

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

Revision 1. Effective date: April 11, 2023

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I. Purpose and Scope

A. Purpose.

This policy establishes independent personnel boards to hear and take action on a complaint alleging Retaliatory Action as required by Utah Code Title 67, Chapter 21, Utah Protection of Public Employees Act. The University is committed to operating in a responsible manner and in compliance with legal requirements, and

further, wishes to foster an environment where Employees are empowered to raise concerns.

B. Scope.

This policy applies to all University of Utah Employees and all academic and administrative units of the University, including the University of Utah Hospitals and Clinics. The policy applies only to Retaliatory Action as defined in this policy, which is Retaliatory Action against an Employee for the Employee's actions that are specifically protected by Utah Code Title 67, Chapter 21, Utah Protection of Public Employees Act, such as communicating the waste or misuse of public funds. Processes addressing other types of retaliation are addressed in other regulations, such as Rule 1-012: Discrimination Complaint Rule and Policy 7-001: Policy for Research Misconduct. For information about prohibited Retaliatory Action, see Utah Code Section 67-21-3.

II. Definitions

The following definitions apply for the limited purposes of this policy and any associated regulations.

- A. The terms defined in Policy 5-001 apply for purposes of this policy.
- B. "Complaining Party" means an employee who files a complaint described in this policy.
- C. "Faculty-Involved Complaint" means a complaint alleging that a Faculty Member engaged in Retaliatory Action.
- D. "Good Faith" means that an Employee acts with:
 - a. subjective good faith; and
 - b. the objective good faith of a reasonable Employee.
- E. "Retaliatory Action" means to do any of the following to an Employee in violation of Utah Code Section 67-21-3:
 - a. dismiss the Employee;

- b. reduce the Employee's compensation;
- c. fail to increase the Employee's compensation by an amount that the Employee is otherwise entitled or was promised;
- d. fail to promote the Employee if the Employee would have otherwise been promoted; or
- e. threaten to take an action described in this Subsection II.E.

III. Policy

A. Independent Personnel Board

1. The University's independent personnel board is comprised of the following personnel:
 - a. for a complaint other than a Faculty-Involved Complaint, three individuals from the Staff Hearing Committee Pool, which is described in Policy 5-203; or
 - b. for a Faculty-Involved Complaint, three individuals from the Senate Consolidated Hearing Committee selected in accordance with Policy 6-011.
2. The independent personnel board may not include an individual who:
 - a. is in the same department as the complaining party;
 - b. is a supervisor of the complaining party; or
 - c. has a known conflict of interest in relation to the complaining party or an allegation made in the complaint.
3. The University may combine a hearing for a complaint alleging Retaliatory Action with another type of hearing.

B. Complaint Filing

1. An Employee may file a complaint alleging Retaliatory Action with the

director of employee relations for human resources no later than 180 days after the occurrence of the alleged Retaliatory Action. This time limit does not extend the time for any appeal or request for a hearing made pursuant to other University regulations, including but not limited to Policy 5-203 , 6-002 or 6-011.

2. A Complaining Party shall file the complaint in Good Faith.
3. A Complaining Party should include in a complaint alleging Retaliatory Action specific information relevant to the allegation, including the date, time, and location of the alleged Retaliatory Action, the individual(s) involved and/or responsible, the nature of the complaint, and the desired remedy.

C. Routing of Complaint

1. The director of employee relations for human resources shall forward a Faculty-Involved Complaint to the Academic Senate Office and may notify the associate vice president for faculty or the health sciences associate vice president for faculty as appropriate.
2. The Academic Senate Office for a Faculty-Involved Complaint, or the director of employee relations for all other complaints, may dismiss a complaint that does not allege Retaliatory Action or is not made in Good Faith.
 - a. A Complaining Party may appeal the dismissal of the complaint to the cognizant senior vice president for a Faculty-Involved Complaint or the Chief Human Resources Officer for all other complaints with five days of the dismissal.
3. For a Faculty-Involved complaint that is not dismissed, the Academic Senate Office shall convene an independent personnel board.
4. For all other complaints that are not dismissed, the director of employee relations shall convene an independent personnel board.

D. Hearing and Final Decision Procedures

1. Except as otherwise described below, a hearing for a complaint alleging Retaliatory Action shall follow hearing procedures associated with Policy 5-203.
2. The burden of proof is on the University to establish by substantial evidence that the University's action was justified by reasons unrelated to the Employee's Good Faith actions under Utah Code Section 67-21-3, and therefore was not a Retaliatory Action.
3. The independent personnel board shall, at the conclusion of a hearing, prepare a report and recommendation regarding whether the University engaged in Retaliatory Action and provide the report to the final decision-maker.
 - a. For a Faculty-Involved Complaint, the final decision maker is:
 - i. the cognizant senior vice president or designee; or
 - ii. if the cognizant senior vice president allegedly engaged in the Retaliatory Action, the other senior vice president.
 - b. For all other complaints, the final decision maker is:
 - i. the cognizant vice president or designee; or
 - ii. if the cognizant vice president allegedly engaged in the Retaliatory Action, another appropriate vice president as determined by the president.
4. The independent personnel board shall provide the report and recommendation within 30 days of the day on which the employee files the complaint, or a longer period of time, not exceeding 60 days from the day on which the employee files the complaint, if agreed to by the employee who filed the complaint and the independent personnel board.
 - a. A final decision-maker who receives a recommendation pursuant to this

policy shall render a decision within seven days after the day on which the final decision-maker receives the recommendation.

5. For a complaint other than a Faculty-Involved Complaint, the final decision described in this policy constitutes the final decision regarding any Employee grievance under Policy 5-203.
6. For a Faculty-Involved Complaint, if another type of hearing under Policy 6-011 is combined with a hearing under this policy, the procedures and appeals processes are governed by Policy 6-011.

Sections IV- VII are for user information and are not subject to the approval of the Academic Senate or the Board of Trustees. The Institutional Policy Committee, the Policy Owner, or the Policy Officer may update these sections at any time.

IV. Policies/ Rules, Procedures, Guidelines, Forms and other Related Resources

- A. Policies/ Rules. [*reserved*]
- B. Procedures, Guidelines, and Forms. [*reserved*]
- C. Other Related Resources. [*reserved*]

V. References

- A. Policy 5-100: Employee Definitions
- B. Policy 5-203: Staff Employee Grievances
- C. Policy 6-011: Functions and Procedures of the Senate Consolidated Hearing Committee
- D. Utah Code Title 67, Chapter 21, Utah Protection of Public Employees Act

VI. Contacts

The designated contact officials for this Regulation are:

A. Policy Owners (primary contact person for questions and advice): Human Resources Director for Employee Relations

B. Policy Officers: Chief Human Resources Officer

See University Rule 1-001 for information about the roles and authority of policy owners and policy officers.

VII. History

Revision History.

A. Current version. Revision 1.

1. Presented for the Information of Academic Senate March 13, 2023 and Approved by Board of Trustees April 11, 2023, with effective date of April 11, 2023.

2. Legislative History

B. Previous versions.

1. Revision 0. Effective Date. July 1, 2019.

a. Legislative History for Revision 0.

C. Renumbering

1. Not applicable