

University of Utah

Legislative History

Interim Policy 5-211 -- University Independent Personnel Boards & Procedures for Complaints Under the Utah Protection of Public Employees Act.

As presented to the Senate Executive Committee 2019-06-17, presented for the Information and Recommendations of the Academic Senate 2019-08-26, and presented to & approved by the Board of Trustees September 10, 2019. Date of Enactment by the University President, and effective date: July 1, 2019

History prepared by Bob Flores, Senate Policy Liaison, for the Institutional Policy Committee.

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1. Note regarding History. This Regulation was enacted as an Interim Policy July 1, 2019, by the President of the University, without action by the Academic Senate, under the authority for Interim Regulations as described in Policy 1-001. A draft of the Interim Regulation was presented to the Academic Senate Executive Committee for consultation June 17, 2019 prior to the President’s enactment, and after enactment the Interim Regulation was also presented for the Information and Recommendations of the Senate, August 26, 2019. The Regulation was then presented to & approved on the General Consent calendar by the Board of Trustees September 10, 2019.

For further information regarding the *interim* status, and the anticipated schedule for replacing the Interim Regulation with a permanent Regulation—contact the office of the *Policy Owner or Policy Officer*. Policy Owner: Senior Human Resources Director for Employee Relations (tel. 801-581-5469). Policy Officer: Chief Human Resources Officer.

**Explanatory memorandum / President's notice to IPC
regarding Interim Policy 5-211**

[placeholder only, *document not on file with IPC as of July 2020*]

[Note: For Senate Executive Committee meeting June 17, 2019. As will be explained at meeting, it is expected that President Watkins will implement this around July 1, as an Interim Regulation, in response to a new Utah legislation requirement.]

[Interim] Policy 5-211: University Independent Personnel Boards and Procedures for Complaints Under the Utah Protection of Public Employees Act. Revision 0
[Interim]. Effective date: July 1, 2019

I. Purpose and Scope

A. Purpose:

The primary purpose of this Policy is to establish the types of independent personnel boards and related procedures by which the University implements the Utah Protection of Public Employees Act for filing and administrative review of certain types of complaints from University employees. 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.

II. Definitions

A. The Utah Protection of Public Employees Act (“UPPEA”) is [Utah Code Section 67-21-1](#), et seq., as amended {Drafting note: a copy is attached for convenience}.

B. The following definitions of terms as defined in Policy 5-001 –Employee Definitions, apply for purposes of this Policy:

1. Employee – An individual who meets both of the following qualifications:

- a. Receives compensation for work or services in which the University has the right (whether or not it exercised the right) to supervise and control the manner of performance as well as the result of the work or service and
- b. Receives compensation which has been appropriated from funds controlled by the University regardless of the source of the funds, the duties of the position, the amount of the compensation paid, or the percent of time worked.

2. Employees include: Administrative Officers, Faculty or Faculty Members, Non-Faculty Academic Employees, Staff or Staff Member, At-will, Benefits Eligible and Non-Benefits Eligible, Full-time and Part-time, Per Diem or PRN, Probationary, Salaried Exempt, Hourly Non-Exempt, Temporary, Time and/or Fund Limited.

III. Policy

A. Independent Personnel Boards for staff or faculty employees.

Whereas the UPPEA provides that a “state institution of higher education shall adopt a policy to establish an independent personnel board to hear and take action on a complaint alleging adverse action”, and because the University has for other purposes previously established separate dispute hearing bodies and hearing procedures for various disputes involving either staff employees or faculty employees, the University’s independent personnel boards for purposes of the UPPEA are comprised of the following personnel:

- i. For a concern brought by a staff member against a staff member (a staff-involved case), the independent personnel board will be comprised of individuals from the Staff Hearing Committee Pool. (See Hearing Procedures [5-203](#))
- ii. For concerns brought by a faculty member or against a faculty member (a faculty-involved case), the independent personnel board will be comprised of individuals from the Senate Consolidated Hearing Committee. (See Policies [6-002](#) and [6-011](#))
- iii. The independent personnel board will not include any individual who is in the same department as the complaining party, is a supervisor of the complaining party, or has a known conflict of interest in relation to the complaining party or an allegation made in the complaint.

