

From *Inside Higher Ed*

Layoffs Without 'Financial Exigency'

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One of the ultimate protections of being a tenured faculty member, historically, has been being immune from layoff in all but the most extraordinary circumstances. Under policies issued by the American Association of University Professors and largely accepted by higher education leaders, only institutions that declare "financial exigency" -- a state so dire that it "threatens the survival of the institution as a whole" -- can eliminate the jobs of tenured faculty members.

Given the strict criteria on when an institution can declare exigency, and the obviously unwelcome scrutiny such a declaration would bring about, institutions have hesitated to invoke that status. As a result, while institutions eliminate adjunct positions all the time, the tenured faculty member has been protected.

But maybe not so much anymore. In a series of recent actions, colleges appear to be ignoring the exigency requirement either when eliminating tenured jobs or considering the possibility of doing so. Administrators defend their moves as necessary to manage institutions in tight financial times, but faculty leaders see an erosion of a key right.

Consider these developments:

- Florida State University, without declaring financial exigency, is currently moving ahead with [layoffs for 21 tenured faculty members](#) (along with many more who lack tenure).
- Clark Atlanta University [eliminated 20 tenured faculty members' jobs](#) last year (along with more layoffs of non-tenured faculty members) without declaring financial exigency.
- The Idaho Board of Education last month changed the rules on the budget cuts that public college and university presidents can impose without declaring financial exigency. The impact of the language that was approved is in dispute. Everyone agrees that campus presidents can now impose furloughs without declarations of financial exigency. Faculty members believe the language could be used to impose layoffs -- including of tenure faculty members -- without a declaration of exigency.
- The University of System of Georgia on Monday released lists of program and position cuts its campuses would make -- including the elimination of tenured faculty positions -- if additional steep cuts are ordered by the state. The lists were compiled at the request of legislative committees and nobody in higher education is pushing the planned cuts. But while faculty groups are insisting that these cuts could be imposed only under a state of exigency, the system has resisted linking an exigency declaration to the potential cuts.

Why does a declaration of exigency matter so much? "It really guts tenure when you have layoffs" without financial exigency, said Jack Fiorito, a professor of management and president of the faculty union at Florida State University. Right now, he said, Florida State is hiring in some programs, even as tenured faculty members must search for work elsewhere while waiting for the outcome of a union grievance on the layoffs. True tenure rights should mean that no university with the means to be hiring some faculty members should be getting rid of those promised lifetime job security in other academic areas, he said.

So if declaring financial exigency would give colleges more flexibility to impose layoffs, why don't they want to do so?

Officials cite a variety of reasons, including concerns that bond-rating agencies or accreditors may immediately impose extra reviews, and that students and donors might be scared off. They argue that the current economic downturn is so severe that colleges need more flexibility even if their financial survival isn't threatened. Indeed, given the general unwillingness of states to close public colleges and universities, but great willingness to impose deep cuts, some state higher education leaders say that they need more budget-balancing options to be available quickly -- even if they can't claim that their campuses are about to collapse.

Mark Browning, a spokesman for the Idaho Board of Education, said that these times really are different. "You've got to give the presidents all the tools possible to manage" in a situation where "conditions erode rapidly" and colleges could easily run out of money, he said. The speed with which financial realities change today may not allow a state board to meet and deliberate on financial exigency before a president needs to impose cuts, he said. (Browning stressed his belief, however, that the new authority approved by the board doesn't extend to layoffs, although he acknowledged faculty fears on the issue.)

A related issue, said John Millsaps, associate vice chancellor of the University System of Georgia, is that higher education systems are being forced to plan for budgets that they hope to avoid. In the last year, the university system has seen state support fall from \$2.3 billion to \$2.1 billion, and the governor's proposals for next year would bring state funds down to \$1.9 billion. The new list of program cuts is in response to state legislative committees that, noting a massive additional shortfall in the state budget, asked the university to come up with plans to cut an additional \$300 million in state funds.

In planning, the Board of Regents has told individual campuses that they may not declare exigency, and that only the system could do so, as a system -- an event considered highly unlikely.

Millsaps noted that, even if the additional cuts were imposed, something he said system officials hope does not happen, it's not clear that exigency would be appropriate. "We aren't going to take steps that aren't necessary," he said. In fact, he said it would be wrong to declare much of anything about the fiscal health of the university system without knowing what the final state budget looks like.

Likewise, he said system officials are not endorsing the list of potential cuts that they have just released. The system had to comply with the legislative requests for cuts, he said. "We want to give a realistic picture [to legislators] so they understand the magnitude of what they are asking of us," he said. "Our hope is that once legislators see these levels of magnitude, they will help work with us to help mitigate that."

