
MEMORANDUM OF UNDERSTANDING

TERM OF AGREEMENT – AUGUST 18, 2020– 11:59 PM on the day before the first day of classes, Fall Term, 2023

This Memorandum of Understanding 2021. 7 concerns Article 7.3 Unpaid Leaves.

The parties agree to add the following language on Involuntary Disability Separations:

"5. Involuntary Disability Separation: A faculty member who is unable to perform the essential job duties of their position due to a disabling illness, injury or condition may be involuntarily disability separated after all available paid and unpaid leave has been exhausted. An involuntary disability separation occurs when the University has received substantial credible medical evidence of the faculty member's disability and determines that the faculty member is incapable of performing the essential job duties of the faculty member's assigned position due to the disabling illness, injury or condition. Before disability separation can occur, the University will satisfy its obligations under the Americans with Disabilities Act.

(B) Medical/Psychological Examination

(1) The University shall request that the faculty member submit to a medical or psychological examination prior to involuntary disability separating the faculty member unless:

(a) The faculty member is hospitalized at the time such action is taken, or

(b) Substantial credible medical evidence already exists that documents the bargaining unit member's inability to perform the essential job duties.

The medical or psychological examination may occur prior to the exhaustion of any paid or unpaid leaves.

(2) The University shall select one or more licensed practitioners to conduct the examinations. Prior to any examination, the University shall supply the examining practitioner with facts relating to the perceived disabling illness, injury or condition. The University shall also supply physical and mental requirements of the faculty member's position; duty statements; position specifications; and descriptions. Both the University's Office of Human Resources and the faculty member shall receive the results of any examination and related documents. Except when the faculty member fails to appear for the examination, the University shall pay the cost of the examinations. A faculty member's refusal to submit to an examination or the refusal to release the results of the examination amounts to insubordination, punishable by the imposition of discipline up to and including removal. A faculty member's unexcused failure to appear for an examination could result in discipline. The University shall pay for the cost of this examination, except that the faculty member will be responsible for the costs associated with an unexcused failure to appear at a scheduled examination.

(3) If the faculty member disagrees with the fit for duty finding of the University's practitioner, they shall have an opportunity to use a licensed practitioner of their choosing to perform a second fitness for duty examination. The faculty member shall pay for the cost of this examination. If the findings of their chosen practitioner directly conflicts with that of the

University on the issue of whether the faculty member can perform the essential functions of the job, the faculty member's practitioner and the University's practitioner shall collaborate to select a neutral third practitioner to perform the fitness for duty assessment. This selection shall be made within 14 calendar days after the receipt of the second examination results. Should that selection not be timely made, then the University's third - party health care administrator shall select a third medical practitioner from its list of medical practitioners. The cost of the third medical opinion shall be split between the University and the faculty member. The prevailing finding of two of the three practitioners shall determine the faculty member's fitness for duty. The determination shall be final and binding and not subject to arbitration.

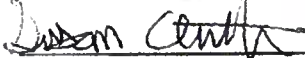
(C) A faculty member so separated shall have the right to grieve the separation in accordance with Article 8, with the grievance filed at Step 2. If arbitrated, then the only issues before the arbitrator will be whether the procedures contained in this Section have been followed and the appropriate length of a reinstatement period, if any, and not whether the faculty member is capable of performing their job duties.

(D) The reinstatement period for a faculty member who has been separated under the Involuntary Disability Separation provision shall have a reinstatement period of up to two years. The effective date of separation, for purposes of reinstatement, shall be based on the date in which the faculty member was no longer performing in active work status due to the disabling illness, injury or condition. A faculty member who has been involuntarily disability separated is not prohibited from applying for disability leave benefits. The total time of absence due to the disabling illness, injury or condition shall not exceed two years from the date of last active status work date for purposes of reinstatement rights under this provision. If a faculty member attempts to return to work during the reinstatement period but fails to perform the essential job duties for six consecutive months, the faculty member's effective date of separation does not change."

Except as otherwise specified herein, all provisions of Article 7.3 shall remain in full force and effect as written.

MOU 2021. 7, Entered into this 4th day of November ~~October~~ 2021.

FOR THE ASSOCIATION



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YSU Chapter of OEA



AJ Sumell, Chief Negotiator
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FOR THE ADMINISTRATION



Brian N. Smith, Provost
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