

Policy 1325
Wage Employment

Date of Current Revision: September 2016
Primary Responsible Officer: Director of Human Resources

1. PURPOSE

It is the policy of the university to employ qualified persons for wage employment in order to meet personnel needs as outlined below. The objective of this policy is to define wage employment and to outline the conditions of employment for wage employees.

2. AUTHORITY

The Board of Visitors has been authorized by the Commonwealth of Virginia to govern James Madison University. See Code of Virginia section 23-164.6; 23-9.2:3. The Board has delegated the authority to manage the university to the president.

STATE OR FEDERAL STATUTE AND/OR REGULATION

Wage employees are not covered by the Virginia Personnel Act provided in section 2.2-2905 of the Code of Virginia. See Code of Virginia § 23-38.114 and the Restructured Higher Education Act (Chapter 4.10 of Title 23 of the Code of Virginia), as well as IRS code section § 4980H, Notice 2011-36.

3. DEFINITIONS

At-Will Employment

An employee/employer relationship that can be terminated by either party at any time with or without cause. An at-will employee may resign from work or be terminated from work, with or without cause, with or without severance, or without advance notice. Wage employees are at-will employees.

Harassment

For the purposes of this policy, a form of discrimination consisting of unwelcome or offensive physical, oral or written conduct that shows aversion or hostility toward a person on the basis of age, color, disability, genetic information, national origin, parental status, political affiliation, race, religion, or veteran status. Harassment may also include behavior directed toward stereotypical notions of how a person in a protected classification should appear or behave, or a failure to conform to stereotypes. Harassment is prohibited in the following situations:

1. Term or condition of employment or education. This type of harassment occurs when the terms or conditions of employment, educational benefits, academic grades or opportunities, living environment or participation in a university activity are conditioned upon, either explicitly or implicitly, submission to or rejection of unwelcome conduct, or such submission or rejection is a factor in decisions affecting that individual's employment, education, living environment, or participation in a university program or activity.

2. Hostile environment. This type of harassment occurs when the actions of another create a hostile environment, as defined herein.

Hostile Environment

A hostile environment is created by oral, written, graphic or physical conduct that is sufficiently severe, persistent or pervasive and objectively offensive that it interferes with, limits or denies the

ability of a person to participate in or benefit from the institution's educational programs, services, opportunities, or activities or the individual's employment access, benefits or opportunities. Mere subjective offensiveness is not enough to create a hostile environment. In determining whether conduct is severe, persistent or pervasive, and thus creates a hostile environment, the following factors will be considered: (a) the degree to which the conduct affected one or more individuals' education or employment; (b) the nature, scope, frequency, duration, and location of the incident(s); (c) the identity, number, and relationships of persons involved; (d) the perspective of a "reasonable person" in the same situation as the person subjected to the conduct, and (e) the nature of higher education. A hostile environment for a member of the university community can be created by the actions of an employee, a student, an affiliate or a visitor.

Standard Measurement Period

Under the Affordable Care Act, JMU must identify a retroactive measurement, or "look back" period, in order to determine which employees will meet the Act's definition of "full-time" employee, and must be offered healthcare coverage in order to avoid significant tax penalties. The Commonwealth of Virginia has determined the time period to be May 1 through April 30 of each year.

Wage Employment

Employment within the university to meet part-time, temporary or seasonal needs. Wage employees are limited to working no more than 1,500 hours during each 12-month period of May 1-April 30. In addition, wage employees may not exceed an average of 29 hours per week over the standard measurement period, May 1-April 30 of each year. Supervisors may allow wage employees to temporarily exceed the 29-hour limit provided this exception is planned for and approved by Human Resources.

4. APPLICABILITY

This policy applies to all wage employees and, where applicable, their supervisors.

5. POLICY

Wage employees shall be hired strictly on a part-time, at-will basis.

