

# University of St. Thomas Policies

## FACULTY CONTRACTS

Policy Number: F.01.06

Scope: All Faculty

Purpose: To establish policies for faculty contracts

## POLICY

The University may establish employment provisions with a faculty member through a written contract. Such an agreement between the faculty member and the University includes specific provisions in which there is a promise to perform in return for valuable consideration. The faculty member promises to perform and be accountable for the specific named responsibilities and those acts and forbearances in the University's best interests, which may include active collaboration with University colleagues, for aspects of the University's academic programs. This provides the basis for the University's response with identifiable benefits. (See Policy F01.01)

### 1. Types of Contracts

Faculty may receive one of five potential contracts:

- Tenured faculty
- Probationary tenure-track faculty
- Term faculty
- Religious faculty
- Adjunct faculty

Each of these types of faculty contracts include individual provisions for percentage of appointment, rank, and duration of employment. Additional provisions may be included on an individual basis. All faculty are governed by the policies and provisions in effect during the year of service specified in their contract.

### 2. Tenured Faculty Contract

- a. The contract for a tenured faculty member is for one academic year.
- b. Because the faculty member is tenured, the annual contract includes the provision that the faculty member has the right to be reemployed for succeeding academic years until he/she resigns or retires, subject to item "c." below.
- c. A tenured faculty member can be terminated for cause or if the Board of Directors terminates a school or program, a change in enrollment at the University, financial considerations, consolidation of departments or other reorganization or termination or substantial change of one or more courses or academic programs, or financial exigency. (See Section 10 for details concerning termination).

### 3. Probationary Tenure-Track Faculty Contract

- a. The contract for a probationary tenure-track faculty member is for one academic year.
- b. These contracts are specified as probationary unless explicitly stated otherwise in the letter of appointment.

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- c. Because the faculty member is in a probationary position, subsequent contracts are determined by the duration of the probationary period and not beyond this period of duration.
- d. The original contract does not ensure subsequent contracts.
- e. If a probationary tenure-track faculty member is not to be reappointed, he or she shall be informed in writing of the University's decision as follows:
  - i. No later than March 1 of the first year of academic service
  - ii. No later than December 15 of the second year of academic service and all subsequent years
- f. At the time of initial appointment, a faculty member may receive credit towards satisfying the duration of the probationary period based on prior academic experience.
- g. Normally the total period of full-time tenure-track service prior to the acquisition of tenure shall not exceed seven years, with review for tenure during the sixth year.
- h. A probationary tenure-track faculty may be considered for a term contract at the conclusion of their probationary period. This can occur during the probationary period or at its conclusion if the faculty member does not progress to tenured status and/or promotion to Associate Professor.
- i. A probationary tenure-track faculty member may be terminated for cause during the period of the contract without further notice requirements or if the Board of Directors terminates a school or program, a change in enrollment at the University, financial considerations, consolidation of departments or other reorganization or termination or substantial change of one or more courses or academic programs, or financial exigency. (See Section 10 for details concerning termination).

### 4. Term Faculty Contract

- a. The contract for a term faculty member is usually for one academic year.
- b. The original contract does not ensure subsequent contracts.
- c. At the discretion of the University, reappointment of a term faculty member can continue indefinitely.
- d. If a term faculty is not to be reappointed, they shall be informed in writing of the University's decision as follows:
  - i. No later than March 1 of the first year of academic service
  - ii. No later than December 15 of the second year of academic service and all subsequent years
- e. If a term faculty member is not reappointed, reemployment in a subsequent year is solely at the discretion of the University.
- f. A faculty member with a term contract may apply for promotion in rank according to the Promotion and Tenure Policy of the University. (See Policies F.03.01 and F.03.02).
- g. Provisions for tenure do not apply to a term faculty contract. However, other policies concerning faculty do apply to a faculty member on a term faculty contract.
- h. If the status of a term faculty member changes and a probationary tenure-track contract is offered, a maximum of four years of full-time service may be considered in determining the total probationary period.
- i. A term faculty member may be terminated for cause during the term of the contract period without further notice requirements or if the Board of Directors terminates a school or program, a change in enrollment at the University, financial considerations,

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consolidation of departments or other reorganization or termination or substantial change of one or more courses or academic programs, or financial exigency. (See Section 10 for details concerning termination).

