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*Chair of the Assembly and the Academic Council  
Faculty Representative to the Board of Regents  
University of California  
1111 Franklin Street, 12th Floor  
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May 6, 2008

**WYATT R. HUME  
PROVOST AND CHIEF OPERATING OFFICER**

**Re: Proposed Revisions to APMs 080, 710, & 711**

Dear Rory:

The Academic Council has completed its review of UCOP's proposed amendments to APM - 080, Medical Separation; APM - 710, Leaves of Absence/Medical Leave for Academic Appointees Who Do Not Accrue Sick Leave; and APM - 711, Reasonable Accommodation for Academic Appointees with Disabilities. Council received responses and comments from divisions and systemwide committees on these APMs earlier this year and tasked the University Committee on Faculty Welfare (UCFW) to work with Academic Advancement to clarify issues of concern that were raised at Council's January 23, 2008 meeting. At its April 23, 2008 meeting, Council endorsed the following UCFW recommendations regarding these APMs:

- APM - 080-1 should be amended to indicate that the faculty member will be informed at the time his/her review file for possible medical separation is sent to the Chancellor.
- The wording of APM - 080-1 should be amended as suggested by Academic Advancement (page 2 of the table), to address the concern raised by UCD about the link between APM - 710 and APM - 080.
- Revised wording suggested by Academic Advancement for APM - 080-3 (page 3 of the table) should be adopted.
- The different benefit offered to Health Sciences faculty should be reconsidered as part of a comprehensive review of the Health Sciences Compensation Plan.

- Council requests annual reports concerning the use of paid medical leave granted by chancellors, as well as instances of accommodation and medical separation, to monitor the success of these policies and to consider recommending further changes in policy. Council does not support “banking” or accrual of sick leave at this time, but considers both options worth considering in the future.
- To address concerns over definitions of terms such as “interactive process” and interpretations of UC’s obligations under both state and federal laws concerning non-discrimination against employees with disabilities, Council supports the proposal from Academic Advancement to develop web-based guidelines for employees and recommends that representatives from UCFW work in collaboration with Academic Advancement (and perhaps representatives from UCAP or UCP&T) to ensure that these web sites are given prompt attention.

Thank you for your efforts to work with us in this important task of having the Academic Personnel Manual accurately convey our values and expectations as a University. We are particularly appreciative of the efforts of the Academic Advancement officials in working with UCFW on these revisions. For your convenience and reference, I have enclosed the UCFW table, ‘UCFW and UCOP-Academic Advancement Responses to Academic Senate Comments on Systemwide Review of APM - 710, 711 and 080,’ which clarifies Council’s concerns and Academic Advancement’s responses to them. Please do not hesitate to contact me if you have any questions.

Sincerely,



Michael T. Brown, Chair  
Academic Council

Copy: Academic Council  
María Bertero-Barceló, Executive Director

Encl. 2

**RE:** UCFW and UCOP-Academic Advancement Responses to Academic Senate Comments on Systemwide Review of APM - 710, 711 and 080

**DATE:** April 11, 2008

**A. 1. APM - 080 Medical Separation**

Section	Senate Division(s)	Senate Comment	Response from Academic Advancement	Response from UCFW
080-1	UCI	Faculty members should be invited to submit comments about the proposed action to terminate him or her before the proposal for termination is forwarded to the Chancellor.	<p>Faculty are directly involved in the Interactive Process, and APM - 080-1 already includes a requirement for consultation with the appointee before the file is sent to the Chancellor. However, we could add an additional requirement that the appointee be notified at the time a med sep review file is sent to the Chancellor. Question: would this step really benefit the faculty member, or would it perhaps be a redundant notice during a difficult stage in someone's career?</p> <p>Academic Advancement can provide links to a description of the Interactive Process on its website to ensure that everyone understands the faculty member's involvement in the Interactive Process.</p>	<p>We agree it is unlikely the employee (or his/her representative) would not already know about the medical separation review, but support formal notification.</p> <p>We strongly recommend that the website be developed to define terms and provide support for both employees and the supervisors or HR staff involved in the interaction process or a medical separation review.</p>

