



*UNC Today*

## ***Carolina Connecting through Community Service***

Carolina's response to the system-wide "UNC Tomorrow" initiative centers attention on the ways that our campus can address the needs of the state by improving our outreach to local communities. But in truth, we don't have to wait for tomorrow. We can begin today to improve the University's outreach to our local communities by taking advantage of a mechanism that is already in place—and every single employee can become personally and actively involved. That mechanism is called "Community Service Leave," or CSL.

CSL is a paid time-off program that allows employees to spend a limited number of their work hours each year doing volunteer work in schools or in other kinds of non-profit organizations. Disaster relief work in more remote locations and blood, bone marrow and organ donation are also legitimate uses of an employee's CSL.

According to the University's Human Resources manual, the volunteer activity of its employees is an important way in which the University becomes involved in its surrounding communities, so it encourages its employees to take advantage of this paid leave opportunity by providing flexibility in work schedules.

The amount of CSL time available depends upon the kind of activity for which it will be used, ranging from 24 hours per year of leave for school activities relating to an employee's own children, up to 180 hours per year for employees who become organ donors.

SPA permanent employees who are regularly scheduled to work 20 or more hours per week, permanent EPA non-faculty and EPA faculty who earn leave are all eligible for CSL. This means that considering staff employees alone, there are at least 158,000 hours of volunteer time that the University is just waiting to donate to the welfare of Carolina communities every year!

Of course, there are a number of caveats and details involved in taking paid volunteer time through the CSL program. To find out more about what these are—as well as how to start doing your own volunteering for your favorite charitable cause—go to <http://hr.unc.edu/Data/SPA/leave/commserviceleave>.

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### ***UNC's Layoff Policy Declared Worthless Layoff Decision "Idiotic"...but Legal***

Sharon House and Jacqueline Maynard, two of the School of Dentistry laboratory technicians who were laid off in January 2007, had their appeal heard by the State Personnel Commission (SPC) on August 21, 2008. On October 15, 2008, the Commissioners issued their ruling, finding against the

plaintiffs and thereby rendering UNC's layoff policy worthless, according to Elizabeth Haddix, attorney for House and Maynard.

House and Maynard's case was heard initially by an Administrative Law Judge (ALJ) on December 4, 2007. Judge Joe L. Webster submitted his recommended decision on April 8, 2008, in which he found that although the evidence cast "significant doubt" on the credibility of UNC's cost-savings, "business justification" for the layoff, and although the layoff disproportionately affected older workers, Maynard and House had failed to prove that the layoff violated the Age Discrimination in Employment Act (ADEA).

In appealing Judge Webster's ruling, Elizabeth Haddix, the attorney for House and Maynard, submitted a 34 page brief citing numerous objections to Webster's conclusions of law but urging the Commission to accept many of his Findings of Fact, which were actually in Maynard and House's favor.

One objection cited by Haddix was that the Court had not given adequate weight to Dean Williams' inconsistent reasons for the layoff. Under case law, "When a company, at different times, gives different and arguably inconsistent explanations, a jury may infer that the articulated reasons are pretextual," (i.e., false).

Initially, Williams stated that the rationale for the layoff was to save funds through outsourcing. The ALJ found, however, that UNC had failed to perform a *bona fide* cost-benefit analysis and that in fact there were cost increases associated with the outsourcing proposal. Williams had also stated that the layoff was due to lack of in-house support for the dental laboratory. The ALJ found this reason to be false, as well. Williams further stated that the layoff was due to low productivity of the laboratory technicians. The evidence contradicted that statement in that the technicians' performance appraisals were outstanding and there had been no managerial effort to increase productivity or improve efficiency.

Maynard and House's appeal urged that the ALJ had misapplied the law in another way, also. The ALJ found that the School of Dentistry was at fault by its own admission in not following the University's reduction-in-force (RIF) policy. But in a Catch-22 argument, the State's attorneys contended that it was necessary for Maynard and House plaintiffs to point to some procedure or practice that was implemented which caused the disparate impact on older workers. They stated that since the RIF policy hadn't been followed, there was no practice to which the plaintiffs could point.

In her oral argument before the State Personnel Commission, Assistant Attorney General Katherine Murphy conceded that the layoff decision may well have been "idiotic", but that it was not motivated by age discrimination. Ms. Haddix responded that the most important issue in the case was not whether there was discriminatory *motive*, but rather the discriminatory *impact* the layoff had on older workers. Haddix argued that UNC's failure to follow its own RIF policy, or otherwise make sure that the layoff was necessary to save money, resulted in a statistically significant adverse impact on workers over the age of 40, and that Maynard and House should therefore be entitled to a remedy.

