

**BRIDGEVALLEY COMMUNITY AND TECHNICAL COLLEGE
BOARD OF GOVERNORS**

POLICY B-21

FURLOUGHS AND REDUCTION IN EMPLOYEE WORKFORCE

Section 1. General

- 1.1. Scope – This rule establishes the process for enacting furloughs and reduction in employee workforce during a period where financial conditions necessitate a reduction in the institution’s labor budget at BridgeValley Community and Technical College (BridgeValley).
- 1.2. Authority – WV Code §18B-7-3, West Virginia Council for Community and Technical College Education Rule Title 135 and Series 9, *Academic Freedom, Professional Responsibility, Promotion and Tenure*.
- 1.3. Effective Date – June 15, 2016. Revised May 18, 2018. New Effective Date – June 21, 2018.

Section 2. Policy

- 2.1. This policy shall apply to all regular full-time (.53 FTE and above) employees and positions, to include faculty, classified, and non-classified employees.
- 2.2. This policy is intended to apply *only* to full-time regular employees, i.e., those at .53 FTE and above. Employees at less than .53 FTE, i.e., part-time regular (“1039”) or temporary, adjunct, casual or project employees are not included in this policy, as they are considered “at-will” employees whose positions may be abolished if deemed necessary.
- 2.3. Whenever feasible, the President shall seek voluntary reductions in FTE and appointment length prior to implementing sections 5, 6 and 7 during a period where financial conditions necessitate a reduction in labor budget.

Section 3. Definitions of Employees (from Title 133, Series 8, 2.1)

- 3.1. **Full-Time Regular Employee (FTR):** Any employee in a classified position created to last a minimum of nine months of a twelve-month period and in which period such employee is expected to work no less than 1,040 hours during said period. The full-time equivalent (FTE) of such a position must be reported at no less than .53 FTE. Personnel who fail to meet the work threshold for designation as full-time classified personnel shall hold no seniority and will be considered “at-will” employees.
- 3.2. **Full-Time Faculty:** Employment as a faculty member for a full academic year (at least a nine-month contract basis) for at least six (6) semester credit hours teaching per semester

or the equivalent in teaching, research, public service, and/or administrative responsibilities. Faculty are not considered classified employees or subject to the classification program.

- 3.3. **Non-Classified Employee:** An employee who meets one or more of the following criteria: is responsible for policy formation at the department and/or institutional level; reports directly to the president of the institution; is in a position deemed critical to the institution by the President; is in an information technology-related position; or is hired after July 2, 2017 into a FLSA exempt position. Non-classified employees are not subject to the classification program but are eligible for benefits.
 - 3.3.1. An information technology-related position is defined as a staff person that is responsible for managing a technology function.
- 3.4. **Part-Time Regular Employee:** An employee in a position created to last less than 1,040 hours during a twelve-month period. An employee in a PTR position is not eligible for benefits, but is covered under the classification program.
- 3.5. **Temporary Employee:** An employee hired into a position expected to last fewer than nine months of a twelve-month period regardless of hours worked per week. A temporary employee is not eligible for benefits, but is covered by the classification program.
- 3.6. **Casual Employee:** Position created to meet specific operational needs at an institution for no more than 450 hours in a 12-month period. Individuals in a casual employee position are not eligible for benefits and are not covered by the classification program.
- 3.7. **Furlough:** A furlough is mandatory time off work for no pay for an employee or employees, a program typically implemented in lieu of reductions in force and the permanent loss of jobs and positions.
- 3.8. **Reduction in Force (RIF):** The termination of employees and/or positions due to lost funding or unmet revenues; or due to institutional or programmatic changes; or due to the reorganization of business operations.
- 3.9. **Seniority (for classified employees):** For purposes of reduction in force, “seniority” means uninterrupted service in the higher education system. Uninterrupted service means the continuous period of time that an employee is in payroll status—i.e., being paid for time worked regardless of when the payment occurs. Therefore, persons on unpaid leaves of absence (regardless of the reason) do not accrue seniority service for purposes of reduction in force. An employee hired at BridgeValley who previously worked at another institution under the jurisdiction of the Higher Education Policy Commission or Council for Community Council for Community and Technical College Education must have no break in service between the two institutions in order to have the previous institutional service counted toward seniority calculations for reduction in force purposes at BridgeValley.

