and who is in a position for which the potentially displacing employee is deemed qualified. This is referred to informally as
bumping or the bump. In certain circumstances the bump may involve a classified position in a lower grade and may - depending upon assessment of qualification - involve a classified position whose original incumbent does not have the least seniority in that pay grade. Classified employees displaced by bumping may have rights with regard to bumping other less senior employees in the same or lower pay grades.

3 Policy.

3.1 This policy and procedure sets forth the method for reduction in force, layoff, and/or reassignment of classified employees and applies at the point in time when the employing institution’s personal services budgets must be reduced to an extent that will not permit the continued employment of all regular-status classified employees employed immediately prior to the reduction, provided that such reduction will necessitate the layoff of one or more regular-status classified employees. This policy and procedure applies only to classified employee and does not cover reductions in force for nonclassified employees and/or for faculty employees.

3.2 A situation requiring layoff of regular-status classified employee(s) may be declared independently by either Marshall University (hereinafter the University) or Marshall Community & Technical College (hereinafter the College) or both concurrently or at different times. Layoffs will only affect employees in the institution declaring a layoff. Classified employees subject to layoff who avail themselves of seniority-based displacement (bumping) may only bump to a position within their own institution. Persons eligible for bumping do not bump across institutional lines. Bumping is discussed below.

3.3 All decisions concerning reductions in the workforce of full-time regular classified personnel will be made in accordance with WV State Code Section §18B-7-1. The process for the determination of which classified position(s) to layoff is not covered by this policy. However, such process for the determination of which classified position(s) to layoff must be approved by the Marshall University Board of Governors prior to its application.

4 Reassignment.

4.1 A full-time regular-status classified employee facing layoff will first be considered for reassignment to a vacant position within the employing institution and within the same pay grade. Such reassignment may be made at the institution’s discretion and upon the authority of the President of the University or his/her designee or the President of the College or his/her designee. If the classified employee refuses such reassignment to a position within the same pay grade, he or she relinquishes rights outlined in West Virginia State Code Section §18B-7-1 and will be terminated. If the vacant position is in a lower pay grade, and the classified employee refuses reassignment and is subsequently laid off from his or her current position, he or she will retain all recall rights. See section on recall below.

4.2 If reassignment attempts are unsuccessful and a layoff is otherwise imminent, the affected classified employee will be given an opportunity to displace a less senior classified employee in the same pay grade or any other equivalent or lower pay grade within their employing institution for which the senior classified employee is minimally qualified based on the data line for the position using current, established practice to determine qualifications, if such position exists. The process for seniority-based displacement is hereinafter referred to as bumping or the bump. The determination of which position to bump into and the determination of qualification to fill positions in other than the affected classified employee’s initial classification are the responsibility of the chief human resources officer.

5 Layoff.
5.1 See definition above. The office of the President of the University or the office of the President of the College shall communicate to the chief human resources officer the classified position(s) by budgetary organization, classification title, and/or position number scheduled for layoff.

5.2 The incumbent of a classified position scheduled for layoff will be given written notice from the chief human resources officer via certified mail to his/her home address of record at least 60 calendar days prior to the effective date of layoff. Such communication shall include: (a) the reason for layoff; (b) the effective date of the layoff; (c) a copy of this policy; (d) a statement that the employee is responsible for maintaining a current address (including current telephone number and if available current e-mail address) with the office of the chief human resources officer; (e) a statement that an effort will be made to reassign the employee prior to the target date of the layoff; (f) a request for a decision in writing as to whether he/she wishes to exercise his/her rights under West Virginia State Code Section §18B-7-1 to potentially bump into another classified employment position in their employing institution; and (g) if unsuccessful in such bumping process for whatever reason whether or not they desire to be placed on the preferred recall list for their employing institution. The employee must reply in writing within ten (10) working days of receipt of such notice if they wish to participate in bumping. Individuals not replying within this time limit shall be deemed not to desire to bump.

5.3 Classified employees not responding within the time limit but who were hindered from doing so by circumstances beyond their control (such as serious illness or injury) may request in writing within thirty (30) working days from the date of receipt of notice of layoff an exception to the deadline and restoration to eligibility for bumping. Such communications shall include a physician's certificate documenting their condition with regard to illness or injury. This documentation will be reviewed by the chief human resources officer who will determine whether or not a valid reason existed for delay. A satisfactory result from the bumping process cannot be assured, however, in cases where the beginning of participation is thus delayed.