B. Complaint filing.

- i. A complaint alleging a violation of the UPPEA must be filed within 180 days after the occurrence of the alleged violation and must be filed with the Director of Employee Relations. This time limit does not extend the time for any appeal or request for a hearing made pursuant to other University Regulation, including but not limited to Policy [5-203](#) , [6-002](#) or [6-011](#).
- ii. A complaint filed under this Policy should be filed in good faith and include specific information relevant to the concern, including: date, time, location of alleged occurrence of violation of the UPPEA, individual(s) involved and/or responsible, the nature of the complaint, and desired remedy.

C. Hearing and Final Decision Procedures

- i. Except as otherwise described below, a complaint alleging a violation of the UPPEA and which warrants a hearing will follow hearing procedures associated with University Policy 5-203, “*Staff Employee Grievances.*”
 - a. When a complaint is filed by a staff employee and/or about a staff employee (a staff-involved case) the independent personnel board will consist of three (3) members of the Staff Hearing Committee pool, unless the hearing under this Policy is combined with another type of hearing that requires a greater number of committee members.
 - b. When a complaint is filed by a faculty employee or about a faculty employee (a faculty-involved case) the independent personnel board will consist of three (3) members of the Senate Consolidated Hearing

Committee pool, unless the hearing under this Policy is combined with another type of hearing that requires a greater number of committee members (in which case the greater number shall apply). The selection procedures for board members shall be in accord with Policy [6-011](#).

- ii. The independent personnel board shall, at the conclusion of a hearing, prepare a report and recommendation concerning the complaint.
 - a. For a staff-involved case the report and recommendation will be forwarded to the appropriate cognizant Vice President (or a designee) for review and final decision.
 - b. For a faculty-involved case the report and recommendation will be forwarded to the cognizant Sr. Vice President (or a designee) for review and final decision.
- iii. A final decision maker who receives a recommendation pursuant to this Policy shall render a decision within seven (7) days after the day on which the final decision maker receives the recommendation.
- iv. For a staff-involved case, the final decision described in this Policy constitutes the final decision regarding any employee grievance under Policy 5-203.
- v. For a faculty-involved case, nothing in this Policy prohibits the Senate Consolidated Hearing Committee from combining the hearing under this Policy with any other type of hearing or procedure under Policy 6-011. If another type of hearing under Policy 6-011 is combined with a hearing under this Policy, the procedures and appeals processes will be governed by Policy 6-011.
- vi. For either a staff-involved or a faculty-involved case under this Policy, in accord with the UPPEA (and as these terms are defined in the UPPEA) the University must establish by “*substantial evidence*” that any “*adverse action*” against the complaining employee was justified by reasons unrelated to the employee’s good faith actions under the UPPEA.

[Note: Parts IV-VII of this Regulation (and all other University Regulations) are Regulations Resource Information – the contents of which are not approved by the Academic Senate or Board of Trustees, and are to be updated from time to time as determined appropriate by the cognizant Policy Officer and the Institutional Policy Committee, as per Policy 1-001 and Rule 1-001.]

IV. Rules, Procedures, Guidelines, Forms, and other related resources

[reserved]

V. References

Policy 5-100 Employee Definitions

Procedure 5-203 Staff Employee Appeal Hearings

Policy 6-011 Senate Consolidated Hearing Committee

Utah Protection of Public Employees Act--[Utah Code Section 67-21-1](#), *et seq.*,

VI. Contacts

The designated contact officials for this Policy are:

Policy Owner (primary contact person for questions and advice): Human Resources Director for Employee Relations (tel. 801-581-5469)

Policy Officer: Chief Human Resources Officer

These officials are designated by the University President or delegee, with assistance of the Institutional Policy Committee, to have the following roles and authority, as provided in University Rule 1-001:

"A "Policy Officer" will be assigned by the President for each University Policy, and will typically be someone at the executive level of the University (i.e., the President and his/her Cabinet Officers). The assigned Policy Officer is authorized to allow exceptions to the Policy in appropriate cases.... "

"The Policy Officer will identify an "Owner" for each Policy. The Policy Owner is an expert on the Policy topic who may respond to questions about, and provide interpretation of the Policy; and will typically be someone reporting to an executive level position (as defined above), but may be any other person to whom the President or a Vice President has delegated such authority for a specified area of University operations. The Owner has primary responsibility for maintaining the relevant portions of the Regulations Library... .[and] bears the responsibility for determining which reference materials are helpful in understanding the meaning and requirements of particular Policies... ." University Rule 1-001-III-B & E

VII. History { *add history description after Policy is processed through Senate and Trustees.* }

COPY OF UPPEA

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Chapter 21

Utah Protection of Public Employees Act

67-21-1 Short title.

This chapter is known as the "Utah Protection of Public Employees Act."

Enacted by Chapter 216, 1985 General Session

67-21-2 Definitions.

As used in this chapter:

(1) "Abuse of authority" means an arbitrary or capricious exercise of power that:

(a) adversely affects the employment rights of another; or

(b) results in personal gain to the person exercising the authority or to another person.

(2) "Adverse action" means 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.

(3) "Communicate" means a verbal, written, broadcast, or other communicated report.

(4) "Damages" means general and special damages for injury or loss caused by each violation of

this chapter.

(5) "Employee" means a person who performs a service for wages or other remuneration under a

contract of hire, written or oral, express or implied.

(6)

(a) "Employer" means the public body or public entity that employs the employee.

(b) "Employer" includes an agent of an employer.

(7) "Gross mismanagement" means action or failure to act by a person, with respect to a person's

responsibility, that causes significant harm or risk of harm to the mission of the public entity or

public body that employs, or is managed or controlled by, the person.

(8) "Judicial employee" means an employee of the judicial branch of state government.

(9) "Legislative employee" means an employee of the legislative branch of state government.

(10) "Political subdivision employee" means an employee of a political subdivision of the state.

(11) "Public body" means any of the following:

(a) a state officer, employee, agency, department, division, bureau, board, commission, council, authority, educational institution, or any other body in the executive branch of state

government;

(b) an agency, board, commission, council, institution member, or employee of the legislative

branch of state government;

(c) a county, city, town, regional governing body, council, school district, local district, special

service district, or municipal corporation, board, department, commission, council, agency, or

any member or employee of them;

(d) any other body that is created by state or local authority, or that is primarily funded by or

through state or local authority, or any member or employee of that body;

(e) a law enforcement agency or any member or employee of a law enforcement agency; and

(f) the judiciary and any member or employee of the judiciary.

(12) "Public entity" means a department, division, board, council, committee, institution, office,

bureau, or other similar administrative unit of the executive branch of state government.

(13) "Public entity employee" means an employee of a public entity.

(14) "Retaliatory action" is as defined in Section 67-19a-101.

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(15) "State institution of higher education" is as defined in Section 53B-3-102.

(16) "Unethical conduct" means conduct that violates a provision of Title 67, Chapter 16, Utah

Public Officers' and Employees' Ethics Act.

Amended by Chapter 427, 2013 General Session

67-21-3 Reporting of governmental waste or violations of law -- Employer action -- Exceptions.

(1)

(a) An employer may not take adverse action against an employee because the employee, or a

person authorized to act on behalf of the employee, communicates in good faith:

(i) the waste or misuse of public funds, property, or manpower;

(ii) a violation or suspected violation of a law, rule, or regulation adopted under the law of this

state, a political subdivision of this state, or any recognized entity of the United States; or

(iii) as it relates to a state government employer:

(A) gross mismanagement;

(B) abuse of authority; or

(C) unethical conduct.