- 3.9.1. For regular employees, this excludes adjunct teaching experience and part-time temporary and/or casual work experience. Temporary and casual employees do not earn or carry seniority.
- 3.10. **Seniority (for faculty employees):** For regular faculty employees, seniority may apply in some circumstances, as detailed in Section 5 following.
- 3.11. **Seniority (for non-classified employees):** Seniority is not a mitigating factor or consideration for non-classified employees, who are considered “at-will” employees.
- 3.12. **Full-Time equivalency (FTE):** Full-time equivalency is the percentage of time for which a position is established; a 1.0 FTE is a position assigned to work 1950 hours per the twelve (12) months of the fiscal year.

Section 4. Furlough Policy

- 4.1. After the decision that a financial condition necessitating a reduction in the institution’s labor budget exists, the President shall have the authority to determine and implement a feasible furlough plan, which shall be applied to all regular employees equitably and in a manner appropriate to their FTE’s and employment type as described above in Section 3. Such a plan must be approved by the Board of Governors in a regular meeting or by another method of voting approved by the Board.
- 4.2. The furlough plan must be designed such that it minimizes the financial impact on employees.
- 4.3. Seniority is not a consideration in furloughing.

Section 5. Reduction in Force Policy - Faculty

- 5.1. It shall be the policy of the Board of Governors to undertake reductions in the workforce or personnel in a consistent and equitable manner. Following the decision that a financial condition necessitating a reduction in the institution’s labor budget exists, the President shall undertake program/curriculum reviews to consider pertinent program/curriculum or administrative information. The President may recommend to the Board of Governors the elimination or reduction of programs/curricula deemed appropriate, given financial and enrollment considerations, and in the best interest of the College in general. The primary consideration in any resulting decision to eliminate positions and to reassign or reduce the number of affected faculty positions and personnel will be the preservation of the quality and effectiveness of the College’s programs and overall mission.
- 5.2. **Basis for Elimination of Faculty Positions:** Recommendations by the President to the Board of Governors concerning the elimination of any faculty position because of a reduction-in-force resulting from a decision that a financial condition necessitating a reduction in the institution’s labor budget will be made on the basis of need within each

discipline, as defined by the President after consultation with the Chief Academic Officer, the Deans, and department chairs.

5.2.1. **Elimination of Positions with Equal Rank in Same Discipline/Department:** In the event all other factors are considered to be equal and a choice must be made concerning the elimination of the position of one of two or more faculty members holding the same rank and teaching the same discipline, the faculty member with the greater seniority will be retained. Also, in the event of a conflict between rank and seniority, such as when an assistant professor has substantially more seniority than his or her equally qualified counterpart who is an associate professor, the department chair, dean and the chief academic officer will jointly review the annual evaluations of both faculty members for the previous three years, as well as any other relevant data, including but not limited to enrollment data, and make a recommendation to the President concerning which of the positions better serves the vital interests of the College.

5.2.2. **Order for Elimination of Faculty Positions:** Non-tenured term faculty members, within the discipline to be reduced, will be terminated prior to the termination of the employment of tenured faculty members. Employment terminations of faculty members will generally follow the order specified below unless there is an identified need to retain faculty members who are deemed to be of key importance to a particular program:

Non-Tenured Term Faculty:

1. Adjunct Faculty
2. Lecturer and Visiting / Temporary Faculty
3. Instructor
4. Assistant Professor
5. Associate Professor
6. Professor
7. Professor/Senior

Tenured Faculty:

1. Assistant Professor
2. Associate Professor
3. Professor
4. Professor/Senior

5.3. **President's Recommendation:** In addition to recommendations made in response to a financial condition necessitating a reduction in the institution's labor budget, the President may recommend the termination of the employment of faculty members to the Board of Governors at any time for reason of lack of funds, lack of work, reduction in enrollment or abolition of position. Recommendations of the President to the Board of Governors relative to the termination of the employment of faculty members shall not

be made until affected faculty members have been afforded a hearing as provided herein.

