UTDBP3050 - Appointments Section

Policy Statement

The Board of Regents, upon the recommendation of the Chancellor, appoints all of the employees of The University of Texas System. This authority has been delegated to the President of UTD for Classified and Administrative and Professional positions.

All appointments shall be on the basis of merit and shall comply with applicable law, including the requirement of the Texas Constitution, Article 1, Section 4, that no religious qualification shall be required for appointment to any position.

Classified Appointments

Classified positions are those which:

1. Do not entail significant instructional responsibility, or
2. Are not responsible for the administration of instructional, functional or research departments within UTD.

Administrative and Professional Services

Administrative and Professional (A&P) positions are those whose incumbents:

1. Serve as head or director of a non-academic department or budget entity;
2. Perform duties of a recognized and state-licensed profession requiring a doctoral degree such as lawyers, physicians, opticians, veterinarians, etc; or
3. Serve as athletic coaches.

Individuals appointed to A&P positions serve at the pleasure of the President and his or her designee.

Authority to Make Appointments

Classified appointments are approved by the President or his designee.

Administrative and Professional appointments must be approved by the President, or his designee, and the Chancellor with the concurrence of the Board of Regents.

Criminal Background Checks

Purpose

The purpose of this policy and related procedures is to promote campus safety and the security of personal or University property, consistent with the requirements of the law and prudent financial and programmatic practices.

Policy

It is the policy of The University of Texas at Dallas:
1. To obtain criminal history record information on applicants who are under final consideration, following normal screening and selection processes, for a position that is designated as a security sensitive position;

2. To obtain criminal conviction record information on a current employee who is under consideration for a transfer, promotion or reclassification from a non-security sensitive position to a position designated as a security sensitive position; and

3. To obtain criminal conviction record information on a current employee who is under consideration for a transfer, promotion or reclassification from one security sensitive position to another security sensitive position and on whom the institution did not previously obtain either criminal history record information or criminal conviction record information.

4. To obtain criminal conviction information on current employees, students, and volunteers whose assignments involve contact with minors on a regular basis outside the scope of faculty/student instruction. Examples of types of activities involving minors that would require criminal background checks are summer camps, research involving human subjects, volunteer activities, etc.

5. To use such criminal history record or criminal conviction information for the purpose of evaluating applicants for employment in security sensitive positions. The information will not be used to discriminate on the basis of race, color, national origin, religion, sex, disability, age or sexual orientation.

6. To regard such criminal history or criminal conviction information as confidential as required by law. Such information will not be made a part of the applicant's file, or the employee's personnel file, or communicated to any unauthorized person when prohibited by law. The release of such information must be authorized in writing by the Vice President for Administration. The disclosure of criminal history record information to unauthorized persons is a criminal offense under Texas Government Code §411.085.

7. That nothing in this policy shall be construed to prevent a hiring official from discussing with the applicant or employee information from the criminal background or history check for purposes of verification or clarification.

Definitions

*Applicant:* An individual who applies for a position within The University of Texas System, whether the individual is an outside candidate or a current employee of The University of Texas System.

*Controlled Substance:* This term has the meaning assigned in *Texas Health & Safety Code §481.002*, as that section may be amended from time to time.

*Criminal Conviction Record Information:* Public information maintained by the Department of Public Safety, as provided in *Texas Government Code §411.135*

*Criminal History Record Information:* Information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, information, and other formal criminal charges and their dispositions, as more fully described in *Texas Government Code §411.082*.

*Hiring Official:* The Dean, in the Division of Academic Affairs, the Department Head, in other Divisions; or the equivalent administrative official responsible for the decision to offer employment to an applicant for, or to promote, transfer or reclassify an employee to, a security sensitive position; or the administrative position responsible for the decision to engage a student or volunteer in an assignment involving contact with minors on a regular basis.

*Position:* Both full-time and part-time positions, whether the position is filled or to be filled by a regular or a temporary worker or a volunteer, but not including a position filled by a temporary worker provided by a temporary employment agency; the employment agency should be expected to conduct and held responsible for conducting the criminal background check.

