By E-Mail

October 7, 2010
Revised October 19, 2010

TO: Directors of Human Resources
    Labor Designees

FROM: Raymond F. O'Brien
      Senior University Director, Human Resources Operations

SUBJECT: Substitutes

As a result of the settlement of a longstanding grievance filed to arbitration by the PSC, the February 20, 1980 memorandum from Vice Chancellor Catalano regarding the University's use of substitutes is now null and void. Under the settlement agreement, there are important changes in the appointment process and terms and conditions of employment for instructional staff in substitute titles. These changes are effective for appointments for the spring 2011 semester and thereafter. A copy of the settlement agreement is attached. The purpose of this memorandum is to detail the terms of the settlement agreement.

1. Limitations on the Use of the Substitute Title for Particular Purposes

Article 9.7 of the PSC/CUNY collective bargaining agreement stipulates that "substitutes are temporary employees appointed to fill vacancies caused by leaves and/or emergencies . . . ." One of the issues raised by the PSC was the scope of this definition. The settlement agreement provides a list of acceptable purposes for substitute appointments with time limits for each:

<table>
<thead>
<tr>
<th>Purpose of Substitute Appointment</th>
<th>Limit on Appointment of Substitutes</th>
</tr>
</thead>
<tbody>
<tr>
<td>To fill a teaching instructional staff position during a search</td>
<td>Maximum of four consecutive semester appointments</td>
</tr>
<tr>
<td>To fill a non-teaching instructional staff position during a search</td>
<td>Maximum of two consecutive six-month periods</td>
</tr>
<tr>
<td>To fill a position during a contractual disciplinary proceeding or legal proceeding challenging the severance of an incumbent's employment</td>
<td>Duration of proceedings until a final disposition</td>
</tr>
</tbody>
</table>
To fill a position during the prolonged disability of an incumbent | Until the return of the incumbent or the severance of the incumbent’s employment (at which time the rules governing vacancies during a search pertain as long as the authorization to conduct a search is issued during the same semester as the severance of employment or at the beginning of the next semester)

To fill a vacancy owing to the death or unanticipated resignation or retirement of an incumbent | Two semester appointments for teaching instructional staff
Six months for non-teaching instructional staff
(As soon as authorization to fill the vacancy is issued, the rules governing searches pertain)

To fill a vacancy owing to a leave of absence, including Travia Leave | The duration of the leave

To fill a vacancy owing to full-time reassigned time for PSC or UFS business | The duration of the vacancy

The maximum duration of a substitute appointment is six months. The substitute must be appointed to the department or office in which the vacancy occurs.

2. **Limitations on the Number of Consecutive Appointments of an Individual as a Substitute**

In addition to limiting the time during which vacancies may be filled by substitute appointments, the settlement agreement also limits the appointments of individuals as substitutes.

An individual may serve as a substitute in a teaching instructional staff capacity at a particular college for no more than four out of any six semesters. Then, the individual may not serve as a substitute in any instructional staff position (*i.e.*, either teaching or non-teaching) at that college for at least four semesters.

An individual may serve as a substitute in a non-teaching instructional staff capacity at a particular college for no more than two six-month periods out of any 24 months. Then, the individual may not serve as a substitute in any instructional staff position (*i.e.*, either teaching or non-teaching) at that college for at least 12 months.

These limitations do not prevent individuals from serving in regular, non-substitute positions or in hourly positions at the college, nor from serving in substitute positions at another college during the period in which they cannot be appointed in a substitute position at the first college.
The settlement agreement recognizes that particular situations may require that the limitations on consecutive substitute appointments be waived. Such waivers must be signed by the PSC President and the Chancellor, or their designees. For this purpose, the Chancellor's Designee is the Senior University Director for Human Resources Operations.

3. Terms and Conditions of Employment of Substitute Instructional Staff

A. Most of the terms and conditions of employment of substitutes remain unchanged from the Catalano memorandum, including the following:

- Service as a substitute does not count as service credit toward tenure or toward a CCE. Therefore, when an individual who served in a substitute capacity is appointed to a regular title in the professoriate or as a Lecturer, that appointment is his/her first appointment in the title.