5. **Religious Faculty Contract** (Applicable to Priests of the Diocese of Galveston-Houston and the Diocese of Dallas in the University of St. Thomas School of Theology at St. Mary's Seminary)
  - a. The contract for a religious faculty is a term contract, usually for one academic year.
  - b. The initial contract is negotiated with the Vice President for Academic Affairs and approved by the President of the University and the Bishop of Galveston-Houston or the Bishop of Dallas, as appropriate.
  - c. Reappointment of a faculty member on a religious contract is solely at the discretion of the University and may continue indefinitely.
  - d. If a religious faculty member is not to be reappointed or the priest has not been recalled by his Ordinary, they shall be informed in writing of the University's decision as follows:
    - i. No later than March 1 of the first year of academic service
    - ii. No later than December 15 of the second year of academic service and all subsequent years
  - e. A faculty member with a religious contract may apply for promotion in rank according to the Promotion and Tenure Policy of the University. (See Policies F.03.01 and F.03.02).
  - f. Provisions for tenure do not apply to a religious contract. However, other policies concerning faculty and, where relevant, in the Structures and Procedures Handbook of the School of Theology, do apply to a faculty member with a religious faculty contract.
  - g. A religious priest faculty member may be terminated for cause during the term of the contract period without further notice requirements or if the Board of Directors terminates a school or program, a change in enrollment at the University, financial considerations, consolidation of departments or other reorganization or termination or substantial change of one or more courses or academic programs, or financial exigency. (See Section 10 for details concerning termination).

### 6. Adjunct Faculty

Adjunct faculty policies are detailed in Policy F.01.03.

### 7. Initial Appointment

- a. The initial appointment to the faculty may be made only by the President upon recommendation of the Vice President for Academic Affairs.
- b. The President shall designate at his/her sole discretion the rank of the faculty member and, in the case of probationary tenure-track faculty, the number of years of service, if any, to be credited to his/her probationary period.
- c. For compelling reasons the President may recommend to the Board of Directors that a candidate with outstanding qualifications who has held tenure elsewhere and who meets the University's own criteria be granted tenure at the time of initial appointment.

### 8. Contract Conditions

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- a. Contracts are in writing, qualify as legal documents, and are negotiated only by the Vice President for Academic Affairs with the approval of the President. Only written contracts signed by the President or Vice President for Academic Affairs may bind the University.
- b. No discussion or communications about work assignments, courses or teaching duties will be considered a contract.
- c. All full-time faculty will receive annual contracts prior to the end of spring semester for the ensuing academic year. The contract will designate rank, salary, tenure status, assignments and any individual special provisions. A faculty contract is not self-renewing and terminates on the date specified. The salary stated in the contract is based on the faculty member's performance of duties envisioned for the contract period.
- d. Acceptance of a University contract by the faculty member includes acceptance of the general conditions of employment and responsibilities set forth in University policies. This acceptance is the faculty member's legal commitment to his/her role in furthering the University's academic mission through observable professionalism congruent with the University's mission.
- e. Contracts must be signed and returned by the faculty member within two weeks (14 calendar days) of the offer. If a signed contract is not received within that period, the University assumes the faculty member is discontinuing employment with the University and will act in reliance of that failure. Exceptions to this requirement may be negotiated only in advance of the two week period with the Vice President for Academic Affairs or his/her designee.
- f. Addenda to the contract are valid only upon acceptance by the University and the faculty member in writing, incorporated by reference, and attached to the contract.

### 9. Resignation

- a. A faculty member may terminate an appointment effective at the end of the academic year provided that he/she gives notice in writing at the earliest opportunity, but no later than March 1 of the contract period.
- b. The faculty member may properly request a waiver of this requirement of notice in case of hardship; hardship negotiations are conducted at the discretion of the Vice President for Academic Affairs.
- c. The policy of early notice is necessary to minimize hiring problems for the University and to safeguard the individual's record of faculty service.

