

**ARTICLE 28
POSITIONS/APPOINTMENTS**

A. CAREER APPOINTMENTS

1. Career appointments are established for a fixed or variable percentage of time at 50% or more of full-time and are expected to continue for one year or longer.
2. Beginning on January 1, 2001, a career appointment may also be established by conversion from a limited appointment pursuant to Section B.2. of this Article.

B. LIMITED APPOINTMENTS

Effective January 1, 2001:

1. A limited appointment is established at any percentage of time, fixed or variable, during which the appointee is expected to be on pay status for less than one thousand (1000) hours in a rolling 12-month period.
2. In the event that a limited appointment employee attains 1,000 hours of qualifying service within a rolling 12-month period, without a break in service of at least 120 consecutive calendar days, the incumbent's appointment shall convert to career.
 - a. Qualifying service includes all time on pay status in one or more limited appointments at the campus/laboratory/hospital. Pay status shall not include on-call or overtime hours.
 - b. Such career conversion shall be effective on the first day of the month following attainment of 1000 hours of qualifying service.
 - c. Any break in service of 120 consecutive calendar days or longer shall result in a new 12-month period for purposes of calculating the 1000-hour requirement.
3. Employees in limited appointments may be released or have their time reduced at the sole discretion of the University and without recourse to the grievance and arbitration procedures of this Agreement. An employee in a limited appointment will be automatically released as of the last day of the appointment unless there is an earlier separation or formal extension of the appointment.
4. Employees in limited appointments are at will, except that the University will not terminate limited appointment employees for the sole purpose of denying them career status, except that an allegation that a limited appointment employee is terminated for the sole purpose of denying career status is grievable and arbitrable. CUE shall have the burden of proof when raising any allegation that a limited employee's termination is for the sole purpose of avoiding career status.

5. The automatic conversion to career status, as provided in §B.2. above will not occur when one or more of the following occur:
 - a. A limited appointee is hired to replace an employee on leave that exceeds 1000 hours. If the employee on leave does not return from leave, the limited appointee shall be converted to career retroactive to the first of the month following attainment of 1000 hours; except that nothing in this subparagraph precludes the University from releasing the limited appointee prior to the anticipated return date of the employee on leave.
 - b. The position into which the employee is hired is not an “ongoing” position, in that the position is established and funded for 18 months or less at any percent of time. In the event the position is funded beyond 18 months, the limited appointee shall be converted to career retroactive to the first of the month following attainment of 1000 hours; except that nothing in this subparagraph precludes the University from releasing the limited appointee prior to the effective date of the funding extension.

C. PARTIAL-YEAR APPOINTMENTS

Partial-year career appointments are established with regularly scheduled periods during which the incumbents remain employees but are not at work. These scheduled periods during which employees are not at work are designated as furloughs and are without pay. Such scheduled periods need not be consecutive in time. Furloughs are not to exceed a total of three months in each calendar year.

D. PER DIEM APPOINTMENTS

1. Per diem appointments are established at any percentage of time regardless of the duration of the appointment. These appointments are established to complement career and limited appointments when necessary to maintain appropriate staffing of the University teaching hospitals and other healthcare facilities.
2. Employees who are appointed to per diem titles are covered by per diem salary rates, the overtime provisions and the Work Rules Article of this Agreement.
3. Employees in per diem appointments may be disciplined, terminated, released or have their time reduced at the sole discretion of the University and without recourse to Article 7, - Grievance Procedure of this Agreement, except as provided in §D.5. of this Article.
4. Use of Article 7, - Grievance Procedure of this Agreement by employees in the per diem appointments is limited to alleged violations of the Wages, Overtime and Work Rules provisions of this Agreement, except as set forth in §D.5. of this Article.

5. Special Per Diem Rights

Effective January 1, 2001, Per Diem employees who work 1,000 hours exclusive of overtime and on-call hours, within the following 12-month period, and who provide the University with a commitment to work in the future at least fifty percent (50%) time, will be eligible for coverage Article 5, - Corrective Action, Discipline, and Dismissal, and the related portions of Article 3, - Arbitration Procedure, and Article 7, - Grievance Procedure.