*Security Sensitive Position:* Security sensitive positions are those UTD positions described in *Texas Education Code §51.215 (c)* and *Texas Government Code §411.094 (a) (2)*, as those sections may be amended from time to time.
Security Sensitive Positions will include all senior level administrator positions; positions that have responsibility for providing patient care or for providing childcare in a childcare facility, as that term is defined in Texas Human Resources Code §42.002 (3), as it may be amended from time to time; positions that have contact with minors on a regular basis and positions that have direct access to, or responsibility for, pharmaceuticals, select agents, or controlled substances.

Select Agent: This term has the meaning assigned in 18 U.S.C. §175b, as that section may be amended from time to time.

Minor: A person under the age of 18 years.

Contact with minors on a regular basis: This term means having contact with minors for one hour or more in any 30-day period outside the scope of student instruction.

Procedures

The President has designated the Chief Academic Officer as the official responsible for designating which faculty positions or areas are security sensitive, and the Vice President for Administration as the official responsible for designating which non-faculty positions or areas are security sensitive.

Security sensitive positions will be identified as such in job descriptions and vacancy advertisements.

Hiring officials are responsible for requesting that an applicant who is the finalist for a security sensitive position or other individuals for whom a criminal background check is required under this policy complete the appropriate UTD Criminal Background Check Form. The Forms are attached to this policy and include the notice required by Texas Government Code § 559.003, as it may be amended from time to time. The hiring official will forward the completed form and, if applicable, a copy of the criminal convictions section of the finalist's employment application to the University Police Department. An individual who refuses to complete, sign and submit the form will be removed from further consideration for the position.

Only the Chief of Police is authorized to initiate requests for criminal history information or criminal Conviction record information from the Texas Department of Public Safety or other law enforcement agencies.

Upon receipt of a signed UTD Criminal Background Check Form, the Chief of Police will promptly obtain and review the individual's criminal history record information or the individual's criminal conviction record information. The Chief will notify the hiring official of the results of the investigation and cause the UTD Police Department section of Criminal Background Check Form to be completed. No other notes are to be made on that form.

If the results of an applicant's criminal background investigation indicate that the applicant may be a security risk, the hiring official may, at his or her discretion, consult with the Chief of Police, the Director of Human Resources, and/or the appropriate Vice President about the risk. However, it is the responsibility of the hiring official to evaluate the risk and make the final hiring decision. The evaluation should be based on such factors as the duties of the position, the nature and number of offenses, the dates of the offenses, employment and rehabilitation history, accuracy of the information on the employment application, and other job-related factors.

After the Chief of Police has notified the hiring official of the results of the investigation and completed the Criminal Background Check Form, the Chief will return the completed form to the hiring official. The hiring official must include the completed form with the other search and new hire documents sent to the Office of Human Resources, in the case of an employee; or the hiring official will maintain the form in the departmental office in the case of a student or a volunteer. After the expiration of the employee's probation, the Chief will destroy all criminal history record information about the individual. If the position is one that does not have a probationary period, then the Chief will destroy the information 180 days after the position is filled.
Employment offers may not be made until the criminal background check process is completed.

In order to comply with the provisions of this policy, communication with applicants who are not hired should be limited to notification that a more qualified candidate was selected. Applicants with questions about their criminal history or criminal conviction information must be referred to the Texas Department of Public Safety or the equivalent law enforcement agency of another jurisdiction.

Questions regarding compliance and other issues related to security sensitive positions should be addressed to the Chief Academic Officer or to the Vice President for Administration, as appropriate.

Those whose assignments require them to have contact with minors on a regular basis outside the scope of faculty/student instruction will be required by the department making the assignment to complete the "Contact with Minors Background Check Form" prior to the initial contact with minors, and on a biennial basis as directed by the Chief of Police.