5.4 For any classified employee who responds within the stipulated time limit and states his/her desire to participate in bumping (hereinafter the bumping employee), the chief human resources officer (a) shall review filled classified employment positions in the same pay grade in the bumping employee’s employing institution and (b) shall determine the incumbent with the least seniority in the eligible employee’s employing institution in such pay grade in a classification title for which the individual is deemed minimally qualified. Qualification to fill positions in other than the bumping employee's initial classification shall be determined solely by the chief human resources officer.

5.5 The chief human resources officer shall notify the bumping employee in writing of the availability of a position into which he/she may bump and shall ask them to respond in writing within ten (10) working days whether or not they wish to accept the position. Such offer to continue active employment in the same pay grade as the employee's original grade is deemed to completely satisfy the University's obligations or the College’s obligations under the West Virginia State Code. If the bumping employee declines to accept employment in such a position, he/she is deemed to accept layoff but may request that his/her name be placed on the recall list, discussed below.

5.6 If the bumping employee chooses to accept the position, the process described above shall continue with a written communication to the incumbent of the position into which the employee will bump. This process continues until all affected classified employees who wish to exercise their rights under the State Code for bumping have been accommodated. The bumping process stops when it is no longer necessary to seek placement for a bumping employee or when a bump cannot be accomplished.
5.7 If the classified employee subject to layoff is the employee with the least seniority in the pay grade within the employing institution and/or if no position for which the employee is qualified can be identified in the same pay grade (that has an incumbent with less seniority than the bumping employee), the chief human resources officer (a) shall review filled classified positions in the eligible employee’s employing institution in the next lower pay grade; (b) shall determine if the classification title of the least senior employee in that pay grade is in a classification title for which the bumping employee is deemed qualified; and (c) shall determine if the incumbent of the position is less senior than the bumping employee. Any classified employee displaced through such process may himself/herself request review for possible bumping to a lower pay grade in their employing institution. Likewise, any classified employee who is displaced by a classified employee bumping from a higher pay grade shall have the same communication sent to them as set forth in paragraph 5.2 above advising them of their rights under the West Virginia State Code. If employment in the same pay grade as the bumping employee was originally employed in is not available in the employing institution, such offer of continued active employment in a lower pay grade than the classified employee's original grade is deemed to satisfy the University's obligations or the College’s obligations under the West Virginia State Code. If a classified employee declines to accept employment in this circumstance he/she is deemed to accept layoff and may request that his/her name be placed on the recall list.

5.8 Any classified employee designated for layoff and receiving disability leave benefits (workers’ compensation temporary total disability (TTD) payments or disability insurance payments) at the time layoff is effective shall be subject to layoff. However, an employee who is to be laid off while receiving disability leave benefits shall continue to receive such disability benefits according to the benefit provider’s determination until the period of disability is over and/or the employee would otherwise be able to return to work. Any employee laid off who is covered by group health insurance may continue such coverage for three months from date of layoff by remitting to the office of the chief human resources officer or to the office of the chief payroll officer the employee portion of the group health insurance premium. The University or the College continues to remit the employer portion of the premium. After three months from date of layoff, an affected individual is eligible to continue insurance coverage under the provisions of the federal COBRA statute. An employee may choose to take accumulated annual leave during a layoff period rather than hold it until the layoff is over in accordance with West Virginia State Code Chapter 21. Use of accrued annual leave on and/or after the effective date of layoff causes the employee to continue in active pay status until such annual leave accrual is exhausted or until the employee makes a decision to stop using accrued annual leave and go on layoff status.

6 Recall.

6.1 In the event that a classified employee is laid off from his/her employing institution, the chief human resources officer shall maintain a recall list including the name of that and any other classified employee who is laid off from that particular institution. Recall to active employment from lay off shall be in order of seniority with the last laid off recalled first to the extent possible given the nature, requirements, and/or qualifications of classified employment vacancies that may occur at the former employing institution. The decision to offer recall to active employment for a classified employee into a classified employment vacancy shall rest with the chief human resources officer. Posting of employment vacancies for recruiting may occur during a period of time in which a classified employee is laid off. Nothing shall prevent a laid off employee from making a bid for an employment vacancy in the former employing institution or at another institution than the one in which he/she was formerly employed. Recall to active employment shall have a higher priority for filling a classified employment vacancy than shall the normal recruiting process. Further recall to active employment may have the effect of closing recruiting for a
6.2 Each classified employee who may be recalled from layoff to active employment in their former employing institution shall be notified of the offer of reinstatement or reemployment by certified letter from the chief human resources officer to his/her home address of record. The notice of reinstatement will contain (a) the effective date of such reinstatement; (b) the pay grade, title, salary, and job description; and (c) a statement that a refusal of reinstatement, except for compelling reasons, will result in removal of the classified employee’s name from the recall list. For the purpose of recall the classified employee will be responsible for keeping a current address and telephone number on file with the office of the chief human resources officer and for maintaining an up-to-date employment application and/or resume on a yearly basis.

