

Procedure: 5-203 Rev: 2

Date: April 28, 2014

EMPLOYEE RELATIONS STAFF EMPLOYEE APPEALS PROCEDURES

1. APPEALS PROCEDURES: RECEIPT OF APPEAL

Receipt by Employee Relations of a signed appeal form and statement of allegations commences the Step II or Step III appeal process. If Employee Relations accepts the appeal for action in accordance with [Policy and Procedures 5-203](#), Employee Relations shall notify the immediate manager/supervisor and the appropriate hearing officer or higher-level supervisor in Step II. In Step III cases, the appeal will be provided to the immediate manager/supervisor and either the Higher-Level Supervisor or the Hearing Committee (once constituted). If the responding party is at a vice presidential level, another vice president will be selected as the "cognizant" vice president for purposes of this process. In cases where the President is a respondent in a case or otherwise involved in the decision being reviewed, the final decision will be made by an appropriate person designated by the Chief Human Resources Officer in consultation with the Office of General Counsel.

2. APPEALS PROCEDURES: MEDIATION/NEGOTIATION

At the initial request of the parties, or at any stage of the appeals process, Employee Relations may help arrange for the parties to attempt to resolve the case through mediation. Employee Relations will also advise employees of resources available to resolve workplace issues that fall outside of the purview of [Policy and Procedures 5-203](#).

3. APPEALS PROCEDURES: STEP I APPEAL

The employee may pursue a Step I appeal with the immediate supervisor/manager and should notify Human Resources. They may also move directly to Step II appeal if the employee deems necessary. All appeals involving loss of employment go directly to Step III.

4. APPEALS PROCEDURES: STEP II APPEAL

- A. Step II Appeals will generally be heard by a higher-level supervisor who may choose the method for gathering and evaluating information related to the appeal as long as it is thorough and fair. For example, they may choose to meet with the parties and witnesses.
- B. In cases involving a Written or Final Written Warning with a demotion and suspension, A Hearing Officer may be chosen from the experienced members of the Hearing Panel who may choose the method for gathering and evaluating information related to the appeal as long as it is thorough and fair. For example, they may choose to meet with the parties and witnesses.
- C. If an employee has received notification from Human Resources that they may take some "reasonable time off" to prepare for the appeal, they must coordinate with their supervisor or manager to determine schedule adjustments, to assure minimal impact to department operations.
- D. Upon completion:
 - i. Written Warnings—the decision is final and will be forwarded to the appellant, the immediate supervisor/manager, and employee relations.

- ii. Final Written Warnings, Demotions or Suspensions without pay—the parties will have the option to request a final review by the cognizant Vice-President or designee by submitting a request to Employee Relations within five (5) working days of notice of the higher level manager’s decision. Employee Relations will forward the appeal and the decision of the hearing officer/higher-level supervisor to the cognizant Vice-President or designee for review and final decision. This decision should be forwarded to Employee Relations and to the parties.

5. APPEALS PROCEDURES: STEP III APPEAL—Higher Level Supervisor Review

- A. The higher-level supervisor may choose the method for gathering and evaluating information related to the appeal as long as it is thorough and fair. For example, they may choose to meet with the parties and witnesses.
- B. If an employee has received notification from Human Resources that they may take some “reasonable time off” to prepare for the appeal, they must coordinate with their supervisor or manager to determine schedule adjustments, to assure minimal impact to department operations.
 - i. The recommendation of the higher level supervisor will be reported to the cognizant Vice-President for a final decision. The decision should also be reported to the appellant, immediate supervisor/manager and employee relations.
 - ii. Failure to request a Step III review within the allotted time will be considered a waiver of this option and the case considered closed.

6. APPEALS PROCEDURES: STEP III APPEAL—HEARING COMMITTEE

- A. Unless an appeal has been previously withdrawn, dismissed, settled or otherwise resolved, the matter may proceed to a hearing committee. The appellant may request a formal hearing before a hearing committee within five (5) business days of the action being appealed, by submitting his/her request in writing to the Employee Relations office.
- B. Selection of Hearing Committee**
 - i. When a timely request for a formal hearing is filed, Employee Relations shall convene a hearing committee.
 - ii. The hearing committee (“Committee”) shall be composed of five (5) persons, plus one alternate, selected from a panel of individuals previously appointed for that purpose. The panel members, who shall be appointed annually, include at least 45 staff employees of the University appointed by the Chief Human Resources Officer for a three-year term—15 each year from a list of staff members nominated by the University of Utah Staff Advisory Council. Additional members from any group may be appointed as needed. The staff employees serving on this panel will also serve as the panel for Discrimination grievance hearings.
 - iii. The Committee shall be selected in the following manner: the Chief Human Resources Officer (or designee) shall select a chairperson of the Committee; four (4) additional members will be randomly selected from the list of 45, taking into account such factors as management/nonmanagement status and whether they work in the health sciences or university environment. One additional member will be chosen to serve as an alternate. iv. Members may be disqualified for good reason at the discretion of the Chief Human Resources Officer or designee. In addition, without stating the reasons, the responding party and the appellant may each excuse one panel member. If necessary, any vacancies on the Committee

resulting from disqualifications determined pursuant to the process above shall be filled by selection of the alternate or if necessary from the list of 45 staff members.