For persons doing human subject research involving minors, the Institutional Review Board (IRB) will require that a criminal background check be conducted on the principle investigators (PIs) and any other persons having regular contact with minors as a part of the research project. After initial approval of the research project by the IRB, PIs are responsible for ensuring that criminal background checks are conducted on students and others working on the research project and having regular contact with minors.

The Chief will conduct checks as authorized by law, and communicate findings as outlined in this procedure. The hiring official will be responsible for allowing the person to have contact with minors on a regular basis after considering the results of the affidavit and any background checks.

**Authority**

*Texas Education Code §51.215 Access to Police Records of Employment Applicants*

*Texas Government Code §411.094 Access to Criminal History Record Information: Institution of Higher Education*

*Texas Government Code §411.135 Access to Certain Information by Public*

**Classified Appointment Probationary Period**

**Policy**

Classified appointees who have not previously satisfied a 180-day probationary period at UTD are considered to be on probation for a period of 180 days from the date of their first UTD appointment.

**Procedures**

1. This probationary period allows the employee to assess the new job, and it allows the supervisor to assess the new employee.
2. New classified appointees will be evaluated after 30 days, 90 days, and before the end of the 180 days of employment.
3. During this probationary period, the employee may be terminated for any lawful reason. Probationary employees are not subject to the grievance or discipline and dismissal procedures.
4. The probationary period will be extended on a day-for-day basis, for all missed work days during the probationary period.
This 180-day probationary period should not be confused with the 6-month period during which new state employees are not eligible to take vacation leave. For a new employee who has never worked for the State of Texas, the two periods start on the first day of employment. However, the vacation leave prohibition ends at the beginning of the seventh month of employment, while the probationary period may be extended as noted above in Section D under Classified Appointment Probationary Period. A new employee who has prior state service of more than 6 months will have a probationary period, as provided in this policy, but will be able to accrue and use vacation leave from the first day of employment.

**Definitions**

Classified positions are those which do not entail significant instructional responsibility, or are not responsible for the administration of instructional, functional or research departments within UTD.

For more information, contact Human Resources.

**Classified Appointment Procedures**

**Policy**

Departments wishing to appoint individuals to approved classified positions must follow all current budget and human resources policies related to appointments. Commitments to prospective employees which do not comply with administrative policy cannot be honored.

**Procedures**

1. Prior to being considered for appointment to a classified position, individuals must complete the current application for employment. Finalists for security sensitive positions must also complete documentation required for the completion of a criminal background check.
2. Prior to advertising for employment, departments must complete the current budget and human resources documentation related to appointments. These documents will identify the position, the funding for the position, the job duties to be assigned to the position and other related information. Departments should consult with the Budget Office and the Human Resources Office to determine the current required documentation.
3. Departments may begin to interview candidates as the candidates are referred by Human Resources. Vacancies should remain open until an adequate pool of qualified candidates has been considered. Departments should consult with Human Resources to determine when to close a search.
4. Interviews must be conducted by trained staff and the content of interviews and reference checks, including criminal background checks, must comply with federal, state and UTD policy. Training is available through Human Resources.
5. The President has delegated the authority to make job offers for classified positions to Human Resources. The offer will be made after the department has complied with current procedures, including equal employment opportunity reporting requirements.

For more information, contact the Budget Office and the Human Resources Office.

**Classified Appointment Procedures**

**Search Plan**
When it becomes necessary to fill an Administrative and Professional position within the University, the employing party will distribute the following information about the position to the Affirmative Action officer responsible for the appointment of A&P personnel and other concerned parties:

1. Description of the position
2. Salary range,
3. Date the position must be filled,
4. Date all applications must be received,
5. Qualifications required to include the minimum acceptable, and preferred education and experience, and
6. Persons named to any "Search Committee."