The SPC upheld all of the ALJ's findings of fact and conclusions of law. The SPC decision offers no explanation or rationale for accepting the ALJ's recommended decision.

When asked about the SPC's ruling, Steve Hutton, Employee Relations Chair for SEANC District 25, provided the following statement:

“Dean Williams was trying to demonstrate to Chancellor Moeser that he’s a good manager, but now we all know that’s not the case. This layoff hurt the lives of numerous faithful, hard-working state employees without any good cause. No one in university management has publicly expressed any remorse for this gross mistake. It’s also clear that OAH and SPC aren’t working, and we’ll have to approach the legislature about removing personnel cases from this track in favor of binding arbitration. I admire Jackie and Sharon tremendously for standing up for themselves and for all of us. Working women and men may have lost this decision, but we will eventually win the day.”

Attorney Elizabeth Haddix commented, “The most damaging aspect of the SPC's decision for state employees is the green light it gives to management to completely disregard policies and procedures which are designed to protect career state employees from arbitrary and even discriminatory employment decisions. As the ALJ said in his decision, UNC's RIF policy is worthless. State employees need to know that.”

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### ***Update Special Meeting Held on ACLU-NC Offer***

About 20 members of the Employee Forum met on October 7<sup>th</sup> to discuss various possibilities for challenging UNC-Chapel Hill’s decision last summer to censor the employee newsletter when it was published as an insert to the *University Gazette*. Also present at the start of the meeting were a reporter from the *University Gazette*, Gary Moss, as well as Brenda Malone (AVC for HR) and one of her assistants. Ms. Malone is also an attorney.

University Counsel knew that the meeting was going to be held, but they chose not to show up. Specifically, Joanna Carey in the University Counsel’s office, called ACLU-NC Legal Director Katy Parker on October 6<sup>th</sup> to discuss the dispute and indicated to Ms. Parker that University counsel was not planning to be present at the meeting. Ms. Parker was pleased to hear that and made it clear that she would be discussing confidential attorney-client information with individual members of the Forum who might be seeking legal representation from the ACLU-NC.

On the agenda for discussion was a brief history of the events in question, the legal strengths and weaknesses of each side's position, the pro's and con's of proceeding with litigation no matter how strong or weak the Forum’s position, and other possible avenues to address what had happened.

The meeting was to be a closed meeting with only current Forum delegates and the Forum’s (potential) attorney from the ACLU present. To ensure that the meeting conformed to standard practices, the Forum voted to go into executive session. This means that non-Forum members were not to be allowed in the room and no minutes were to be taken of the meeting. When this vote was taken, a reporter from the *University Gazette* did leave the room, though with a great deal of reluctance. Brenda Malone and her assistant refused to do so.

Malone said that (1) the Forum should trust the Administration enough that her being there would pose no problems for us; (2) she doubted that the Forum had the right to go into executive session or have any kind of closed meeting and (3) as a representative of Chancellor Thorp, she always attends any meeting involving faculty or staff employees where she thinks that the University may have an interest in what could transpire. She denied having been asked by Chancellor Thorp or anyone else to attend. At one point she left the room briefly to phone University Counsel. When she returned, she

did not leave. [Note: One Forum delegate said that the Forum has gone into executive session in the past, and no one questioned the group's right to do so at that time.]

Because of Malone's (and her assistant's) close connection to the upper administration, the Forum's (potential) attorney could not share all of the information that she had planned to share. Delegates were not free to discuss the matter fully and freely, lest they compromise the case if they should choose to litigate.

The more constrained discussion that ensued dealt with clarifying some of the facts of what had happened, explaining the legal analysis which included the ACLU's position as well as the University's position as set forth in letters already exchanged by each side, and sharing opinions about proceeding with litigation. Those delegates in favor of litigation (if necessary) said that the Forum would not be fighting this case just for its own sake, but for the sake of helping to define and protect freedom of speech for others throughout the University and the state. Those opposed to litigation said that University employees are not very interested in having the Forum spend its time on this matter, but are more worried about pay, health benefits, and retirement security, so it would be an inadvisable use of the Forum's limited time and energy resources to try to litigate.

Ms. Parker shared with the Forum that, while University Counsel did not seem interested in a sit-down meeting with all interested parties, Leslie Chambers Strohm and Joanna Carey did indicate a willingness to discuss a potential compromise. When Ms. Parker spoke with counsel during the week of September 29<sup>th</sup>, counsel suggested that Forum members suggest a compromise that the University could consider. When Ms. Carey called Ms. Parker again on the 6<sup>th</sup>, she reiterated the University's willingness to come to an informal compromise on this matter.

