

MEMORANDUM
Not Subject to Attorney–Client Privileged

To: Jesse Perez Mendez, *Provost and Executive Vice President*
Ethan Erickson, *Vice President for Administration and Finance*
Shanna Legleiter, *Chief Human Resources Officer*
Margaret Mohr-Schroeder, *Vice Provost for Academic Affairs and Innovation*

Date: January 24, 2025

Re: Revised Notice of Non-Reappointment Policy and University Handbook Proposals

Executive Summary

In January 2024, the Kansas Board of Regents (“KBOR”) revised its policy regarding the notice procedures for non-reappointment of non-tenured and non-tenure-track employees (“NNR”). KBOR institutions were directed to bring policies and handbooks into compliance with the revised policy by January 1, 2025. Kansas State University (“K-State”) has administratively approved a compliant policy within its Policy and Procedures Manual, Chapter 4050: Notice Procedure for Non-Reappointment (“PPM 4050”). Certain provisions of the K-State University Handbook (“Handbook”) must also be amended in accordance with the revised KBOR policy. At its December 2024 meeting, the K-State Faculty Senate approved language to bring the Handbook into compliance (“Approved Language”). Since that approval, alternative language was proposed by some Senators (“Alternative Language”). You asked us to provide an assessment of this language, with the expectation that our review may be shared with Faculty Senate leadership.¹ For the reasons set out below, we believe the Approved Language substantially complies with the KBOR policy, and the Alternative Language does not.

Background

KBOR exists under Article 6 of the Kansas Constitution and is empowered by the Kansas Legislature. State law provides that K-State is governed by KBOR, and KBOR has the authority to develop and enforce policy applicable to K-State.² All university policies are subject to and must be in conformity with KBOR policies.³

KBOR’s January 2024-revised NNR policy is set forth in Chapter II, Section C.7. of the KBOR Policy Manual:⁴

- (b) Any [NNR procedures] for all classes of employees other than tenured or tenure-track faculty members may be determined by the institution’s [CEO], subject to the following limitations:
- i. For each non-tenured or non-tenure-track employee hired on or after July 1, 2024, the service end date in any [NNR] shall not exceed 90 days from the date of the [NNR].
 - ii. On and after July 1, 2025, for each non-tenured and non-tenure-track employee regardless when hired, the service end date in any [NNR] shall not exceed 90 days from the date of the [NNR] unless: (1) a conflicting applicable Board-approved labor agreement provides for a longer period; (2) a conflicting applicable Board-approved University Support Staff system of administration plan developed pursuant to K.S.A. 76-715a prior to July 1, 2023 provides for a longer period; (3) the employee is in a grandfathered class established by a university prior to July 1, 2023, that provided employees in the grandfathered class a longer notice period; or (4) the university [CEO] determines a longer period is warranted in an individual circumstance.
 - iii. On or before January 1, 2025, all university policies and handbook provisions containing any [NNR procedures] for all classes of employees other than tenure-track faculty members shall be brought into compliance with this policy.

¹ Given this context, we do not consider this memo to be covered by the attorney–client privilege.

² K.S.A. § 76-712 ([link](#)); KBOR Policy Manual, Chapter I, Section A.2. ([link](#)).

³ KBOR Policy Manual, Chapter I, Section A.3.a.ii. ([link](#)).

⁴ KBOR Policy Manual, Chapter II, Section C.7.b. ([link](#)).

Pursuant to subsections (b) and (b)(iii) of this KBOR policy, K-State administratively adopted PPM 4050, effective July 1, 2024.⁵ PPM 4050 complies with, and its language tracks, the revised KBOR policy.

Analysis of Proposed University Handbook Revisions

The revised KBOR policy further requires K-State to bring the Handbook’s provisions regarding NNR procedures—including Sections C60, C160.1, and C170.3—into compliance with the revised KBOR policy. This directive invokes the K-State Faculty Senate in considering amendments to the Handbook. At its December 2024 meeting, the Faculty Senate consented to the following Approved Language:

C60 Definition. Faculty members on regular non-tenure track appointments (see C10) are evaluated annually to determine whether or not they will be reappointed. These faculty members must be explicitly informed in writing of a decision not to renew their appointments in accordance with The Standards of Notice of Non-Reappointment. (See C160.1.)

C160.1 General standards for non-reappointment.