A Search Plan in accordance with the UTD Affirmative Action Plan must be approved by the President, or his designee, to include:

1. Placing and advertisement in major Dallas/Fort Worth news media,
2. Notifying the acting director or head of the UTD office or department the position will affect that a search is being conducted and requesting recommendations from interested applicants within the University,
3. Listing the position with the Texas Workforce Commission,
4. Screening of all applicants and eliminating those who do not meet the minimum qualifications,
5. Applying an appropriate ranking system to those applicants meeting or exceeding minimum qualifications,
6. Interviewing applicants, from the top-ranked to the lowest-ranked, by a committee appointed by the President, or his designee, until a suitable applicant is found,
7. Conducting a thorough background review of the selected applicant and reporting the findings to the President, or his designee.

If the background review is acceptable, the applicant will be offered the position; however, if at any of the above steps, the top-ranked applicant is found to be unacceptable, the procedure will be repeated for the second-ranked candidate and continue until a suitable candidate is chosen and the University offer is accepted.

**Research Titles**

**General Policy**

Generally, unclassified research positions should be held to a minimum; however, with the appropriate approvals, as set forth in appointment procedures below, individuals appointed to a position with the title of Research Scientist or Research Associate will be considered Administrative/Professional appointments.

**Research Scientist**

The Research Scientist category is reserved for individuals not seeking or being considered for appointment as a faculty member (though he/she would generally be considered qualified for a faculty appointment) and able to receive full funding for research activities from outside sources. The primary job duties of the position are research activities. The position is not a faculty position. This is an Administrative and Professional (A&P) position and as such serves at the pleasure of the President.

A person may be appointed to the position of Research Scientist only after the approval of the Dean of the School. Normally, these approvals will be processed through the routine appointment and budget procedures. A person appointed to this position will be eligible to participate in the Optional Retirement Program provided all other eligibility criteria are met.
Research Associate

The position is commonly in the career path leading to a faculty appointment after post-doctoral work.

Appointment to Research Associate may be granted by the Dean of the School.

This appointment is not a faculty appointment. This is an Administrative and Professional (A&P) position and as such serves at the pleasure of the President.

Procedure for Appointments

The procedure for initial appointment as a Research Associate is as follows:

1. A Search Plan must be submitted to the appropriate dean.
2. The vacancy must be advertised in at least one national and one local publication. Diverse vacancies may be publicized in the same advertisement.
3. The Principal Investigator should prepare an academic file on the candidate to include
   ◦ Biographical data (Curriculum Vitae),
   ◦ Letters of recommendations, and
   ◦ Reprints of the candidate's publications (if available).
4. At the conclusion of the search, and before an offer can be made to the candidate, the Principal Investigator must prepare a summary of the search and submit it, along with all the applicant files attached, and a completed Request for Appointment Form to the dean for his approval.
5. If the dean approves the appointment, the Principal Investigator will prepare an offer letter in accordance with the Office of General Counsel approved form http://www.utsystem.edu/ogc/contracts/aaform6.htm for signature by both the Principal Investigator and the dean.

Appointment of Foreign Nationals

Where sponsored contracts and grants do not prohibit or limit the employment of an foreign national, that non-citizen can be employed upon certification by the Director of Human Resources that:

1. The foreign national's visa is in order, and
2. The foreign national has approval of U.S. Immigration authorities to accept such employment.

If it is desired to employ an foreign national, an administrative officer should follow the normal appointment procedure for Classified Service. The foreign national must meet the minimum qualifications for the position to which he/she is to be appointed.

Appointment of Minors

General Policy

Any person who is at least fourteen (14) years of age, but under sixteen (16) years of age, may be employed at UTD in a position not prohibited as subsequently described in "Under 16 Years of Age" and "Under 18 Years of Age", except that he/she may not be employed during the regular school term unless a work certificate has been issued. A work certificate permits a person to work during non-school hours, subject to the provisions of this policy, or permits an individual who has been permanently excused from school to work. It is not necessary for a person over fourteen (14), but under sixteen (16) years of age, to obtain a work certificate for employment during vacation periods. However, a work certificate must be obtained if the person is to be employed during the school term.
Any person under sixteen (16) years of age may not be employed or permitted to work:

1. For more than 8 hours in any one day,
2. More than 6 days or 40 hours in any one week,
3. Before the hour of 7:00 a.m. or after the hour of 10:00 p.m.

