University Staff Grievances Policy

Policy Summary

The University of Wisconsin-Madison University Staff Grievances Policy outlines the internal university process for the good-faith review and resolution of employment-related grievances filed by University of Wisconsin-Madison University Staff employees. While the university has developed this formal grievance process, employees are encouraged to first seek resolution through informal discussions with their immediate supervisors, as well as other campus resources (e.g., human resources representatives, employee assistance office, ombuds, etc.) to resolve conflicts. If these discussions do not resolve the matter to the employee’s satisfaction, he/she may grieve the issue, following the process defined in this policy.

Employees may exercise all rights described in this policy without being subject to reprisal, harassment or retaliation.

Who This Policy Applies To

This policy applies to full- or part-time University Staff employees with a defined or anticipated appointment greater than one year.

Rationale

UW-Madison strives to hire, develop and retain a high-performing work force. In spite of the best efforts of both managers and employees, there may be instances where disputes arise. The Grievances Policy provides a structured process through which employees may address and seek to resolve workplace concerns.

Policy Detail

Section A – Overview

I. Grievance Process

a. The grievance process is designed to resolve employment issues that have not been satisfactorily resolved through the informal resolution process or where the employee believes that informal resolution would not be productive. The grievance process contains four steps. However, prior to filing a grievance, the employee may pursue informal resolution. If that does not resolve the issue, step 1 of the formal grievance process is at the college, school or division; step 2 is at the Office of Human Resources (OHR); step 3 involves an impartial hearing officer or Wisconsin Employment Relations Commission (WERC); and step 4 is at the Board of Regents. University Staff with an expectation of continued employment may appeal certain working conditions, discipline, layoff, involuntary demotion or dismissal. A grievance must allege that an employee has been, or is being, adversely affected by an improper application, interpretation, or violation of a specific law, university rule, policy, practice, or procedure. A grievance may be denied if it fails to allege a grievable issue.
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Management will attempt in good faith to secure translation services for non-English language speaking employees.

II. Definition of Parties

a. An employee with an expectation of continued employment is defined as a University Staff employee in either a permanent or fixed-term terminal position.

b. A grievance may be filed by one or more University Staff employees. The person filing the grievance is the grievant. The grievance must be filed by the aggrieved employee(s), and may not be filed by anyone else on that employee’s behalf.

c. The respondent is the employer, the University of Wisconsin–Madison. A grievance may not be directed against another employee as an individual.

III. Grievable Issues

a. Disciplinary Action. Disciplinary actions pursuant to the corrective action policy may be grieved through step 3. Written reprimands may be grieved ending at step 2.

b. Dismissal. Dismissal of University Staff employees with an expectation of continued employment may be grieved through step 4 and may begin at step 2.

c. Policy and Procedures. A grievance may be filed to determine whether the action being grieved was made in accordance with relevant university policies, rules or procedures (e.g., compliance with probationary period policy, performance management policy). This includes grievances on employee layoffs and hazardous or unsafe working conditions. These issues may be grieved ending at step 2.

IV. Non-Grievable Issues

a. Discretionary Actions. Discretionary actions such as salary adjustments, lump sum awards, wages, hours of work, assignment of overtime, work standards, staffing levels, work assignments, job title assignments, fringe benefits, performance improvement plans, and performance evaluations may not be grieved unless written policies, rules, or procedures are not being followed.

b. Termination of Probationary Employees. Non-permanent employees such as probationary employees who have been released during their probationary period or dismissal may not grieve their release or whether there was just cause for dismissal.

c. Management Rights. Employees may not grieve activities falling under management rights. University management possesses the sole right to operate to carry out the mission and goals of the university. Management rights include, but are not limited to:

   i. The ability to utilize personnel, methods, and means in the most appropriate and efficient manner possible as determined by management.

   ii. To manage and direct university employees.

   iii. To suspend, demote, dismiss, or take other appropriate disciplinary action against employees for just cause.

