

# 國立臺北教育大學學生兼任助理學習與勞動權益保障處理要點

## National Taipei University of Education Student Employment Guideline Relating to Adjunct Assistant Learning and Labor Rights Protection

104年8月26日本校第120次行政會議通過

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- 一、國立臺北教育大學(以下簡稱本校)為兼顧培育人才之目的，並保障學生兼任助理學習及勞動權益，特依據教育部訂頒「專科以上學校獎助生權益保障指導原則」(以下簡稱教育部指導原則)及勞動部訂頒「專科以上學校兼任助理勞動權益保障指導原則」(以下簡稱勞動部指導原則)，訂定「國立臺北教育大學學生兼任助理學習與勞動權益保障處理要點」(以下簡稱本要點)。
  1. National Taipei University of Education (hereinafter referred to as NTUE) Student Employment Guideline Relating to Adjunct Assistant Learning and Labor Rights Protection, for which this guideline was founded upon "Ministry of Education College and University Scholarship Student Rights & Benefits Protection Guideline" (hereinafter referred to as the MOE Guideline) and "Ministry of Labor College and University Student Employment Guideline Relating to Adjunct Assistant Labor Rights Protection" (hereinafter referred to as the MOL Guideline), established "National Taipei University of Education Student Employment Guideline Relating to Adjunct Assistant Learning and Labor Rights Protection" (hereinafter referred to as this Guideline).
- 二、本要點所稱學生兼任助理，係指本校在學學生研究獎助生、教學獎助生、附服務負擔助學生(以下簡稱獎助生)、研究計畫臨時工、工讀生及其他不限名稱之學生兼任助理工作者。
  2. The adjunct assistant, assumed by students, termed by this Guideline, refers to scholarship-based research students, scholarship-based tutoring students, service-subsidy students (hereinafter referred to as scholarship-based student), research program temporary staff, part-timers and other adjunct-assistant students.
- 三、本要點所保障之學生兼任助理，分為「獎助生」與「勞僱型」兼任助理兩類如下：
  - (一)「獎助生」：係指本校學生依教育部指導原則第四點，參與以學習為主要目的及範疇之教學研究活動，或領取學校弱勢助學金參與服務活動之附服務負擔助學生者，與本校或教師均無僱傭關係，其活動亦無勞務與報酬之對價關係。
  - (二)「勞僱型」兼任助理：係指本校學生依教育部指導原則第十四點，與本校存有提供勞務獲取報酬之工作事實，且具從屬關係，屬僱傭關係者；其認定原則，依勞動部指導原則辦理。如屬承攬或其他非屬僱傭關係者，則另依相關法令規定辦理。本校(各單位、計畫主持人、教師)進用學生兼任助理時，宜以書面或電子文件確認雙方關係(「獎助生」或「勞僱型」)，並充分告知相關權利義務。
  3. This position of student adjunct assistant, protected by this guideline is of scholarship-based and employment-based types of adjunct assistant roles:
    - (1) Scholarship-based: In accordance with Clause 4 of the MOE Guideline, this refers to the students of this school who participate in teaching and research activities of learning objectives

and scope, or those who receive service-based subsidy and engage in service activities. These activities are irrelevant to payment or any form of compensation and of no employment association to this school or teaching staffs.

- (2) Employment-based: this refers to any NTUE student, in accordance with Clause 14 of the MOE Guideline, having paid-employment relationship with NTUE, along with actual supervisor-employee relationship of employment relationship; as recognized and defined by the MOL Guideline. For those who are contractors or other non-employment relations, other relevant regulations apply.

As NTUE (all units, program supervisor, teachers) recruit students to be adjunct assistants, there should be written or electronic documents to confirm the nature of employment relationship (scholarship-based or employment-based), as well as fully communicate all relevant rights and obligations.