### 10. Non-Renewal or Termination of Faculty

- a. If the University determines that it is necessary to terminate faculty positions because of a change in enrollment at the University, financial considerations, consolidation of departments or other reorganization, termination or substantial change of one or more courses or academic programs, or financial exigency, the following guidelines will apply:
  - i. wherever possible faculty reduction will first be accomplished through attrition;
  - ii. those with tenure or probationary tenure-track contracts will have priority over those faculty serving under term contracts unless demonstrably sound academic or organizational reasons indicate otherwise;

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- iii. a tenured faculty member whose contract is not to be renewed will have the right to either one year's notice or salary with benefits or a combination of both at the University's discretion.
- b. If a faculty member is dismissed for cause (including, but not limited to, intentional nonperformance of contract, abuse of authority, incompetence, dishonesty, insubordination, neglect of duties, moral turpitude, impropriety, persistent policy violation, mental or physical incapacity), the notice provided under paragraph 10(a)(iii) above shall not be required, and no salary compensation will be awarded.
- c. In the case of non-renewal of contract of term faculty or religious faculty, the University shall give the requisite notice but is not obliged to give reasons for non-renewal.
- d. Non-renewal of a contract is not a form of dismissal; it does not involve bringing charges or showing "cause" why the individual's service should be terminated.

### 11. Dismissal for Cause

#### a. Termination of Faculty Appointments by the University

Termination of an appointment with continuous tenure or of a probationary appointment before the end of the specified term, may be effected by the institution for adequate cause. Forms of adequate cause include dismissal for cause, physical or mental disability, financial exigency, program or department discontinuance or reorganization or reduction or change or termination in program not mandated by financial exigency.

#### b. Dismissal for Adequate Cause

- i. **Definition:** Adequate cause for dismissal will be related, directly and substantially, to the performance of faculty members in their professional capacities as teachers or researchers and is defined as:
  - a) Demonstrable incompetence or dishonesty in teaching or research, or
  - b) Personal conduct which substantially impairs the faculty member's fulfillment of his/her institutional responsibilities, or
  - c) Neglect of faculty duties and responsibilities, including but not limited to, intentional nonperformance of contract, abuse of authority, insubordination, moral turpitude, impropriety, persistent policy violation, and mental or physical incapacity.
- ii. **Procedure:**
  - a) **Informal Efforts to Resolve Difficulties.** Termination for cause will be preceded by discussions between the faculty member and appropriate administrative officers looking toward a mutual settlement.
  - b) **Charges.** If the informal efforts described above fail to resolve the difficulty, the Vice President for Academic Affairs shall provide the faculty member a written intention to terminate, along with a statement of the charge or charges, expressed with reasonable particularity, upon which the decision to terminate is based.
  - c) **Hearings.** Within fourteen (14) days of receiving this written intention to terminate, the faculty member may request a review of the case by the Ad Hoc For Cause Committee. The faculty member may respond to the intent to terminate in writing and/or request a hearing. The faculty member will present a written complaint to the Vice President for Academic Affairs

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who convenes an Ad Hoc For Cause Committee within seven (7) days. The committee shall consist of three (3) faculty members, a dean, and a staff member. The Ad Hoc For Cause Committee shall select a chair of the committee. Members of the Ad Hoc For Cause Committee deeming themselves disqualified for bias or interest shall remove themselves from the case, either at the request of the Vice President for Academic Affairs or the complainant or on their own initiative. The complainant being charged shall have the opportunity to remove, without stated cause, any two members of the committee. In any case, where a member of the committee is removed from participation, the Vice President for Academic Affairs may appoint a replacement. At least five (5) committee members shall hear each case.