   iv. To determine the size and composition of the workforce and to lay off employees in the event of lack of work or funds or under conditions where management believes that continuation of such work would be inefficient or nonproductive.

   v. To determine the mission of the university, the content of written policies and procedures, and the methods and means selected to fulfill that mission.

   vi. The management of position classification, position qualification standards, establishment and abolition of classifications, and allocation of positions to classifications.
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V. General Requirements

a. Time Limits. An employee initiates a grievance by submitting a written grievance to the employee’s first line supervisor, HR representative, or OHR within 30 calendar days from the date the employee first became aware, or should have become aware with the exercise of reasonable diligence, of the matter grieved.
   i. If an employee fails to observe the time limits established for any stage, the grievance will be considered resolved. If the university fails to observe the time limits for any stage, the employee may appeal the grievance to the next stage within the designated time limits.
   ii. The employee’s first line supervisor, local human resources representative, or OHR will schedule the grievance meeting.

b. Grievance Contents. A written grievance must be filed on the university grievance form. Failure to submit the following information by the filing date may cause a grievance to be denied. A single grievance form may be used for more than one employee if the grievants are grieving the same issue or circumstance. The written grievance must include:
   i. The identity of the grievant and his/her original signature and date. Group grievances must be signed by each grievance group member.
   ii. The action being grieved.
   iii. The specific university work rule, university or department policy, procedure, practice or law which is alleged to have been violated, if known.
   iv. The employee responsible for the action resulting in the grievance.
   v. The relief sought.
   Note: The grievant may provide additional relevant documents or other information pertinent to the grievance as attachments to the grievance form or provide those documents at the hearing.

c. Receipt of Grievance. Receipt of a grievance for purposes of meeting timeline requirements at each step is determined by the date stamp on the grievance form (if hand delivered), digital timestamp (if filed electronically), or envelope postmark (if delivered by U.S. Mail).

d. Grievance Attendance. The grievance hearing shall be scheduled during the grievant’s normally scheduled work hours. The grievant shall attend the hearing without loss of pay. The grievance representative, if a UW-Madison employee, may attend the grievance hearing without loss of pay if the hearing is scheduled during the representative’s normally scheduled work hours with prior supervisor approval. The grievant may choose to submit a written statement in lieu of attending the grievance hearing.

e. Recording of Grievance Hearing. Grievance hearings may not be recorded.

f. Evidentiary Hearing. The steps 1 and 2 evidentiary hearings allow the grievant to present documents, witness statements, and other evidence that support the grievant’s case. Only testimony from the grievant is heard at this evidentiary hearing. All other witness statements must be provided as signed written statements. Upon mutual agreement, the grievant may submit additional information after the hearing, but before the issuance of the decision.

VI. Representation

a. Right to Assistance. Employees have the right to assistance from a representative of their choice at any step in the grievance or disciplinary process. If the grievant wishes to be represented by an attorney, including an employee advocate who is an attorney, the grievant must promptly inform the appropriate employer representative responsible for conducting that step of the grievance process.
   i. The employer has the ability to determine whether the time requested by the representative and/or grievant is a reasonable request.
   ii. Time spent preparing grievances outside of the employee’s regularly scheduled hours of work or any travel or other expenses incurred by the grievant or representative are not the
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responsibility of the employer and will not be reimbursed. Overtime will not result from this grievance activity for either the grievant or grievant’s representative.

c. **Teleconference or Videoconference.** Grievance hearings may be conducted via teleconference or video conference, if the required employee or representative is not located on or near the UW-Madison campus. It is not reasonable to request a representative who is a UW-Madison employee who requires significant travel time to go to the grievant’s work location or hearing location.

VII. **Burden of Proof**

a. The grievant has the burden of demonstrating, by the preponderance of the evidence, the violation of university rule, regulation, policy, or practice in all phases of the grievance process, except as identified below.

b. In cases of dismissal or suspension with loss of pay, the university has the burden of demonstrating, by the preponderance of the evidence, the violation of university rule, regulation, policy, or practice that resulted in the dismissal or suspension with loss of pay.