(b) For purposes of Subsection (1)(a), an employee is presumed to have communicated in good

faith if the employee gives written notice or otherwise formally communicates the conduct

described in Subsection (1)(a) to:

(i) a person in authority over the person alleged to have engaged in the conduct described in Subsection (1)(a);

(ii) the attorney general's office;

(iii) law enforcement, if the conduct is criminal in nature;

(iv) if the employee is a public entity employee, public body employee, legislative employee, or a judicial employee:

(A) the state auditor's office;

(B) the president of the Senate;

(C) the speaker of the House of Representatives;

(D) the Office of Legislative Auditor General;

(E) the governor's office;

(F) the state court administrator; or

(G) the Division of Finance;

(v) if the employee is a public entity employee, but not an employee of a state institution of higher education, the director of the Division of Purchasing and General Services;

(vi) if the employee is a political subdivision employee:

(A) the legislative body, or a member of the legislative body, of the political subdivision;

(B) the governing body, or a member of the governing body, of the political subdivision;

(C) the top executive of the political subdivision; or

(D) any government official with authority to audit the political subdivision or the applicable part of the political subdivision; or

(vii) if the employee is an employee of a state institution of higher education:

(A) the State Board of Regents or a member of the State Board of Regents;

(B) the commissioner of higher education;

(C) the president of the state institution of higher education where the employee is employed;

or

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(D) the entity that conducts audits of the state institution of higher education where the employee is employed.

(c) The presumption described in Subsection (1)(b) may be rebutted by showing that the employee knew or reasonably ought to have known that the report is malicious, false, or frivolous.

(2) An employer may not take adverse action against an employee because an employee participates or gives information in an investigation, hearing, court proceeding, legislative or other inquiry, or other form of administrative review held by the public body.

(3) An employer may not take adverse action against an employee because the employee has objected to or refused to carry out a directive that the employee reasonably believes violates a

law of this state, a political subdivision of this state, or the United States, or a rule or regulation adopted under the authority of the laws of this state, a political subdivision of this state, or the United States.

(4) An employer may not implement rules or policies that unreasonably restrict an employee's ability to document:

- (a) the waste or misuse of public funds, property, or manpower;
- (b) a violation or suspected violation of any law, rule, or regulation; or
- (c) as it relates to a state government employer:
 - (i) gross mismanagement;
 - (ii) abuse of authority; or
 - (iii) unethical conduct.

Amended by Chapter 178, 2018 General Session

67-21-3.5 Administrative review of adverse action against a public entity employee.

(1) A public entity employee who believes that the employee's employer has taken retaliatory action against the employee in violation of this chapter may file a grievance with the Career Service Review Office in accordance with Section 67-19a-402.5 and subject to Section 67-21-4.

(2) If the Career Service Review Office determines that retaliatory action is taken in violation of this chapter against the public entity employee, the Career Service Review Office may order:

- (a) reinstatement of the public entity employee at the same level held by the public entity employee before the retaliatory action;
- (b) the payment of back wages, in accordance with Subsection 67-19a-406(5)(b);
- (c) full reinstatement of benefits;
- (d) full reinstatement of other employment rights; or
- (e) if the retaliatory action includes failure to promote, as described in Subsection 67-19a-101(11) (d), a pay raise that results in the employee receiving the pay that the employee would have received if the person had been promoted.

(3) A public entity employer has the burden to prove by substantial evidence that the public entity employer's action was justified.

(4) A public entity employee or public entity employer may appeal a determination of the Career Service Review Office as provided in Section 67-19a-402.5.

Amended by Chapter 390, 2018 General Session

67-21-3.6 Administrative review for political subdivision employees.

(1)

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(a) A political subdivision may adopt an ordinance to establish an independent personnel board

to hear and take action on a complaint alleging adverse action.

(b) The ordinance described in Subsection (1)(a) shall include:

(i) procedures for filing a complaint and conducting a hearing; and

(ii) a burden of proof on the employer to establish by substantial evidence that the employer's

action was justified by reasons unrelated to the employee's good faith actions under Section

67-21-3.

