

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. A career appointment may also be established by conversion from a limited appointment pursuant to Section B. 4. and B. 5., of this Article.

B. LIMITED APPOINTMENTS

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. 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.
3. The termination of a limited appointment because the position lacks funding, or for other work-related reasons, does not constitute a termination designed to deny a limited appointment career status.
4. Except as provided in §B.5. below, if a limited appointment employee attains one thousand (1,000) hours of qualifying service within a rolling twelve (12) months, without a break in service of at least one hundred twenty (120) consecutive calendar days, the incumbent's appointment shall convert to a variable career appointment of at least 50% time.
 - 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 any on-call, premium, or overtime hours.
 - b. Such career conversion shall be effective on the first day of the month following attainment of one thousand (1000) hours of qualifying service.
 - c. Employees who have been converted to career appointments shall serve a probationary period in accordance with the provisions of Article 30 - Probationary Period.
 - d. Any break in service of 120 days or longer shall result in a new 12-month period for purposes of calculating the 1000-hour requirement.
5. The automatic conversion to career status, as provided in §B.4. above will not occur when:
 - a. An employee who was hired as a replacement for another person who is on an extended leave that exceeds the 1,000 hours; or
 - b. The position into which the employee is hired is not an "ongoing" position, in that the position is established and funded for less than a year at any percent of time, or
 - c. The funding for the position is "one time" funding, of eighteen months or less, or the employee was hired specifically to work on a short-term project lasting no more than one year.
6. Disputes:
 - a. Except as provided in §6.a.1) and §6.a.2), and §6.b., below, employees in limited appointments may have their appointment terminated or have their time reduced at the sole discretion of the University and without recourse to the grievance and arbitration procedures of this Agreement. Disputes by Limited Appointees are not subject to the grievance and arbitration procedures of this Agreement, except:
 - 1) When a limited employee has been released after working greater

than a thousand (1,000) hours, or

2) When a limited employee has been released for the sole purpose of denying her/him career employment.

b. AFSCME shall bear the burden of proof when raising any allegation that a limited employee's termination is grievable/arbitrable.

C. PARTIAL-YEAR APPOINTMENTS

Partial-year appointments are career appointments 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 supplement career and limited appointments on a pre-scheduled basis or as needed on a day-to-day basis when necessary to supplement appropriate staffing of the University medical centers and other health care facilities. The number of Per Diem appointments may fluctuate in response to patient issues such as census, level of care, and acuity changes.

2. The University does not generally intend to replace career employees with Per Diem employees.

3. The University agrees that the ratio of Per Diem to career employees will not grow by more than 12% over three years.

4. Employees in per diem appointments may be scheduled or not scheduled, called off from a pre-established schedule, or have their eligibility for scheduling discontinued at the sole discretion of the University and without recourse to Article 9 - Grievance Procedure or Article 3 - Arbitration Procedure of this Agreement, except as provided in §D.7 of this Article.

5. Employees who are in per diem appointments are covered by per diem salary rates (by agreement rates), the overtime provisions in Article 12, Hours of Work, Article 14, §C.6. Pregnancy Disability Leave, Article 14, §K - O, Military Leave, Article 22, No Strikes, and Article 45, Work Rules. Per Diem employees may be released or have their time reduced at the sole discretion of the University and without recourse to the Layoff procedures of this Agreement.

6. Use of Article 9 - Grievance Procedure and Article 3 - Arbitration Procedure of this Agreement by employees in per diem appointments is limited to alleged violations of the Wages, overtime and Work Rules provisions of this Agreement, as set forth in §D.4, of this Article.

7. Consideration for Career Appointment

a. Annually, in the month of May, each campus and hospital will review the total hours worked, pursuant to 7.b. below, by Per Diem employees who have provided the University with a written statement of interest in becoming a career employee. This review will determine if such a Per Diem employee meets the criteria for consideration for career appointment pursuant to 7.b., below.

b. Qualifying Per Diem employees are those who:

1) have been employed at least twelve (12) months at the campus or hospital;

2) have worked 80% of full time, with no less than 50% time worked in any given month or quadri-weekly period, including overtime, during the preceding contract year;

3) have satisfactory work performance;

4) have provided the University with an annual written statement of

interest in a career appointment.

- c. The University shall provide qualifying Per Diem employees who meet the criteria in §D.7.a., and D.7.b., above, a career appointment as follows:
 - 1) The appointment shall be made no later than nine (9) months from the date on which the employee meets the criteria set forth in §D 7.a., and §D 7.b., above.
 - 2) The appointment shall be a variable career appointment of at least 50%, provided the University first complies with the recall and preferential rehire procedures in Article 13, Layoff and Reduction in Time.
 - 3) The appointment shall be in the same or substantially similar job at the same classification at the same campus/hospital, provided the employee is qualified for that appointment.
 - 4) The appointment shall be at the appropriate pay rate according to the applicable hiring guidelines for career appointments at the employing campus or hospital.
- d. When Per Diem employees are appointed to a career appointment, the employee shall serve a probationary period in the career appointment in accordance with the provisions of Article 30 – Probationary Period.

8. Discipline and Dismissal

- a. Articles 7 - Discipline and Dismissal, 9 - Grievance Procedure, and 3 - Arbitration Procedure shall apply to any Per Diem employee as long as the following conditions are satisfied:
 - 1) The Per Diem employee has worked 1000 hours in Per Diem status, exclusive of overtime and on-call hours, in a rolling 12 month period; and
 - 2) The Per Diem employee provides the University with a commitment to work at least fifty percent (50%) time.

Per Diem employees meeting the conditions in D.7.a. and D.7.b, above, shall not be subject to discipline or removal from scheduling without just cause

- b. In the event that a Per Diem employee rescinds her/his 50% work commitment, or fails to work 50% or 1000 hours as scheduled within a rolling 12 month period, s/he waives any right to access Articles 7 - Discipline and Dismissal, 9 - Grievance Procedure, or 3 – Arbitration Procedure.

E. LAWRENCE BERKELEY LABORATORY

The definitions of career, limited, term and rehired retiree appointments that are currently in effect at the Laboratory will remain in effect.

F. BENEFITS FOR EMPLOYEES ON FURLOUGH

Employees on furloughs shall be provided the University's contribution to the cost of the University-sponsored medical plans for a maximum of three months in a calendar year. For medical plans to remain in force, the employees on furlough must remit to the University, in advance, the amount of the employee's contribution, if any. 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.

G. 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.

H. 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 work day or workweek.