

# The University of Wisconsin System UPS OPERATIONAL POLICY - GEN 14



**SUBJECT:** Grievance Procedures

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**Original Issuance Date:** July 1, 2015

**Last Revision Date:**

## 1. POLICY PURPOSE:

The purpose of this policy is to establish grievance procedure parameters for university staff that include the elements required by [Wis. Stat. § 36.115\(4\)](#).

## 2. POLICY BACKGROUND:

This policy establishes grievance procedures for university staff who were formerly members of the classified staff (subject to [Wis. Stat. Chapter 230](#)) as of June 30, 2015, and for university staff hired on or after July 1, 2015, who, by the terms of their appointment, have an expectation of continued employment.

### A. Dismissal

Under [Wis. Stat. § 36.115\(4\)](#) the new University of Wisconsin System personnel systems must include grievance procedures applicable to dismissals that include the following elements:

- (a) A written document specifying the process that a grievant and an employer must follow [Wis. Stat. § 36.115\(4\)\(a\)](#).
- (b) A hearing before an impartial hearing officer [Wis. Stat. § 36.115\(4\)\(b\)](#).
- (c) An appeal process in which the highest level of appeal is the Board of Regents [Wis. Stat. § 36.115\(4\)\(c\)](#).

All UW System institutions will need to develop and administer, through university staff shared governance, grievance procedures for dismissals of university staff consistent with the elements outlined in this policy.

University of Wisconsin System faculty are subject to Chapters [UWS 4](#) and [UWS 7](#) of the Wisconsin Administrative Code. University of Wisconsin System academic staff are subject to [Chapter UWS 11](#) of the Wisconsin Administrative Code. Institution faculty and academic staff governance bodies will need to make the necessary changes to incorporate the impartial hearing officer concept into their respective rules. Academic staff governance bodies will need to incorporate appeal to the Board for fixed term and probationary academic staff. Indefinite academic staff are currently provided with appeal to the Board.

## **B. Discipline**

[Wis. Stat. § 36.115\(4\)](#) requires the Board and the UW-Madison chancellor to establish personnel systems that include provisions relating to employee discipline. Chapters [UWS 6](#) and [UWS 13](#) of the Wisconsin Administrative Code require UW System institutions to establish grievance procedures for faculty and academic staff in cases involving discipline other than dismissal. Institutional policies adopted pursuant to those provisions satisfy the requirements of [Wis. Stat. § 36.115\(4\)](#).

All UW System institutions will need to develop and administer grievance procedures for discipline of university staff consistent with the elements outlined in this policy. University staff shared governance groups shall have the opportunity to participate in the development of the grievance procedures.

## **C. Working Conditions**

University of Wisconsin System university staff may file grievances regarding some matters that affect working conditions. Grievances may not be filed on issues pertaining to:

- a) Utilizing personnel, methods and means to carry out the mission of the University of Wisconsin System or institution;
- b) Determining the size and composition of the work force;
- c) Managing and directing the employees of the University of Wisconsin System;
- d) Hiring, promoting, assigning or retaining employees; or
- e) Establishing reasonable workplace expectations.

All UW System institutions will need to develop and administer, through university staff shared governance, grievance procedures for university staff regarding working conditions consistent with the elements outlined in this policy.

Chapters [UWS 6](#) and [UWS 13](#) of the Wisconsin Administrative Code require UW System institutions to establish complaint procedures for faculty and academic staff in cases involving discipline other than dismissal.

## **3. POLICY DEFINITIONS:**

“Dismissal” means separation from employment for disciplinary or performance reasons.

“Discipline” means any action taken by a University of Wisconsin institution with respect to a University staff member with an expectation of continued employment which has the effect, in whole or in part, of a penalty.

“Grievance procedure” means the process through which certain working conditions, discipline, or dismissal of a UW System university staff member with an expectation of continued employment can be appealed.

“Impartial hearing officer” means a grievance review committee established through shared governance, an arbitrator employed by the Wisconsin Employment Relations Commission (WERC), an arbitrator from the WERC roster of neutral decision-makers not employed by the WERC, or an arbitrator from a UWSA roster of arbitrators with a set fee for resolving a discharge case.