5.3.1. Notice and Hearing for Tenured Faculty Members: The President shall provide written notice to any full-time tenured faculty member of the intent to recommend termination of employment based upon a reduction-in-force. The notice shall contain a description of the reasons for the intended recommendation. The President must make every effort to give as much notice as is practical in light of a financial condition necessitating the reduction in the institution's labor budget exists to each affected faculty member in advance of the effective date of the layoff. Yet, the legislative appropriation process or the recognition of a reduction in revenues and the subsequent analysis needed before a decision that a financial condition necessitating a reduction in the institution's labor budget exists may allow little time for formal notice to the employees who are to be laid off. Upon receipt of such notice, the affected faculty member may request a hearing to be conducted by the President or his or her designee. A request for a hearing must be made within five (5) calendar (working) days of a notice of recommended termination. Among the issues to be considered by the President or designee are:

- a. Ensuring that reductions-in-force do not arbitrarily violate the principles of academic freedom or established law on the basis of individual qualifications such as race, color, religion, sex, sexual orientation, gender identity, national origin, or age as identified and defined by relevant and appropriate employment law.
- b. The burden of proof in position or employee termination proceedings rests with the faculty member.
- c. The decision that a financial condition necessitating a reduction in the institution's labor budget rests solely within the President's authority and discretion with the approval of the Board and is not subject to contest by any faculty member.
- d. The hearing shall be recorded by mechanical means and a written transcript provided to all participating and appropriate parties to be included with the final response as described in (e) below. The strict rules of evidence shall not, however, be applied during the hearing.
- e. Following the hearing, the President or designee shall prepare a written decision upon any matters raised by the faculty member who requested the hearing. The decision shall contain a description of the concerns raised by the faculty member and a response to each thereto. A copy of the decision and transcript shall accompany any subsequent recommendation made by the President to the Board of Governors. These actions will all be completed within ten (10) working days of the appeal meeting, unless an extension is mutually agreed upon by the faculty member and an approved designee of the College.
- f. Use of the appeal procedure does not delay the effective date of employment termination of the faculty member.

- 5.3.2. **Non-Tenured Term Faculty Members:** In most instances, a reduction-in-force of faculty members under fixed-term appointments will be accomplished by non-reappointment, following notification guidelines as set in the faculty evaluation handbook, rather than by layoff during the term of employment. In the event a faculty member serving under a fixed-term appointment is recommended for employment termination during the term of employment because of a reduction-in-force resulting from a decision that a financial condition necessitating a reduction in the institution's labor budget, that faculty member shall be entitled to use the appeal procedure described in Section 5.3.1.
- 5.3.3. **Action by the Board of Governors:** Upon receipt of a recommendation by the President, the Board of Governors may approve the termination of employment of a faculty member. No separate hearing shall be afforded to affected faculty members by the Board of Governors. The affected faculty member shall be provided with written notice of the action taken by the Board of Governors and shall also be provided with a copy of the instructions and form for filing an appeal with the West Virginia Public Employees Grievance Board.
- 5.3.4. **Transfers/Refusals to Transfer:** In some cases, the President may decide (as a result of the above-described review process), to abolish or combine certain programs or curricula, or to close certain physical campuses or locations, whether for purposes of a financial condition necessitating a reduction in the institution's labor budget or for reorganization or reallocation of resources. In such a case, an employee may be reassigned to a new program, division or physical location. If a faculty member refuses the reassignment to a program, school or physical location, the President may then terminate that faculty member's employment; as an equitable offer has been made and refused, the College is under no further obligation to maintain the employee's job or employment.
- 5.3.5. **New Faculty Positions:** New positions will not be created while a financial condition necessitating a reduction in the institution's labor budget is in effect unless a serious disruption in the functioning of the College or a loss of grant funds would otherwise result, as determined within the sole discretion of the President. New academic programs or faculty positions may be created only when it can be demonstrated that these programs or positions will help the College extricate itself from the financial conditions necessitating the reduction in the institution's labor budget and/or program and curriculum performance. Priority for filling these positions will be given to existing, qualified faculty whose positions are slated for abolishment.
- 5.3.6. **Re-employment Following Financially Based or Other Termination:** Notwithstanding any other recall rights contained in the policy, in the case of the termination of the employment of a tenured faculty member occupying a permanent faculty position, the position concerned may not be filled by

