# Employee Grievance Policy
# University Staff
# University of Wisconsin-Extension

## Policy Summary

This policy establishes grievance procedures for University of Wisconsin-Extension University Staff and includes requirements as indicated in Wis. Stat. 36.115(4) and UWS Operational Policy GEN 14. This policy applies to University Staff with an expectation of continued employment who wish to file a grievance contesting dismissals, disciplinary action, or layoff if the employee alleges that the action was taken without just cause. Grievances may also be filed for working conditions or workplace safety. University Staff serving a probationary period, temporary employees and project employees do not have the right to file grievances on dismissal, discipline or layoff. University Staff serving a probationary period, temporary employees and project employees do have the right to file a grievance on working conditions. Prior to filing a grievance, employees are strongly encouraged to first seek resolution through discussions with supervisors and other institutional resources.

## Policy Definitions

"Dismissal" means separation from employment for disciplinary or performance reasons.

"Discipline" means any action taken by a University of Wisconsin institution with respect to a University Staff member with an expectation of continued employment which has the effect, in whole or in part, of a penalty.

"Grievance" is a written complaint by a University Staff member involving an alleged violation of conditions of employment. Only one subject matter shall be covered in any one grievance. A grievance shall contain a clear and concise statement of the grievance by indicating the issue involved, the relief sought, and the date the incident or violation took place.

"Grievance procedure" means the process through which certain working conditions, discipline, or dismissal of a UW System University Staff member with an expectation of continued employment can be appealed.

"Impartial Hearing Officer (IHO)" means a grievance review committee established through shared governance, an arbitrator employed by the Wisconsin Employment Relations Commission (WERC), an arbitrator from the WERC roster of neutral decision makers not employed by the WERC, or an arbitrator from a roster developed by UW System Administration of arbitrators with a set fee for resolving a discharge case.

"Just Cause" means a standard that is applied to determine the appropriateness of a disciplinary action. The elements of determining whether just cause exists are:

- Whether the employee had notice of workplace expectations and potential consequences if those expectations were not met;

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- Whether the workplace expectations were reasonably related to business efficiency and performance the employer might reasonably expect from the employee;
- Whether an investigation was undertaken by the employer before discipline or discharge to determine whether the employee violated expectations;
- Whether the investigation was conducted fairly and objectively;
- Whether the employer obtained substantial evidence of the employee's guilt;
- Whether workplace expectations were applied fairly and without discrimination; and
- Whether the degree of discipline imposed reasonably related to the seriousness of the employee's offense and the employee's past record.

"Layoff" means separation from employment for reasons of budget or due to the discontinuance, curtailment, modification, or redirection of a program.

"University Staff" are members of the university workforce paid on an hourly basis who contribute in a broad array of positions in support of the university's mission.

## Grievance Procedure

University Staff with an expectation of continued employment and temporary and project University Staff employees wishing to file a formal grievance must determine whether the action can be grieved and at what step the grievance may be filed. The actions are processed through the following steps:

- Dismissal (begin at Step Two and may proceed to Step Three)
- Discipline and Layoff (begin at Step One and may proceed no further than Step Two)
- Working Conditions/Workplace Safety (through Step One only)

Discipline and dismissal of a University Staff member with an expectation of continued employment may be imposed only for just cause.

Actions that cannot be grieved include Wisconsin Retirement System benefits, health insurance matters, verbal reprimands, and performance evaluations. In addition, working condition issues may not be filed that pertain to:

- Utilizing personnel, methods and means to carry out the mission of the University of Wisconsin System or UW-Extension;
- Determining the size and composition of the work force;
- Managing and directing the employees of the University of Wisconsin System;
- Hiring, promoting, assigning or retaining employees; and
- Establishing reasonable workplace expectations.

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 a 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.

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Administration will make a good faith effort to informally resolve a problem brought to their attention through discussion and communication with the department or unit involved. If an attempt to resolve a matter is not successful, a grievance may be filed.