“Just cause” means a standard that is applied to determine the appropriateness of a disciplinary action. The elements of determining whether just cause exists are:

- Whether the employee had notice of workplace expectations and potential consequences if those expectations were not met;
- Whether the workplace expectations were reasonably related to business efficiency and performance the employer might reasonably expect from the employee;
- Whether an investigation was undertaken by the employer before discipline or discharge to determine whether the employee violated expectations;
- Whether the investigation was conducted fairly and objectively;
- Whether the employer obtained substantial evidence of the employee's guilt;
- Whether workplace expectations were applied fairly and without discrimination; and
- Whether the degree of discipline imposed reasonably related to the seriousness of the employee's offense and the employee's past record.

“Layoff” means separation from employment for reasons of budget or due to the discontinuance, curtailment, modification, or redirection of a program.

“University staff” are members of the university workforce who contribute in a broad array of positions in support of the University’s mission and are not exempt (hourly) from the overtime provisions of the Fair Labor Standards Act (FLSA).

[Note: All FLSA exempt employees holding positions in the State of Wisconsin “classified” service as of June 30, 2015 are given the choice to remain in the university staff for as long as they retain their existing positions, or to voluntarily be reassigned to a position that the institution has designated as either an academic staff or limited appointment position - see [UPS Operational Policy TR 3: Voluntary Reassignment](#)]

#### **4. POLICY:**

This policy provides UW System institutions with a framework for the establishment of new grievance procedures for university staff with an expectation of continued employment appealing certain working conditions, discipline, layoff or dismissal from a UW System institution. University staff serving a probationary period will not have the right to file grievances on dismissal, discipline or layoff.

Discipline and dismissal of a university staff member with an expectation of continued employment may be imposed only for just cause.

Grievances shall be submitted on a form provided by the employer, and each grievance shall describe the facts upon which the grievance is based and the relief sought by the employee. The employee and a management designee may agree in writing to extend the time limits in any step of the grievance procedure. Parties are strongly encouraged to resolve situations prior to a grievance being filed, but upon filing, parties are encouraged to resolve grievances at early stages of grievance procedures. UW System institutions are prohibited from retaliating against a grievant for filing a grievance or against a representative or witness who participates, or is scheduled to participate, in grievance proceedings.

Grievances shall be pursued in accordance with the following steps and time limits.

- Dismissal appeals will begin at Step Two, as outlined below, and may proceed to Step Three.

- Layoff and discipline grievances will begin at Step One and may proceed no further than Step Two.
- Working condition grievances may be processed through Step One only.

|                       | STEP ONE | STEP TWO |  | STEP THREE |
|-----------------------|----------|----------|--|------------|
|                       |          | STEP 2A  | STEP 2B<br>(employed on June 30, 2015) |            |
| DISMISSAL             |          | X        | X                                      | X          |
| LAYOFF                | X        | X        | X                                      |            |
| DISCIPLINE            | X        | X        | X                                      |            |
| WORKING<br>CONDITIONS | X        |          |  |            |

**A. Step One:** If attempts to resolve a matter through discussion between an employee and supervisor are not successful, a grievance may be filed. Grievances shall be filed with the employee’s department head, director, dean, or equivalent administrator no later than 30 calendar days from the date the grievant first became aware, or should have become aware (with the exercise of reasonable diligence), of the matter grieved. Within 30 calendar days of receipt of the written grievance, the department head, director, dean, or equivalent administrator (or designee) shall meet with the grievant to hear the grievance. The grievant shall receive a written decision no later than seven (7) calendar days after this meeting. If the subject of the grievance is not discipline or layoff, there will be no further opportunity for appeal.

**B. Step Two A:** When an employee has filed a grievance alleging that a discipline decision was not based on just cause and is dissatisfied with the Step One decision, the employee may appeal the decision to an impartial hearing officer. In order to file such an appeal, the grievant must inform the Chancellor or Chancellor’s designee of his or her desire to appeal the Step One decision within 10 calendar days from receipt of the answer in Step One. An appeal of dismissal of a university staff member will begin at Step Two and must be filed within 20 days of the date of written notice of dismissal.

At issue before the impartial hearing officer will be whether just cause for the discipline or discharge exists. If the subject of the appeal is layoff, the issue before the hearing officer will be whether the applicable layoff procedure was followed. The hearing officer will be charged with hearing the case and making a report and recommendations to the chancellor or chancellor’s designee. Impartial hearing officers should be selected in accordance with processes established by each institution. Such a hearing for a university staff employee shall include a right to representation, a right to offer witnesses, and a right to a written decision. The hearing shall be closed unless the grievant requests an open hearing. Within 20 days of receipt of the report and recommendations, the chancellor or chancellor’s designee shall release a statement accepting or rejecting the findings of the impartial hearing officer and explaining how the decision will be implemented.

