

Effective Date: July 1, 2015  
Last Updated: June 2, 2015  
Last Reviewed:  
Next Review: July 1, 2016

## Policy Summary

This establishes grievance policy and procedures for university staff at the University of Wisconsin - Whitewater. The policy includes requirements as indicated in Wis. Stat. § 36.115(4) and UW-System Operational Policy GEN 14 “Grievance Procedures.”

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## Policy Considerations

This policy applies to all permanent university staff employees who have the expectation of continued employment. Grievances may be filed contesting dismissal, discipline, or layoff if the employee alleges that the action was taken without just cause, or the proper procedures were not followed. Grievances may also be filed for working conditions or workplace safety. University staff serving a probationary period do not have the right to file grievances on dismissal, discipline, or layoff. Temporary and project employees may grieve working conditions or workplace safety issues only. Process timelines are established to enable review and resolution within a reasonable time after the problem occurred.

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## 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 request for a specific action to solve a problem or redress an injury done to the individual presenting it.

“Grievance procedure” means the process through which certain working conditions, discipline, or dismissal of a UW-Whitewater 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:

- ❖ 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.
- ❖ Whether rules are being followed and uniformly applied and that all employees are aware of the policies.

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

“Working Conditions” is the working environment and all existing circumstances affecting labor in the workplace including, but not limited to, work hours, physical aspects of the job, and consistently assigning duties outside the employees job description.

“Workplace Safety” is the maintenance of occupational health and safety standards and for the promotion of workplace health and safety.

“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 (hourly)\* from the overtime provisions of the Fair Labor Standards Act (FLSA).

*\*All FLSA exempt employees holding positions in the State of Wisconsin “classified” service as of June 30, 2015 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 #TR3 linked below*

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## Section A: Policy

Only permanent university staff may file a grievance contesting a dismissal, lay-off or other disciplinary actions taken without elements of just cause. All employees may also submit working condition or workplace safety grievances. No University Staff member or other representative may file a grievance on behalf of another employee. Process timelines are established to enable review and resolution within a reasonable time after the problem occurred. The grievance shall be heard and decided on the basis of whether just cause was followed.

If an employee is absent for a time during the grievance process, they must contact the Office of Human Resources & Diversity (HR&D) regarding filing for an extension of time in order to preserve their right to file. Extensions will be granted for legitimate business reasons as determined by HR&D.

### 1. **Grievable Issues:**

The following issues may be grieved by all University Staff employees:

- Working Conditions/Workplace Safety: Processed through Step One only

The following issues may be grieved by a permanent University Staff employees:

- Discipline: Begin at Step One and may proceed no further than Step Two
- Layoff: Begin at Step One and may proceed no further than Step Two
- Dismissal: Begin at Step Two and may proceed to Step Three

### 2. **Non-Grievable Issues:**

The following issues may not be grieved:

- Utilizing personnel, methods and means to carry out the mission of the University of Wisconsin System or UW-Whitewater;
- Determining the size and composition of the work force;
- Performance evaluations;
- Managing and directing the employees of the University of Wisconsin System;
- Hiring, promoting, assigning or retaining employees;
- Wisconsin Retirement System benefits, health insurance matters;
- Establishing reasonable workplace expectations; or
- Any other matter which UW-Whitewater has no authority to resolve disputes.
- Claims by employees of unlawful harassment or discrimination are not grievable. These complaints may be submitted to the Office of Human Resources & Diversity or the appropriate government state or federal agency (LINK).

### 3. **Grievance Contents:**

Grievances must be submitted on the Employee Grievance Form as found online or at the Office of Human Resources & Diversity. This form must be submitted to HR&D to commence the process of resolving the issue.

## Section B: Procedure/Grievance Steps

### A. Prefile

1. Prior to any grievance being filed, the employee and the employee's representative (if applicable) must first meet with the supervisor and a representative from HR&D in an effort to resolve the issue.
2. If the grievance being filed is against the employee's supervisor, the employee and the employee's representative (if applicable) must first meet with a representative from HR&D in an effort to resolve the issue.
3. This meeting must take place within the first 20 days of the occurrence or when the employee should have been aware or become aware of the occurrence. If employees are not able to meet with their supervisor, they must contact HR&D for assistance.
4. The University will make a good faith effort to informally resolve a problem brought to management's attention through discussion and open communication with the department or unit involved along with other University officials.
5. If there is no agreed upon resolution, the employee should move to Step One in the grievance process.

REASON	STEP ONE	STEP TWO		STEP THREE
		STEP TWO A	STEP TWO B to WERC (employed prior to 7/1/15)	
Working Conditions	X			
*Layoff	X	X	X	
*Discipline	X	X	X	
*Dismissal		X	X	X

\*Employees serving a probationary period do not have the right to file for these reasons.

- B. **Step One** (for working conditions, layoff and discipline) – shall be filed with the Office of Human Resources & Diversity.

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, a representative from HR&D 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.

1. If the subject of the appeal is working conditions or workplace safety, there is no opportunity to appeal beyond Step One.
- C. **Step Two A** (for dismissal, layoff, discipline) – shall be filed with an impartial hearing officer. 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 ten (10) business days from receipt of the answer in Step One.

