

TO: Andrew Leavitt, Chancellor

FROM: John Koker, Provost and Vice Chancellor *JKK*

DATE: December 9, 2019

RE: University Staff Grievance Policy

On the recommendations of the Faculty Senate, Senate of Academic Staff, University Staff Senate, and Oshkosh Student Association Senate, I am recommending your approval of the University Staff Grievance Policy.

I have attached the policy for your review. Please contact me if you have questions regarding the proposal.

JK/eh

Attachment

Approve

Do not approve

*Andrew Leavitt*  
\_\_\_\_\_  
Signature

*12/17/2019*  
\_\_\_\_\_  
Date

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## University Staff Grievance Policy

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### 1. PURPOSE

The purpose of this policy is to establish University Staff grievance procedures at all UW Oshkosh campuses. A grievance in this section is a formal statement by an employee which alleges unfair treatment or dissatisfaction with aspects of working conditions within the University and which are outside his/her control. The term "grievance" is used in two senses here. It denotes first the distress or dissatisfaction caused by perceived unfair treatment or violation of rights or in general unsatisfactory working conditions. It also denotes a formal appeal for relief from such distress or dissatisfaction. A grievance differs from a complaint in that it focuses upon the effects experienced by the grievant rather than upon the alleged misconduct of another. A grievance seeks relief for the grievant rather than punishment of another individual.

### 2. RESPONSIBLE OFFICER

The Office of Human Resources will maintain this policy. Please contact Human Resources at [hroffice@uwosh.edu](mailto:hroffice@uwosh.edu), (920) 424-1166, or at <https://hr.uwosh.edu/>.

The Office of the Provost and Vice Chancellor documents approved policies in the Faculty and Staff Handbook at <https://www.uwosh.edu/provost/Main%20Highlight/handbooks>.

### 3. SCOPE

This policy applies to University Staff with an expectation of continued employment who wish to file a grievance contesting layoff, disciplinary action, or dismissals 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.

### 4. BACKGROUND

Chapters UWS 6 and UWS 13 of the Wisconsin Administrative Code require UW System institutions to establish complaint procedures for faculty and academic staff in cases involving allegations made by persons other than the employee's supervisor.

Effective July 1, 2015, UPS OP: GEN 24 established University Staff complaint procedure guidelines.

## 5. DEFINITIONS

- A. "Dismissal" means separation from employment for disciplinary or performance reasons.
- B. "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.
- C. "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.
- D. "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.
- E. "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.
- F. "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;
  - 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.
- G. "Layoff" means separation from employment for reasons of budget or due to the discontinuance, curtailment, modification, or redirection of a program.
- H. "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.

## 6. POLICY STATEMENT

- A. University staff with the expectation of continued employment may appeal certain working conditions, discipline, layoff, or dismissal.
- B. Discipline and dismissal of a University Staff member with an expectation of continued employment may be imposed only for just cause.
- C. 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.
- D. A grievance may be denied if it fails to allege a grievable issue.
- E. Matters related to wage, hours of work, types of fringe benefits, performance evaluations, and other conditions of employment are non-grievable actions.
- F. If the grievance concerns any of the discrimination or harassment sections in GEN 1.2.(1) through (8), the grievance is made according to the process outlined in that section of this Handbook.
- G. Prior to filing a grievance, a University Staff member is encouraged to seek resolution with his/her immediate supervisor utilizing informal discussion, collegial interaction and existing structures to resolve conflicts and to remedy personal and professional concerns whenever possible.
  - a. If the immediate supervisor is not a department head, he/she shall notify the department head of the grievance and ensuing discussions.
  - b. 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.
- H. UW-Oshkosh is prohibited from retaliating against a grievant, representative, witness, or potential witness.
- I. An employee has the right to assistance from a representative of his/her choice at any step in the grievance or disciplinary process.
  - a. The representative has the right to be present to observe meetings and to take notes.
  - b. 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.
  - c. The representative has no right to speak for the employee in response to questions.
- J. 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 Oshkosh. 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.

- K. Any changes to the related procedures for this policy will be coordinated through HR and the University Staff Senate President outside of the policy approval process.
- L. The difference between a Grievance and a Complaint is outlined below.

	Grievance	Complaint
Nature	alleges unfair treatment or dissatisfaction with aspects of working conditions	objection to perceived misconduct and seeks disciplinary action against another employee
Focus	relief	sanction; can lead to dismissal from employment for another employee
Rules	UW Oshkosh University Staff Personnel Rules (Grievances Policy)	UW Oshkosh University Staff Personnel Rules (Complaints Policy)

## 7. REFERENCES

- A. Stat. 36.115(4) – <https://docs.legis.wisconsin.gov/statutes/statutes/36/115/4>
- B. UW System Operational Policy GEN 14 – [https://www.wisconsin.edu/personnelsystems/download/development\\_documents/ops/gen/UPS-OP-GEN-14-Grievance-Procedure.pdf](https://www.wisconsin.edu/personnelsystems/download/development_documents/ops/gen/UPS-OP-GEN-14-Grievance-Procedure.pdf)
- C. 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>

## 8. PROCEDURES

[Links to procedural information on how to comply with the policy]

# GRIEVANCE PROCEDURE

## INCIDENT

30 calendar days from incident to file.



## STEP ONE

30 calendar days to meet  
7 calendar days to  
answer



Discipline/Layoff –  
10 calendar days to file for HR

Dismissal –  
20 calendar days to file for HR

Discipline/Layoff/Dismissal –  
10 calendar days to appeal  
to the Chancellor

## STEP TWO A

University Staff Hearing Committee  
hears case.

Chancellor releases statement  
within 20 calendar days of report.



