Modes of employment

To ensure members fully understand the application of the Western Australia TAFE Lecturers' General Agreement, this month's article will discuss clauses from part 3 – employer and employees' duties, employment relationship and related arrangements, specifically clauses concerning modes of employment (permanent, fixed-term contract and casual) and part-time work.

Clause 16 – Modes of Employment

This is a key and overarching clause concerning the modes of employment and it states:

16.1. Employees covered by this Agreement will be employed in the mode of either permanent, fixed term contract or casual employment. The employer will inform each employee of the terms and conditions of their employment prior to commencement. Permanent is the preferred mode of employment of the parties to this Agreement.

Clause 18 – Fixed Term Contract (FTC)

This clause opens with this statement in 18.1:

This clause shall be read in conjunction with the STERC Fixed Term Contract Policy.

Many clauses in the agreement must be read in conjunction with an agreed SSTUWA-TAFE Employee Relations Committee (STERC) union-employer policy. If a policy is mentioned in the agreement and the most recent version is not available contact SSTUWA Member Assist on 9210 6060/1800 106 683 or via email at memberassist@sstuwa.org.au

Clause 18.2 states:

'Fixed term contract employee' means an employee who is employed to carry out work of a finite duration. A fixed term contract employee may only be engaged for a reason specified below:

a) Covering one-off periods of relief;
b) Work on project/s with a finite life, where funding is not guaranteed past a certain date;
c) Work is subject to demand driven fluctuations;
d) Work is seasonal in nature;
e) Specific tasks or projects which shall mean a definable work activity which has a starting time and which is expected to be completed within an anticipated timeframe; and
f) Roles where the skills and abilities required to perform a function are expected to vary over time.

An FTC lecturer is subject to the conditions and entitlements of a permanent lecturer during the period of employment. They also accrue all leave types and receive wage increases.

A lecturer can only be employed for one of the five reasons listed in Clause 18.2. It is also important to read Clauses 18.3 – 18.5 which set out some additional terms that apply to several of the reasons.

Clause 18.8 requires the employer to review each FTC position before the contract expires to determine if a further contract will be offered or if the lecturer is to be appointed permanently. Note that there are time frames attached to this process.

It is very important to be aware that the provision for ongoing employment does not require the lecturer to reapply for their position as the Agreement states:

Clause 18.9. A lecturer engaged through a merit selection process where the job was advertised with the possibility of further fixed term appointment, including a pool recruitment process, will not be required to reapply for the same FTC position.

Also of note is that any break between contracts of up to six months will not break continuity of service for the purposes of personal leave and long service leave, however, the break will not count towards accruing such leave entitlements.

Clause 19 – Casual

Please note the provision of Clause 19.1 which states:

Casual lecturers are employed by the hour and are entitled solely to the casual hourly rate of pay specified in Schedule I for each hour of lecturing, or Professional Activities, worked. Casual lecturers are not entitled to leave and other provisions that apply to permanent and fixed term contract lecturers under this Agreement; except for the relevant provisions in Clause 44 - Bereavement Leave; Clause 71 – District Allowances; Clause 53 - Maternity Leave; Clause 54 - Adoption Leave; Clause 55- Other Parent Leave; Clause 56 - Partner Leave; Clause 57 – Unpaid Grandparental Leave; and Clause 49 - Family and Domestic Violence Leave of this Agreement.

Most lecturers within the TAFE sector who work on a casual basis are paid at Level 2 or Level 3 for their teaching in any format and also for any additional marking that is not directly related to the students in their class. Level 1 is for adult education programs only.

Be aware that Schedule I – Salaries – Casual Employment also provides for a rate of pay to cover casual lecturers when Professional Activities are performed, such as attending meetings or professional development.

These duties are outlined in Appendix A – Role Description and Duty Statement for Lecturers of the agreement under Professional Activities and in Clause 29.3 (f).

Occasionally casual lecturers are paid incorrectly so be aware and check pay slips. Always ask a campus union representative for assistance on pay rates or contact SSTUWA Member Assist.

Casual lecturers should not be employed for extended periods of time as Clause 19.7 states:

Colleges will offer the option of a fixed term contract, of up to six months, to a casual lecturer whose employment is expected to exceed six weeks, consistent with the new STERC policy to be developed during the life of this Agreement.

This means that a lecturer whose work is expected to extend beyond six weeks, for example, when a lecturer has been given a timetable for a term or semester, must be offered a fixed term contract by the college.

Clause 20 – Part-Time

Permanent, fixed-term contract and casual lecturers can be either full-time or part-time. Many lecturers are part-time and from time-to-time full-time lecturers opt to be part-time whether temporarily or permanently. It is important that all members understand the provisions of Clause 20 – Part-Time.

Part-time lecturers are entitled to the appropriate full-time salary, leave and conditions in the same proportion that the hours work they work bear to full-time.

If the hours worked vary during leave accrual periods, the entitlements are averaged out over the period.

Lecturers need to check that their pay does not drop during leave periods as some managers incorrectly date variation to hours forms, resulting in underpayments.

The agreement states that prior to work commencing the employer should specify the prescribed weekly hours of work.

The lecturer should have a good understanding of the working hours they are committing to before starting work, including the breakdown of Teaching, Activities Relating to Delivery (ARD) and Professional Activities (PA) time and how they are spread across a working week.

Always cross reference a teaching timetable with Schedule L – Hours Chart and ensure Teaching hours (TH), PA, on campus ARD and off campus ARD are in accordance with the hours given in Schedule L and that no on campus ARD is scheduled unless a lecturer is teaching 14 hours or more per week.

What happens when the employer wants to change a part-time lecturer's hours of work?

If the employer wishes to change the working arrangement of a lecturer there must be:

1) Reasonable notice of any proposed variation to the lecturers ordinary working hours and
2) The employer cannot vary the total weekly hours of work without the lecturer's written consent.

This means that it would not be fair and reasonable for an employer to inform a lecturer on a Friday afternoon, for example, that their timetable will be changing the following week.

The *Western Australian TAFE Lecturers' General Agreement 2019* is very clear regarding this matter and any change in the number of hours worked cannot occur without the lecturer's written permission.

So, hours of work cannot "flex" up or down without a lecturer's specific written agreement.

It is also worthwhile noting here that the agreement stipulates that equity considerations shall be considered in the decision-making process.

Equity considerations include, but are not limited to, obligations lecturers have concerning their family, such as, childcare and support for older or unwell parents.

What happens when a lecturer agrees to increase their weekly teaching hours?

When a lecturer agrees to increase their TH, the agreement is straightforward. An increase in hours will be done via a variation to hours (FTE increase) to accommodate the increase in ARD and PA in accordance with Schedule L – Hours Chart of this agreement. This is important as it also increases the allocation of ARD and PA hours commensurate with the increase in TH.

It is important to recognise that Clause 20 – Part Time, Clause 35 – Hours of Work and Clause 36 – Averaging do not provide for part-time lecturers to agree to an averaging arrangement.

Part-time lecturers who lecture beyond their normal weekly hours must have their employment fraction increased for that period in accordance with Clauses 20.4 and 35.2.

A part-time lecturer can increase or decrease their teaching hours, temporarily or permanently, and such changes must be documented in a variation to hours form (your line manager will have access to this form) up to the full time equivalent of 21 TH.

Any TH above 21 hours would be considered overtime and attract the entitlements under the overtime clauses.

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