Section	Senate Division(s)	Senate Comment	Response from Academic Advancement	Response from UCFW
080-1	UCD	The concluding sentence in APM 080-1 should be eliminated (thereby decoupling APM 710 from 080), and a statement should be added that recognizes the commitment and preparation of faculty for UC positions/appointments, emphasizing that medical separation should only be used in extreme cases when it is beyond reasonable expectations that the faculty member will return to his or her former position.	<p>The intent is simply to begin a medical separation review if the employee has indicated a plan to separate, by electing long-term disability from UCRP, for instance. This does not refer to all instances of receiving disability income.</p> <p>We will change the wording to read:</p> <p>“A medical separation review also may be initiated based on notice of approval of disability income from a retirement system to which the University contributes, such as UCRP or PERS, or approval of University long-term disability insurance benefits.”</p>	<p>This concern seems to have been caused by the awkward phrasing that suggested a review might be initiated upon receipt of any disability income. That was never intended, a fact that has been clarified by the suggested revision. The intent was to indicate that, if an employee were to exhaust the sick leave benefit and additional, employee-paid short-term disability (which should cover at least one year; up to 18 months, for longer-serving employees) and then start drawing long-term disability from UCRP, a review could commence. As stated in the UCRP guidelines, the “UCRP Disability Provision provides disability income when an eligible member has a disability that is permanent or expected to last 12 consecutive months or longer”. The 12 months in question would presumably occur no earlier than months 13 to 24 of the disability. UCFW recommends that the Academic Senate support this provision. Our impression is that faculty who draw on the UCRP disability benefit typically do not return to work. Nonetheless, the medical separation review must</p>

Section	Senate Division(s)	Senate Comment	Response from Academic Advancement	Response from UCFW
				incorporate that possibility.
080-3	<b>UCB, UCD, UCI, UCLA, UCSC, UCSD</b>	The role of the Academic Senate is still unspecified, unclear, and potentially absent. While the wording of SOR 103.9 (“the opportunity for a hearing before the properly constituted advisory committee of the Academic Senate”), seems to indicate that such a hearing would be conducted before the divisional Committee on Privilege and Tenure (P&T), the APM is not explicit in this regard.	<p>There was no intent to mandate a Senate review of all cases, since it is up to the faculty member as to whether or not to invoke such a review. However, if it is desirable, we can add that the Chancellor should periodically inform the Senate about medical separation actions.</p> <p>Language explaining the process outlined in SOR 103.9 can be added. We suggest: “hearing before the properly constituted advisory committee of the Academic Senate under Regents Standing Order 103.9”. Our recommendation is not to specifically obligate P&amp;T involvement, since this would go beyond the content of SOR 103.9.</p>	We agree that the APM should not specify how the Academic Senate is organized, including which divisional standing committees perform a particular function. UCFW continues to believe that SOR 103.9 is sufficient, but the committee supports the proposed new phrasing suggested by Academic Advancement.

**A. 2. APM – 710 Leaves of Absence/Medical Leave for Academic Appointees Who Do Not Accrue Sick Leave**

Section	Senate Division(s)	Senate Comment	Response from Academic Advancement	Response from UCFW
710-11	<b>UCB, UCSD, UCSF</b>	Provisions for Medical Leave should include faculty in the Health Sciences Compensation Plan	Our recommendation is to address paid medical leave for HSCP faculty as part of the pending APM - 670 revisions. The HSCP schools are unable to guarantee the same medical leave provisions to HSCP faculty as are proposed for general campus faculty.	UCFW supports extending to faculty under the Health Sciences Compensation Plan (HSCP) the same medical-leave benefit that is proposed for general-campus faculty. We acknowledge the administration's concerns over the difficulty for the individual units within Health Sciences to fund such a benefit, but do not think the fact that it is expensive justifies unequal treatment. We agree with the proposal to take this question up as part of the review of APM 670.

