

Part 4

Procedural Steps to Be Followed by Aggrieved Employee

67-19a-401 Time limits for submission and advancement of grievance by aggrieved employee -- Voluntary termination of employment -- Group grievances.

- (1) Subject to the provisions of Part 3, Grievance Procedures, and the restrictions contained in this part, a career service employee may have a grievance addressed by following the procedures specified in this part.
- (2) The employee and the person to whom the grievance is directed may agree in writing to waive or extend grievance steps specified under Subsection 67-19a-402(1), (2), or (3) or the time limits specified for those grievance steps, as outlined in Section 67-19a-402.
- (3) Any writing made under Subsection (2) shall be submitted to the administrator.
- (4) Except as provided under Subsection (6), if the employee fails to advance the grievance to the next procedural step within the time limits established in this part:
 - (a) the employee waives the right to advance the grievance or to obtain judicial review of the grievance; and
 - (b) the grievance is considered to be settled based on the decision made at the last procedural step.
- (5)
 - (a) An employee may submit a grievance for review under this chapter only if the employee submits the grievance:
 - (i) within 20 working days after the event giving rise to the grievance; or
 - (ii) within 20 working days after the employee has knowledge of the event giving rise to the grievance.
 - (b) Notwithstanding Subsection (5)(a), an employee may not submit a grievance more than one year after the event giving rise to the grievance.
- (6) The provisions of Subsections (4) and (5)(a) do not apply if the employee meets the requirements for excusable neglect established by rule.
- (7) A person who has voluntarily terminated the person's employment with the state may not submit a grievance after the person has terminated the employment.
- (8)
 - (a) If several employees allege the same grievance, the employees may submit a group grievance by following the procedures and requirements of this chapter.
 - (b) In submitting a group grievance, each aggrieved employee shall sign the grievance.
 - (c) The administrator may not treat a group grievance as a class action, but may select one aggrieved employee's grievance and address that grievance as a test case.

Amended by Chapter 249, 2010 General Session

67-19a-402 Procedural steps to be followed by aggrieved employee.

- (1)
 - (a) A career service employee who has a grievance shall submit the grievance in writing to:
 - (i) the employee's supervisor; and
 - (ii) the administrator.
 - (b) Within five working days after receiving a written grievance, the employee's supervisor may issue a written decision on the grievance.
- (2)

- (a) If the employee's supervisor fails to respond to the grievance within five working days or if the aggrieved employee is dissatisfied with the supervisor's written decision, the employee may advance the written grievance to the employee's agency or division director within 10 working days after the expiration of the period for response or receipt of the written decision, whichever is first.
 - (b) Within five working days after receiving the written grievance, the employee's agency or division director may issue a written response to the grievance stating the decision and the reasons for the decision.
- (3)
- (a) If the employee's agency or division director fails to respond to the grievance within five working days after its submission, or if the aggrieved employee is dissatisfied with the agency or division director's written decision, the employee may advance the written grievance to the employee's department head within 10 working days after the expiration of the period for decision or receipt of the written decision, whichever is first.
 - (b) Within 10 working days after the employee's written grievance is submitted, the department head may issue a written response to the grievance stating the decision and the reasons for the decision.
 - (c) The decision of the department head is final in all matters except those matters that the office may review under the authority of Part 3, Grievance Procedures.
- (4) If the written grievance submitted to the employee's department head meets the subject matter requirements of Section 67-19a-202 and if the employee's department head fails to respond to the grievance within 10 working days after submission, or if the aggrieved employee is dissatisfied with the department head's written decision, the employee may advance the written grievance to the administrator within 10 working days after the expiration of the period for decision or receipt of the written decision, whichever is first.

Amended by Chapter 249, 2010 General Session

67-19a-402.5 Procedural steps to be followed by reporting employee alleging retaliatory action.

- (1) A reporting employee who desires to assert an administrative grievance of retaliatory action:
- (a) shall submit the grievance in writing within 20 days after the day on which the retaliatory action occurs;
 - (b) is not required to comply with Section 63G-7-402 to file the grievance; and
 - (c) is subject to the provisions of Section 67-21-4.
- (2)
- (a) When a reporting employee files a grievance with the administrator under Subsection (1), the administrator shall initially determine:
 - (i) whether the reporting employee is entitled, under this chapter and Chapter 21, Utah Protection of Public Employees Act, to bring the grievance and use the grievance procedure;
 - (ii) whether the office has authority to review the grievance;
 - (iii) whether, if the alleged grievance were found to be true, the reporting employee would be entitled to relief under Subsection 67-21-3.5(2); and
 - (iv) whether the reporting employee has been directly harmed.
 - (b) To make the determinations described in Subsection (2)(a), the administrator may:
 - (i) hold an initial hearing, where the parties may present oral arguments, written arguments, or both; or

- (ii) conduct an administrative review of the grievance.
- (3)
 - (a) If the administrator holds an initial hearing, the administrator shall issue a written decision within 15 days after the day on which the hearing is adjourned.
 - (b) If the administrator chooses to conduct an administrative review of the grievance, the administrator shall issue the written decision within 15 days after the day on which the administrator receives the grievance.
- (4)
 - (a) If the administrator determines the office has authority to review the grievance, the administrator shall provide for an evidentiary hearing in accordance with Section 67-19a-404.
 - (b) The administrator may dismiss the grievance, without holding a hearing or taking evidence, if the administrator:
 - (i) finds that, even if the alleged grievance were found to be true, the reporting employee would not be entitled to relief under Subsection 67-21-3.5(2); and
 - (ii) provides the administrator's findings, in writing, to the reporting employee.
 - (c) The office shall comply with Chapter 21, Utah Protection of Public Employees Act, in taking action under this section.
- (5) A decision reached by the office in reviewing a retaliatory action grievance from a reporting employee may be appealed directly to the Utah Court of Appeals.
- (6)
 - (a) Except as provided in Subsection (6)(b), an appellate court may award costs and attorney fees, accrued at the appellate court level, to a prevailing employee.
 - (b) A court may not order the office to pay costs or attorney fees under this section.