Grievances shall be filed on a form provided by the employer and shall contain the information identified below. In addition, the grievant should submit documents and information which would support the grievance. The grievant is encouraged to indicate the names of other persons who may be able to provide evidence related to the grievance, together with a general description of the evidence to be provided. All documents submitted in support of a grievance shall accompany the grievance through all steps of consideration.

1. The identity of the grievant and his/her original signature and date. Group grievances must be signed by each grievance group member.
2. The action being grieved.
3. Evidence to support the grievance. Such evidence may include materials predating the action leading to the grievance.
4. The specific university work rule, university or department policy, procedure, or practice or a law which is alleged to have been violated, if known.
5. Relief sought.

If two or more University Staff members have a grievance with identical specifications, the grievances may be filed jointly.

A grievant may be assisted by a representative of his/her choosing in person, by telephone, or by teleconference. After an employee has filed a grievance, the employee may designate a representative in writing. A representative may not file a grievance on behalf of an employee. The representative and grievant shall receive all written decisions.

The grievant and the administration designee can agree in writing to extend a time frame for filing or responding.

| **REASON** | **STEP ONE** | **STEP TWO** | | **STEP THREE** |
|---|---|---|---|---|
| | | **STEP TWO A** | **STEP TWO B (employed prior to 7/1/15)** | |
| *Dismissal | | X | X | X |
| *Layoff | X | X | X | |

| | | | | |
|---|---|---|---|---|
| *Discipline | X | X | X | |
| Working Conditions | X | | | |

*Employees serving a probationary period, temporary employees and project employees do not have the right to file a grievance for these reasons.

- **Step One** (for layoff, discipline, and working conditions) –
  shall be filed with the dean, director or equivalent administrator with a copy to the Office of Human Resources. The dean, director or appropriate administrator will hear the grievance.

  The grievance shall be filed no later than 30 calendar days from the date the grievant first became aware, or should have become aware (with the exercise of reasonable diligence), of the matter grieved. Within 30 calendar days of receipt of the written grievance, the appropriate employer representative shall meet with the grievant to hear the grievance. The grievant shall receive a written decision no later than 7 calendar days after this meeting.

  If the subject of the grievance is working conditions or workplace safety, there is no opportunity to appeal beyond Step One.

- **Step Two A** (for dismissal, layoff, and discipline) –
  shall be filed with an Impartial Hearing Officer (IHO). The IHO is a grievance review committee established by the UW-Extension University Staff Council that will consist of five members elected from among all University Staff members with an expectation of continued employment. (See Attachment #1)When an employee has filed a grievance alleging that a ***discipline*** decision was not based on just cause and is dissatisfied with the Step One decision, the employee must inform the chancellor or chancellor's designee of the desire to appeal the Step One decision within 10 calendar days from receipt of the answer in Step One.

  An appeal of ***dismissal*** of a University Staff member will begin at Step Two and must be filed within 20 calendar days of written notice of dismissal.

  If the subject of the appeal is dismissal or discipline, the IHO shall determine whether just cause for the discipline or dismissal exists. The burden of proof of the existence of just cause is on administration or its representatives. If the subject of the appeal is layoff, the issue before the IHO shall be whether the applicable layoff procedure was followed. The IHO will be charged with hearing the case and making a report and recommendations to the chancellor or chancellor's designee.

  The hearing for a University Staff employee shall include a right to representation, a right to offer witnesses, a right to confront and cross examine adverse witnesses, a

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verbatim recording of all hearings (which might be a sound recording provided at no cost), and a right to a written decision. The hearing shall be a closed hearing unless the grievant requests an open hearing.

The grievant shall be provided with the findings of the IHO at the same time this information is provided to the chancellor or chancellor's designee. Within 15 business days of receipt of the report and recommendations, the chancellor or chancellor's designee shall release a statement accepting or rejecting the findings of the IHO and explaining how the decision shall be implemented.

If an employee elects to appeal to the IHO, he/she shall have the right to have a representative of his/her choosing in attendance at the hearing. The grievant shall, in writing, notify the Office of Human Resources or designee, of the name of the representative, which must be received no later than two business days before the hearing is to take place.