VIII. **Awards and Relief**

a. At no step of the grievance process may a financial award be ordered for any employee beyond back pay and benefits actually lost, together with reinstatement. At no step of the grievance process may an order for compensation for fees and expenses of representatives, pain and suffering, emotional distress, penalties, or punitive damages be awarded.

SECTION B – Process

I. **Informal Resolution**

a. **Purpose.** The informal resolution step is designed to enable employees and their representative (if applicable) to resolve disputes through discussions with their managers, supervisors, or human resources representatives before initiating a grievance, if requested by either party.

b. **Role of Employee.** An employee who feels that he/she has a grievable matter - a complaint or a difference of opinion regarding the interpretation of written university policies concerning wages, hours and working conditions or another subject not covered by the grievance procedure - should first discuss the issue with his/her immediate supervisor. Both parties should make every effort to resolve the problem. The employee may also contact the OHR Employee Assistance Office (EAO) or the Ombuds Office for additional guidance or assistance.

c. **Role of Employer.** The university will make a good faith effort to informally resolve a problem brought to management’s attention, through discussion and communication with the department or unit involved and with other university officials.

II. **Step 1: Employee Submits a Written Grievance within the College, School or Division**

a. **Purpose.** The step 1 meeting is designed to resolve grievances by informing administration within the college, school or division of the alleged violation of a university work rule, university or department policy, procedure, practice, or a law. The grievant may request that this step be skipped in cases of dismissal or suspension.

b. **Timing of Grievance Submission.** An employee must submit a written grievance to the first-line supervisor or HR representative within 30 calendar days from the date the employee first became aware, or should have become aware with the exercise of reasonable diligence, of the matter grieved.

c. **Attendance.** The grievant and an appropriate divisional representative or designee shall attend the step 1 meeting. Typically, the divisional representative will bring an additional management representative to document the discussion. The employee has the right to bring a representative,
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as outlined in section A VI. Both the employee and representative shall receive notice of the meeting date, time, and location, if indicated on the grievance form.
d. Timing of Answer. The supervisor or HR representative will meet with the employee and provide a written decision to the employee and representative (if applicable) within 30 calendar days from the date the grievance was received.

III. Step 2: Grievance Hearing with the Office of Human Resources

a. Purpose. The step 2 hearing is an internal evidentiary hearing to determine whether there was a violation of a university work rule, university or department policy, procedure, practice, or law.
b. Timing of Grievance Submission. If the employee is not satisfied with the step 1 decision, or if the supervisor or HR representative fails to respond within the 30 calendar-day time limit, the grievant may appeal to OHR within 14 calendar days of receipt of, or deadline for receipt of, the step 1 decision. If choosing to file directly to step 2, an employee must submit a written grievance to OHR within 30 calendar days from the date the employee first became aware, or should have become aware with the exercise of reasonable diligence, of the matter grieved. Grievances regarding discipline or dismissal should be filed directly to step 2. If the employee does not appeal the step 1 decision within 14 calendar days, the grievance will be considered settled and will not be eligible for further appeal.
c. Attendance. The meeting shall be attended by the grievant and an appropriate representative from OHR. The employee has the ability to bring a representative, as outlined in Section A, Part VI. Both the employee and representative shall receive notice of the meeting date, time, and location, if indicated on the grievance form.
d. Timing of Answer. A representative from OHR will meet with the employee and provide a written decision to the employee and representative (if applicable) within 30 calendar days from the date the grievance was received. For all grievances about written reprimands and policies and procedures, this is the final grievance process step.