#### 四、「獎助生」所為課程學習或附服務負擔之範疇如下：

##### (一)課程學習：

1. 指為課程、論文研究之一部分，或為畢業之條件。
2. 前目課程或論文研究或畢業條件，係學校依大學法、專科學校法授權自主規範，包括實習課程、田野調查課程、實驗研究或其他學習活動。
3. 該課程、論文研究或畢業條件應一體適用於本國學生、外國學生、僑生、港澳生或大陸地區學生。
4. 符合前三目條件，未有學習活動以外之勞務提供或工作事實者。

(二)附服務負擔：指大專校院為協助弱勢學生安心就學，提撥經費獎助或補助學生，並安排學生參與學校規劃之無對價關係之服務活動。

前項獎助生，不包括受學校僱用之學生，及受學校指揮監督，並以獲取報酬為目的從事協助研究、教學或行政等工作，而應歸屬於有對價之僱傭關係之兼任助理。

4. The scope of curriculum learning or service responsibilities of scholarship-based assistant are as follows:

##### (1) Curriculum Learning:

- I. Part of curriculum, dissertation research, or graduation pre-requisites
- II. Current curriculum or dissertation research or graduation pre-requisite, as autonomous guideline deemed eligible by the University Act, College Act, including internship, field-study, experimental research or other learning activities
- III. Curriculum, dissertation research or graduation pre-requisite should consistently apply to local and overseas students, overseas Chinese students, Hong Kong and Macau students or Mainland China students
- IV. Those who fit the first 3 criteria and without any labor-provision or working experience outside learning activities.

(2) Service-subsidized: referring to service activities without pay or any form of compensation, offered by universities while giving subsidy to disadvantaged students.

The aforesaid scholarship-based students, not including students hired by the school, or those who are supervised by NTUE in assisting research, teaching or administrative work to obtain compensation, belongs to the category of adjunct assistant work for corresponding employment

relationship.

五、「獎助生」所從事之學習活動，應符合下列原則：

- (一)該學習活動之主要目的，應與前點所定範疇有直接相關性，並於授課或指導教師之指導下，經學生與指導教師同意為之。
- (二)應有明確對應之課程、教學實習活動、論文研究指導、研究或相關學習活動實施計畫，並就其相關學習準則、評量方式、學分或畢業條件採計及獎助方式等予以明定且公告之。
- (三)教師應有指導學生學習專業知識之行為。
- (四)學生參與前開學習活動期間，得支領獎學金或必要之研究或實習津貼或補助。
- (五)獎助生參與學習活動之權益，本校應予規範保障。學生如參與具危險性學習活動時，教師應落實安全保障。
- (六)針對各類獎助生從事相關研究、教學或服務等活動期間，除原有學生團體保險外，應參照勞動基準法規定職業災害補償額度以加保商業保險方式增加其保障範圍，並由學校編列或教育部支應所需經費。
- (七)研究獎助生或教學獎助生於學習活動之相關研究成果著作權之歸屬，除雙方另有約定外，依下列原則為之。

1. 著作權歸屬：

- (1)研究報告或碩、博士論文，如指導之教師僅為觀念指導，並未參與內容表達之撰寫，而係由學生自己撰寫報告或論文內容，依著作權法規定，學生為該報告或論文之著作人，並於論文完成時，享有著作權（包括著作人格權及著作財產權）。
- (2)研究報告或碩、博士論文，如指導之教師不僅為觀念之指導，且參與內容之表達而與學生共同完成報告或論文，且各人之創作，不能分離利用者，為共同著作，學生及指導之教師為報告或論文之共同著作人，共同享有著作權，其共同著作權（包括著作財產權及著作人格權）之行使，應經學生及指導之教師共同同意後，始得為之。

2. 專利權歸屬：依專利法第五條第二項，除專利法另有規定或契約另有約定外，學生自身為發明人、新型創作人、設計人之情形，對其所得之研究成果享有專利申請權，得依同條第一項向專利專責機關申請專利。但他人(如指導教師)如對論文研究成果之產出有實質貢獻，該他人亦得列為共同發明人。

5. Learning activities by "scholarship-based assistant" should be in accordance with the following principles:

- (1) The main purpose of this learning activity should be directly related to the scope set out in the preceding paragraph and will be agreed upon by the students and the teacher as directed by the lecturer or the supervisor.
- (2) Relevant activities or programs should comprise of clearly correlated curriculum, practical experience activities, dissertation supervision, research or relevant learning activities, while having specified and well published learning standards, assessment methodology, academic credits, or graduation pre-requisite and award-assistance, etc.
- (3) The teachers should behave in such as way so as to guide and supervise students' learning of professional knowledge.