- a. Failure to comply with minimum scheduling requirements may result in release from employment at any time at the sole discretion of the University and without access to Article 7, - Grievance Procedure, and Article 3, - Arbitration Procedure.
- b. In the event a per diem employee rescinds her/his fifty percent (50%) work commitment or fails to work fifty percent (50%) time or one thousand (1,000) hours as scheduled within a 12-month period, s/he waives her/his right to Articles 5, - Corrective Action, Discipline, and Dismissal; 7, - Grievance Procedure, and 3, - Arbitration Procedure.

E. TEMPORARY EMPLOYMENT POOLS & FLOATER APPOINTMENTS

1. Definition

Temporary employment pools or programs (TEP) are operated by Human Resource Departments to serve campus/hospital/laboratory staffing needs.

- a. The primary goal of the Temporary Employment Program (TEP) is to provide immediate administrative and technical support services to the University departments. Departments utilize TEP employees to complete special projects, to respond to workload fluctuations that are unusual or episodic in nature, to fill in for employees who are on leave, or to fill in during a recruitment period.
- b. A second goal is to provide the campus/laboratory/hospital with a viable source of candidates for its career and limited appointments.

2. Individuals employed in temporary employment pools shall be appointed to a floater appointment.

- a. A "Floater Appointment" is an appointment reserved for use in temporary employment pools, established at any percent of full time up to thirty-six (36) months in duration.
- b. A Floater Appointee is not a Career, Casual-Restricted, Academic, Limited Appointment, or Per Diem employee.

- c. A Floater Appointee is “at will” and may be released from a Temporary Employment Pool for any reason and without just cause. Receiving a Floater Appointment is not a guarantee of work. Floater Appointees may be scheduled or not scheduled, or released from any assignment at the University’s non-grievable discretion.
- d. Upon the commencement of a Floater Appointment, the Floater Appointee will receive a letter advising him/her that, although a Floater Appointment may be terminated at any time, floater appointments may not be extended beyond thirty-six (36) months. The letter will further inform the Floater Appointee that if he/she chooses not to be available for work for a period of 120 days or more, he/she can notify the University in advance, ending his/her appointment and taking a break in service. The letter also will inform the Floater Appointee that he/she must reapply in order to be readmitted to the TEP.
- e. The parties agree that the utilization of Floater Appointees in accordance with paragraph 1.a above is a permissible use of TEP employees. The parties further agree that it is a misuse of the TEP program to utilize a Floater Appointee in the same assignment in the same department doing the same work for more than 1,500 hours in twenty-four months. Further, the use of successive floaters in the same assignment in the same department doing the same work shall create an inference that the University’s use of floaters is not consistent with paragraph E.1.a. The following exclusions apply:
 - 1) Exclusion One: Floater Appointees may serve for more than 1,500 hours in one floater assignment if the Floater Appointee is assigned to replace an employee on leave that exceeds 1,500 hours. If the employee on leave does not return from leave, the Floater Appointee shall be converted to career retroactive to the first of the month following attainment of 1,500 hours, except that nothing in this subparagraph precludes the University from releasing the Floater Appointee from the assignment prior to the anticipated return date of the employee on leave.
 - 2) Exclusion Two: Floater Appointees may serve for more than 1,500 hours in one floater assignment if the position into which the Floater Appointee is assigned is not an “ongoing” position, in that the position is established and funded for eighteen months or less at any percent of time.

In the event the position is funded beyond eighteen months, the Floater Appointee shall be converted to career retroactive to the first of the month following attainment of 1,500 hours; except that nothing in this subparagraph precludes the University from releasing the Floater Appointee from the assignment prior to the effective date of the funding extension.

- 3) A Floater Appointee does not work 1,500 hours or more in any one assignment within the meaning of this Article (even if the Floater Appointee accrues a total of 1,500 or more hours during his/her Floater Appointment), if the 1,500 hours is accrued as a result of working in several short-term assignments.