(2) If a political subdivision adopts an ordinance described in Subsection (1), a political subdivision

employee may file a complaint with the independent personnel board alleging adverse action.

(3) If an independent personnel board finds that adverse action is taken in violation of the

ordinance described in Subsection (1)(a), the independent personnel board may order:

(a) reinstatement of the employee at the same level as before the adverse action;

(b) the payment of back wages;

(c) full reinstatement of fringe benefits;

(d) full reinstatement of seniority rights; or

(e) if the adverse action includes failure to promote, as described in Subsection 67-19a-101(11)

(d), a pay raise that results in the employee receiving the pay that the employee would have

received if the person had been promoted.

Enacted by Chapter 427, 2013 General Session

67-21-3.7 Administrative review for state institution of higher education employees.

(1)

(a) As used in this section, "independent personnel board" means a board where no member of

the board:

(i) is in the same department as the complainant;

(ii) is a supervisor of the complainant; or

(iii) has a conflict of interest in relation to the complainant or an allegation made in the complaint.

(b) A state institution of higher education shall adopt a policy to establish an independent

personnel board to hear and take action on a complaint alleging adverse action.

(c) The policy described in Subsection (1)(b) shall include:

(i) procedures for filing a complaint and conducting a hearing; and
(ii) a burden of proof on the employer to establish by substantial evidence that the employer's action was justified by reasons unrelated to the employee's good faith actions under Section 67-21-3.

(2)

(a) An employee of a state institution of higher education may file a complaint with the independent personnel board described in Subsection (1)(b) alleging adverse action.

(b) An independent personnel board that receives a complaint under Subsection (2)(a) shall hear

the matter, resolve the complaint, and take action under Subsection (3) within the later of:

(i) 30 days after the day on which the employee files the complaint; or

(ii) a longer period of time, not to exceed 30 additional days, if the employee and the independent personnel board mutually agree on the longer time period.

(3) If an independent personnel board finds that adverse action is taken in violation of the policy

described in Subsection (1)(b), the independent personnel board may order, or recommend to a

final decision maker:

(a) reinstatement of the employee at the same level as before the adverse action;

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(b) the payment of back wages;

(c) full reinstatement of fringe benefits;

(d) full reinstatement of seniority rights; or

(e) if the adverse action includes failure to promote, as described in Subsection 67-19a-101(11)

(d), a pay raise that results in the employee receiving the pay that the employee would have

received if the person had been promoted.

(4) A final decision maker who receives a recommendation under Subsection (3) shall render a

decision and enter an order within seven days after the day on which the final decision maker

receives the recommendation.

Amended by Chapter 178, 2018 General Session

67-21-4 Choice of forum -- Remedies for employee bringing action -- Proof required.

(1)

(a) Except as provided in Subsection (1)(b) or (d), and subject to Subsections (1)(d) through (e),

an employee who alleges a violation of this chapter may bring a civil action for appropriate

injunctive relief, damages, or both, within 180 days after the occurrence of the alleged

violation of this chapter.

(b) Except as provided in Subsection (1)(d):

(i) an employee of a political subdivision that has adopted an ordinance described in Section

67-21-3.6:

(A) may bring a civil action described in Subsection (1)(a) within 180 days after the day on

which the employee has exhausted administrative remedies; and

(B) may not bring a civil action described in Subsection (1)(a) until the employee has exhausted administrative remedies; and

(ii) an employee of a state institution of higher education:

(A) may bring a civil action described in Subsection (1)(a) within 180 days after the day on

which the employee has exhausted administrative remedies; and

(B) may not bring a civil action described in Subsection (1)(a) until the employee has exhausted administrative remedies.

(c) Except as provided in Subsection (1)(d), a public entity employee who is not a legislative

employee or a judicial employee may bring a claim of retaliatory action by selecting one of the

following methods:

(i) filing a grievance with the Career Service Review Office in accordance with Section 67-19a-402.5; or

(ii) bringing a civil action for appropriate injunctive relief, damages, or both, within 180 days

after the occurrence of the alleged violation of this chapter.