Section	Senate Division(s)	Senate Comment	Response from Academic Advancement	Response from UCFW
710-11(b)	<b>UCD</b>	Faculty with more than 10 years of service should be allowed to accumulate or “bank” sick leave	<p>The Campuses do not support any increase to the amount of paid leave provided in the proposed policy. The alternative would be to allow faculty to accrue leave, but overall that would likely provide a substantially lower amount of paid leave to most faculty. Full time UC employees who accrue sick leave earn sick leave at 8 hours/month, and it takes over 22 years to accrue one year of sick leave.</p> <p>We can advocate for another open enrollment period so that faculty who are not currently covered by UC’s employee-paid disability plan have the opportunity to sign up for this benefit.</p>	<p>UCFW recommends that the pattern of sick leaves awarded by chancellors be monitored by the administration, to see if either banking of sick leave or longer periods of leave would be worthwhile. This is a subject for possible reconsideration in the future, but we do not favor opposing the policy over this concern.</p> <p>We do not support accrual of sick leave, which implies a cumbersome process that probably would reduce, rather than increase, the options and flexibility faculty would enjoy with the current proposal.</p>
710-24(d)	<b>UCD</b>	Section should be amended to allow Department Chairs to grant medical leaves for academic terms, as they are responsible for scheduling courses and hiring substitutes	We do not want Dept. Chairs to <i>require</i> a faculty member to take a full academic term off for medical leave, if, for example, the faculty member only needs a month off.	UCFW did not understand the motivation for the request. It seems reasonable to expect chairs, faculty, and chancellors to be in agreement, but we did not want to place sole authority with chairs. This could, in fact, leave departments with the burden of funding a replacement lecturer, rather than treating this as a campus cost.

Section	Senate Division(s)	Senate Comment	Response from Academic Advancement	Response from UCFW
710-24 (g)	UCD	Reference to Medical Separation (APM - 080) should be removed	The reference in APM - 710 to APM - 080 is to help faculty and administrators understand one possible sequence of events in cases of serious medical conditions. If the Council continues to recommend that the references be dropped, we can of course do this.	We see no reason to remove this reference. We anticipate that the clarification in 080-1 adequately addresses the concern.



Section	Senate Division(s)	Senate Comment	Response from Academic Advancement	Response from UCFW
710-40	UCI	Should state explicitly that the tenure clock for untenured faculty on medical disability shall be stopped for a maximum of two years	<p>This proposal contains no change to existing policy. APM - 133-17g.(3) grants the Chancellor the authority to stop the clock for periods of paid or unpaid sick leave. Reference to this policy appears under 710-40.</p> <p>- 7 -</p>	<p>Specifically, item 3 under 133-17(g) states: “Periods of leave, whether with or without salary, shall be included as service toward the eight-year period unless, upon the basis of a petition filed at the time leave is requested, or in the case of sick leave, normally within one quarter or semester after the leave is taken, the Chancellor, after consultation with the appropriate committee of the Academic Senate, determines that the activity undertaken during the course of the leave is substantially unrelated to the individual’s academic career. The Chancellor shall report such a decision in writing to the individual.”</p> <p>UCFW would support dispensing with the petition, but it also seems reasonable to simply incorporate a request for stopping the clock when sick leave is requested. The consultation with the Senate that occurs for periods of leave should not be necessary for sick leave. It might be construed as an invasion of privacy more than protection for the faculty member. It may be that 133 needs to be revised, but UCFW finds that the reference to existing policy under 710-40 is sufficient.</p>

**A. 3. APM – 711 Reasonable Accommodation for Academic Appointees with Disabilities**

Section	Senate Division(s)	Senate Comment	Response from Academic Advancement	Response from UCFW
711	<b>UCLA</b>	Language in this APM could be interpreted as implying that the University regards the provision of “reasonable accommodations” to be relevant only for the performance of the “essential functions” of academic jobs. Council is concerned that the University retains its commitment to providing “reasonable accommodations”, not those that only allow “essential functions”.	<p>Our recommendation is that the policy should only address reasonable accommodation of the essential job functions, as required by law. Campuses are of course free to provide further accommodations (ergonomics, etc.), but the policy should only include as a <u>requirement</u> the level of accommodation required by law.</p> <p>Academic Advancement can provide links to a description of Reasonable Accommodation on its website to ensure that everyone understands employee rights under the law.</p>	As noted earlier, providing information easily accessible on the UCOP web site is important.

Section	Senate Division(s)	Senate Comment	Response from Academic Advancement	Response from UCFW
711	UCSC	The ADA mandates reasonable accommodations, without the discretion of the employer, in cases of employee disability, which seems incompatible with such statements as “This information will be used by the University to determine what reasonable accommodation, if any, will be made” (711-80-b). Indeed, if there is to be an articulation of policy beyond the ADA, it should be in the favor of the employee.	<p>The law provides for the employer to determine reasonable accommodation, based in part on feedback from the employee during the Interactive Process.</p> <p>Academic Advancement can provide links to a description of Reasonable Accommodation on its website to ensure that everyone understands employee rights under the law.</p> <p>We can also provide a link defining essential functions and how they are determined.</p>	Same comment as above.