- (4) During students' participating period of aforementioned learning activities, students are entitled to receive scholarship aid or necessary research or internship allowance or subsidies.
- (5) The responsibilities and obligations of scholarship-based assistants in participating in learning activities should be regulated and protected by NTUE. If students are participating in dangerous learning activities, teachers need to ensure safety in activities.
- (6) For the duration of all associated research, teaching or service activities, apart from the existing student group insurance, additional commercial insurance, as regulated by the Labor Standards Act should be made, which may be paid for by relevant school budget or subsidy from Ministry of Education
- (7) The ownership of copyright for relevant research achievements generated from scholarship-based research students or scholarship-based tutoring students, should be subject to the following guidelines, unless agreed upon otherwise:
  - I. Copyright Ownership:
    - A. For research reports, or thesis for master or doctorate degree, which the supervising teachers are only of conceptual guidance, and not taking part in writing expression, as students write the report content themselves, in accordance with the Copyright Law, students shall be the authors of the report or thesis, and have the copyright (including the moral right and copyright) when the paper is completed.
    - B. For research reports, or thesis for master or doctorate degree, which the supervising teachers are not only of conceptual guidance, but also taking part in writing expression so as to collaboratively complete the report content with students, in accordance with the Copyright Law, teachers and students shall be the co-owners of the copyright of the scholar writing (including the moral right and the copyright), which shall be agreed upon by both teachers and students.
  - II. Patent Ownership: According to the Article 5 (2) of the Patent Act, unless there are additional provisions of the Patent Law, or contracts otherwise agreed upon, the students themselves as inventors, new model creators or designers, the research achievements are entitled to apply for a patent, according to Article 5 (1), to the patent office for patent applications.

六、「獎助生」對於課程學習或服務學習等活動之措施或處置，認有違法或不當，致損害其權利或利益者，得於該措施或處置作成或發布之次日起三十日內以書面向本校「學生申訴評議委員會」提出申訴。學生提出申訴前，應由所屬系所(院)、計畫執行單位或其他學習主管單位先行協調處理，並提出書面說明。  
前項學生申訴悉依「國立臺北教育大學學生申訴辦法」規定辦理。

6. If Scholarship-based students believe that there is illegal or inappropriate implementation or disposal of the curriculum learning or service learning, which lead to any damage to his or her rights or interests, shall file appeal to NTUE Student Appeal Board within thirty days from the second date on the aforementioned illegal or inappropriate implementation or disposal. Before students raise their complaints, there should be coordinated effort from the affiliated faculty (institute), program department, or other learning department to mediate, before producing written report for the mediation proceeding.

The aforementioned student complaint should be processed in accordance with "NTUE Student Appeal Procedure".