(d)

(i) A claimant may bring an action after the 180-day limit described in this Subsection (1) if:

(A) the claimant originally brought the action within the 180-day time limit;

(B) the action described in Subsection (1)(d)(i)(A) failed or was dismissed for a reason other

than on the merits; and

(C) the claimant brings the new action within 180 days after the day on which the claimant

originally brought the action under Subsection (1)(d)(i)(A).

(ii) A claimant may commence a new action under this Subsection (1)(d) only once.

(e) A public entity employee who files a grievance under Subsection (1)(d)(i):

(i) may not, at any time, bring a civil action in relation to the subject matter of the grievance;

(ii) may seek a remedy described in Subsection 67-21-3.5(2); and

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(iii) waives the right to seek a remedy or a type of damages not included in Subsection 67-21-3.5(2).

(f) A public entity employee who files a civil action under Subsection (1)(d)(ii) may not, at any

time, file a grievance with the Career Service Review Office in relation to the subject matter of the civil action.

(2) An employee who brings a civil action under this section shall bring the action in the district court for the county where the alleged violation occurred, the county where the complainant resides, or the county where the person against whom the civil complaint is filed resides or has the person's principal place of business.

(3) To prevail in an action brought under this section, the employer shall prove by substantial evidence that the employer's action was justified.

Amended by Chapter 178, 2018 General Session

67-21-5 Court orders for violation of chapter.

(1) A court, in rendering a judgment in an action brought under this chapter, may order reinstatement of the employee at the same level, the payment of back wages, full reinstatement

of fringe benefits and seniority rights, damages, or any combination of these remedies.

(2) A court shall award the complainant all or a portion of the costs of litigation, which are

defined to include reasonable attorney fees and witness fees, if the court determines that the

complainant prevails.

Amended by Chapter 427, 2013 General Session

67-21-6 Civil fine.

(1)

(a) A person who violates this chapter is liable for a civil fine of not more than \$500.

(b) The person who takes an adverse action against an employee in violation of this chapter,

and not the public body that employs the employee, shall, after receiving notice and an opportunity to be heard, pay the civil fine under this Subsection (1).

(c) If a person is ordered to pay a civil fine under this Subsection (1), the employer may dismiss

the person who took the adverse action in violation of this chapter.

(2) A civil fine ordered under this chapter shall be submitted to the state treasurer for deposit in the General Fund.

(3) The civil fine described in this section may be imposed if a violation of this chapter is found by:

(a) an independent personnel board described in Subsection 67-21-3.6(1)(a) or 67-21-3.7(1)(a);

(b) the Career Service Review Office; or

(c) a court.

Amended by Chapter 427, 2013 General Session

67-21-7 No impairment of employee rights under collective bargaining agreement.

This chapter shall not be construed to diminish or impair the rights of an employee under any collective bargaining agreement.

Enacted by Chapter 216, 1985 General Session

67-21-8 No compensation when participation in public inquiry.

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This chapter shall not be construed to require an employer to compensate an employee for participation in an investigation, hearing, or inquiry held by a public body in accordance with

Section 67-21-3.

Enacted by Chapter 216, 1985 General Session

67-21-9 Notice of contents of this chapter -- Posting.

(1) An employer shall post notices and use other appropriate means to keep employees informed

of their protections and obligations under this chapter.

(2) An employer shall provide an employee with a copy of this chapter:

- (a) when the employee is hired;
- (b) upon a request by the employee; and
- (c) when the employee files a grievance under this chapter.

Amended by Chapter 178, 2018 General Session

67-21-10 False accusations.

(1) An employee violates this chapter if the employee knowingly makes a false accusation against

an employer under this chapter.

(2) An employee who violates Subsection (1), is subject to:

- (a) a fine not to exceed \$5,000; and
- (b) dismissal from employment.

Enacted by Chapter 427, 2013 General Session

--end--