Wage employment is intended to provide additional staff for part-time, seasonal, peak workloads, interim replacements, short-term projects or jobs that do not necessitate the employment of full-time classified employees.

Newly hired or rehired (separated for more than one year) wage employees shall be subject to a criminal background check in accordance with Policy [1321](#) - Criminal Background Check.

Wage employees may apply for any vacancy, including agency-only recruitments. However, when hired into a classified position, service as a wage employee does not count toward any form of continuous state service. Wage employees entering full-time employment must serve a probationary period.

Wage employees are expected to satisfactorily perform all assigned duties. While wage employees are not subject to formal performance evaluations, managers and supervisors will monitor wage employee performance and provide informal performance evaluation and coaching as needed.

6. PROCEDURES

6.1 All newly hired and rehired wage employees must be cleared for hire upon review of the Onboard Request form or ePAR by HR's Onboard Specialist in Recruitment and Employment Services prior to their first day of employment.

6.2 Wage employees shall have their hours of work limited to 1,500 hours per each 12-month period of May 1-April 30.

Example: If an employee works two wage jobs at the university, s/he may only work a total of 1,500 hours in both jobs combined – 500 hours in one job and 1,000 hours in the other job.

In addition, wage employees may not exceed an average of 29 hours per week on average over the 12-month period May 1- April 30. Supervisors may allow wage employees to temporarily exceed the 29-hour limit provided this exception is planned for and approved by Human Resources.

6.3 All wage employees will have wage employee work hours counted on a 12-month basis, May 1-April 30.

6.4 Wage employees may only remain active employees of record during the period of actual wage employment. Wage employees will not remain active in the Human Resources Management System (HRMS), and therefore retain any rights and privileges of active wage employees, for more than 60 days or four pay periods (whichever is greater) without having any hours worked entered into the payroll system. Exceptions to this are foreign language interpreters, part-time special event public safety officers, and on-call, part-time PRN Health Center employees. Such part-time employees who do not work in the prior 60-day period would be allowed active access to the HRMS.

6.5 On a monthly basis, Human Resources will notify supervisors of wage employees who have not worked any hours in the preceding 60-day period and who have been terminated from their wage position. Procedures in Policy [1314](#) - Transfer or Separation from Employment will be followed.

6.6 Under Affordable Care Act (ACA) regulations the university shall not rehire a former JMU full-time employee into a wage position until the employee has been separated for a minimum of 26 weeks. Hiring supervisors should contact their [HR Consultant or Recruitment Specialist](#) for assistance when making re-hire decisions on any JMU employee who was most recently employed in a full-time position at JMU and who wishes to return to JMU in any part-time capacity.

6.7 Compensation

Wage employees shall be paid only for actual hours worked.

The university generally pays the minimum sufficient to attract suitably qualified applicants for job openings. Inexperienced applicants normally should be hired at the minimum of the pay band. Applicants with experience related to the position may be hired at a rate higher than the pay band minimum with prior approval from Human Resources.

In most cases, the starting pay should not exceed the applicant's final pre-employment wage/salary by more than 10%.

Wage employees may receive wage increases granted by the Governor and/or the General Assembly. Wage adjustments will be made when advised to do so by the Virginia Department of Human Resource Management (DHRM).

Hiring supervisors may request additional pay increases for their wage employee(s) through the in-band adjustment process as outlined in Part VI of the [Salary Administration Plan](#). To qualify to receive an in-band adjustment, a wage employee must have 12 months of continuous employment

at the university and must have worked a total of at least 1,500 hours with at least 1,250 hours in the previous 12 months. Wage employee in-band adjustments will be determined on the same schedule as classified in-band adjustments. Approved in-band adjustments are funded by the requesting department.

Wage employees, except those who meet the criteria for exempt status, are considered non-exempt for the purposes of application of the Fair Labor Standards Act (FLSA) and must be paid overtime at the one and one-half time rate for hours worked over 40 in a work week in accordance with Policy [1303](#) - Provisions for Granting Overtime and Compensatory Leave. Therefore, records of hours worked must be kept for all wage employees, regardless of their status.