- 七、「勞僱型」兼任助理應於起聘日前完成校內聘僱及勞保加保程序始得進用，不得追溯聘期，並至遲於到職日完成簽訂勞動契約事宜。
7. Employment-based adjunct assistant should have on-campus employment and labor insurance procedure completed before the commence date of employment, in order for the employment to take effect without back-track employment period, and the signing of contract cannot be later than the on-board date.
- 八、「勞僱型」兼任助理契約內容應包含聘期、工作內容、工作地點、工作時間、工作酬勞、權利義務及其他工作條件等事項。
8. Employment contract for employment-based adjunct assistant should include employment duration, job content, job location, working hours, employment compensation, rights & obligations and other working conditions.
- 九、「勞僱型」兼任助理工作酬勞由勞資雙方依相關規定辦理，惟不得低於中央主管機關所核定之基本工資。
9. Employment-based adjunct assistant employment compensation should be processed by both parties in accordance with relevant regulations, and shall not be lower than the minimum wage regulated by the central governing authorities.
- 十、「勞僱型」兼任助理工作酬勞之給付，依勞資雙方約定時間核發，次月核發上個月薪資。但因補助機關尚未核撥經費等特殊原因者，從其約定。惟不得預扣工作酬勞作為違約金或賠償費用。
10. Employment-based adjunct assistant employment compensation should be issued according to the timing agreed upon by both parties, and the payment shall be made one month after the end of the salary period. However, if due to special circumstances such as the subsidy authorities have not yet allocated funds, then separate agreement shall be reached. Regardless, work compensation cannot be provisionally deducted as contract penalty or reparation.
- 十一、「勞僱型」兼任助理因業務需要，經計畫主持人、教師或其他單位主管指定加班者，應事先申請，並經計畫主持人、教師或其他單位主管同意後，始得加班。未依規定完成核定程序者，不得視為加班。前項加班得選擇補休或支領加班費。
11. Over-time for employment-based adjunct assistant, if designated by program supervisor, teacher or other division head, needs to be applied in advance, and to be approved by the program supervisor, teacher or other division head, before the over-time can be implemented. For any over-time not approved by following the required procedure, it shall not be regarded as over-time. The aforesaid over-time can only be given compensatory leave or receiving overtime pay.
- 十二、「勞僱型」兼任助理之給假，依勞動基準法(以下簡稱勞基法)、勞工請假規則、性別工作平等法及本校相關規定辦理。前項人員如須請假或調移工作時間者，應事先辦妥請假或調班手續。如因急病或緊急事故，應先口頭報告計畫主持人、教師或其他單位主管，經其同意，或委請同事代辦或補辦請假手續。

12. The leave policy of "Employment-based" assistant shall be based on the Labor Standards Act, the Rules on Leave-taking by Workers, the Gender Equality in Employment Act and NTUE relevant protocols. If personnel in the previous circumstance need to apply for leave or change working time-slot, leave application or time-shift procedure should be processed in advance. In case of illness or emergencies, verbal notice shall be made to the program supervisor, teacher or other division head, for their approval; other colleagues can also lodge the leave application on behalf of the assistant.

十三、「勞僱型」兼任助理請假及差勤，由計畫主持人、教師或其他單位主管依本校及勞基法規定辦理，出勤紀錄應保存至勞工離職之日起五年止。

13. Program supervisor, teacher or other division head should handle leave and attendance of employment-based adjunct assistant in accordance with the relevant provisions of the school and of the Labor Standards Act. The attendance record shall be kept for five years from the date of the departure of the employee.

十四、「勞僱型」兼任助理協助或參與計畫主持人執行研究計畫所產出相關研究成果，除雙方另有約定外，依下列規定辦理：

(一)著作權歸屬：依著作權法第十一條規定，學生為著作人，本校享有著作財產權。

(二)專利權歸屬：依專利法第七條第一項規定，研究成果之專利權歸屬於本校。

14. The relevant research achievements generated from the work of employment-based adjunct assistant or program supervisor shall be subject to the following guidelines, unless agreed upon otherwise:

(1) Copyright Ownership: According to Article 11 of the Copyright Act, when the student is the author, NTUE owns the copyright.

(2) Patent Right Ownership: According to Article 7 (1) of the Patent Act, the patent right of the research achievements belongs to NTUE.

十五、「勞僱型」兼任助理到職時，本校(計畫主持人、教師、各單位)應依「勞工保險條例」、「就業保險法」、「全民健康保險法」、「勞工退休金條例」等規定，主動申辦加保(轉入)及提繳勞工退休金，其契約期滿或中途離職時，亦應主動申辦退保(轉出)及停繳勞工退休金。

前項人員應自行負擔之保費及自提之勞工退休金，除有特殊情形外，原則由本校按月自薪資中代為扣繳。

未依第一項規定辦理，其所衍生之費用或違反規定而受罰，應依序由當事人、計畫主持人(結餘款)、教師(結餘款)或單位(單位經費)支付。

15. When the employment-based adjunct assistant commences his/her employment contract, the school (program supervisor, teacher and each division) shall be subject to the provisions of the Labor Insurance Act, the Employment Insurance Act, the National Health Insurance Act and the Labor Superannuation Act. The school shall take the initiative for insurance enrollment (transfer in) and labor superannuation allocation. When the contract expires or the employee separates, the school shall also take the initiative for cancellation of insurance (transfer out) and labor superannuation. Except special circumstances, premiums and the labor superannuation borne by the aforementioned assistant shall be deducted from payroll each month by the school on behalf of the assistant.

