

MSP information sheet on
Retrenchment, furloughs, layoffs, and unemployment insurance
April 17, 2020

MSP has received many questions from our members about contractual and legal protections in the case of budget cuts related to the COVID-19 crisis. In our discussions with the administration, the MSP has been reassured that UMass will do everything possible to avoid “workforce reductions.” We are urging the administration to work with the multi-union coalition to fight for stimulus funding legislation at the state and federal levels. A major higher education stimulus package is the best way to invest in the economy and will allow our university to honor its commitments to employees while providing excellent education for all of our students.

Furloughs

The MSP’s position is that furloughs – asking or mandating employees to take unpaid time off – are an illegal violation of our collective bargaining agreement as well as your individual employment contract. Massachusetts tried to implement furloughs once, in response to a budget crisis in 1991. The MTA sued, and the Mass. Supreme Court ruled for the union, stating that because valid collective bargaining agreements were in effect for university employees, furloughs were illegal. The court held, “a unilateral reduction in contractually established, future state employee salary obligations constitutes substantial impairment for Contract Clause purposes.” In 1995, after the unions won in court, all employees received their full back pay, plus interest. The state did not attempt furloughs of unionized employees in subsequent budget crises. UMass should not be using that word or contemplating furloughs now – unless they want to negotiate the terms and reach an agreement with the unions.

Layoffs

The MSP contract protects job security. Our contract has “just cause” language requiring the administration to follow specific progressive discipline, including warnings and opportunities to improve identified problems. Other than the rare situation of retrenchment caused by “financial exigency” (see below), you cannot be laid off in the middle of your contract or continuing appointment.

In the event that work is eliminated, for financial or for programmatic reasons, the MSP contract specifies the process and the order of layoffs. NTT faculty on continuing appointments are entitled to one year’s notice before a layoff, according to Article 21.9.5. Librarians also are entitled to notice – three months’ notice after the first year, six months after the second year, and one year’s notice anytime after the third year – and in the event that a librarian is not given the appropriate notice, the librarian is entitled to a one-year terminal reappointment, according to Article 20.9.1. Other layoff processes and requirements are detailed in Articles 21, 22 and 22L.

Retrenchment

The MSP contract provides protections in the case of retrenchment or reorganization in response to financial emergency. Retrenchment has not happened in many decades at UMass, through many severe budget crises – in part because the MSP contract makes it very difficult for the administration to retrench. Article 22 states that the parties share the goal to “safeguard the constitutional and property rights of faculty in continued employment,” recognizing the legal and ethical barriers to retrenchment.

Retrenchment is defined specifically as “the involuntary reduction or abrogation by the Administration of a contract of a nontenured bargaining unit faculty member prior to the expiration date of his/her current period of appointment or the involuntary reduction or abrogation by the Administration of a contract of a tenured bargaining unit faculty member.” If the administration is considering retrenchment of librarians, NTT, or tenure-track faculty, there are many requirements in the contract:

- The administration must show that there is “financial exigency”
- A joint MSP-administration committee must be formed to consider alternatives to retrenchment (we always have good ideas here!)
- The administration must provide a preliminary retrenchment plan to the MSP as well as faculty governance bodies, including
 - the reasons for the anticipated retrenchment
 - the amount of the anticipated retrenchment
 - the specific areas proposed for retrenchment
- They must share all financial information, data, and statistics relevant to the retrenchment plan, which the union can share with our members
- They must provide us 30 days to comment on the preliminary retrenchment plan
- They must then provide a final retrenchment plan, with specific details about which individuals in which units are to be affected, and for what duration
- They must respond to 8 specific considerations listed in Article 22.4.5 detailing how retrenchment would affect the unit, the faculty, staff, and students

If retrenchment occurs, the MSP contract lists the order among bargaining unit members, beginning with part-time faculty and librarians before full-time, and in inverse order of seniority, with exemptions possible to meet campus affirmative action goals. If the administration is considering retrenchment “for programmatic reasons,” including cuts to particular programs or academic units, they must notify the union and the unit, and provide at least 90 days’ notice during the academic year, for consultation and reconsideration. Faculty and librarians are entitled to notice of up to one year, depending on seniority, with a possible option of partial salary payout. All full-time faculty and librarians who are retrenched can be placed on a recall list for three years, to be called back to the same position or a suitable position when the economy improves.

Unemployment Insurance (UI)

If you are a librarian or NTT faculty member (full-time or part-time) not yet on a continuing appointment, and your contract expires this spring or summer, you should know that Unemployment Insurance (UI) is available for adjuncts as well as full-time faculty and staff. Faculty on “soft money” including Research and Extension Faculty are also eligible for Unemployment Insurance through the state.

If you learn that your hours will be “substantially less” in the fall compared to your previous workload, you are probably eligible for UI benefits. The state considers a workload to be “substantially less” if there is a reduction of greater than 10 percent in wages and benefits compared to what was earned in the prior academic year or term. The emergency legislation around COVID-19 included additional funds to supplement benefits for laid-off workers. We do not know if that program will continue in the fall.

If you are denied Unemployment Insurance, or you have any trouble with the state agencies that handle your claims, please contact the MSP. Our parent union, the Massachusetts Teachers Association, provides legal representation to faculty and librarians who are dealing with unemployment hearings and appeals.*

For more information

You can see the complete MSP contract here: umassmsp.org. If the union and administration agree to make a change at any time, we are able to re-open the contract and negotiate new policies.

As always, if you have concerns about any of these topics, you should begin by contacting the MSP office. MSP staff are working full-time this spring and summer, and we are happy to answer your questions or to refer you to the MTA Legal Department for assistance. Please email mzp@umass.edu – we can schedule a phone call or a Zoom meeting if necessary, and all conversations with the union are absolutely confidential.

***NOTE: You must be an MSP member in good standing in order to qualify for legal advice or representation from the MTA; non-members are not eligible for legal assistance. If you are not sure of your membership status, please contact the MSP office today: mzp@umass.edu.**