So Millsaps said that the decision to declare financial exigency is one question while the development of lists of potential cuts is another. He acknowledged, however, that the additional \$300 million in cuts does in fact involve tenured faculty jobs -- primarily through colleges and universities saying that they would deal with cuts by eliminating entire programs.

Some of [the institutional cut plans](#) submitted specifically state that tenured jobs would not be at risk, although these plans typically have exceptionally high projected layoffs for those off the tenure track. The University of Georgia, for example, says that it could absorb its share of the cut in part by eliminating 543 filled instructor positions held by those off the tenure track, but that it could avoid tenured or tenure-track cuts.

But the plan for Georgia Southern University calls for eliminating 33 tenured faculty positions and the plan for the University of West Georgia would eliminate 17 tenured faculty jobs. Many of the plans call for eliminating entire departments and their associated faculty -- and while they don't specify that tenured faculty would be included, they suggest that would be the case (at least in any programs with tenured faculty members).

The reports are detailed on the negative impact that all of the cuts would have on students, with enrollment limits, fewer options for majors and so forth. And university leaders say that detailing all of these impacts doesn't mean that they want layoffs, but is part of a strategy to avoid or minimize them.

That doesn't reassure Hugh D. Hudson Jr., a history professor at Georgia State University and executive secretary of the Georgia Conference of the AAUP. He views the current process as "a massive assault on tenure."

That's for several reasons. One is that AAUP guidelines do not allow program elimination (as is central in all of the plans) to be a substitute for declaring financial exigency when it comes to eliminating tenured jobs. The AAUP rules give colleges the right to eliminate academic programs for educational reasons decided by the faculty -- and in those cases, tenured lines may be eliminated, although the colleges are supposed to make every effort to find other appropriate positions for those who'd lose their jobs. But that's supposed to be an educational decision-making

process, not a budget-cutting process. That's also an issue at Florida State, where administrators have justified the layoffs by saying those losing their jobs are in areas from which the university has decided to withdraw.

Hudson said he is receiving calls from around the state with reports that the campuses have been told that they can go ahead and eliminate programs (if the additional cuts are ordered) without financial exigency and with tenured faculty members losing jobs. The campuses "are being told to just figure it out," he said.

Idaho may provide an illustration of why faculty members care so much about the process of declaring financial exigency. In 1981, the state board declared financial exigency and layoffs followed, including some of tenured faculty members. Some of those faculty members sued, and won a court battle over the appropriateness of the declaration of financial exigency and the way layoffs were determined. The AAUP censured the University of Idaho over the issue in 1983, lifting the censure in 1989. A key part of the lifting of the censure was an agreement about declaring financial exigency, with stipulations about the conditions that would be required for such a declaration.

Nick Gier, a professor emeritus of philosophy at the University of Idaho and president of the Idaho Federation of Teachers, said that the board's recent action followed presidents "begging for more power" to make cuts as they wish, regardless of the pledges made in 1989. (Idaho law bars collective bargaining by public college faculty members, but the federation -- an affiliate of the American Federation of Teachers -- works on behalf of faculty members while pushing to change the law.)

Gier said that the disputes of the 1980s show why "emergency powers" should be reserved for true emergencies that have been verified as such, not just declared by a campus administrator. He said that the strict rules that have been in place have forced administrators to look elsewhere -- not at tenured faculty members -- when making cuts. "And I've been amazed at how well the university has responded to significant cuts" without layoffs, he said.

Gary Rhoades, general secretary of the AAUP, said that "no one is contesting that we face bad times" economically in higher education. But he said that colleges are trying to have it both ways. "What you have is institutions playing a game of internally invoking financial difficulty, but not wanting externally to indicate financial difficulty in ways that could hurt their public image or bond rating."

Rhoades also said that the protection provided by financial exigency rules -- namely that in many rounds of cuts, tenured faculty jobs can't be included -- is appropriate. "What has been happening nationally is that we have been moving money away from the students and educational activities, moving money away from hiring tenure-track faculty," he said. A strong tenured and tenure-track faculty, he said, is directly related to student learning in that these professors develop the curriculum and build relations with students. "The very first thing we should be protecting are the people and activities that serve the students," he said, and financial exigency rules do that.

Although Rhoades said he is "skeptical" that significant layoffs of tenured faculty members are needed or will help higher education, he said it was possible that some institutions need to declare financial exigency. But he said that the traditionally high standard for such declarations was appropriate. "You have checks and balances and you have a wide range of people, not just administrators, determining how dramatic an economic situation is," he said.

— **Scott Jaschik**