IV. Step 3A: Impartial Hearing Panel and Campus Hearing Officer

a. Purpose of Impartial Hearing Panel. The step 3 impartial hearing panel provides a grievant with an impartial review of the grievance. The hearing panel is comprised of four impartial hearing officers: two representatives appointed by campus administration and two representatives appointed by University Staff shared governance. The hearing panel will conduct a hearing on the case in accordance with the impartial hearing panel guidelines. If the committee reaches a decision (i.e., to sustain, deny or modify the grievance), the committee will provide a report and recommendation to the Chancellor or Chancellor’s designee. Hearings before the impartial hearing panel are limited to cases of dismissal and suspensions with loss of pay. All University Staff employees who held permanent status in the classified civil service prior to July 1, 2015, may choose to pursue a grievance under this process. When an employee elects to pursue the grievance before an impartial hearing panel, the employee loses the ability to pursue the grievance with the Wisconsin Employment Relations Commission (see step 3B).
b. Purpose of Campus Hearing Officer. The step 3A campus hearing officer provides a grievant with an impartial review of the grievance in cases where the impartial hearing panel is unable to reach a decision (i.e., deadlock). The campus hearing officer will conduct a full hearing regarding the grievance, in accordance with the campus hearing officer guidelines, and issue a written recommendation to the Chancellor or Chancellor’s designee. Hearings before the campus hearing officer are limited to cases of dismissal and suspensions with loss of pay.
c. Timing of Grievance Submission to Impartial Hearing Panel. If the employee is not satisfied with the step 2 decision, or if OHR fails to respond within the 30 calendar day time limit, the employee may appeal the grievance to the impartial hearing panel within 7 calendar days of receipt of, or deadline for receipt of, the step 2 decision. If the employee does not appeal the decision within 7 calendar days, the grievance will be considered settled and will not be eligible for further appeal.
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Both the employee and representative shall receive notice of the meeting date, time, and location, if indicated on the grievance form.

d. **Timing of Grievance Submission to Campus Hearing Officer.** If the impartial hearing panel is unable to reach a decision, the employee may appeal the grievance to the campus hearing officer within 7 calendar days of receipt of the hearing panel decision. If the employee does not appeal the decision within 7 calendar days, the grievance will be considered settled and will not be eligible for further appeal.

e. **Selection.** The impartial hearing panel and campus hearing officer shall be selected by the process established by OHR in consultation with University Staff shared governance.

f. **Campus Hearing Officer’s Decision.** After conducting a full hearing on the grievance, the campus hearing officer will issue a written decision. The hearing officer’s decision is then forwarded to the Chancellor, or Chancellor’s designee, for review. The Chancellor, or Chancellor’s designee, will determine whether to accept, reject or modify the decision, and any relief determined by the hearing officer. The Chancellor, or Chancellor’s designee’s, decision will be final and binding, and may not be appealed or reviewed, except in cases of dismissal, in which case the employee may appeal the Chancellor’s decision to the Board of Regents.

V. **Step 3B: Wisconsin Employment Relations Commission (WERC)**

a. **Purpose.** According to the provisions of Wis. Stat. § 26.115(6), University Staff employees who held permanent status in the classified civil service prior to July 1, 2015, retain Chapter 230 appeal rights. Therefore, these employees may choose to use the impartial hearing officer process (step 3A) for suspensions with loss of pay or dismissal; OR grieve a disciplinary action (other than written reprimands), layoff or dismissal using the WERC appeal process in place before July 1, 2015.

b. **WERC Submission.** If an employee covered by this provision is dissatisfied with the decision issued by OHR under step 2, the employee may appeal the decision to the WERC under Wis. Stat. § 230.44(1)(c) within 30 calendar days from the date of, or deadline for receipt of, the step 2 decision. If the employee does not appeal the decision within 30 calendar days, the grievance will be considered settled and will not be eligible for further appeal.

c. **Limitation.** If the employee or the employer files an appeal with the WERC, the Commission’s decision is binding. Additionally, the UW-Madison University Staff grievance process will end and the employee will not be able to appeal the WERC decision except when subject to judicial review. An employee who selects this procedure cannot appeal to the Board of Regents (step 4).