- **Step Two B** (for dismissal, layoff, and discipline) –
  University Staff who held permanent status in employment prior to July 1, 2015, may appeal a disciplinary action, layoff or dismissal directly to the Wisconsin Employment Relations Commissions (WERC).

  The grievant may appeal directly from Step One to the chancellor or chancellor's designee within 10 calendar days from receipt of the Step One decision. If the employee is still dissatisfied with the decision as issued by the chancellor or chancellor's designee, the grievant may appeal the decision to the WERC under Wis. Stat. 230.44(1)(c) within 30 calendar days from the date of the decision being appealed.

  If an appeal to WERC is filed, no further steps in the grievance process will apply. The decision of the WERC may be subject to judicial review, but an appeal to the Board of Regents is not available using this procedure.

  Note: Employees hired prior to July 1, 2015, may choose to file a grievance under Step Two A or Step Two B. An employee who appeals a grievance to an impartial hearing officer under Step Two A waives the right to submit a Step Two B appeal to the WERC. An employee who appeals a grievance to the WERC under Step Two B waives the right to submit a Step Two A appeal to an impartial hearing officer.

- **Step Three** (for dismissal) – shall be filed with the Board of Regents. For matters that involve dismissal only, a grievant who is dissatisfied with a chancellor's or chancellor's designee Step Two A decision may appeal the decision to the Board of Regents. The appeal must be filed within 30 calendar days of receipt of the decision.

  The Board of Regents Personnel Matters Review Committee will conduct a review based on the record of the matter created by the impartial hearing officer and will prepare

recommended findings and a decision and transmit them to the full Board for final action. No further appeal shall be available to the parties.

A flow chart of the grievance steps is contained in Attachment #2.

## Representation

An employee has the right to assistance from a representative of his/her choice at any step in the grievance or disciplinary process. The representative has the right to be present to observe meetings and to take notes. He/she has a limited right to speak but can serve as an advisor to the employee including repeating certain points stated by employee, explaining significance of points made by the employee, and speaking about practices at the work site. The representative has no right to speak for the employee in response to questions.

## Use of Paid Work Time for Grievances

The employee and his/her representative will be allowed a reasonable period of time as determined by the OHR to investigate, prepare, and present a grievance during normal work hours without loss of pay. Time spent preparing grievances outside the employee's scheduled work hours, or any travel or other expenses incurred by the grievant, are not the responsibility of UW-Extension. Any expense incurred by the grievant or his/her representative in investigating, preparing, or presenting a grievance shall be the sole responsibility of the grievant or representative.

UW-Extension University Staff Council members or any UW-Extension employees who are chosen to serve as an IHO shall remain in pay status to duly fulfill their responsibilities associated with being an IHO.

## Deadlines

A grievance must be filed with and received by the designated employer representative within the timeframe noted. If mailed, the postmark denotes the date of submittal or response. Grievances not appealed within the designated time limits at any step of the grievance procedure will be considered as having been adjudicated on the basis of the last preceding employer answer.

Deadlines may be modified only by mutual agreement between the grievant and the appropriate employer representative.

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 grievance will be considered resolved in the employee's favor.

## Retaliation

UW System and UW-Extension are prohibited from retaliating against a grievant, representative, witness, potential witness, or IHO in the grievance proceedings.

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## University Responsibilities

The Office of Human Resources will maintain this policy.

## Background

Prior to July 1, 2015, grievance procedures were directed by the Office of State Employment Relations and described in Chapter 430 of the *Wisconsin Human Resources Handbook*. This policy document was approved on May 7, 2015 and defines the UW-Extension grievance policy as of July 1, 2015.