**C. Step Two B - Direct Appeal to WERC for Certain University Staff:** An employee who held permanent status in employment prior to July 1, 2015 and according to the provisions of [Wis. Stat. § 36.115\(6\)](#), therefore retains [Chapter 230](#) appeal rights may instead appeal a disciplinary action (suspension, demotion, or reduction in base pay), layoff or discharge using a different procedure. Such a grievance may be appealed directly from Step One to the chancellor or chancellor’s designee within 10 calendar days from receipt of the answer in Step One. Thereafter, if the employee is still dissatisfied with the decision as issued by the chancellor or chancellor’s designee, the employee may appeal the decision to the WERC under [Wis. Stat. § 230.44\(1\)\(c\)](#) within 30 calendar days from the

date of the decision being appealed. If an appeal to WERC is filed, no further steps in the grievance process will apply. The decision of the WERC may be subject to judicial review, but an appeal to the Board of Regents is not available using this procedure.

**D. Step Three - Board of Regents Review:** For matters that involve dismissal only, a grievant who is dissatisfied with a chancellor's or chancellor's designee's Step Two decision may appeal the decision to the Board of Regents. If the matter is not appealed to the Board of Regents within 30 calendar days, the grievance will be considered ineligible for Board review. Upon receiving an appeal, the President of the Board shall refer the appeal to the Board of Regents Personnel Matters Review Committee. In accordance with Board of Regents Bylaws, the Committee shall conduct a review based on the record of the matter created by the impartial hearing officer, and it shall prepare recommended findings and a decision, and shall transmit them to the full Board for final action. The full Board may confirm the Committee's decision, or it may direct a different decision. No further appeal shall be available to the parties.

**5. RELATED DOCUMENTS:**

Wis. Admin. Code Chapter [UWS 4, Faculty Procedures for Dismissal](#)  
Wis. Admin. Code Chapter [UWS 6, Faculty Complaints and Grievances](#)  
Wis. Admin. Code Chapter [UWS 11, Dismissal of Academic Staff for Cause](#)  
Wis. Admin. Code Chapter [UWS 13, Academic Staff Complaints and Grievances](#)  
Wis. Stat. § [36.115, University Personnel Systems](#)  
Wis. Stat. § [36.05, Definitions](#)  
Wis. Stat. § [230.44\(1\)\(c\), Appeal Procedures](#)  
The employee grievance form is attached to this policy.

**6. POLICY HISTORY:**

See Wis. Admin. Code Chapter [ER 46, Grievance Procedure](#)  
Reviewed by the Board of Regents, December 7, 2012

|                             |   |   |
|-----------------------------|---|---|
| Grievance Step – circle one |   |   |
| 1                           | 2 | 3 |

|                             |
|-----------------------------|
| No. – for Employer use only |
|-----------------------------|

# EMPLOYEE GRIEVANCE REPORT

If this is a group grievance, use name of spokesperson and attach a sheet listing the names and signatures of other grievants.

|                                    |                |   |
|------------------------------------|----------------|---|
| Name – Last, First, Middle Initial | Classification | Working Title of Position   |
| Institution                        | Department     | Telephone number  |
| This grievance alleges             |                | Type of grievance (check one)<br><input type="checkbox"/> Grievance appealing a dismissal<br><input type="checkbox"/> Grievance appealing discipline other than dismissal<br><input type="checkbox"/> Working conditions grievance<br><input type="checkbox"/> Layoff grievance |

Describe the grievance – state all the facts, including time, place of incident, names of persons involved, etc. The description of the grievance may be attached to this report.

Relief sought

|   |  |  |
|---|--|--|
| Employee's Signature                          | Employee Representative's Signature (if applicable)    | Date Submitted   |
| Employee's Mailing Address and e-mail address | Employee Representative's Name (PRINT) (if applicable) | Employee Representative's Mailing Address and e-mail address (if applicable) |

Employer's Decision

|                      |       |               |               |
|----------------------|-------|---------------|---------------|
| Employer's Signature | Title | Date Received | Date Returned |
|----------------------|-------|---------------|---------------|

### INSTRUCTIONS

Grievances shall be pursued in accordance with the following steps and time limits:

- Dismissal appeals will begin at Step Two.
- Layoff and discipline grievances will begin at Step One and may proceed no further than Step Two.
- Working condition grievances may be processed through Step One only.

**Grievances must be filed on this form. Please fill out sheet, print, and obtain necessary signatures.**