If not processed in accordance with Article 1, and consequently penalized in accordance with the expenses or violation of the provisions, the sum shall be paid in the following order by the party concerned, the program supervisor (surplus budget), the teacher (surplus budget) or the unit (unit funds).

- 十六、「勞僱型」兼任助理如擬於契約期滿前先行離職，應於三十日前提出申請，經計畫主持人、教師或其他單位主管核准後，應於離職生效日前辦妥離職手續，並得申請核發離職證明書。未依規定提出辭呈逕行離職，致本校受有損害者，本校得依法請求賠償。
16. If employment-based adjunct assistants wish to leave their post before the expiry date of the contract, they shall submit their resignation 30 days in advance. After gaining the approval from the program manager, teacher or other division head, the departure formalities must be completed before the effective date of departure; the employment separation certificate can then be applied. If failing to submit your resignation in accordance with the regulations and further leading to any loss or damage to the school, the school shall claim for compensation according to law.
- 十七、「勞僱型」兼任助理或本校之一方，於聘僱期間，如有勞基法第十一條、第十二條、第十四條及本校相關規定所訂終止契約情事者，依勞基法相關規定辦理。
17. In any cases of employment-based adjunct assistants or the school terminating the employment contract under the circumstances stipulated in Article 11, Article 12 and Article 14 of the Labor Standards Act and the relevant provisions of the school, the employment shall be handled in accordance with the relevant provisions of the Labor Standards Act.
- 十八、計畫主持人、教師或其他單位主管與「勞僱型」兼任助理於聘僱期間應遵守下列事項：
- (一)計畫主持人、教師或其他單位主管之配偶及三親等以內血親、姻親不得在其主管單位中任職。
  - (二)兼任助理應依工作時間出勤，並親自簽到退，違者議處。
  - (三)雙方應遵守職業安全衛生法及相關法規規定。
  - (四)兼任助理應接受計畫主持人、教師或其他單位主管之指揮監督。
  - (五)兼任助理於工作時間內，不得擅離工作崗位。
  - (六)本校因業務需要，在不違反勞動法令之規定下，得為工作之調整。
  - (七)兼任助理應尊重他人與自己之性或身體之自主，避免不受歡迎之追求行為，並不得以強制或暴力手段處理與性或性別有關之衝突。
  - (八)僱用兼任助理，應遵守就業服務法及性別工作平等法規定，不得有就業歧視。
18. Program supervisor, teachers or other division head and employment-based adjunct assistants shall abide by the following guideline, during the period of employment:
- (1) The spouse, relative by blood within three generations and relative by marriage of program supervisor, teacher or other division head shall not serve in the relevant divisions.
  - (2) Adjunct assistants are required to abide by the agreed working hours, and personally sign in and sign out in attendance record; otherwise, penalty shall occur.
  - (3) Both parties shall abide by the Occupational Safety and Health Act and relevant regulations.
  - (4) Adjunct assistants should accept the command and supervision from program supervisor,

teacher or other division head.

- (5) Adjunct assistants shall not be absent from work during the contracted working hours.
- (6) NTUE reserves the right to adjust working positions of employees, while in compliance with the Labor Standards Act.
- (7) Adjunct assistants shall respect others' and their own autonomy over their sexuality and body, avoid undesirable courting gestures, and must not use forcible or violent means to handle conflicts related to sex or gender.
- (8) Adjunct assistants should comply with the Employment Service Act and the Gender Equality in Employment Act, as employment discrimination is prohibited.

十九、本校與「勞僱型」兼任助理間之權利義務除依勞動部指導原則及本要點外，應依勞基法及其相關勞動法令辦理。

19. The rights and obligations between the school and the "Employment-based" assistant shall be handled in accordance with the MOL Guideline and this guideline, as well as those of the Labor Standards Act and relevant labor regulations.