At the end of the meeting, the Forum voted to do two things: (1) ask Chair Tommy Griffin to contact Chancellor Thorp about discussing such a compromise, and (2) find a location off campus where individual Forum delegates/University employees can meet after work hours with Ms. Parker to discuss the pros and cons of potential litigation on behalf of employees—a place where these employees can ensure that the conditions for maintaining attorney-client privilege can be met, since the Administration denied the Forum that ability at this special, closed meeting.

A final vote on whether or not to litigate was deferred until these two tasks can be done. The Forum was informed by the ACLU attorney that it has a 3-year statute of limitations on a First Amendment claim, so there is ample time to decide later whether to litigate, if the University refuses to reach a reasonable compromise.

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*Staff by Any Other Name*

### ***SPA and EPA-NF Employees—What's the Diff?***

UNC-Chapel Hill. It isn't really about us—we staff employees. It's about the faculty and the students who come here to teach, do research, and learn.

Yet it couldn't happen without us.

Staff employees constitute 21% (or 8,238) of the three-part Carolina community composed of faculty (8% or 3,295), staff and students (71% or 28,136). But we constitute a whopping 71% of all employees on campus, with faculty being the other 29%.

Here's another way to think of what we do: For every full or part-time faculty member working in a classroom or a lab, there are 2.5 staff members performing the daily functions that keep the University running, and the work of each one of those staff members indirectly (and sometimes directly) supports the educational activities of 3.4 students.

But not all staff employees are created equal. Beyond the differences in our job titles and our work duties, we fall into two broad categories: 79% of us are SPA employees (subject to the State Personnel Act), while 21% of us are EPA-NF (non-faculty staff who are exempt from the State Personnel Act).<sup>1</sup>

What does that really mean?

### **Distinguishing between non faculty classifications:**

The jobs of State Personnel Act (SPA) employees are governed by N.C.G.S. 126, the State of North Carolina's personnel act that sets up the State Personnel Commission and authorizes it to make and manage the State's employment policies through its administrative arm, the Office of State Personnel (OSP).

SPA positions require a minimum set of skills and level of experience, but they do not consistently require an advanced education. Compensation for these positions is set jointly by the North Carolina legislators and OSP. As of this year, SPA jobs at Carolina are divided into career bands that have an assigned pay range reflecting the nature of the work and market conditions, both of which are determined by OSP.

EPA Non Faculty positions, on the other hand, are not governed by the State Personnel Act and OSP. Instead, they are governed by the decisions of the UNC General Administration, which sets the scope and the compensation level of EPA-NF employment in accordance with the needs of the university system and market conditions. Most EPA-NF positions require at least a post-baccalaureate degree.

When the EPA-NF job category was originally created, it was to provide the University with a small group of employees whose primary duties were high-level administration. Since the 1990s, the EPA-NF designation has been expanded to include more mid-level administrative jobs and certain kinds of instructional duties, as well as more research support-oriented duties.

As you might expect, the levels of compensation and kinds of benefits that are available to SPA and EPA-NF employees differ significantly, but other features of their work life are very much the same.

### **Benefits highlights between SPA and EPA-NF:**

#### ***Vacation hours:***

SPA employees accrue a gradual number of vacation hours based upon total years of State service whereas EPA-NF employees are given a fixed number of vacation hours each year.

For example, a State employee with less than 2 years of service accrues 94 hours or 11.75

vacation days per year, assuming full-time employment status, but this amount increases with additional years of State service. With 15 years of total State service, SPA employees accrue 182 hours or 22.75 days per year, and with 20 years they earn 206 hours or 25.75 days per year.

In contrast, most EPA-NF employees start out with 24 days of vacation leave or 192 hours per year.<sup>2</sup> This is a fixed amount that will not change no matter how long an individual works for the University—unless General Administration decides to increase the number of leave days for all EPA-NF employees alike.

***Employees' use of holiday time:***

Generally, SPA and EPA-NF employees follow the same university holiday guidelines. For the 2008 calendar year, the university sanctioned 11 holidays. The university holiday schedule may be found at UNC's Office of Human Resource website, <http://hr.unc.edu/Data/SPA/records/schedules/holidayschedule>

***Retirement Plans:***

With the exception of EPA-NF Senior Academic and Administrative Officers, all SPA and EPA-NF employees are required to participate in the Teachers' and State Employees' Retirement Systems (TSERS). Senior Academic and Administrative Officers are eligible to choose an alternative to the TSERS called the Optional Retirement Program (ORP), which essentially is a retirement annuity contract approved by the University. This optional program is similar to the TSERS program because there is a period of five years before the employee is vested in the program.

