

To: Legislative History

From: Bob Thompson, Director Employee Relations, Human Resources and Allyson Hicks, Director, University Regulations

Policy Owner(s): Director Employee Relations, Human Resources

Date: April 11, 2023

Re: Revisions to Policy 5-211: University Independent Personnel Boards & Procedures for Complaints Under the Utah Protection of Public Employees Act

Introduction and Background

The University enacted Policy 5-211 on July 1, 2019 to comply with a requirement bill passed by the Legislature that requires institutions of higher education to adopt a policy to address complaints of retaliation against employees who engage in reporting or activities protected by Utah Code Title 67, Chapter 21, Utah Protection of Public Employees Act. These protected activities include things like reporting the waste or misuse of public funds, proper, or manpower and reporting a violation or a suspected violation of the law.

In 2022, the Legislature amended the types of actions that the University could take that are within the scope of the policy.

Changes

Policy 5-211 requires that “the University must establish my substantial evidence than any adverse action against the complaining employee was justified by reasons unrelated to the employee’s good faith actions under the [Utah Protection of Public Employees Act].” “Adverse Action” was defined in statute as “to discharge, threaten, or discriminate against an employee in a manner that affects the employee’s employment, including compensation, terms, conditions, location, rights, immunities, promotions, or privileges.”

2022 General Session S.B. 40 repealed the definition of “Adverse Action” and changed the type of complaints that are subject to the University policy required by Section 67-21-3.7 from “adverse action” to “Retaliatory Action.” “Retaliatory Action” is defined in state law as doing “any of the following to an employee in violation of Section 67-21-3: dismiss the employee; reduce the employee’s compensation; fail to increase the employee’s compensation by an amount that the employee is otherwise entitled to or was promised; fail to promote the employee if the employee would have otherwise been promoted; or threaten to take and action [described above]. The revisions to Policy 5-211 implement this change in scope.

In addition, we made non-substantive technical changes to streamline and clarify the policy.

Process for Policy Revisions

The IPC reviewed the proposed changes in the September 2022 meeting and had some questions about the current process for addressing complaints of adverse actions. A working group of the IPC was formed, including Allyson Mower, Trina Rich, Sarah Projansky, and Bob Fujinami. The working group met with Allyson Hicks and Bob Thompson and received legal support from Kelly Marsden. The revised policy reflects the working groups recommendations to clarify the University's process for responding to complaints of retaliatory action. In addition, the Senate Advisory Committee for Academic Policy reviewed this proposed policy change.

This policy changes was presented for the Information of the Academic Senate on March 13, 2023 and approved by the Board of Trustees on April 11, 2023.