- Service creditable towards tenure, a CCE, a multiple year or a 13.3.b appointment that immediately precedes a substitute appointment is counted towards tenure, a CCE, a multiple year or a 13.3.b appointment along with creditable service that immediately follows such substitute service. That is, substitute service occurring between creditable service before and after the substitute service, with no break in service, acts as a bridge.

- Service as a Substitute Instructor does not count as service toward the limitations on appointments as Instructor in Bylaws Section 6.6.e or as service credit upon appointment as an Assistant Professor under Article 9.8 of the PSC/CUNY collective bargaining agreement or for service credit toward a CCE upon appointment as a Lecturer under Article 12.6 of the PSC/CUNY collective bargaining agreement.

- Service as a substitute counts for purposes of movement within salary schedule and salary schedule changes.

- An individual may be appointed as a substitute in the Higher Education Officer series for a period of time up to the length of time needed to fulfill the requirement of Section 13.10 of the PSC/CUNY collective bargaining agreement.

- Substitutes must be evaluated in accordance with the terms of Article 18 of the PSC/CUNY collective bargaining agreement. If a substitute teaching instructional staff member is employed for two consecutive semesters one of which is a semester in which the department/unit performs annual evaluations, the substitute will receive an annual evaluation.

- Substitutes are not subject to the reappointment process. They may not be considered for reappointment by Personal & Budget Committees. Substitutes do not receive notice of reappointment, inasmuch as they are not considered for
reappointment. Substitutes may be given a series of consecutive semester or six-month appointments as substitutes, consistent with the terms of the settlement agreement.

- Substitute instructional staff members have the same welfare and pension benefits as regularly-appointed, annual-salaried instructional staff. Except as limited under existing University leave policies, substitute instructional staff members have the same leave entitlements as regularly-appointed annual-salaried instructional staff.

B. The settlement agreement changes the terms and conditions of employment for substitute instructional staff in two important ways.

The first change is that an individual who has served as a substitute in a Higher Education Officer series title and who then receives a consecutive regular appointment in a Higher Education Officer series title at the same college may receive up to two years of service credit toward a 13.3.b appointment for the substitute service under two scenarios. In the first scenario, if an individual serves as a substitute for two consecutive years and then receives a consecutive regular appointment, both years of substitute service are creditable. In the second scenario, where the substitute service is not consecutive, an individual may still earn up to two years of creditable service provided that one year of substitute service immediately precedes the regular appointment and no more than one year intervenes between the years of substitute service. All other rules for the calculation of service credit for substitute service will be the same as for other service.

The following example illustrates this principle:

Example: An individual receives the following appointments:

7/1/08 – 6/30/09: appointments as a Substitute Higher Education Assistant
7/1/09 - 6/30/10: no regular or substitute appointments in the HEO series
7/1/10 - 6/30/11: appointments as a Substitute Higher Education Assistant
7/1/11 - 6/30/12: a regular appointment as a Higher Education Assistant

In this example, the individual would receive two years of service credit for the substitute service because 1) the substitute service occurred at the same college, 2) no more than one year intervened between the two years of substitute service, and 3) at least one of the years of substitute service was immediately contiguous to the regular appointment. This individual’s regular appointment on July 1, 2011 will be considered the second reappointment for purposes of credit toward a 13.3.b appointment, as well as for the schedule of notification of reappointment under Article 13.13.

Notwithstanding the foregoing, an individual appointed to a position in the Higher Education Officer series must serve at least one full year in the position before achieving a 13.3.b appointment.
The second significant change is that the teaching workload for a substitute instructional staff member will change when an agreement is reached between the PSC and the Office of Human Resources Management to permit a fifth consecutive substitute teaching instructional staff appointment at the same college. In such a situation, the "teaching contact hour workload" for the substitute instructional staff member is governed by the terms set forth for the underlying non-substitute title in Appendix A of the PSC/CUNY collective bargaining agreement, for the fifth consecutive semester and all subsequent consecutive semesters.

If you have any questions concerning implementation of this agreement, please call me at (212) 794-5386.

Attachment

c: Vice Chancellor Gloriana B. Waters
Vice Chancellor Pamela Silverblatt
Chief Academic Officers
Chief Administrative Officers
Ms. Deborah Bell