replacement within a period of two (2) years from the effective date of the termination of employment, unless the faculty member has been offered a return to employment in that position and has not accepted the offer within 30 calendar days after the offer is extended.

- 5.3.7. **Termination of Exigency:** The conclusion of a financial condition necessitating a reduction in the institution's labor budget will not imply that employment terminations that were made during that period are automatically withdrawn, revoked or otherwise invalid.
- 5.3.8. **Process for Re-employment of Affected Personnel:** The following process shall be observed for determination of recall and reassignment of affected faculty members following their termination during a financial condition necessitating a reduction in the institution's labor budget: When filling academic positions, the highest ranking qualified tenured faculty member whose employment has been terminated as part of a financial condition necessitating a reduction in the institution's labor budget reduction-in-force (and who has not been employed in an academic position elsewhere) shall be offered the position. If the position is refused, it shall be offered to other similarly affected faculty members in rank order. Any refusal of employment by a faculty member shall extinguish any further rights to recall. However, a refusal to accept a position shall not preclude a faculty member from making application for other posted position openings. The Office of Human Resources shall notify faculty members whose employment has been terminated of position openings in accordance with the terms of this policy. The notice shall be sent by certified mail to the last known address of the employee. It is the responsibility of the employee on the recall list to notify the Office of Human Resources of any change in address in order to retain recall status.
- 5.3.9. **Assumption of Responsibilities:** The duties of a faculty member terminated under the provisions of this policy will be assumed by his/her remaining colleagues in so far as is feasible.
- 5.3.10. **Rights of Returning Tenured Faculty Members:** A tenured faculty member who has been terminated and who accepts re-employment with the College under the terms of this policy will resume tenure and the rank held at the time of employment termination, be paid a salary commensurate with the rank and length of previous service, be credited with any sick leave accrued as of the date of employment termination and be credited with any annual leave accrued as of the date of employment termination for which payment has not been made. Annual increment service time will begin accruing upon reinstatement; no annual increment or other service time accrues during the period of reduction-in-force.