C. Hearing Guidelines

- i. To facilitate the work of the Committee, an Employee Relations representative shall:
 - (a) serve as the Secretary to the Committee;
 - (b) provide it with the complaint, a copy of the action being grieved, information submitted by the parties, if any;
 - (c) make appropriate physical arrangements;
 - (d) give notice of the time and place of the hearing to the parties,
 - (e) distribute the Committee's hearing guidelines to the parties;
 - (f) provide for the making of an electronic record of all oral testimony received and oral arguments made during the hearing; and
 - (g) provide such other investigatory and support services as the Committee may request. The Employee Relations representative may not participate in the Committee's deliberations and shall have no vote.
- ii. The Committee and each party may request the appearance of witnesses and the production of documentary evidence. Whenever possible, all materials submitted for consideration by any party or otherwise considered by the Committee shall be made available to all parties at least nine (9) calendar days prior to the scheduled hearing. In exceptional circumstances, the Committee may, at its discretion allow a party to submit evidence or materials at the time of the hearing. Advance notice of witnesses to be interviewed shall be given to all parties. Parties are responsible to notify any witnesses they wish to attend of the time and place of the hearing. Appellant must provide documents and list of witnesses by the stated deadline. If appellant does not plan to provide/introduce documents or to introduce witnesses he or she must notify HR of that decision by providing the hearing participant summary form if he or she still plans to go forward with the hearing. Failure to provide this information waives the right to a hearing, the grievance will be closed and the related employment action upheld.
- iii. The parties shall be notified in writing of the date of the hearing and a copy of these guidelines at least ten (10) calendar days prior to the hearing.
- iv. Hearings shall be conducted in secure hearing rooms and shall be closed to the public.
- v. Both parties may be accompanied and counseled by an advisor of their choice who may be an attorney, and who may participate in the hearing as described below. The parties must notify the Appeals Coordinator of the advisors selected, at least nine (9) days prior to the date of the hearing. This information is communicated on the hearing participant summary form. Failure by appellant to submit the hearing participant summary form by the stated deadline waives the right to a hearing, the grievance will be closed and the related employment action upheld.
- vi. Each party shall personally make a narrative opening statement that states her/his position on the issues and the facts. The narrative statement shall also describe the relief sought. Thereafter, either the party or his/her advisor, (if any), (but only one of them) shall conduct any examinations and cross-examinations and make a summary statement at the conclusion of the hearing.
- vii. At the hearing, the parties or their advisors, as determined above, shall have the right (through the Committee Chair) to question witnesses (including the other party), to present evidence and call witnesses on their own behalf, in accordance with the

Committee's procedures established for the conduct of hearings. The Committee may ask questions for clarification.

- viii. Attendance at the hearing:
 - (a). If the appellant fails to attend the hearing without prior notification and good cause, the hearing committee is dissolved and the original employment action stands.
 - (b). If good faith efforts to contact the appellant prior to the hearing date are unsuccessful and it is reasonably believed that the appellant will not attend, the hearing committee will be dissolved and the original employment action stands.
 - (c). It is the appellant's responsibility to ensure they have provided Employee Relations with accurate contact information throughout the grievance process.
 - (d). If the respondent fails to attend, the hearing will be suspended until a University representative can be identified to fill this role.
- ix. The Committee shall not be bound by strict rules of legal evidence or procedure and may consider any evidence deemed relevant. Regardless of whether or not a party is represented by an advisor, the Committee may ask questions at any time of either party, and the parties (not their advisors) shall respond to the questions of the Committee.
- x. The Office of General Counsel may provide a staff attorney to be present at hearings in order to provide guidance on substantive law and procedural matters.
- xi. Human Resources may provide a staff member to be present at the hearings in order to provide assistance as needed.
- xii. Committee Chairs and other committee members are prohibited from discussing any matter related to the hearing with the parties or the witnesses, or with others who are not involved in the hearing process, before or after the hearing. Violation of confidentiality shall result in dismissal from the Committee and possible disciplinary action.
- xiii. The parties shall not communicate directly to each other about the complaint.
- xiv. Committee deliberations and voting shall be closed sessions from which all other persons are excluded, exception is granted for committee counsel as necessary. Upon request of any member of the Committee, votes shall be taken by secret written ballot.
- xv. Standard of Review: The committee shall not substitute its judgment for the judgment of the manager/supervisor in question. Rather, it is their responsibility to determine:
 - (a). Was there a substantial violation or defect in the application of policy by the manager/supervisor in taking the employment action against the appellant? Did any such violation or defect operate to deny the appellant basic fairness and due process?
 - (b). Was the decision to take action justified within the bounds of reason, or was the decision arbitrary and capricious? (Did the supervisor give due consideration to the relevant facts and determining principles before taking the action?)
 - (c). Was the level of disciplinary action within the bounds of reason, or was the decision arbitrary and capricious? (Did the supervisor provide an explanation for the action that included a rational connection between the facts, principles and action?) The burden of establishing by a preponderance of the evidence that a procedural defect, if any, operated to deny basic fairness and due process rests upon the appellant.

- xvi. A majority vote by the members of the Committee who attended the hearing shall be required for decisions. The chairperson shall be entitled to vote on all questions.
- xvii. If there is more than one hearing on a matter, or if the hearing continues over more than one session, the same members are to be present for all sessions.
- xviii. The Committee shall make its findings of fact and its recommendations to the cognizant vice-president within five (5) working days after the conclusion of the hearing.
- ixx. Employee Relations shall send a copy of the Committee's findings and recommendations to the cognizant vice-president, the appellant and the responding party.

D. Vice Presidential Decision

The cognizant vice president shall consider all of the documentation s/he feels will be helpful, including the findings and recommendations of the Committee. The vice president may not base a decision on new information not presented at the hearing unless the nature of that information is fairly communicated to the parties and a reasonable opportunity to respond is given to the parties. The vice president may seek advice from his or her advisors who were not involved in taking the action or making the decision under review. Written notification of the vice president's decision should be communicated within ten (10) working days to the parties concerned. The decision of the vice-president is final and binding.