1. An appeal of *dismissal* of a university staff member will begin at Step Two and must be filed within 20 business days of written notice of dismissal.
  2. The impartial hearing officer will determine whether just cause for the discipline or discharge exists. If the subject of the appeal is layoff, the issue before the impartial hearing officer will be whether the applicable layoff procedure was followed. The impartial hearing officer will be charged with hearing the case and making a report and recommendations to the Chancellor or Chancellor's designee.
  3. The hearing for a university staff employee shall include a right to representation, a right to offer witnesses, and a right to a written decision. The hearing shall be closed unless the grievant requests an open hearing. Within 20 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 impartial hearing officer and explaining how the decision will be implemented.
- D. **Step Two B** (for dismissal, layoff, discipline) – university staff who held permanent status in employment prior to July 1, 2015, may appeal a disciplinary action, layoff or discharge directly to the Wisconsin Employment Relations Commissions (WERC).
1. The grievant may appeal directly to the WERC under Wis. Stat. § 230.44(1)(c) within 30 calendar days.
  2. Information on appealing to the WERC can be found on their web page. [LINK](#) A filing fee may apply.
  3. 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.
  4. No grievances pertaining to working conditions may be appealed to the WERC.

*Note: Employees hired prior to July 1, 2015, may choose an appeal route under Step Two A **OR** Step Two B.*

- E. **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 decision in Step Two A only, may appeal the decision to the Board of Regents. The appeal must be filed within 30 calendar days of receipt of the decision.
1. 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.
  2. Appeals taken to the WERC (Step Two B) may not be appealed to the Board of Regents.

*A flow chart of the grievance steps are outlined in Attachment #2.*

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## **Representation**

A grievant may designate a representative of their choosing to be present at any grievance meeting and/or hearing. Prior to a grievance meeting and/or hearing, all communications regarding a grievance will be with the university staff employee unless the employee states in writing all communication must go through their designated representative. During the meeting and/or hearing, the representative has the right to observe and take notes, ask clarifying questions, serve as an advisor to the employee, explain significance of points made by the employee or employer, and speak about practices at the work site. The representative has no right to speak for the employee in response to questions.

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## **Impartial Hearing Officer**

The impartial hearing officer will determine the date of the meeting and/or hearing and make necessary arrangements with the Office of Human Resources and Diversity for a room. The impartial hearing officer will hear the case brought forward, and determine if just cause existed. They will write their decision and present their written decision to the grievant and respondent.

*For more information on the selection of the Impartial Hearing Officer, see Attachment #3.*

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## **Use of Paid Work Time for Grievances**

The University of Wisconsin-Whitewater recognizes that an employee, his/her representative, and any witnesses for the employee or employer may need time to prepare for the grievance meeting and/or hearing. A reasonable period of time as determined by the Office of Human Resources & Diversity will be allowed to investigate, prepare, and present the grievance during normal working hours without loss of pay.

Any time spent outside the work day preparing the grievance, or expenses incurred in the investigation of are not the the responsibility of the employer and will not be reimbursed or recompensed.

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## **Deadlines**

A grievance must be filed with and received by the designated employer representative within the time frame noted. If mailed, the postmark denotes the date of submittal or response.

For workplace safety and working conditions grievances that do not receive an acknowledgment for a pre-file meeting, HR&D does not meet the deadlines for Step One, or the resolution is not implemented, the grievance should be forwarded by the employee to the Vice Chancellor for Administrative Affairs for resolution.

Discipline grievances that are not answered by the employer within the time limits may be grieved to the next allowable Step within 10 calendar days after the last day on which the grievance could have been timely answered.

All 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.

If an employee is absent for a time during the grievance process, they must contact the Office of Human Resources & Diversity (HR&D) regarding filing for an extension of time in order to preserve their right to file. Extensions will be granted for legitimate business reasons as determined by HR&D.

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## **Retaliation**

UW System and UW-Whitewater are prohibited from retaliating against a grievant, representative, witness, potential witness, or impartial hearing body members.

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## **University Responsibilities**

The Office of Human Resources & Diversity and the University Staff Council will share joint responsibility for evaluating the effectiveness of the policy by conducting yearly reviews of grievance issues and resolutions. The Office of Human Resource & Diversity may provide procedural assistance for employees if requested.

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## **Equal Employment Opportunity**

This policy will be applied and administered in a manner consistent with UW-Whitewater's equal employment opportunity and affirmative action programs which includes, but is not limited to, without regard to race, religion, color, national origin, sexual orientation, marital status, parental status, age, disability, sex or veterans status, except where a characteristic is a bona fide occupational qualification.

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## 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*. University Staff that have achieved permanent status on June 30, 2015 will retain the rights described in Wis. Stat. § 36.115(4).

This policy document was approved on January 28, 2015, and defines the UW-Whitewater grievance policy as of July 1, 2015.

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## Related Documents / References

[Wis. Stat. § 36.115\(4\)](#)

UW System Operational Policy [GEN 11 Workplace Safety](#)

UW System Operational Policy [GEN 14 Grievance](#)

UW System Operational Policy [GEN 24 Complaint Procedures](#)

UW System Operational Policy [TR 3 Voluntary Reassignment](#)

[Weingarten Rights](#)

[Loudermill Rights](#)

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## Supporting Documents

Employee Grievance Form

Grievance Procedure Flowchart

Impartial Hearing Officer

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## Contact

Please direct questions about this policy to the Office of Human Resources & Diversity, or the University Staff Council.

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## ACCEPTED AND APPROVED ON BEHALF OF THE UNIVERSITY

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Chancellor Date

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Vice Chancellor for Administrative Affairs Date

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Director, Human Resources & Diversity Date

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Chair, University Staff Council Date