Section 6. Reduction in Force Policy – Classified Staff

- 6.1. It shall be the policy of the Board of Governors to undertake reductions in the workforce or personnel in a consistent and equitable manner. The President, however, following the decision that a financial condition necessitating a reduction in the institution's labor budget exists, shall undertake program, administrative and service reviews to consider pertinent program, administrative or service information. The President may recommend to the Board of Governors the elimination or reduction of programs or services deemed appropriate, given financial, enrollment and other pertinent considerations, and in the best interest of the College in general. The primary consideration in any resulting decision to eliminate positions and to reassign or reduce the number of affected staff positions and personnel will be the preservation of the quality and effectiveness of the College's programs and overall mission.
- 6.2. **Basis for Elimination of Classified Staff Positions:** It shall be the policy of the Board of Governors to undertake reductions in the workforce of classified personnel in a consistent and fair manner, insofar as the needs of the institution, its mission and its students are met first. Following a reduction in workforce in the ranks of classified personnel, the continuation of services and programs with appropriately trained and qualified personnel shall be afforded primary consideration in all decisions related to elimination of positions and the reassignment of affected classified personnel.
- 6.2.1. Part-time regular (1039), casual, project and/or temporary classified positions and employees are not covered under the provisions of this policy.
- 6.2.2. A reasonable reduction in the number of hours an employee works (FTE) is NOT considered a reduction in force; i.e., altering the FTE of a position or employee's job by .20 or less.
- 6.3. **Calculation of Seniority:** Seniority accumulation for regular employment begins on the date the employee enters regular employment duties and continues until such regular employment is severed with the College. Full-time service will be prorated by FTE. Part-time service performed prior to becoming a regular employee will not be counted in the seniority calculation. Only regular status, increment eligible service will be counted. Additional seniority shall be given for full-time service in the West Virginia system of higher education. Such additional seniority shall be applied to adjust the total months of service. Employees shall accrue seniority while on paid sick leave or annual leave, while receiving temporary total disability benefits under the workers' compensation system, while on approved military leave, or on any authorized paid leave. Employees shall not accrue seniority during periods of disciplinary suspension without pay, leave without pay, or unauthorized absences. Any loss of seniority occasioned by disciplinary suspension or unauthorized absences shall result in an adjustment to an employee's total months of service for seniority purposes.

- 6.3.1. An employee who is subject to a reduction-in-force shall, upon re-employment, receive credit for previously accumulated seniority, but shall not accumulate seniority during the period of absence prior to re-employment.
 - 6.3.2. If two or more employees accumulate identical seniority, the priority shall be determined by a random selection established by the employees and approved by the Office of Human Resources. Priority shall be established anew in the context of each personnel decision where a tie in seniority must be broken.
- 6.4. **Correction of Erroneous Total Months of Seniority:** It shall be the responsibility of all classified personnel to validate the correctness of their total months of service and adjustments thereto. An employee who fails to correct erroneous total months of service and who is subject to adverse personnel action by virtue of erroneous seniority shall be prohibited from raising the error in the context of the adverse personnel action. However, an employee's erroneous seniority shall be corrected for all purposes other than the adverse personnel action in question.
- 6.5. **Specific Qualifications or Training:** Any specific qualifications or training associated with a classified position shall be set forth in the Position Information Questionnaire (PIQ). Specific qualifications and training shall be reviewed annually by the supervisor in the context of Position Information Questionnaire reviews during the performance appraisal process. Any significant changes recommended by supervisors or by the Office of Human Resources shall be submitted to the President for approval.
 - 6.5.1. No pretextual PIQ's are to be submitted to, nor will they be reviewed by, Human Resources, if it is perceived or determined by the President or HR that such submission is intended solely or in the main to protect an individual's position or employment from abolishment. PIQ's to be used in the review process are those that were in effect 90 days or more before the announcement of a reduction-in-force.
- 6.6. **President's Authority and/or Recommendation:** The President may eliminate classified positions without prior recommendation to the Board of Governors for reasons other than financial conditions necessitating a reduction in the institution's labor budget. These reasons may include, but are not limited to lack of funds, expirations of special grants or revenue streams, lack of work, material changes in duties, or changes in organization. In the event of a decision that a financial condition necessitating a reduction in the institution's labor budget exists, the President shall eliminate non-critical vacant positions prior to recommending the elimination of positions held by regular full-time classified personnel.
- 6.7. **Affected Personnel:** Personnel who are serving in positions that have been designated for elimination shall be considered for reassignment based upon their classification and any relevant specific qualifications or training they may possess. Once positions have been designated for elimination, the affected employees must update their record of credentials and specific qualifications and training within a reasonable

timeframe as determined by the Chief Human Resources Officer.

