

PPSM 70 A: Complaint Resolution – Professional and Support Staff (PSS)

A Campus Implementing Procedure for UCSF non-represented staff appointed at the PSS levels.

Note: This local implementing procedure is written to correspond to the sections of PPSM Policy 70 as found in the PPSM Personnel Manual. To the extent that there are any conflicts between these local implementing procedures and Policy 70, or if the procedures are silent on particular matters, language from Policy 70 will trump these established procedures.

Introduction

The University of California San Francisco supports the resolution of employee complaints based on a complaint procedure that facilitates a fair and equitable review of the issues arising during employment with the University.

A. General

Informal Resolution

Employees shall attempt to resolve the issues of a prospective complaint with their immediate supervisor before filing the formal complaint. Except as noted below, attempts at informal resolution do not extend the thirty (30) calendar day time limit for filing a formal complaint.

Mediation--Problem Resolution Center

The Problem Resolution Center (PRC) provides a neutral means for employees, supervisors and managers to resolve concerns or discuss issues through mediation. Mediation is voluntary and, pursuant to California law, the process is confidential between the parties involved in the dispute or conflict. Mediation may be used as an alternative dispute resolution option, preferably before a formal complaint is filed. The PRC is a separate and neutral entity from existing administrative units and the Complaint Resolution Policy. Arrangements for an external mediator can be made through the PRC. Use of the PRC's mediation process does not extend time limits of this policy except as otherwise agreed by all parties and Labor and Employee Relations.

B. Eligibility

All employees covered by the Personnel Policies for Staff Members (PPSM) are eligible to file a complaint under this policy with the following exceptions: Managers and Senior Professionals (MSP) appointed to salary grades VIII and

IX, Senior Managers, employees who voluntarily terminate employment or retire from the University, and employees appointed to per diem positions.

An employee who has been laid off and subsequently denied reemployment for a position covered by the PPSM may file a complaint regarding alleged violations of PPSM Policy 60, Layoff and Reduction in Time from Professional and Support Staff Career Positions. Only those allegations pertaining to violations of recall and preference for reemployment are eligible for review.

C. Scope

A complaint is defined as:

1. a claim by an individual employee regarding a specific management act which is alleged to have adversely affected the employee's existing terms or conditions of employment; or
2. a claim by an individual employee adversely affected by a management action that a provision of Personnel Policies for Staff Members has been violated.

A request for review of a decision on the classification of a position is not covered by the Complaint Resolution Policy, nor are concerns or inquiries regarding classification standards, benefits, salary rates or ranges for classes, or these personnel policies. An employee may request a review of a decision denying a reclassification or may request to have heard concerns regarding classification standards, benefits, salary rates or ranges for classes. A request for a review shall be made in writing to the Human Resources Department, Client Services Center. The request must be received within thirty (30) calendar days of the date on which the employee was informed of a classification decision or made aware of the issue giving rise to the action, and shall state the reasons why the employee is requesting the review.

When an employee appeals a classification decision, a representative of the Human Resources Department other than the representative who made the original decision shall be appointed to conduct the review. The decision will be in writing and is final. More information is available in the Campus [Staffing and Compensation Guidelines](#).

D. Filing

A complaint filed under this policy must be presented in writing on the [Complaint Resolution Review Form](#). For Campus employees, complaints should be addressed to: Human Resources – Labor & Employee Relations, 3360 Geary Boulevard, Suite 301, San Francisco, CA 94118-3324 or faxed to 415-514-6963.

Medical Center employees should contact the Medical Center's Labor and Employee Relations Unit at 353-4012 for information on how to file a complaint.