**B. 1. Other Concerns About APM - 080:**

Section	Senate Division(s)	Senate Comment	Response from Academic Advancement
080	UCSC	Some terms used in these APM's are unclear, and should be better defined. These include a “reasonable period of time” (without specifying who determines what is reasonable), “other relevant academic personnel policy,” and “job description for criteria for standards of essential job functions”.	The flexibility is intentional. “Reasonable” may be different in different circumstances. “Other relevant academic personnel policy” may change with time. An academic “job description” and “essential job functions” may already exist as a written job description, but often will have to be determined as situations arise.

Section	Senate Division(s)	Senate Comment	Response from Academic Advancement	
080	UCSC	There likely exist real differences between terminal illnesses and other medical cases that affect a faculty member's ability to carry out their duties, but the proposed APM - 080 does not account for such differences either in its intent or in its language.	The intent was to make no distinction between terminal illness and other reasons why someone may be unable to perform the essential functions of his or her position.	
080-1	UCI	It appears that the Disability Management Office has a dual and potentially conflicting role. It can act as initiator of medical separation at the dean's level, but then the chancellor is to refer such a case to the same office presumably for advice and counsel in making her or his decision.	The Disability Management Office is intended to have an advisory role, but never would initiate the request for a medical separation review. Proposal: change language in 080-1: "If the chair or Dean <del>or</del> , <u>after consultation with</u> the Disability Management office (or equivalent) determines that a medical separation review may be warranted . . ."	UCFW supports this proposal.
080-0	UCSB	"With or without reasonable accommodation . . ." Does this imply that the appointee has a choice? There seems to be a conflict with APM - 711 here	"with or without reasonable accommodation" is language from the ADA. The ADA protects an otherwise qualified person with a disability who can perform the essential functions of a position "with or without reasonable accommodation."	

## B. 2. Other Concerns About APM - 710

Section	Senate Division(s)	Senate Comment	Response from Academic Advancement
710-11-b	<b>UCSB</b>	From when is the 10 year period measured? Date of hire or 10-year anniversary? Date of last paid medical leave? Date of tenure?	The initial 10-year period (during which the appointee will be granted up to 6 months of total paid leave) is measured from date of hire into an eligible position. After that, the faculty member may be granted up to 1 year of leave per 10 year period, measured from the 10-year anniversary date of hire into an <i>eligible</i> position.
710-11 (last paragraph?)	<b>UCSB</b>	“This policy provides paid leave in addition to normal childbearing and childrearing leaves”. Also in addition to leave for family sickness?	Leave granted per APM - 710 is only for personal illness, injury or disability.
710-20-a	<b>UCSB</b>	Is there a definition of “domestic partner” in the APM?	A definition of “domestic partner” is included in the proposed revision (currently out for systemwide review) to APM - 110-4, and is consistent with the UC definitions for all employees.
710-20-a	<b>UCSB</b>	Why are step-grandparents included but not aunt and uncle?	The language about relatives is not new language. (We can check on why grandparents and step-grandparents are included.)
710-20-a	<b>UCSB</b>	“This provision also covers other persons residing in the appointee’s household.” What are the criteria: residing for how long? What constitutes proof of residence?	This is also not new language. “Other persons residing in the appointee’s household” is also found in PPSM and staff collective bargaining agreements, and is intended to allow for a more inclusive definition of family: it would cover extended family (e.g., aunts and uncles) and other persons for whom the faculty member may have a direct responsibility for care.

Section	Senate Division(s)	Senate Comment	Response from Academic Advancement
710-24-b	UCSD	No mention is made of what would happen if the medical certifications provided by the faculty member and by the University disagree. Suggest adding provision for a third certification by a mutually agreed-upon provider.	The campus, in consultation with the Disability Management Office, would review all medical information provided. A guaranteed third party review is not consistent with other UC policy provisions, but could be provided by the appointee or requested by the campus.
710-24-d	UCSB	How long does it take to get “prior approval” for medical leave longer than one month?	This would depend on campus actions.
710-24-h	UCSB	“The chair may evaluate . . .”. By what means? The overall criteria for the determination of how return to service from personal illness, injury or disability is to be determined was questioned. None of the documentation given for review addresses the criteria for returning to work.	The section states that the chair “may request a release to return to work . . .”. The chair would use the information in the release to determine if the faculty member is able to resume the duties of the position.