- 6.7.1. If two or more qualified employees are situated in identical positions and one position has been designated for elimination, the supervisor and second-level supervisor shall jointly review the annual evaluations of the affected staff members for the previous three years, as well as any other relevant data, and make a recommendation to Human Resources concerning which of the positions better serves the vital interests of the College. If all other considerations are equal, such as job performance and qualifications, the position occupied by the staff member with the least seniority will be eliminated.
- 6.8. **Consideration of FTE Status:** FTE status shall be considered in evaluating the suitability of positions for reassignment. Notwithstanding the fact that employees with FTE's between .53 and 1.0 are considered full-time, vacancies and other potential positions for an employee's reassignment must not vary more than .20 of the affected employees' FTE status to be considered suitable. However, if there are no suitable vacancies, an employee may be reassigned to a position that would otherwise be considered non-suitable for reason of FTE disparity.
- 6.9. **Process for Reassignment of Affected Personnel:** The following process shall be observed for determination of reassignment of affected personnel. In all cases, employees whose jobs have been identified for abolishment must meet the stated qualifications for and be able to perform the duties (as described in the PIQ) of the position into which they would be slated. Human Resources is to make such determinations.
 - 6.9.1. Priority One – Qualified affected employees will be transferred to current vacant positions, without regard to seniority, in order to avoid a layoff situation by the institution. Attempts will be made to transfer affected employees to vacancies in the same classification. If a vacancy does not exist in the same classification, attempts will be made to transfer employees to vacant positions in lower classifications.
 - 6.9.2. Priority Two – Transfer to a part-time vacancy within the same or lower classification.
- 6.10. **Preferred Recall List:** All employees who have been displaced as a result of the elimination of their positions and who elect to refuse reassignments to lower classifications shall be placed on a preferred recall list. Employees on the preferred recall list shall be notified of any position opening by the institution within the classification in which the employee had previously been employed or to any position in a lower classification for which the employee is qualified on the basis of and related experience. Preference shall be given to the best qualified employee from the recall list that applies for the respective vacancy.

- 6.10.1. The Office of Human Resources shall notify all employees on the preferred recall list of all position openings that exist from time to time. The notice shall be sent by certified mail to the last known address of the employee. It is the responsibility of the employee on the recall list to notify the Office of Human Resources of any change in address in order to retain recall status and to be contacted.
- 6.10.2. An employee's listing shall remain active for a period of one year. However, employees must annually request in writing that their listing be renewed for the succeeding year. An employee who fails to renew listing on the recall list prior to the anniversary date of placement on the list or last renewal shall be removed from the list.
- 6.10.3. No position openings shall be filled by the institution, whether temporary or permanent, until all employees on the preferred recall list have been properly notified of existing vacancies and have been given an opportunity to apply for the vacancies.

Section 7. Reduction in Force Policy – Non-Classified Staff

- 7.1. Seniority of employees in non-classified positions is neither a factor nor a consideration in determining reduction in force of such positions, in which employees are considered "at-will." However, following the decision that a financial condition necessitating a reduction in the institution's labor budget exists, the President shall undertake program, administrative and service reviews to consider pertinent program administrative or service information. The President may recommend to the Board of Governors the elimination or reduction of programs or services deemed appropriate, given financial, enrollment and other pertinent considerations, and in the best interest of the College in general. The primary consideration in any resulting decision to eliminate positions and to reassign or reduce the number affected non-classified positions and personnel will be the preservation of the quality and effectiveness of the College's programs and overall mission. Consequently, those employees who are deemed to be of key importance to a specific program or service will be retained in preference to other staff members, whatever their status or seniority.

Section 8. Responsibilities and Procedures

- 8.1. Faculty: The President and Chief Academic Officer shall have primary responsibility for making recommendations to the Board of Governors regarding elimination of faculty positions. Human Resources will be guided in process and implementation by the decisions provided by the President and Chief Academic Officer.
- 8.2. Classified, Non-Classified and FEAP Employees: The Chief Human Resources Officer shall have primary responsibility for the implementation of the provisions of this policy.

Section 9. Benefits

- 9.1 In the event of implementation of furloughs or reduction in force due to a financial condition necessitating a reduction in the institution's labor budget, relevant and appropriate state and federal laws will be applied in relation to benefits, such as leave accruals and insurance, for affected employees.