二十、為增進校內和諧及落實學生權益保障，本校另設置「學生兼任助理學習與勞動身分認定申訴委員會」(以下簡稱身分認定申訴委員會)處理學生兼任助理「獎助生」或「勞僱型」認定之爭議。

對於前項申訴處理結果，雙方如有不服，得依勞資爭議處理法向主管機關申請調解、仲裁或裁決。

20. In order to enhance the school harmony and implement the protection of students' rights and interests, the school also set up the "Student Adjunct Assistant Learning and Labor Identity Appeals Board" (hereinafter referred to as the Identity Appeals Board) to deal with the identity dispute regarding "scholarship-based" or employment-based adjunct assistant.

For the dissatisfaction of the results of the preceding appeal, the two parties may apply for mediation, arbitration or adjudication to the competent authorities in accordance with the Act for Settlement of Labor-Management Disputes.

二十一、身分認定申訴委員會之委員，由副校長、主任秘書、校內法律專長教師、爭議所涉及之業務相關單位、學生所屬學院教師代表及學生代表組成，校內相關單位列席說明，並由副校長擔任召集人。必要時，得視案情需要，由召集人增聘委員，或邀請相關人員列席。本校各計畫主持人、教師、其他單位主管或學生兼任助理對於雙方關係之認定有爭議時，得於爭議事實發生之次日起十日內向身分認定申訴委員會提出申訴。

21. The committee members of the Identity Appeals Board consist of the Vice President, the Chief Secretary, the school's legal professional teachers, the business units involved in the dispute, the academic faculty representative of the student's affiliated college and the student representative. The relevant units shall attend the meeting, and the vice president shall be the convener for such committee. The relevant units shall attend the meeting, and the vice president shall be the chairperson for such committee. If deemed necessary, the convener may recruit additional members or to invite relevant personnel to attend. If the program supervisor, teacher, other division head or student adjunct assistants are in dispute with respect to the determination of the relationship



between the two parties, the appeal shall be filed to the Identity Appeals Board within 10 days from the second date of the occurrence of the dispute.

二十二、身分認定申訴委員會應於收到身分認定爭議之申訴案件之次日起三十日內召開會議，除有不受理或中止評議之情形外，應於收到申訴案件之次日起二個月內作成評議結果報告，必要時，得予延長，並通知當事人。延長以一次為限，最長不得逾一個月。

22. The Identity Appeals Board shall hold a meeting within thirty days from the second date of the receipt of the complaint of the identity dispute. Unless the application is rejected or suspended, the report shall be made within two months from the day following the receipt of the appeal case, and may be extended if necessary. The parties concerned must be notified. Extension may only be allowed once, and the duration of the extension cannot be longer than one month.

二十三、身分認定申訴委員會應有二分之一以上委員出席，並經出席委員二分之一以上同意方得評議。但評議結果應經全體委員過半數之同意。

本校應於作成前項評議結果後十日內以書面方式通知當事人及計畫主持人（教師、單位）。

23. The Identity Appeals Board shall be attended by more than half of the board members and shall be subject to the approval of more than half of the members present for further review. However, the result of the review shall be agreed upon by more than half of all the members.

The school shall notify the party concerned and the program supervisor (teacher, division) in written form within ten days after the result of the aforesaid review has been made.

二十四、「勞僱型」兼任助理對於勞動權益之措施或處置，認有違法或不當，致損害其權利或利益者，得向本校各學生之權責單位提出申訴。

對於前項申訴處理結果如有不服，得依勞資爭議處理法向主管機關申請調解、仲裁或裁決。

24. If Employment-based assistant regards the labor rights implementation being illegal or inappropriate, so as to implicate damage to his/her rights or interest, he/she is entitled to appeal to NTUE's student body.

If not satisfied with the handling of the previously mentioned appeal, in accordance with the Act for Settlement of Labor-Management Disputes, he/she is entitled to appeal to relevant authorities for mediation, arbitration or adjudication.

二十五、本要點經行政會議通過後，並經校長核定後施行。

25. Once this Guideline is reviewed and passed by NTUE Administrative Council, it shall be implemented once approved by the university president.