

**University of Wisconsin-Eau Claire
University Staff Policy: Grievance Procedures**

Approved by UW-Eau Claire Chancellor 09/24/2015

Based upon UPS Operational Policy: GEN 14

1. Purpose

The purpose of this policy is to establish grievance procedures for university staff at the University of Wisconsin-Eau Claire in accord with Wis. Stat. § 36.115(4). It applies to university staff who were formerly members of the classified staff as of June 30, 2015, and to university staff hired on or after July 1, 2015, who, by the terms of their appointment, have an expectation of continued employment.

While not included in the grievance procedures, employees are strongly encouraged to resolve situations through informal discussions with their immediate supervisors and other campus resources, such as Human Resources and Employee Assistance Programs.

UW-Eau Claire is prohibited from retaliating against a grievant for filing a grievance or against a representative or witness who participates, or is scheduled to participate, in grievance proceedings.

2. Definitions

“Dismissal” means separation from employment for disciplinary or performance reasons.

“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” means a grievance review committee established through shared governance, an arbitrator employed by the Wisconsin Employment Relations Commission (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:

- a. Whether the employee had notice of workplace expectations and potential consequences if those expectations were not met;
- b. Whether the workplace expectations were reasonably related to business efficiency and performance the employer might reasonably expect from the employee;
- c. Whether an investigation was undertaken by the employer before discipline or discharge to determine whether the employee violated expectations;
- d. Whether the investigation was conducted fairly and objectively;
- e. Whether the employer obtained substantial evidence of the employee’s guilt;
- f. Whether workplace expectations were applied fairly and without discrimination; and
- g. 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 who contribute in a broad array of positions in support of the university’s mission and are not exempt (hourly¹) from the overtime provisions of the Fair Labor Standard Act (FLSA).

[¹Note: All FLSA exempt employees holding positions in the State of Wisconsin “classified” service as of June 30, 2014 are given the choice to remain in the university staff for as long as they retain their existing positions, or to voluntarily be reassigned to a position that the institution has designated as either an academic staff or limited appointment position – see UPS Operational Policy #36]

3. Grievable Issues

Wis. Stat. § 36.115(4) and UPS operational policies identify the following as grievable issues:

- a. Dismissal
- b. Disciplinary Actions
- c. Working Conditions
- d. Layoffs

To determine whether an issue is grievable, employees are encouraged to consult the Human Resources Office.

4. Non-Grievable Issues

UPS operational policies indicate grievances may not be filed regarding some matters that affect working conditions as follows:

- a. Utilizing personnel, methods and means to carry out the mission of the University of Wisconsin System or the University of Wisconsin – Eau Claire;
- b. Determining the size and composition of the work force;
- c. Managing and directing employees;
- d. Hiring, promoting, assigning or retaining employees;
- e. Establishing reasonable workplace expectations.

University staff serving a probationary period will not have the right to file grievances on dismissal, discipline, or layoff.

5. Procedure

Grievances are initiated by submission of the grievance form available here, <https://www.uwec.edu/hr/Forms/GrievanceReportForm.pdf>, which must include the facts upon which the grievance is based and the relief sought by the employee.

The grievant and a management designee may agree in writing to extend the time limits in any step of the grievance procedure (See Appendix for timeline summary).

- a. STEP ONE – Department Head, Director, Dean, or Equivalent Administrator
Working Conditions, Layoff and Discipline grievances begin with Step One. Working Conditions are not permitted to go beyond Step One.

The grievance form must be filed with Human Resources no later than (30) calendar days from the date the grievant first became aware, or should have become aware, of the matter grieved. Human Resources will notify the appropriate department head, director, dean, or administrator one administrative level up from the source of the grievance within seven (7) calendar days.

Within (30) calendar days of the administrator's receipt of the written grievance, the administrator (or designee) must meet with the grievant to hear the grievance. The grievant has the right to choose a representative to attend this meeting.

The grievant must receive a written decision no later than seven (7) calendar days after this meeting. If no extension is requested and granted, and the administrator (or designee) fails to provide the grievant with a written decision within this timeframe, the grievance will be automatically moved to Step Two of the grievance procedures if the grievance is eligible to be appealed (non-working conditions). If the grievance is not eligible to be appealed to Step Two (working conditions), Human Resources will contact the grievant and, at his or her option, schedule a meeting with the Chancellor (or Chancellor's designee) to discuss how to resolve the grievance.

Employees who were employed prior to July 1, 2015 shall choose Step 2A or Step 2B if they choose to appeal the Step 1 decision. Once a step is chosen, it cannot be changed during the grievance process.

b. STEP TWO A – Appeal to an Impartial Hearing Officer

A grievant who alleges that a discipline decision was not based on just cause and who is dissatisfied with the Step One decision, may appeal that decision to an Impartial Hearing Officer (IHO). The grievant must inform the Chancellor (or designee) in writing of the desire to appeal the Step One decision within ten (10) calendar days from receipt of that decision.

Dismissal appeals begin at Step Two and must be filed within twenty (20) days of the date of written notice of dismissal.

The IHO will determine whether just cause for the discipline or discharge exists. If the appeal is for layoff, the IHO will determine whether the applicable layoff procedure was followed.