***Supplemental Benefits: health plan and voluntary retirement***

EPA-NF and SPA employees enjoy similar supplemental benefits, which include the State Health Plan (PPO), a healthcare flexible spending account and the voluntary supplemental retirement plan known as the 403(b), 457 or the 401K program. Both the health plan and the voluntary retirement plans operate in a similar fashion for all non faculty employees of the university.

Details of supplemental benefits will be outlined in a later article.

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<sup>1</sup> <http://oira.unc.edu/facts-and-figures/general-information-about-the-university/current-statistics.html>

<sup>2</sup> Some EPA-NF positions, such as Tier I senior academic and administrative officers (SAAOs), earn as much as 26 vacation days per year during the first year of service.

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***The Health Risk of Bad Bosses***

***A bad boss can hurt your heart, study says***

Stephen Smith, The Boston Globe

*[Editor's Note: Who would have thought that efforts to improve the quality of supervision of staff employees at Carolina could have positive effects not just on the workplace, but on employees' health status (and thus the health of the State Health Plan) as well? Two benefits for the price of one!]*

Sick and tired of your lousy boss?

It's more than a mere irritation. It could kill you.

Swedish researchers report that workers saddled for four years with managers who were inconsiderate, opaque, uncommunicative, and poor advocates were about 60 percent more likely to suffer a heart attack or other life-threatening cardiac condition. By contrast, employees whose managers exhibited robust leadership skills were roughly 40 percent less likely to suffer heart emergencies.

And the boss effect appeared to trump other considerations, including work load and whether the employee smoked, exercised, or had weight problems, researchers found.

[To read the entire article, go to <http://www.newsobserver.com/business/story/1314600.html>.]

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*News You Can Use*  
***Thinking of Retiring?***

For those who are planning their retirement, here's something you might not know:

There is about a three-month lag between the time an individual retires and when they actually receive their first retirement check. For those who don't have other resources to fall back on, it can be a long three months!

Fortunately, the State Employees Credit Union has agreed to assist employees with this dilemma by "loaning" them the monthly amount they'd be receiving. When the retirees receive their first check about four months after retiring, it contains all of the back pay for the first three months as well as the fourth month's pay. The Credit Union treats the loan just like a salary advance, taking what is owed to them out of this first, big check.

For more details, call 962-9191 and ask for the loan department.

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*News You Can Use*  
***Free Health Screenings for Low-Income Women***

A Susan G. Komen grant with UNC Dept. of Family Medicine offers free mammograms to low-income women who live in Caswell, Chatham, Durham, Edgecombe, Franklin, Granville, Harnett, Johnston, Nash, Orange, Person, Vance, or Wake Counties.

For information or to ask about eligibility criteria, please contact Teresa Brooks at (919) 966-3133 or Gloria Estefes at (919) 548-4145.

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*News You Can Use*  
***Who Cares? A Health Care Booklet & Website for Seniors***

To help provide reliable sources of health information to seniors and their family members, caregivers, and friends, the Federal Trade Commission has developed a new booklet and Web site.

Who Cares: Sources of Information About Health Care Products and Services, online at [www.ftc.gov/whocares](http://www.ftc.gov/whocares), urges older consumers to discuss their health-related decisions with doctors and other trusted health care providers.

Copies of the Who Cares booklet can be ordered from the FTC's Consumer Response Center. Call toll-free: 1-877-FTC-HELP. For bulk orders of the booklet, go to [www.ftc.gov/bulkorder](http://www.ftc.gov/bulkorder).

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*From the "I wish I'd said that" Department*

***Editorial: Thrift, from top down***

Tuesday, November 25

From: [http://www.news-record.com/content/2008/11/24/article/editorial\\_thrift\\_from\\_top\\_down](http://www.news-record.com/content/2008/11/24/article/editorial_thrift_from_top_down)

Even as some colleges fear having to close in the face of a trying economy, some college presidents are doing very well, thank you.

Salaries of public university presidents rose 7.6 percent in 2007-08, reports a national survey by the Chronicle of Higher Education.

The Chronicle adds that nearly one-third of public university presidents earn more than \$500,000 a year. Fifteen made at least \$700,000 in 2007-08, nearly twice as many as the year before.

