

January 2, 2008

RE: Jeff Freeman v. University of Washington
Rule Violation Review No. RULE-07-005

Dear Mr. Freeman:

The Director's review of your rule violation appeal has been completed. The review was based on written documentation.

Background

On August 23, 2007, you filed a request for a Director' review alleging that the University of Washington (UW) violated WAC 357-19-295, WAC 357-19-435 and WAC 357-19-297 regarding your employment as a temporary hourly Gardener 2 at the Bothell Campus.

On October 29, 2007, Karen Wilcox confirmed that the review would be conducted on written documentation and set December 27, 2007 as the deadline for the submission of addition documentation.

On December 24, 2007, the UW submitted additional documentation. Other than your original Request for Director's Review form, you provide no documents.

Summary of Mr. Freeman's Perspective

In your review request form, you asserted that you had worked continuously from February 5, 2007 to the present [8/21/07] and that your hours of work exceeded 1050 hours. You requested that you be given permanent status and benefits from your first date of hire, which was July 18, 2005.

Summary of UW's Reasoning

UW agrees that you were originally hired as a temporary employee effective July 18, 2005. However, UW asserts that you have consistently worked less the 1050 hours for each twelve consecutive month employment period based on your original temporary employment. UW argues that their records demonstrate that your work hours were well within the limits of temporary employment set forth in WAC 357-19-435 and therefore, your request for remedial action should be denied.

Director's Determination

As the Director's designee, I carefully reviewed all of the documentation in the file. Based on my review of the documents and the relevant rules, I find that no violation of the WACs occurred regarding your temporary employment at the UW.

Rationale for Determination

You allege that UW violated WAC 357-19-295 and WAC 357-19-297 which state:

357-19-295 What are cyclic year positions?

Cyclic year positions are positions within higher education institutions and related higher education boards which are scheduled to work less than twelve full months each year, due to:

- Known, recurring periods in the annual cycle when the position is not needed; or
- Limited funding of the position.

Cyclic year positions are permanent positions and must be filled in accordance with the rules on recruitment, assessment, and certification as provided in chapter 357-16 WAC.

357-19-297 What are the notification requirements for appointing an employee to a cyclic year position?

Upon appointment and before the start of each annual cycle, incumbents of cyclic year positions must be informed in writing of their scheduled periods of leave without pay in the ensuing annual cycle. Scheduled, cyclic leave without pay does not constitute a break in service and is not deducted from the employees' seniority and does not affect the employees' vacation leave accrual rate.

The temporary appointment form you signed on July 12, 2005 shows that you were hired as an hourly temporary employee not as a cyclic year employee. Neither your appointment form nor your time sheets establish that you worked for a recurring period in an annual cycle. Therefore, the provisions of WAC 357-19-295 and WAC 357-19-297 do not apply to your employment.

You allege that UW violated WAC 357-19-435, which states:

A higher education employer may make a temporary appointment for the following reasons:

- (1) The number of hours to be worked by the individual will not exceed one thousand and fifty hours in any twelve consecutive month period from the original date of hire or October 1, 1989, whichever is later, in accordance with WAC 357-04-045; or
- (2) The employing official formally assigns a classified employee the duties and responsibilities of a higher-level class for a period of less than six consecutive months.

The temporary appointment form you signed on July 12, 2005 shows that you were hired as a temporary employee as allowed under section (1) of the rule. The form states, in part:

You have been appointed to a temporary position at the University of Washington. As a temporary employee, you are limited by University policy to working a maximum of 950 hours temporary hours (excluding overtime) in any consecutive month period from your original date of temporary employment or October 1, 1989, whichever is later. If the 950 hour maximum is reached, you cannot work in any temporary appointment at the University until after the next anniversary of your original temporary employment date. . . .

If you exceed 1050 temporary employment hours worked, you may have the right to appeal for permanent status to the Personnel Appeals Board per WAC 251-12-600.

Effective July 1, 2005, WAC 251-12-600 was replaced by WAC 357-19-450. WAC 357-19-450 states, in part:

For individuals in higher education temporary appointments under the provisions of WAC 357-19-435(1), the director may take remedial action to confer permanent status, set base salary, and establish seniority when it is determined that the following conditions exist:

(1) The employee has worked in one or more position for more than one thousand fifty hours in any twelve consecutive month period since the original hire date or October 1, 1989, whichever is later. (Overtime and time worked as a student employee under the provisions of WAC 357-04-040 are not counted in the one thousand fifty hours.)

. . . .

While the UW's temporary appointment form was not updated with the correct rule citations effective July 1, 2005, the substance, intent and application of the rules did not change. This error did not have a negative impact on your employment or on your ability to file a timely request for review. However, the UW should review their standard forms and assure that they contain the correct citations and appeal rights.

The UW provided copies of your timesheets and a weekly summary of the hours you worked between July 18, 2005 and October 15, 2007.

- Between July 18, 2005 and July 17, 2006, your first twelve consecutive month period of employment, you worked 906.25 hours, beginning July 18, 2005 and ending February 13, 2006.
- You had no hourly employment between February 14, 2006 and January 31, 2007.
- During your second twelve consecutive month period of employment, you worked 872 hours, beginning on February 1, 2007 and ending on July 11, 2007.
- During your third twelve consecutive month period of employment, you worked 330 hours, beginning July 18, 2007 and ending on October 15, 2007.

Your original date of hire was July 18, 2005. During the subsequent twelve consecutive month periods commencing on July 18, 2005, the hours you worked as a temporary employee did not exceed the 950 hour maximum in UW policy or the 1050 hour maximum in the civil service rules. The UW did not violate the rules governing temporary appointments.

In a review of an alleged rule violation, the employee has the burden of proof. You did not prove that that your hours of work exceeded 1050 hours during any twelve consecutive month period from your original date of hire or that the UW violated the rules governing temporary appointments. Therefore, your request for remedial action is denied.

Appeal Rights

If this position is covered by a Collective Bargaining Agreement, please refer to the contract to determine whether the parties have appeal rights to the Personnel Resources Board.

If this position is not represented, WAC 357-49-018 provides that either party may appeal the results of the Director's review to the Personnel Resources Board by filing written exceptions to the Director's determination in accordance with Chapter 357-52 WAC. An appeal must be received in writing at the office of the Board within thirty (30) calendar days after service of the Director's determination. The address for the Personnel Resources Board is 2828 Capitol Blvd., P.O. Box 40911, Olympia, Washington, 98504-0911.

If no further action is taken, the Director's determination becomes final.

Sincerely,

Holly Platz, SPHR
Director's Review Investigator

cc: Caroline Currin, UW
Kris Brophy, DOP