During a school term, a person under sixteen (16) years of age, except one who has been permanently excused from school, may not be permitted to work after the hour of 7:00 p.m. on days immediately preceding days when school is in session.

An individual wanting to employ a minor should follow the normal Classified Service employment procedures. The Human Resources Office should be contacted in order to obtain a work certificate for the prospective employee.

Age Restrictions on Work

Under 14 Years of Age: Any persons under fourteen (14) years of age may not be employed at UTD under any conditions.

Any person under sixteen (16) years of age may not be employed or otherwise permitted to work:

1. In connection with power driven machinery,
2. In the oiling, cleaning and washing of machinery,
3. Upon any scaffolding,
4. In the operation of any automobile, truck or motor vehicle, including farm tractors and trucks,
5. In the operation of hoisting machines, cranes, or freight elevators, or any other elevator that might be used for the purpose of carrying freight or supplies,
6. In occupations involving exposure to radioactive substances,
7. In any other occupation dangerous to the life, health or limb, or injurious to the health or morals of children under the age of sixteen (16).

Under 18 Years of Age: Any persons under eighteen (18) years of age may not be employed in the operation of, or help in the operation of, any motor vehicle, including tractors and mowing equipment. This does not include motor-propelled mowing equipment such as motored walking-type mowers.

Appointment of Relatives (Nepotism Rules)

An appointment made within the University on either a full-time or part-time basis shall be made solely with regard to the special fitness of the appointee, subject to applicable statutes; and subject also to Part One, Chapter III, Section 5 of the Regents’ Rules and Regulations which is reproduced below:

Section 5 Appointment of Relatives (Nepotism Rule)

5.1 Whenever an appointment is made, either on a full-time or part-time basis, it shall be made solely with regard to the special fitness of the appointee, subject to applicable statutes; and subject also to the provisions of this Section of the Regents’ Rules and Regulations.

5.2 In accordance with the prohibition of Article 5996a, Vernon’s Civil Statutes, no person related to any member of the Board of Regents within the second degree by affinity or within the third degree by consanguinity shall be eligible for appointment to any office, position, employment, or duty with The University of Texas System or any component institution thereof, when the salary, fee, or compensation of such appointee is to be paid, either directly or indirectly,
out of public funds of any kind.

- 5.21 Article 5996a, Vernon's Civil Statutes, does not prohibit the reappointment or continued employment of any person who shall have been continuously employed in any such office, position, employment, or duty for a period of one (1) year prior to the appointment of the member of the Board of Regents related to such person within the prohibited degree, nor does it apply to prohibit honorary or nonremunerative positions; provided that when such person is reappointed or continued in employment, the member of the Board of Regents who is related to such person in the prohibited degree shall not participate in the deliberation or voting upon the reappointment, continuation of employment, change in status, compensation or dismissal of such person, if such action applies only to such person and not to a bona fide class or category of employees.

- 5.22 Those persons related within the prohibited degrees are indicated on the charts displayed in this Section as Table 1.

- 5.23 The prohibition of Article 5996a, Vernon's Civil Statutes, applies to all programs administered under the Board of Regents and may not be waived.

5.3 Even though the appointment of a person would not be prohibited by Article 5996a, Vernon's Civil Statutes, no officer, official or employee of The University of Texas System may approve, recommend, or otherwise act with regard to the appointment, reappointment, promotion, or salary of any person related to such officer, official, or employee within the second degree by affinity or the third degree by consanguinity regardless of the source of funds for payment of salary.

