Employee Relations Process Handout

Introduction

Reference this document for informal and formal employee relations cases. This document is not meant to be legal guidance, nor was it reviewed by UWS legal counsel. Always refer to your own institutions handbook/by-laws and policies, UWS policy, state and federal law, and contact legal counsel as needed.

General Guidance

All faculty and staff should be provided and/or have access to university policies upon hire. Conduct trainings and notices to faculty and staff as applicable, per policy type. Coordinate updates for non-compliance related policies with university shared governance.

Generally, an employer is required to respond to an employee complaint of bullying, sexual harassment, discrimination, and/or retaliation when the employer “knows or should have known” about alleged misconduct. Follow your institution’s policies regarding what triggers an informal versus formal investigation.

Thus, upon a complaint, assess whether the situation involves ineffective behavior (conflict or performance based) or if there is an egregious alleged misconduct behavior (bullying, sexual harassment, discrimination, and/or retaliation).

Investigator Qualifications/Expectations

- Trained/experienced in conducting workplace investigations
- Highly effective interpersonal skills
- Able to identify and minimize biases, and notify their supervisor when a bias is/will be a conflict
- Document and follow-up, even for informal (or “non-case”) related items
- Avoid pre-judging the findings or decision during the investigation

Initial Checklist

☐ Gather and document:
  - How the complaint came to your office
  - Faculty or staff complainant name, supervisor, department

☐ Determine if:
  - The faculty or staff member has spoken to the person directly
  - The faculty or staff member has spoken to their supervisor (when/if supervisor is not the respondent)
Determine which type of investigation if any is needed, informal or formal investigation and identify next steps

Communicate options to faculty or staff member

Provide employee assistance program resources to individual

Create an employee relations case file, even if it’s a “non-case”

For informal, “non-case” situation (employee chose to speak with supervisor and/or other involved party directly), follow-up with complainant within two weeks

**Conducting an Effective Investigation**

A timely good-faith determination based on a timely good-faith investigation is critical for formal employee relations cases. When possible, apply the preponderance of evidence decision making (a greater than 50% chance the behavior occurred) to all types of conduct related cases for faculty and staff. Also, consider complainant, respondent, and witness creditability when making a determination. When possible, have two investigators (one may be the supervisor, depending on situation) to conduct the investigation. If there are delays within the process, document the reasons and include in the timeline.

Interviewing all witnesses is recommended. However, depending on the amount of witnesses, if at a certain point the investigators determine further interviews, based on initial statements of those already received, will not illicit new or different information, document the rationale for not interviewing all witnesses.

**At the end of the interviews**

Ask all parties to limit or avoid discussing the situation with others as it may hinder or alter the investigation determination.

Provide all parities the anti-retaliation information.

**Due Process Requirements**

The state of Wisconsin requires due process prior to formally disciplining an employee. It is the process in which an individual is notified of concerns and provided the opportunity to respond to concerns prior to discipline being administered. The in-person opportunity is referred to as Loudermill Hearing or investigatory interview (the terms are interchangeable). An employee is also provided the right to bring a representative (any person who is not a witness) to provide support to a Loudermill Hearing.

The written notice should include the concerns/incident, any relevant dates, the complainant’s name, location, time, investigator(s) name(s), and any other relevant information. Enclose a copy of the institution’s policy/policies being reviewed for determination.

If a representative is present, provide expectations for the meeting. The role of the
representative is to be a witness for the individual at this meeting. The representative cannot comment on behalf of the employee. If guidance from the representative is requested, a short caucus may take place. A caucus after each question is not appropriate.

**Just Cause**

For an effective response to alleged misconduct, ensure just cause occurs. Just cause is a standard applied to determine the appropriateness of a disciplinary action. The elements of determining whether just cause exists include whether:

- The employee had notice of reasonable workplace expectations and the potential consequences if those expectations were not met
- A full, fair and complete investigation was undertaken by the employer before discipline or discharge to determine whether the employee violated expectations
- The employer obtained substantial evidence of the employee's culpability
- Workplace expectations were applied equitably and without discrimination, and
- The degree of discipline imposed was reasonably related to the seriousness of the employee's offense and the employee's past record

**Progressive Discipline**

Follow your institution’s progressive discipline procedures. While there may be fewer or more steps, common progressive discipline is:

1. Verbal warning
2. Written warning
3. Termination

**Investigation Checklist**

- Gather and review as much information as possible from complainant or supervisor
  - Review the possible policy/policies violated, gather department policies as needed
- Determine an estimated level of alleged misconduct to determine if informal or required previous steps within institution’s process have occurred
  - Determine if a performance improvement plan is appropriate prior to investigation for discipline
  - Determine risk level of individual remaining at work during the investigation.
- Provide complainant the investigation process and employee assistance program information (and/or other community resources)
- Create and update a complete [as possible] timeline starting with the first incident the complainant, respondent, and witnesses provide, include the investigation start date (the date of notice from the complainant either to HR or to another party), and all dates of the investigation
☐ Contact the complainant and respondent’s supervisor(s); or the supervisor’s supervisor if the respondent is the complainant’s supervisor
☐ Interview supervisor(s) as appropriate
☐ Meet with the respondent to notify them of investigation; provide a written notice of investigation
  o Ensure the respondent receives the investigation process and employee assistance program information (and/or other community resources)
☐ Conduct interviews; depending on situation it may be appropriate to interview some individuals prior to the respondent
  o Interview the respondent as timely as possible
  o Re-interview the complainant and/or respondent to follow-up on new/different information
    Attempt to minimize re-interviews by gathering as much additional information prior to the re-interview
☐ Periodically touch base with the complainant and respondent to keep them up to date on the progress/timelines of the investigation
☐ Review case and contact legal counsel if/as needed
☐ Create an investigatory report and/or letter of findings, documenting discipline if determined
☐ Provide the findings to complainant first, then the respondent, and supervisor(s)

Interview Questions

When interviewing, start with open-ended questions and narrow to closed ended questions.

Ask all:
• Please describe what occurred in your own words.
• What/How did you feel when that happened?
• What did you do after…?
• Where and when did this take place?
• Who else was present; Who else may have seen/heard the incident?
• What do you think the reasons are/were for the behavior?
• Have you discussed the incident with anyone since it occurred?
• What actions have you taken since the incident?
• Do you know of any others who may have been affected by the actions? If so, who?
• Is there any documentation, physical evidence, or other information you would like to provide?
• Is there anyone else we should interview? If, yes, who?
• How are you doing, and do you have resources/support?
• Is there anything else you would like to share?

Additional for the complainant:
• Have you indicated to the person that you are displeased by the behavior?
Another common question is “What would you like the institution to do?”. Please follow your preferences on using this question. While this question provides an additional level of support to the complainant, if the complainant provides a request that, after investigation, is not appropriate, it may lead to the complainant feeling as though you didn’t support them, and/or they may have a more difficult time accepting the response.

For the respondent, if they deny the incident occurred or if the situation as they describe it is vastly different than other(s).
• Is there any reason anyone would invent or lie about the incident?
• Where were you when the alleged incident occurred?
• Are there any witnesses who can corroborate your version of the incident or your whereabouts at the time of the incident?

Additional for witnesses:
• How would you describe the respondent?
• How would you describe the complainant?