Dismissal –30 calendar days to file

## STEP THREE

Board of Regents conducts review.

## STEP TWO B

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

Appeal to WERC within 30 calendar  
days from date appeal decision was  
made by the Chancellor.



No further appeal processes  
are available.

## University Staff Grievance Procedures

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### PROCEDURES

If the University Staff member is not satisfied with the resolution of the problem after informal discussion and consultation, he/she may file a written grievance indicating the results of the informal discussion and consultation and containing the information required in the section below identifying the form of grievances. The purpose of this procedure is to resolve conflicts arising from grievances from University Staff members under UPS Operational Policy GEN 14.

1. Grievances shall be filed on a form provided by the employer and shall contain the information identified below. All documents submitted in support of a grievance shall accompany the grievance through all steps of consideration.
  - (a) The identity of the grievant, and his/her original signature and date. Group grievances must be signed by each grievance group member.
  - (b) The action being grieved.
  - (c) Evidence to support the grievance. Such evidence may include materials predating the action leading to the grievance. Also 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.
  - (d) The specific university work rule, University or Department policy, procedure, or practice or a law which is alleged to have been violated, if known.
    1. The employee responsible for the action resulting in the grievance.
    2. Relief sought.
  - (e) If two or more University Staff members have a grievance with identical specifications, the grievances may be filed jointly.
  - (f) 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.
  - (g) The grievant and the management designee can agree in writing to extend a time frame for filing or responding.
2. Grievances shall be pursued in accordance with the following steps and time limits.
  - (a) Dismissal appeals will begin at Step Two, as outlined below, and may proceed to Step Three.
  - (b) Layoff and discipline grievances will begin at Step One and may proceed no further than Step Two.
  - (c) Working condition grievances may be processed through Step One only.

	STEP ONE	STEP TWO		STEP THREE
		STEP 2A	STEP 2B (employed on June 30, 2015)	
DISMISSAL		X	X	X
LAYOFF	X	X	X	
DISCIPLINE	X	X	X	
WORKING CONDITIONS	X			

3. Step One: If attempts to resolve a matter through discussion between an employee and supervisor are not successful, a grievance may be filed.
  - (a) Grievances shall be filed with the employee's department head, director, dean, or equivalent administrator 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.
  - (b) Within 30 calendar days of receipt of the written grievance, the department head, director, dean, or equivalent administrator (or designee) shall meet with the grievant to hear the grievance.
  - (c) The grievant shall receive a written decision no later than seven (7) calendar days after this meeting. If the subject of the grievance is not discipline or layoff, there will be no further opportunity for appeal.
  
4. Step Two A: 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 may appeal the decision to a University Staff hearing committee. The employee may submit any new evidence, if applicable.
  - (a) In order to file such an appeal, the grievant must inform the Chancellor or Chancellor's designee of his or her desire to appeal the Step One decision within ten (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 twenty (20) days of the date of written notice of dismissal. If the subject of the appeal is dismissal or discipline, the University Staff Senate Hearing Committee shall determine whether just cause for the discipline or dismissal exists. The administration or its representatives must demonstrate that the discipline decisions was based on just cause.
  - (b) Following the procedures outlined in GOV 4.3.C., the University Staff President shall convene a committee which shall review the grievance on the record and determine within 14 calendar days whether a hearing is required. A hearing is necessary only when the committee believes that there is sufficient evidence to indicate the possibility that University Staff rights have been violated or that unfair treatment has been received.

- (c) 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 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.
  - (d) If no hearing is called, the hearing committee chairperson shall transmit his/her report, via the President of University Staff, to the grievant, and Chancellor or Chancellor's designee. If a hearing is called, procedures outlined under GOV 4.3.C. shall apply. The hearing shall be completed within 40 calendar days after being called, unless extended by mutual agreement between the University Staff member and the chairperson of the committee.
  - (e) The hearing committee will be charged with hearing the case and making a report and recommendations to the Chancellor or Chancellor's designee. Within twenty (20) 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 hearing committee and explaining how the decision will be implemented.
5. Step Two B: Direct Appeal to the Wisconsin Employment Relations Commission (WERC) for Certain University Staff: 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.
- (a) Such a grievance may be appealed directly from Step One to the Chancellor or Chancellor's designee within ten (10) calendar days from receipt of the answer in Step One.
  - (b) Thereafter, if the employee is still dissatisfied with the decision as issued by the Chancellor or Chancellor's designee, the employee 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.
  - (c) 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.
6. Step Three: Board of Regents Review: For matters that involve dismissal only, a grievant who is dissatisfied with a Chancellor's or Chancellor's designee's Step Two A decision may appeal the decision to the Board of Regents.
- (a) If the matter is not appealed to the Board of Regents within 30 calendar days, the grievance will be considered ineligible for Board review.
  - (b) Upon receiving an appeal, the President of the Board shall refer the appeal to the Board of Regents Personnel Matters Review Committee. In accordance with Board of Regents Bylaws, the Committee shall conduct a review based on the record of the matter created by the University Staff hearing committee, and it shall prepare recommended findings and a decision, and shall transmit them to the full Board for final action.

The full Board may confirm the Board of Regents Personnel Matters Review Committee's decision, or it may direct a different decision. No further appeal shall be available to the parties.

**REVISION HISTORY**

01/28/2019	Revisions from Restructuring with Access Campuses; New Policy Format
03/07/2019	Revisions from System Legal
05/14/2019	Faculty Senate
05/15/2019	University Staff Senate
05/16/2019	Senate of Academic Staff
09/18/2019	Oshkosh Student Association Senate
	Chancellor

**APPROVED BY**



Chancellor Andrew Leavitt

12/17/2019

Date