- 5.31 If the appointment, reappointment, or promotion of a person places him or her under an administrative supervisor related within the above specified degree, all subsequent actions with regard to reappointment, promotion, or salary shall be the responsibility of the next highest administrative supervisor. It shall also be the responsibility of the next highest administrator to make a written review of the work performance of such employee at least annually and submit each review for approval or disapproval by the component institution's Human Resources Director in the case of classified employees or the chief administrative officer in the case of faculty or nonclassified employees.

- 5.32 If the appointment, reappointment, or promotion of a person places him or her in an administrative or supervisory position with responsibility to approve, recommend or otherwise act with regard to the appointment, promotion, or salary of a person who is related to them within the degree prohibited by Article 5996a, all subsequent actions regarding the reappointment, promotion or salary of such person shall be made by the next highest administrator or supervisor at the component institution or The University of Texas System.

- 5.33 It shall be the responsibility of the administrator or supervisor acting pursuant to Section 5.31 or 5.32 to make a written review of the work performance of such person at least annually and to submit such review to the next highest administrator or supervisor at the component institution or The University of Texas System.

- 5.34 The provisions of Section 5.31 shall apply to situations where two employees of the System marry and one spouse is the administrative supervisor of the other.

- 5.35 All situations covered by Section 5.31 shall be reported annually through the institution's docket or with the annual operating budget.

**Dual Appointments**

The U.T. System Human Resources Office has provided the following administrative memorandum to all component institutions regarding Dual Employment:

**Memorandum Number I.030**
1. The Board of Regents' Rules and Regulations establish policy concerning members of the faculty or staff of component institutions of The University of Texas System engaging in Outside Employment and encompasses, Dual State Employment, as well. In addition, the Regents' Rules and Regulations address the issue of employment in two positions within state and/or United States government. The Appropriations Bill, 68th Legislature, sets forth certain provisions pertaining only to Dual State Employment with the State, and are enumerated in this policy. Employees who are legally employed in two positions within state government (multiple component institutions; component institution/state agency; component institution/other institution of higher education) are subject to the following provisions, and are to be informed of these provisions prior to being placed in such Dual State Employment status:

- 1.1 Separate leave records will be maintained for each such employment.
- 1.2 Time worked in one position may not be used as additional tenure credit for purposes of longevity or annual leave accrued for the other position.
- 1.3 Upon termination of one employment, the leave balances accrued under that employment may not be transferred to the remaining employment.
- 1.4 Total state contribution towards the employee's group insurance will be limited to no more than the amount specified in the current Appropriations Bill for full-time active employees. The employee may choose the insurance program of only one of the employing entities for the employee and/or dependents. That entity shall contribute the total state contribution.
- 1.5 The employee will be entitled to receive longevity payment for no more than one employment.
- 1.6 An employee who works in a dual employment capacity, subject to the overtime provisions of the Fair Labor Standards Act in either employment, shall have all combined time worked in excess of forty hours per week considered as overtime. The employee shall be compensated for such overtime in accordance with the overtime provisions of the Fair Labor Standards Act.

2. All employees are to be informed of their obligation and responsibility to inform both initial and second employers of their intent to accept an additional employment with the State or other institution.

3. Institutions employing individuals with multiple-component assignments shall enter into necessary agreements designating the institution which is to be the principal employer and, therefore, maintain personnel and leave records in compliance with the preceding provisions.

**Beginning and Ending Dates (Appointment Effective Date)**

The following procedure will be used to determine the dates on which appointments begin and end:

1. Unless otherwise specified below, appointments begin on the first day actually worked and end on the last day worked. Reappointment at the beginning of a new fiscal year will not be permitted when the sole purpose is to allow the use of accrued vacation, since vacation must be taken in the fiscal year earned.
2. If the first day worked is the first normal working day of the month, the appointment begins on the first calendar day of that month. Similarly, if the last day worked is the last normal day of the month, the appointment ends at the close of the last calendar day.

If an employee transfers from another state agency, the beginning date is determined so as to effect continuous employment with the State.

The Human Resources Office should be contacted regarding any special provisions that may apply to beginning and ending dates as well as what does and does not constitute a "break in service."