Emailed complaints will not be accepted. Complaints not received within the established time limits will be considered untimely filed and ineligible for processing under this policy unless an extension has been requested and granted in writing prior to the expiration of the filing time period

E. Timeliness

To qualify for formal review, a written complaint must either be received in person in the Human Resources office or if mailed, postmarked within thirty (30) calendar days after the date on which the employee knew or could reasonably be expected to have known of the event or action which gave rise to the complaint, or within thirty (30) calendar days after the date of separation from University employment, whichever is earlier. A former professional or support staff employee separated by layoff who is eligible for recall or preference for reemployment as provided in Staff Policy 60, Layoff and Reduction in Time from Professional and Support Staff Career Positions, may file a complaint within thirty (30) calendar days after the date on which the employee could be expected to know of the alleged violation, but no later than 30 calendar days after the recall or preferential reemployment eligibility period ends, whichever expires first.

Time limits which expire on a Saturday, Sunday, or University holiday are automatically extended to the next business day.

An attempt to informally resolve a complaint does not extend the deadline for filing a written complaint or appealing a decision to any step in the complaint resolution process except as provided above under Mediation-Problem Resolution Center.

All parties for good cause may submit a request for an extension of established time limits. The Labor and Employee Relations Analyst will review and may approve for good cause any such request. A request for an extension must be received by Labor and Employee Relations before the original time limit for filing the formal complaint expires or prior to the timeline for appealing to the next step of the process. All parties will be notified in writing if extensions are granted.

When a complainant alleges sexual harassment, the complainant may elect to substitute the local Sexual Harassment Complaint Resolution Procedure with the Office of Sexual Harassment Prevention and Resolution (OSHPR) for attempted resolution with the employee's immediate supervisor under Section A of this Policy. The timelines for filing a complaint under this policy remain as indicated under Section E above. If, in addition to a report being made to the OSHPR, a complaint alleging sexual harassment is filed under this policy, the complaint made under this policy shall be held in abeyance pending completion of the Early

Resolution or Formal Investigation steps of the Sexual Harassment Complaint Resolution Procedure. If the individual wishes to proceed with the complaint under this policy, the Early Resolution or Formal Investigation shall constitute the Step 1 response. If eligible, the complainant may appeal the Step 1 response in accordance with the timelines established under this policy.

F. Administration/Procedural Review

The Human Resources Department, Labor and Employee Relations, is responsible for the administration of the Complaint Resolution Policy. The Labor and Employee Relations Analysts are responsible for coordinating the complaint resolution procedure.

In accordance with PPSM Policy 70, Section E., the Labor and Employee Relations Analysts are responsible for processing complaints filed under this policy and for determining whether a complaint is timely and whether it qualifies for review at any step of this policy.

A complaint that has been timely filed but requires clarification or additional information in order to determine its eligibility for processing will be returned to the complainant. The complainant must return the complaint with the required revisions within fifteen (15) calendar days of the date on which the original complaint was returned to the complainant. Once the complaint has been perfected and is accepted for processing, the employee will be notified in writing and the timelines for the next steps in the process will begin.

If the Analyst finds the complaint or any part of the complaint to be ineligible for processing due to issues of timeliness and/or scope, the complainant will be so advised in writing. This decision may be appealed to the Assistant Vice President--Human Resources, Office of the President (UCOP), within twenty (20) calendar days from the date of the letter from Labor and Employee Relations notifying the complainant that the complaint is ineligible for review under the policy. If any part of a complaint is found to be ineligible for processing and that decision is appealed to UCOP, the portion of the complaint found to be eligible will be held in abeyance pending disposition of the appeal process.

G. Review Process

Step I (Department Response)

Within fifteen (15) calendar days after the complaint has been accepted by the Labor and Employee Relations Analyst and/or following receipt of a response from the Office of the President, the complaint shall be sent to the department/unit head for a written response to the allegations cited in the complaint.

The department/unit head shall respond to the complaint within fifteen (15) calendar days from the date of receipt from the Labor and Employee Relations Analyst unless an extension is granted. The response shall be in writing and sent to the Labor and Employee Relations Analyst who shall then forward the response to the complainant/representative. If the Step I response is not issued within the prescribed time limits, including written extensions if any, or if the complaint is not resolved at Step I, the complainant may appeal the decision to the next step in the complaint resolution process.