6.8 Benefits

Wage employees are covered under the Virginia Workers' Compensation Act. When eligibility is established, compensation is provided after a standard seven calendar day waiting period.

Wage employees shall be allowed leave without pay for military service. When a wage employee returns from active military service, reemployment will be granted under the terms provided for in the United Services Employment and Reemployment Rights Act (USERRA).

Wage employees shall be paid only for hours worked and cannot accrue paid leave, compensatory time or overtime leave credits.

Wage employees who meet eligibility requirements may take the allowable weeks of unpaid family or medical leave as outlined in the [Family and Medical Leave Act \(FMLA\)](#). See Policy [1308](#) - Family and Medical Leave Act.

Currently, wage employees cannot participate in the state's health insurance program, nor in other benefits programs designed for full-time employees. However, wage employees may participate in supplemental retirement accounts, such as 403(b) and/or 457 accounts. In addition, wage employees may participate in voluntary benefits such as: AFLAC accident, cancer, critical care, hospitalization, and intensive care insurance; New York Life whole life insurance; LegalShield identity protection and legal resources; FIRM/American Funds 529 plans; Met Life home, auto insurance; and VPI pet insurance.

Non-student wage employees, who meet the criteria, are eligible for on-campus waiver of tuition in accordance with Tuition Policy [1402](#). Wage employees are not eligible for tuition reimbursement for courses taken at other educational institutions in accordance with Reimbursement Policy [1401](#).

Wage employees are not eligible to use the state grievance procedure. However, they may consult with the Office of Employment Dispute Resolution (EDR) concerning work-related problems.

Wage employees may file complaints alleging discrimination and harassment with the Office of Equal Opportunity in accordance with Policy [1324](#) - Discrimination and Harassment (Other than Sexual Harassment and Misconduct). Wage employees may file complaints alleging sexual harassment or sexual misconduct with the Title IX coordinator in accordance with Policy [1340](#) - Sexual Harassment and Sexual Misconduct. They also have access to the State Employees' Discrimination Complaint procedures administered by the Office of Equal Employment Services of the Department of Human Resources Management. Mediation is also available to wage employees.

7. RESPONSIBILITIES

Vice presidents, deans, AVPs, directors, department heads and supervisors are responsible for the consistent application of this policy and are responsible for ensuring hours worked are consistent with this policy.

Human Resources will monitor the hours of wage employees and will assist supervisors with management of hours. Human Resources will notify hiring supervisors when their wage employee(s) have reached 1,200 hours within the measurement period.

The director of the Office of Equal Opportunity is the individual designated by the university to receive, investigate, and process discrimination and harassment complaints under Policy [1324](#) - Discrimination and Harassment (Other than Sexual Harassment or Misconduct). The Title IX Coordinator is the individual designated by the university to coordinate the institution's compliance with Title IX and oversees the university's process for receiving, investigating, and processing complaints under Policy [1340](#) - Sexual Harassment and Sexual Misconduct.

8. SANCTIONS

Employees who violate this policy, including supervisors who allow wage employees to work more than 1,500 hours in the 12-month period, or to exceed an average of 29 hours worked per week during the Standard Measurement Period, are subject to discipline commensurate with the severity and/or frequency of the offense, and sanctions may include termination of employment.

9. EXCLUSIONS

This policy does not apply to classified employees, instructional faculty members, administrative & professional faculty members, student employees or adjunct faculty. Refer to Policy [1334](#) for student employment policy. It does not apply to foreign language interpreters, part-time special event public safety officers, or on-call PRN Health Center employees due to the necessity to retain their services on an as-needed basis.

10. INTERPRETATION

The authority to interpret this policy rests with the president, and is generally delegated to the Director of Human Resources.

Previous Version: April 2014

Approved by the President: March 1999