3. Conversion to Career

- a. If a Floater Appointee is allowed to serve in his/her Floater Appointment for a period of more than thirty-six (36) months without a break in University service of one hundred twenty (120) consecutive calendar days, the Floater Appointee shall be converted to a career appointment on the first day of the month following completion of the 36-month Floater Appointment.
- b. If a Floater Appointee has a break in University service for a period of 120 consecutive calendar days, that individual may be re-hired into a new Floater Appointment.
- c. If during his/her 36-month Floater Appointment, a Floater Appointee serves in one floater assignment in the same department doing the same work for more than 1,500 hours, s/he shall be converted to a career appointment on the first day of the month following completion of 1,500 hours in one assignment, unless one or both of the exclusions enumerated in paragraphs E.2.e.1 or E.2.e.2 of this Article are applicable.
- d. Nothing in this Article shall otherwise prevent a Floater Appointee from attaining a career, limited appointment or other position through the recruitment process or other processes.

4. Benefits

Employees in floater appointments will receive Health and Welfare benefits in accordance with University Benefit Eligibility rules. DCP contributions shall be required.

5. Contract Coverage

When Floater Appointees are assigned to title codes covered by this contract, they are covered by the following Articles of this Agreement: Access, Agreement, Duration of Agreement, Health and Safety, Holidays, Hours of Work, Management Rights, Military Leave, Nondiscrimination in Employment, No Strikes, Parking, Payroll Deduction, Personnel Files, Positions, Rehabilitation, Severability, Shift Differential, Sick Leave, Uniforms, Vacation, appropriate sections of Wages, Waiver, Work-Incurred Injury or Illness, and Work Rules. With regard to the above-referenced Articles (with the exception of the Positions Article), Floater Appointees may use the grievance and arbitration procedures of this Agreement only to the extent provided in the applicable portions of the Articles identified in this Section. An allegation that a Floater Appointee has been utilized in a manner inconsistent with paragraph E.1.a, paragraph E.2.e and/or paragraph 3 of this Positions Article shall be grievable and arbitrable. CUE shall have the burden of proof to show floater use that is inconsistent with paragraph E.1.a., paragraph E.2.e, and/or paragraph 3.

6. The University shall notify CUE at least 45 calendar days prior to establishing a Temporary Employment Pool (TEP) operated by the Human Resources Department at a campus/laboratories/hospital that does not have an existing TEP as of January 1, 2001. Upon receipt of a timely written request from CUE, the campus/laboratory shall meet and discuss the establishment of the Temporary Employment Pool prior to implementation.

7. Employment Information Lists:

a. The University shall continue to post on its FTP site, information for all Floater Appointees. The information shall include, but not be limited to, the type of information posted as of the date of the execution of this Agreement.

b. In addition to the information posted on the FTP site, within 90 days following the effective date of this Agreement, locations with Floater Appointees shall provide CUE with the following information for all individuals in Floater Appointments: name, assignments held within preceding six (6) month period and number of hours worked in each assignment. Thereafter, the locations with Floater Appointees shall provide this information to CUE on a quarterly basis.

F. REHIRED RETIREES

Rehired Retirees working in positions covered by this unit will be eligible to elect to waive future retirement accruals to the same extent that other rehired retirees in staff positions are eligible.

G. LAWRENCE BERKELEY LABORATORY

The definitions of temporary and indeterminate positions which currently are in effect at the Laboratory shall remain in effect.

H. SERVICE CREDIT AND BENEFITS

Non-industrial disability and short-term disability insurance are not provided when employees are on furlough. Time on furlough is not qualifying time for vacation leave, sick leave, holiday pay, or service computation for seniority or retirement.

For health benefits, see Article 42, - University Benefits, Section M.1.

I. REASSIGNMENT

The reassignment of an employee in a full-time career appointment to a partial-year appointment or to a part-time appointment at a fixed or variable percentage of time shall be considered a reduction in time and must be carried out in accordance with the provisions of Article 13, - Layoff and Reduction in Time.

J. Neither this Article nor any other Articles or provisions of this Agreement shall be construed as a guarantee of or limitation on the number of hours per workday or workweek.