Appeal – Step II (Fact Finding) or Step III (Hearing)

A complainant has fifteen (15) calendar days from the date on which the Step I response was personally delivered or mailed to respond on a form attached to the department's response. Failure to meet this deadline will cause the complaint to be considered resolved on the basis of the last University response. If the issues raised in the complaint are not subject to a final and binding hearing at Step III (see below), the complainant may appeal to Step II and elect to have the University appoint a fact-finder or request a decision by the Vice Chancellor for Administration and Finance or designee without the implementation of fact-finding. If the issues raised in the complaint are eligible for a final and binding hearing at Step III, the complainant may either appeal to Step II (Fact-finding) – in which case the decision at Step II is final and binding – or appeal directly to Step III (Hearing), but not both.

Step II (Fact-finding)

If fact-finding is chosen, the complaint is sent to a fact-finder selected by Labor and Employee Relations from a list of University fact-finders appointed by Human Resources. The fact-finder shall be selected from outside the campus unit or reporting line in which the complaint arises. If the complainant demonstrates that the selection of a particular fact-finder creates an actual conflict of interest, Labor and Employee Relations will select another fact-finder from the list.

The fact finder conducts an investigation as appropriate to determine the pertinent facts, which may include meeting each party to the complaint individually and/or jointly and allowing the parties to the complaint to respond to the information gathered by the fact-finder. The fact-finder shall submit a written report to the Labor and Employee Relations Analyst. There is no time limit provided for the fact-finding process; however, it is expected that the fact-finding will be completed as expeditiously as possible based on the circumstances and complexities of each case.

The fact-finding report shall contain the following information:

1. a clear statement of the issues under review;
2. the position of the parties;

3. a brief summary of the information received, people interviewed and documents relied upon;
4. findings of fact; and
5. policy violations, if any.

The report shall not recommend any specific action or remedies.

The fact-finding report is forwarded by the Labor and Employee Relations Analyst, along with the original complaint, to the Vice Chancellor or designee for a final and binding decision. The Vice Chancellor or designee should render a written final and binding decision within thirty (30) calendar days following receipt of the fact finder's report or remand the matter to the fact finder for additional fact-finding and/or clarification of the report.

If the complainant does not elect to utilize a fact finder, the complaint is sent directly to the Vice Chancellor or designee for a final and binding decision. The Vice Chancellor or designee will render a written final and binding decision within thirty (30) calendar days of receipt of the complaint. If the Vice Chancellor or designee determines that fact-finding should occur prior to issuance of a final and binding decision, the complaint will be sent back to the Labor and Employee Relations Analyst for selection of a fact finder.

Step III (Hearing)

Alleged violations of the following policies are eligible for a final and binding hearing at Step III:

- Policy 12, Nondiscrimination in Employment, pertaining only to an alleged discriminatory application of a personnel policy issue listed below in this section
- Policy 31, Hours of Work
- Policy 32, Overtime
- Policy 33, Shift and Weekend Differential
- Policy 40, Holidays
- Policy 41, Vacation except scheduling
- Policy 42, Sick Leave
- Policy 43, Leave of Absence
- Policy 60, Layoff and Reduction in Time from Professional and Support Staff Career Positions, pertaining only to notice, order of layoff, recall, or preference for reemployment
- Policy 62, Corrective Action, pertaining only to temporary or indefinite within-range salary decrease, corrective demotion, suspension without pay, and written warnings pertaining to such actions
- Policy 64, Termination of Career Employees-Professional and Support Staff, and written warnings pertaining to such actions
- Policy 66, Medical Separation

- Reprisal for utilizing the complaint resolution process

As an alternative to proceeding to Step III (Hearing), the complainant may elect to have hearing eligible violations processed through Step II (Fact Finding) only. If the complainant chooses fact-finding in lieu of a hearing, a fact finder will be appointed as described in the Step II process above and, following issuance of the fact finder's report, the complaint will be forwarded to the Vice Chancellor or designee for a final and binding decision closing the complaint

If an election is made to proceed to Step III (Hearing), the complainant may elect to have the alleged violations that are subject to a final and binding decision heard either by a University or Non-University hearing officer.