### B. 3. Other Concerns About APM – 711

Section	Senate Division(s)	Senate Comment	Response from Academic Advancement	Response from UCFW
711-80-c (2)	UCSD	Suggest substituting “work spaces” for “classrooms”, as faculty need appropriately accessible laboratory and office space in addition to instructional facilities.	The list in 711-80-c is intended to provide examples of potential reasonable accommodations. It is not meant to be exhaustive nor exclusive.	711-80-c(1) reads: reasonable accommodation may include, but is not limited to, making existing facilities readily accessible to and usable by the disabled appointee.



UNIVERSITY COMMITTEE ON FACULTY WELFARE (UCFW)  
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April 11, 2008

**MICHAEL T. BROWN, CHAIR  
ACADEMIC COUNCIL**

**RE: Systemwide Review of APM 080, 710 and 711**

Dear Michael,

In cooperation with Jill Slocum and Gregory Sykes from Academic Advancement, and informed by comments received from simultaneous administrative reviews, UCFW has reviewed both the comments from the systemwide review of APM - 080, Medical Separation; APM - 710, Leaves of Absence/Medical Leave for Academic Appointees Who Do Not Accrue Sick Leave; and APM - 711, Reasonable Accommodation for Academic Appointees with Disabilities, and responses provided by Academic Advancement.

The attached table summarizes those responses from Academic Advancement, followed by UCFW comments. The table separates comments concerning the issues that you highlighted as most important, in your letter of January 29, 2008, from the broader set of comments. Typically, UCFW added no comment where there was no proposed action, unless we had anything to add to the comments provided by Academic Advancement. The recommendation from UCFW remains that the Academic Council endorse these three policies, as amended in the ways indicated in the attachment. Specifically, UCFW recommends in favor of the following actions:

- APM - 080-1 should be amended to indicate that the faculty member will be informed at the time his/her review file for possible medical separation is sent to the Chancellor.
- The wording of APM - 080-1 should be amended as suggested by Academic Advancement (page 2 of the attachment), to address the concern raised by UCD about the link between APM - 710 and APM - 080. However, UCFW does not support changing the language in either item to eliminate that link.
- Revised wording suggested by Academic Advancement for APM - 080-3 (page 3 of the attachment) should be adopted.
- The different benefit offered to Health Sciences faculty should be reconsidered as part of a comprehensive review of the Health Sciences Compensation Plan.

- The Academic Senate should request annual reports concerning the use of paid medical leave granted by chancellors, as well as instances of accommodation and medical separation, to monitor the success of these policies and to consider recommending further changes in policy. UCFW does not support “banking” or accrual of sick leave at this time, but considers both options worth considering in the future.
- To address concerns over definitions of terms such as “interactive process” and interpretations of UC’s obligations under both state and federal laws concerning non-discrimination against employees with disabilities, UCFW strongly supports the proposal from Academic Advancement to develop web-based guidelines for employees. UCFW recommends that representatives from our committee work in collaboration with Academic Advancement (and perhaps representatives from UCAP or UCP&T) to ensure that these web sites are given prompt attention.

Many other comments from the systemwide review were helpful in indicating additional areas of concern, but these did not seem to call for immediate action. The comments should serve as a helpful guide for communication, implementation of the policies, and monitoring of our collective experience with them going forward.

Thank you for the opportunity to work with Academic Advancement in further evaluation of these policies. UCFW continues to believe that APM - 710 offers an important benefit to UC faculty, and that the careful enumeration of the processes for either reasonable accommodation or medical separation, where necessary, also provide important information and protection to faculty. In particular, we reiterate our concerns that without APM provisions for such leaves, some faculty may not be requesting sick leave, while every instance of sick leave granted must currently be considered an exception to policy.

Sincerely,



James A. Chalfant, Chair  
UCFW

Encl: 1

Copy: UCFW

Maria Bertero-Barcelo, Executive Director, Academic Senate