The IHO is charged with hearing the case and making a report and recommendations to the Chancellor or designee. Such a hearing for a university staff employee includes the right to representation, the right to offer firsthand witnesses, and the right to a written decision. The hearing is closed unless the grievant requests an open hearing.

The employee filing the grievance selects one of the following options as an IHO:

- 1) A panel consisting of three randomly chosen elected members of the University Staff Grievance Committee;
- 2) An arbitrator employed by the Wisconsin Employment Relations Commission (WERC);
- 3) For grievances to resolve a discharge only, the grievant may choose an arbitrator from a roster developed and provided by UW System.

Human Resources must retain a list of neutral arbitrators (both WERC and System) to be shared with the grievant upon request. The individual serving as an IHO must be agreeable to both the grievant and the employer.

The cost for hearing officers listed in numbers 2 and 3 above will be split 90/10 with the institution paying 90% of the IHO fee and all expenses and the employee paying 10% of the IHO fee only. At the time the employee chooses an IHO, the employee is responsible for paying the

employee portion of the cost to Human Resources. Human Resources will deposit these funds into a separate “grievance fund” account. If the grievance is ultimately sustained, Human Resources will initiate a request to reimburse the employee within ten (10) business days of the final decision. The employing department will then be responsible for 100% of the cost associated with the IHO.

After selecting an IHO, the grievant has the right to choose a representative to attend the hearing. No later than two (2) business days before the hearing is to take place, the grievant must notify the Director of Human Resources in writing of the representative’s name, profession, and relationship to the grievant. The grievant is permitted to offer witnesses provided they have first-hand information directly related to the grievance.

The grievant must be provided with the findings of the impartial hearing officer at the same time this information is provided to the Chancellor or designee. Within twenty (20) days of receipt of the report and recommendations, the Chancellor or designee will release a statement accepting or rejecting the findings of the IHO and explaining how the decision will be implemented. The Chancellor or designee shall have the discretion to provide an alternate remedy apart from the recommendation of the IHO.

It is recognized that an employee who files a grievance may need time to prepare for the presentation of his/her case. Upon receiving notice, the employer must permit the grievant and representative a reasonable period of time, as determined by the Director of Human Resources or designee, during normal work hours, to investigate, prepare, and present a grievance without loss of pay. Pay status shall be extended to UW-Eau Claire employees only. Any expense incurred by the grievant or representative in investigating, preparing, or presenting a grievance will be the sole responsibility of the grievant or representative. Time spent preparing the grievance outside the employee’s regularly scheduled hours of work, or any travel or other expenses incurred by the grievant are not the responsibility of the employer.

University Staff Grievance Committee members or any UW-Eau Claire employees chosen to serve as an IHO remain in pay status to duly fulfill their responsibilities associated with being an IHO.

c. STEP TWO B – Appeal to WERC for University Staff Employed on June 30, 2015

An employee who held permanent status in employment prior to July 1, 2015 and according to the provisions of Wis. Stat. § 36.115(6), therefore retains Chapter 230 appeal rights may instead appeal a disciplinary action (suspension, demotion, or reduction in base pay), layoff, or discharge using a different procedure. Such a grievance may be appealed directly from Step One to the Chancellor or designee within ten (10) calendar days from receipt of the answer in Step One. Thereafter, if the grievant is still dissatisfied with the decision as issued by the Chancellor or designee, the grievant may appeal the decision to the WERC under Wis. Stat. § 230.44(1)(c) within thirty (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 apply. The decision of the WERC is binding but may be subject to judicial review. An appeal to the Board of Regents is not available.

Layoff and discipline grievances may proceed no further than Step Two.

d. STEP THREE – Board of Regents Review

For matters that involve dismissal only, a grievant dissatisfied with the Chancellor’s or designee’s Step Two decision may appeal that decision to the Board of Regents. If the matter is not appealed to the Board of Regents within thirty (30) calendar days, the grievance is ineligible for Board review. Upon receiving an appeal, the President of the Board refers the appeal to the Board of Regents Personnel Matter Review Committee. In accordance with Board of Regents Bylaws, the Committee conducts a review based on the record of the matter created by the IHO, prepares recommended findings and a decision, and transmits 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 to the parties.

Appendix

| Step and Action | Calendar Days* |
|--|---|
| 1 – File grievance with Human Resources | Within 30 days after aware or should be aware of matter grieved |
| 1 – Notification of administrator by Human Resources | Within 7 days |
| 1 – Meeting of grievant and administrator | Within 30 days |
| 1 – Written decision of administrator | Within 7 days |
| 2 – Grievant informs Chancellor of appeal | Within 10 days |
| 2 – Dismissal Appeals | Within 20 days of date of dismissal |
| 2 - Notify HR of representation | 2 days before hearing |
| 2 - Hearing; grievant and chancellor notified of results | |
| 2 - Chancellor accepts or rejects hearing findings | Within 20 days |
| 2B - Appeal to Chancellor | Within 10 days of Step 1 answer |
| 2B- Appeal to WERC | Within 30 days |
| 3 - Appeal Step 2 decision (dismissal) to Board of Regents | Within 30 days |

*The grievant and a management designee may agree in writing to extend the time limits in any step of the grievance procedure.