Hearing Officers:

University hearing officers are selected by Labor and Employee Relations from a list of hearing officers appointed and trained by Human Resources. The hearing officer shall be selected from outside the campus unit or reporting line in which the complaint arises. If the complainant demonstrates that the selection of a particular hearing officer creates an actual conflict of interest, Labor and Employee Relations will select another hearing officer from the list.

University hearing officers and fact-finders serve at no cost to the complainant.

Non-University hearing officers are chosen through an outside organization which can provide a list of impartial hearing officers. Both the University and complainant participate in the selection of the hearing officer. The fees assessed by any organization used for the production of a hearing officers list, and the utilization of any subsequent services of a non-University hearing officer shall be shared equally by the complainant and the University. Costs related to cancellation or postponements are borne entirely by the requesting party.

Recording of the Hearing

Hearings shall be recorded by either tape or other method as determined by the University. If the University determines to record the hearing on tape, the complainant may, at the complainant's expense also record the hearing by stenography. When both parties agree to the use of stenographic services, the cost of services shall be equally shared by both parties. If both parties request a copy of the hearing transcript, the cost shall be equally shared by both parties. If only one party requests a copy of the hearing transcript, that party shall pay the entire cost. If the other party subsequently requests a copy of the transcript, the transcript may be purchased by the requesting party at one-half the cost of the original fee plus the cost of duplication.

Hearing Process

Except by mutual agreement, the issues to be heard shall be limited to the issue(s) determined to be eligible for review by the Labor and Employee Relations Analyst or the Assistant Vice President, Human Resources at the Office of the President. Each party shall be represented by one person only. Other persons may observe the hearing upon advance mutual agreement of both parties. Supervisors shall not represent non-supervisory staff and non-supervisory staff shall not represent supervisory staff members.

The hearing process shall provide an opportunity for the complainant or the complainant's representative and the department head or the department head's representative to examine witnesses and to submit relevant evidence. Prior to the hearing, each party shall provide the other with relevant material and names of all witnesses who are to be introduced at a hearing. To the extent possible this material should be provided at least seven (7) calendar days prior to the hearing. Offers of settlement are not admissible.

Hearing officers shall not add to, delete from, or otherwise modify personnel policies or local implementing procedures, issue subpoenas, or order stenographic records.

The hearing officer is limited to restoring to the complainant any pay, benefits or rights lost as a result of the action taken, less any compensation from other sources, including, but not limited to, Workers Compensation benefits from a disability insurance plan, non-University employment and unemployment insurance benefits.

Any payment of back wages or other monetary reimbursement shall exclude:

1. periods during which an extension of time limits was granted at the request of the complainant/representative;
2. periods during which the hearing was postponed at the request of the complainant/representative;
3. periods earlier than thirty (30) days prior to the date of filing the complaint; and
4. any payment of interest.

The decision of the hearing officer shall be final and binding and disseminated to all parties to the complaint.

Whistleblower Complaints

When an employee files a complaint under the University's Complaint Resolution procedure and it contains an eligible allegation of retaliation under the UC Whistleblower Protection Policy, the Retaliation Complaint Officer (RCO) shall investigate the allegation of retaliation or interference as provided below:

- 1) If the complaint is filed under a Complaint Resolution procedure containing allegations eligible for fact finding as specified in University policies as part of the final available step (e.g., Staff Policies 70, 71, and II-70 for some issues), the RCO will serve as the fact finder.
- 2) If the complaint is filed under a Complaint Resolution procedure, but is not eligible under those procedures for fact finding, the RCO will investigate the complaint after exhaustion of the available steps of the complaint procedure. The investigation and findings will be limited to the interference or retaliation aspect of the complaint only.
- 3) If the complaint is heard before a University or non-University hearing officer, the RCO will receive a copy of that decision. The RCO will review the decision to ensure that the findings regarding the alleged interference or retaliation have been properly addressed.

For additional information on the Whistleblower Protection Policy and process go to: http://ucwhistleblower.ucop.edu/docs/whistleblower_retaliation.pdf.