- d) **Suspension During Hearings.** Pending a final decision by the Ad Hoc For Cause Committee, the faculty member will be suspended or assigned to other duties in lieu of suspension, only if immediate harm to himself/herself or others is threatened by his/her continuance on campus. Salary will continue during the period of suspension.
- e) **Pre-Hearing Meetings.** The Ad Hoc For Cause Committee may, with the consent of the parties concerned, hold joint prehearing meetings with the parties in order to (1) simplify the issues, (2) effect stipulations of facts, (3) provide for the exchange of documentary or other information, and (4) achieve such other appropriate pre-hearing objectives as will make the hearing fair, effective, and expeditious.
- f) **Privacy of Hearing.** The Ad Hoc For Cause Committee, in consultation with the Vice President for Academic Affairs and the faculty member, will exercise its judgment as to whether the hearing should be public or private.
- g) **Counsel.** During the proceedings, the faculty member may have an advisor of his/her choice.
- h) **Record of Hearings.** An audio recording of the hearing or hearings will be made available to the faculty member without cost. If a transcription is requested, it will be made available to the faculty member at cost.
- i) **Burden of Proof.** The burden of proof that adequate cause exists rests with the University and shall be satisfied only by clear and convincing evidence in the record considered as a whole.
- j) **Recess.** The Ad Hoc For Cause Committee will grant a recess to enable either party to investigate evidence as to which a valid claim of surprise is made, but no more than seven (7) days.
- k) **Witnesses and Other Evidence.** The faculty member will be afforded an opportunity to obtain necessary witnesses and documentary or other evidence. The administration will cooperate with the Ad Hoc For Cause Committee in securing witnesses and making available documentary and other evidence.
- l) **Cross-Examination of Witnesses.** The faculty member and the administration will have the right to confront and cross-examine witnesses, but not guaranteed. Where the witnesses cannot or will not

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appear, but the Ad Hoc For Cause Committee determines that the interests of justice require admission of their statements, the Committee will identify the witnesses, disclose their statements, and if possible provide for formal questions or inquiries.

- m) **Charges of Incompetence.** In the hearing of charges of incompetence, the testimony shall include that of qualified faculty members from this or other institutions of higher education.
- n) **Rules of Evidence.** The Ad Hoc For Cause Committee will not be bound by strict rules of legal evidence, and may admit any evidence that is of probative value in determining the issues involved. Every possible effort will be made to obtain the most reliable information available.
- o) **Basis for Decision.** The findings of fact and the decision will be based solely on the hearing record.
- p) **Public Statements.** Except for such simple announcements as may be required, covering the time of the hearing and similar matters, public statements and publicity about the case by either the faculty member or administrative officers will be avoided so far as possible until the proceedings have been completed, including consideration by the Board of Directors.
- q) **Report of the Committee.** The Vice President for Academic Affairs and the faculty member will be notified of the decision in writing and will be given a copy of the record of the hearing within fifteen (15) days of the hearing. If the Ad Hoc For Cause Committee concludes that adequate cause for dismissal has been established, it reports this to the Vice President for Academic Affairs. If the committee determines that disciplinary action less than dismissal would be more appropriate, it will so recommend to the Vice President for Academic Affairs, with supporting reasons. If the Ad Hoc For Cause Committee concludes that the evidence has not established adequate cause for dismissal in the record, it will so report to the Vice President for Academic Affairs. If the Vice President for Academic Affairs rejects the report of the committee, he/she will state his/her reasons for doing so in writing to the Ad Hoc For Cause Committee and to the faculty member, and forward the case to the President. The President may support or overturn the recommendation of the committee or Vice President for Academic Affairs.
- r) **Action by the Board of Directors.** If the recommendation is dismissal, the President will forward to the Board of Directors with a recommendation for dismissal. The Board of Directors via the Academic Affairs Committee will review the matter and make a recommendation to the full Board. The decision will either be sustained or returned to President for further review.

### 12. Termination Because of Physical or Mental Disability

Termination of an appointment with tenure or a probationary appointment before the end of the period of appointment, because of physical or mental disability, will be based upon clear and convincing medical evidence that the faculty member, even with a reasonable accommodation, is

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no longer able to perform the essential duties of the position. The decision to terminate will be reached only after there has been appropriate consultation and after the faculty member concerned, or someone representing the faculty member, has been informed of the basis of the proposed action and has been afforded an opportunity to present the faculty member's position and to respond to the evidence. If the faculty member so requests, the evidence will be reviewed by the Ad Hoc For Cause Committee before a final decision is made by the Board of Directors via Academic Affairs on the recommendation of the President.