6.3 Each classified employee recalled from the layoff will have ten (10) working days from the date of receipt of a certified letter to accept the offer of employment, or explain compelling reasons why they cannot do so. The chief human resources officer and the President of the University or his/her designee or the President of the College or his/her designee will determine if reasons offered if any are compelling and justifiable. The classified employee will not be placed in a probationary status if they had fulfilled that obligation previously.

6.4 According to West Virginia State Code §18B-7-1(c), no classified position openings shall be filled by the institution, whether temporary or permanent until all classified employees on the preferred recall list for that institution have been properly notified of existing vacancies and have been given an opportunity to accept reemployment subject to meeting the qualifications for the position.

6.5 A classified employee recalled from lay off shall be paid at the same rate of pay as he/she was receiving immediately prior to layoff adjusting for any general salary increases that may have been provided to classified employees during the period of the individual’s layoff if the employee is recalled to employment in the same pay grade as formerly employed in. If recalled to active employment in a lower pay grade than the one in which the employee was employed in immediately prior to layoff, he/she shall receive a rate of pay equal to his/her former salary minus five percent per grade for the number of pay grades below the former pay grade in which appointed at recall. The salary for any employment obtained as a result of employment bids electively made by the laid off employee and involving normal recruiting processes shall be determined in the same manner as for a new hire.

7 Contract Services.

7.1 In certain situations contract services provided by contractor employees at the employing institution may be modified or terminated. If at the time that it is determined that a classified employee must be laid off due to financial exigency the employing institution has current contracts in place that provide for services to be performed on institutional premises by contractor employees, (a) if the type of services performed by contractor employees was ever performed or is currently performed in other settings by classified employees at the employing institution, or (b) if in the opinion of the chief financial officer, the chief purchasing officer, and the chief human resources officer such services could reasonably be performed by current classified employees thereby possibly avoiding or diminishing the number of classified employment positions that must be retrenched, then the President of the employing institution prior to the lay off of classified employee(s) shall direct that such contracts be voided according to the particular terms and provisions of that contract and to the extent possible in order to recover financial resources that can be applied to cover all or part of the financial exigency necessitating the layoff of classified employees. Contract services shall not reviewed in this manner nor potentially terminated or modified in the event of classified employee lay off that results from program cessation or
reorganization (see definitions). The current contracts for bookstore services and food services are not subject to review as set forth above.

8 Temporary Employment.

8.1 If a circumstance shall develop wherein the President of the institution and the chief financial officer believe that the layoff of one or more classified employees may become necessary, the chief financial officer shall as soon as possible take steps to reduce to the extent possible the budgetary allocation(s) for temporary employment at that employing institution if such action might preserve budgetary resources that may be applied to prevent or reduce the layoff of classified employee(s).

8.2 If it is actually determined necessary to layoff one or more classified employees and if temporary employment shall exist anywhere at the employing institution, the supervising dean, director, or vice president of such temporary employee(s) must provide a written justification for continuing the employment of said temporary employees or such temporary employment must be terminated at the same time that layoff of one or more classified employees occurs. If the President of the institution and the chief financial officer shall be persuaded that such temporary employment must be continued for good and compelling reason(s), such temporary employment shall be allowed to continue. Likewise any new temporary employment that would become effective on or after the effective date of layoff of one or more classified employees must be justified in writing by the supervising dean, director, or vice president and approved in advance of employment appointment by the President of the institution and the chief financial officer.

8.3 Temporary employee herein refers to individuals employed in extra help or casual employment appointments at the institution affected by or to be affected by layoff of classified employee(s). No steps shall be taken to reduce or eliminate any student employment for which wage payments are derived from a grant or contract source or any student employment in federal work study status.

8.4 Elimination or reduction of temporary employment shall only be contemplated in circumstances where the recovery of funds realized by such elimination or reduction may be directly applied to reduce or prevent the layoff of one or more classified employees at the employing institution.

9 Procedure.

9.1 The chief human resources officer is responsible for developing, implementing, and administering sufficient procedures in order to effectuate the provisions of this policy.