VI. **Step 4: Board of Regents**

a. **Purpose.** The step 4 Board of Regents review provides a final administrative review of the Chancellor’s decision, under step 3A, regarding an employee’s dismissal.

b. **Administrative Review.** The Board of Regents shall refer the appeal to the Board of Regents Personnel Matters Review Committee. In accordance with Board of Regents bylaws, the committee will review the record created by the impartial hearing officer, recommend findings and a decision, and transmit them to the full Board for final action. The full Board may confirm the committee’s decision, or direct a different decision. No further appeal is available.

c. **Timing of Grievance Submission.** The employee or employer must submit the appeal to the Board of Regents within 30 calendar days of the decision by the Chancellor. If the employee or employer does not appeal to the Board within 30 calendar days, the grievance will be considered settled and will not be eligible for further appeal.

d. **Decision.** The Board of Regents decision is final and binding and may not be appealed or be subjected to further review within the provisions of this policy.
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Consequences for Non-Compliance

The grievances policy will be applied and administered in a manner consistent with the university’s equal employment opportunity and affirmative action programs which include, but are not limited to, making decisions without regard to race, religion, color, national origin, sexual orientation, marital status, parental status, age, disability, sex, or veteran status, except where a characteristic is a bona-fide occupational qualification. Employees may exercise all rights enumerated in this policy without being subject to reprisal, harassment or retaliation.

Complaints alleging discrimination based on the following factors may be referred to the UW-Madison Office of Equity and Diversity for investigation and possible disposition in accordance with procedures established by that office: age as defined by law, ancestry, arrest record, color, conviction record, creed, cultural background, disability or handicap, ethnicity, gender identity or expression, genetic information, marital status, national origin, pregnancy, race, religion, sex (including sexual harassment), sexual orientation, military or veteran status as provided by law, use or nonuse of lawful products away from the employer’s premises during nonworking hours, retaliation for making a complaint of discrimination, or taking part in an investigation relating to discrimination.

Employees who believe that they have a cause of action as a result of employment-related discrimination may file a grievance under this policy, file a complaint with the Office of Equity and Diversity, or pursue their claim under both processes. Additional appeal opportunities may also be available through the U.S. Equal Employment Opportunity Commission or the Equal Rights Division of the Wisconsin Department of Workforce Development.

Supporting Tools

OHR maintains an online toolkit to support the campus community in developing, implementing, and sustaining effective grievance programs. The toolkit will include a grievance form, Weingarten and Loudermill rights\(^1\), the corrective action policy, and other information.

Definition

Permanent Status: the rights and privileges attained upon successful completion of an original probationary period or career-executive trial period required upon an appointment to a permanent position.

Responsibilities

| OHR Office of Workforce Relations | ▪ Maintains Grievances Policy and collaborates with deans and directors to ensure this policy is complied with across campus
|                                | ▪ Serves as campus expert on Grievances Policy and provides procedural assistance for employees in the filing of a grievance
|                                | ▪ Develops Grievances Policy tools and support
|                                | ▪ Ensures that divisions comply with Grievances Policy
| Dean/Director                  | ▪ Ensures that the division human resource representatives and supervisors comply with the provisions of Grievances Policy

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\(^1\) These are U.S. Supreme Court cases addressing certain rights afforded to employees involved in investigations and disciplinary actions.
# University Staff Grievances Policy

| College/School/Division HR | Implements, monitors, and maintains a grievances policy that complies with the Grievances Policy and supports employee and organizational needs  
|                           | Consults with OHR Office of Workplace Relations as needed  
|                           | Ensures the division supervisors and employees are knowledgeable about the Grievances Policy |
| Supervisor                | Understands the Grievances Policy and process  
|                           | Completes all elements necessary in the case that a grievance is filed for an employee in compliance with this policy in a timely manner |
| Employee                  | Understands the Grievances Policy and process  
|                           | Initiates the grievance process in a timely manner if needed |

## Link to Policy

## Link to Related Policies

Wis. Stat. 36.115(4); Wis. Stat. 227.01(13)(Lm)

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