### 13. Termination Because of Financial Exigency

**a. Definition:** "Financial exigency" shall refer to the imminent financial crisis which threatens the survival of the University as a whole and which cannot be alleviated by less drastic means than terminations of appointments.

#### **b. Procedure**

**i.** The President shall meet with the Faculty Senate and the faculty as a whole to discuss the current financial situation. The final judgment that a state of financial exigency exists shall be made by the Board of Directors, who shall then direct the executive administrators to prepare proposals for specified budget adjustments designed to avoid financial damage to the University.

#### **ii. Designation of Faculty Members to Be Terminated**

If the Vice President for Academic Affairs' proposals include the termination of any appointments with tenure, or a probationary appointment, before the end of its specified term, he/she shall first consult with the Faculty Senate before developing a final proposal on which appointments are to be terminated. The Vice President for Academic Affairs' report shall comment upon: (1) the existence and extent of the condition of financial exigency, (2) whether all feasible alternatives to termination of appointments have been pursued, (3) where within the overall academic program of the University termination of appointments may occur, and (4) the services that must be discontinued or reduced if proposed terminations of appointments are made.

#### **iii. Notification**

If the President approves the Vice President for Academic Affairs' proposal, the President shall issue notice to the particular faculty of the intention to terminate their appointments because of financial exigency.

#### **iv. Appeal**

Faculty members notified of termination will have the right to a full hearing before the Ad Hoc For Cause Committee.

The issues in this hearing may include:

- a) The existence and extent of the condition of financial exigency. The burden will rest on the administration to prove the existence and extent of the condition.
- b) The validity of the educational judgments and the criteria for identification for termination.
- c) Whether the criteria are being properly applied in the individual case.



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v. **Restrictions on New Appointment; Rights of Tenured Faculty over Non-Tenured Faculty**

If the institution, because of financial exigency, terminates appointments, it will not at the same time make new appointments except in extraordinary circumstances where a serious distortion in the academic program would otherwise result. The appointment of a faculty member with tenure will not be terminated in favor of retaining a faculty member without tenure, except in extraordinary circumstances where a serious distortion of the academic program would otherwise result.

vi. **Rights to Re-assignment**

Before terminating an appointment because of financial exigency, the University may, at its own discretion, make an effort to place the faculty member concerned in another available University position for which the faculty member is qualified and, where possible, without loss of salary or financial benefits.

**14.** Notwithstanding the above, the Board of Directors is empowered to enact emergency modifications of this faculty policy authorizing termination of tenure-track and tenured faculty members based on financial hardship due to the current or continuing effects of pandemics, contagion, or any force majeure event, including, war, riots, terrorist attacks, famine, earthquakes, floods, strikes, fire, epidemics, government action, tornado or hurricane, and any event or occurrence that is the subject of a declaration of an emergency or a state of disaster by any state, federal, institutional, or local government entity with authority to declare the same.

**15. Force Majeure.** In the event that either the University or any tenure-track or tenured faculty member is unable to perform its obligations under this policy as a result of a force majeure event, neither party shall be liable to the other for direct or consequential damages resulting from lack of performance. “Force Majeure” shall mean fire, earthquake, flood, act of God, contagion, riots or civil commotions, terrorist attacks, famine, strikes, work stoppages, or other labor disturbances, epidemics, tornado or hurricane, government action (including government shutdown), and any event or occurrence that is the subject of a declaration of an emergency or a state of disaster by any state, federal, institutional, or local government entity with authority to declare the same, war or other act of any foreign nation, power of government, or governmental agency or authority, or any other cause like or unlike any cause above mentioned which is beyond the control of either party.

**APPROVED: Board of Directors**

**Date of Original Formation: 09/01/2010**

**Revision Number: 1**

**Revision Date: 06/06/2019**

**Effective Date: 06/06/2019**