(snip)

Thankfully, the salaries for top administrators in North Carolina's public universities are far more reasonable. (snip)

[To read the full article, click on the link.]

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### ***Quote of the Day***

They "should be shot, they should be fired from their [expletive deleted] jobs."

– Bernie Marcus, CEO of Home Depot, responding to the idea that employees should be allowed to join unions  
Reported in the *Wall Street Journal*, Thomas Frank, "It's Time to Give Voters the Liberalism They Want," November 18, 2008.

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### ***Editorial Opinion***

***Why Not Close the University?***

Brenda Denzler, *InTouch* Editor

Every month three of the top officials in the Administration at Carolina (and sometimes more) meet with the officers and a few delegates of the Employee Forum to discuss matters of concern. This

opportunity for high-level dialog has proven to be a valuable way for staff employees to get the ear of the Administration on some issues that have been very important to us. And the Administration, as a general rule, always responds to these inquiries and requests. It's not always the response we hope for, but sometimes it is...and it's always an honest exchange of opinions.

Most of the time at these meetings, the Forum brings issues to the Administrators. But every once in a while, it's the other way around. Sometimes the Administration has an issue they want to get our feedback on. That's what happened last summer when we were asked what we thought of the idea of shutting down the University between Christmas and New Year's Day each year.

As we all know, the "paid holiday" benefits of working for the State kick in big time around the winter holidays. Many of us look forward to the resulting short work weeks when we have several paid days off in a row. In fact, many of us maximize our "down" time from the job by taking some personal leave during those weeks. It's like getting a longer vacation for the price of only a few personal days. The net result for the campus is that it becomes almost a ghost town for about a week each year.

Unfortunately, this option of taking personal time is not available to everyone because in some areas on campus certain positions must be staffed if the University is open. This can present management headaches for supervisors who have to choose who gets to take time off and who must come in to work...even if it's not very productive work time. Those who work on those short weeks know that they can't count on getting some kinds of tasks done because of the short staffing in their own and other departments.

The Administration is interested in formalizing what has been happening anyway across campus for years: They want to officially close the University for that one week, thus eliminating staffing problems in some areas and enabling the University to save a bit of money by shutting down non-essential operations.

The catch is that this would require staff employees to take personal leave time for those days that are not already paid holidays (if they want to be paid for those days). What has been an *option* for many would become a *requirement* for all. And *that* is guaranteed to be controversial.

It is not unprecedented, however. A couple of our sister institutions already do this. The Administration has the power to choose to close the University and require staff to take personal leave time in order to get paid for those days. They don't need our approval. So when I heard them ask us what we thought, in our meeting last summer, I considered it a mark of respect that they bothered to ask us at all.

Still, I could feel my hackles rise slightly at the idea that I might be required by the Administration to take leave time that is provided to me by the State for use at my discretion. How dare they?!!

A moment's reflection, however, left me feeling a bit chastened. Chances are I would take those few days off voluntarily, anyway, I admitted to myself. So what's the big deal?

I realized that the issue is not the time; it's the control. If the University does this, I will lose just a little bit of control over my work life. What I would do willingly out of personal desire, I will have to do by compunction, instead—and at a personal cost to me, to boot. The University takes control, and I lose it. Isn't that a good enough reason to be against this proposal?

I have decided that in this case, it is not. I think staff should support the Administration's interest in closing the University for an extra two or three days during the week between Christmas and New Year's.

There are things that the Administration does (or tries to do) that staff object to—and rightly so, in my opinion. The situation with the Housekeepers from the Housing Department is far from settled; the issue of the censorship of this newsletter last summer is also not completely behind us yet; employees get laid off in ways that violate the University's own policies and past practices. In short, there are times when the Powers That Be attempt to encroach on your rights or take actions that seriously disrupt your workplace, and in all good conscience you have to object.

But there are also times when that is not what is happening. There are times when the Powers That Be note how you are *already* using your personal freedoms and think that what you're doing is a good idea that could be beneficial for the institution if it were done campus-wide. To accomplish this, those actions have to be formalized so that what has been happening randomly, according to personal whim, becomes a predictable and manageable thing.

This is not, in my opinion, a case of the University taking the lead to do things that staff employees would never think to do, or want to do, themselves. This is a case of the University wanting to *follow* our lead. And they have done us the double honor of asking our opinion about it beforehand.

Though we need to make sure there are safeguards in place for employees who don't have enough leave time, for the vast majority of us, being required to take a couple of personal leave days once a year won't be much of a hardship.

I think we need to give the close-down a thumbs up.