1. For Tenure-Track Faculty: The Kansas Board of Regents has adopted The Standards of Notice of Non-Reappointment set forth by the American Association of University Professors in the autumn of 1964 for tenure-track only. (See Appendix A. Also see AAUP Statement on Academic Freedom and Tenure, Appendix C.)

2. For Non-Tenure-Track (NTT) Faculty:

a. Notice Period: NNRs shall be provided 90 days prior to the end of the current appointment term (also known as the service end date)

b. Reasons for NNR: NNRs may be used to initiate termination for cause or to initiate termination without cause. Potential reasons are outlined in C161.1. If an NNR is used to initiate termination for cause, the reason will be disclosed and is eligible for grievance in accordance to procedures described in C160.3/C75 and in Appendix G.

C170.3 Persons holding regular or term unclassified professional appointments may be terminated without cause. Regular unclassified professional appointments shall be provided a 90-day notice of non-reappointment in accordance to PPM Chapter 4050, Notice Procedure for Non-Reappointment. All appointments to term positions will be temporary appointments ending at or before the end of the term. Should need or money for the position be extended, a new term may be established with the approval of the dean or that appropriate vice president. In such instances, the incumbent may be appointed for the new term or a portion thereof without the position being declared open for initiation of a search process. If a notice of non-reappointment is used to initiate termination for cause, the reason will be disclosed and is eligible for administrative review up to and including a grievance hearing in accordance to procedures described in C160.3/C75 and Appendix G.

The Provost’s Office and Human Resources leadership believe this Approved Language is sufficiently compliant with the revised KBOR policy. We agree. While this language distinguishes non-tenured and non-tenure-track faculty from other unclassified professionals, it does so intending to offer clarity and references to employee rights described elsewhere in the Handbook.

You also asked our office to review and provide additional clarification regarding the “grandfathered class” exception, described as follows in KBOR Policy Manual, Chapter II, Section C.7.b.ii.3:

ii. On and after July 1, 2025, for each non-tenured and non-tenure-track employee regardless when hired, the service end date in any [NNR] shall not exceed 90 days from the date of the [NNR] unless . . . (3) the employee is in a grandfathered class established by a university prior to July 1, 2023, that provided employees in the grandfathered class a longer notice period.

This “grandfathered class” exception is inapplicable to K-State employees, though it may apply to a limited number of long-time employees of other KBOR institutions. While this is a KBOR-developed policy—not K-State’s—we can offer our understanding of the relevant context. Effective July 5, 2016, Wichita State University (“WSU”) amended their own NNR policy, decreasing WSU’s NNR notice requirement to 60 days for regular, unclassified, non-tenured and non-tenure track employees hired on or after that date. WSU employees in such classification hired before July 5, 2016, were expressly “grandfathered” in and retained their right to a longer notice period. It is our

⁵ K-State PPM Chapter 4050 ([link](#))

understanding that KBOR intended to carve out only that particular “grandfathered” class of WSU employees as exempt from the revised KBOR policy under Section C.7.b.ii.3.

Further, we understand from you that some Senators have proposed Alternative Language stating, “unclassified faculty and staff holding regular appointments at [K-State] comprise a grandfathered class established . . . before July 1, 2023” Based on the plain language of the revised KBOR policy, the Provost’s Office and Human Resources leadership do not believe this Alternative Language is defensible. We agree. WSU voluntarily limited new employees’ NNR notice rights nearly nine years ago, and in doing so they expressly created a “grandfathered class.” In adopting their new NNR policy, KBOR recognized only WSU’s expressly-designated “grandfathered class.” No such class was designated at K-State on or prior to July 1, 2023, and the university did not have an opportunity to create a grandfathered class following KBOR’s approval of this revised policy in January 2024. Therefore, this exception does not apply to any K-State employee, and the Alternative Language would not comply with the revised KBOR policy.

Additional KBOR Guidance

KBOR has provided the university with guidance as to its revised NNR policy on two occasions. First, by email dated January 17, 2025, the KBOR Director of Communications stated, “the grandfathered class provision does not include all employees hired prior to the policy or prior to July 1, 2023. [WSU] took formal action to establish such a class prior to July 1, 2023. The grandfathered class protection does not apply to any other groups of employees.” Second, in a telephone conversation between the KBOR General Counsel and our office on January 24, 2025, the KBOR General Counsel authorized us to state that: (1) he expects the Approved Language will be acceptable to KBOR, and (2) there is no grandfathered class other than the aforementioned employees at WSU.