Amended by Chapter 258, 2015 General Session

67-19a-403 Advancement of grievance to administrator -- Initial hearing.

- (1) At any time after a career service employee submits a written grievance to the administrator under Subsection 67-19a-402(4), the administrator may attempt to settle the grievance informally by conference, conciliation, and persuasion with the employee and the agency.
- (2)
 - (a) When an employee advances a grievance to the administrator under Subsection 67-19a-402(4), the administrator shall initially determine:
 - (i) whether the employee is a career service employee and is entitled to use the grievance system;
 - (ii) whether the office has authority to review the grievance; and
 - (iii) whether the employee has been directly harmed.
 - (b) In order to make the determinations required by Subsection (2)(a), the administrator may:
 - (i) hold an initial hearing, where the parties may present oral arguments, written arguments, or both; or
 - (ii) conduct an administrative review of the file.
- (3)
 - (a) If the administrator holds an initial hearing, the administrator shall issue a written decision within 15 days after the hearing is adjourned.
 - (b) If the administrator chooses to conduct an administrative review of the file, the administrator shall issue the written decision within 15 days after the administrator receives the grievance.

Amended by Chapter 249, 2010 General Session

67-19a-404 Evidentiary hearing.

- (1) If the administrator determines that the office has authority to review the grievance, the administrator shall:
 - (a) appoint a hearing officer to adjudicate the grievance; and
 - (b) set a date for the evidentiary hearing that is either:
 - (i) not later than 30 days after the date the administrator determines that the office has authority to review the grievance; or
 - (ii) at a date:
 - (A) agreed upon by the parties and the administrator; and
 - (B) not greater than 150 days after the date the administrator determines that the office has authority to review the grievance.
- (2) After the date for the evidentiary hearing has been set, the administrator or assigned hearing officer may grant each party one extension of reasonable length for extraordinary circumstances as determined by the administrator or assigned hearing officer.
- (3) Notwithstanding Section 63G-4-205, and in order to accommodate the 150-day time limit, the administrator may only allow a motion for discovery for production of documents, records, and evidence under Utah Rules of Civil Procedure, Rule 34.

Amended by Chapter 249, 2010 General Session

67-19a-405 Prehearing conference.

- (1) The administrator may require the presence of each party, the representatives of each party, and other designated persons at a prehearing conference.
- (2) At the conference, the administrator may require the parties to:
 - (a) identify which allegations are admitted and which allegations are denied;
 - (b) submit a joint statement detailing:
 - (i) stipulated facts that are not in dispute;
 - (ii) the issues to be decided; and
 - (iii) applicable laws and rules;
 - (c) submit a list of witnesses, exhibits, and papers or other evidence that each party intends to offer as evidence; and
 - (d) confer in an effort to resolve or settle the grievance.
- (3) At the conclusion of the prehearing conference, the administrator may require the parties to prepare a written statement identifying:
 - (a) the items presented or agreed to under Subsection (2); and
 - (b) the issues remaining to be resolved by the hearing process.
- (4) The prehearing conference is informal and is not open to the public or press.

Enacted by Chapter 191, 1989 General Session

67-19a-406 Procedural steps to be followed by aggrieved employee -- Hearing before hearing officer -- Evidentiary and procedural rules.

- (1)
 - (a) The administrator shall employ a certified court reporter to record the hearing and prepare an official transcript of the hearing.
 - (b) The official transcript of the proceedings and all exhibits, briefs, motions, and pleadings received by the hearing officer are the official record of the proceeding.

- (2)
 - (a) The agency has the burden of proof in all grievances.
 - (b) The agency must prove the agency's case by substantial evidence.
- (3)
 - (a) The hearing officer shall issue a written decision within 20 working days after the hearing is adjourned.
 - (b) If the hearing officer does not issue a decision within 20 working days, the agency that is a party to the grievance is not liable for any claimed back wages or benefits after the date the decision is due.
- (4) The hearing officer may:
 - (a) not award attorney fees or costs to either party;
 - (b) close a hearing by complying with the procedures and requirements of Title 52, Chapter 4, Open and Public Meetings Act;
 - (c) seal the file and the evidence produced at the hearing if the evidence raises questions about an employee's character, professional competence, or physical or mental health;
 - (d) grant continuances according to rule; and
 - (e) decide a motion, an issue regarding discovery, or another issue in accordance with this chapter.
- (5)
 - (a) A hearing officer shall affirm, rescind, or modify agency action.
 - (b)
 - (i) If a hearing officer does not affirm agency action, the hearing officer shall order back pay and back benefits that the grievant would have received without the agency action.
 - (ii) An order under Subsection (5)(b)(i) shall include:
 - (A) reimbursement to the grievant for premiums that the grievant paid for benefits allowed under the Consolidated Omnibus Reconciliation Act of 1985; and
 - (B) an offset for any state paid benefits the grievant receives because of the agency action, including unemployment compensation benefits.
 - (c) In an order under Subsection (5)(b)(i), a hearing officer may not reduce the amount of back pay and benefits awarded a grievant because of income that the grievant earns during the grievance process.

Amended by Chapter 109, 2013 General Session