## Related Documents/References

- Wis. Stat. 36.115(4) – https://docs.legis.wisconsin.gov/statutes/statutes/36/115/4
- UW System Operational Policy GEN 14 – https://www.wisconsin.edu/personnelsystems/download/development_documents/ops/gen/UPS%20OP%20GEN%2014%20Grievance%20Procedure.pdf
- Wisconsin Employment Relations Commission (WERC) – See Sec. 430-090 (page 5) of Wisconsin Human Resources Handbook: http://oser.state.wi.us/docview.asp?docid=7358

## Contact

Direct questions about this policy to the Office of Human Resources.

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# FORMATION AND SELECTION OF HEARING BODIES

The UW-Extension University Staff Council (USC) shall be responsible for forming the hearing bodies required by UW System and University of Wisconsin-Extension University Staff policies.

Membership

The Chair of the USC shall be responsible for forming a five member hearing committee to act as an impartial hearing officer according to the following procedures:

1. The five members of the UW-Extension University Staff hearing committee shall be elected from among all University Staff with an expectation of continued employment to serve staggered three year terms. The method of nomination and election of members shall be established by the University Staff Council. The committee shall elect its own chair and establish its own procedures, subject to the requirements and limitations of policy.

2. The following are disqualified from service on a hearing committee: 1) any individual who participated in the initiation, formulation, investigation or filing of allegations or charges; 2) any individual who is a member of the concerned University Staff member's department or equivalent; and 3) any individual who is a material witness.

Procedures

If a hearing is determined to be necessary, the hearing committee shall operate consistent with the procedures in this section. Where appropriate, additional procedural requirements indicated in the other sections of these roles shall apply. Requirements guaranteeing due process and assuring procedural uniformity include the following:

1. At the request of the USC Chair, and with concurrence of the chancellor, the University shall provide legal counsel to a hearing committee. All parties shall be notified if legal counsel is to be provided.

2. University Staff members shall be assured of a fair hearing, which will include the right to present testimony in one's own behalf, the right to offer witnesses, the right to cross-examine adverse witnesses, and the right to counsel or representation.

3. The department or functional equivalent of the University Staff member concerned shall be consulted and have the opportunity to present evidence or testimony through the unit director or other representative(s), as appropriate.

4. By a majority vote, a hearing committee may, on the motion of one of the University Staff members involved, or on its own initiative, disqualify any one of its members for cause. In such case, the USC Chair shall designate a replacement unless, in his/her opinion, the disqualification should occur after a significant portion of the hearing already has taken place. The same replacement procedures shall be followed in the event a member of the hearing committee is not able to complete the assignment.

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5. Hearings shall be open or closed in accordance with the Wisconsin Open Meetings Law.

6. A verbatim sound recording shall be made of all formal hearings. Upon written request, a copy of the recording shall be made available at no cost within a reasonable period of time to anyone involved in the hearing.

7. The hearing committee shall have access to documentary evidence it believes to be pertinent, including public records and official documents specifically requested by the hearing committee, and shall have the right to summon witnesses necessary to assure a fair hearing.

8. The chancellor shall assist hearing committees in obtaining witnesses and documents required for proper conduct of hearings.

9. The hearing committee shall not be bound by common law or statutory rules of evidence; it may admit evidence having reasonable probative value, but shall exclude immaterial, irrelevant or unduly repetitious testimony, and shall allow the exercise of legal privileges. Members of the hearing committee who participate in discussion of the decision-making shall be familiar with all testimony, all deliberations, and all evidence presented.

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# GRIEVANCE PROCEDURE

## INCIDENT

30 calendar days from incident to file

## STEP ONE

30 calendar days to meet
7 calendar days to answer
(Working conditions issues stop here)

Discipline/Layoff/Dismissal –
10 calendar days to file
Dismissal –
20 calendar days to file

## STEP TWO A

Impartial Hearing Officer hears case.

Chancellor releases statement within 20 calendar days of report.

Discipline/Layoff/Dismissal –
10 calendar days to appeal to chancellor

## STEP TWO B

Employee must be employed prior to 7/1/15.

Appeal to WERC within 30 calendar days from decision.

Dismissal – 30 calendar days to file

## STEP THREE

Board of Regents Conducts Review

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