

**Representative LaVar Christensen** proposes the following substitute bill:

**WORK ENVIRONMENT AND GRIEVANCE**

**PROCEDURE AMENDMENTS**

2018 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: LaVar Christensen**

Senate Sponsor: \_\_\_\_\_

---

---

**LONG TITLE**

**General Description:**

This bill clarifies and amends grievance procedures for state employees in the executive branch.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ incorporates in statute the state's policy and commitment to provide and maintain a work environment free of abusive conduct;
- ▶ requires biennial training and annual reports to a legislative committee regarding abusive conduct and grievances;
- ▶ includes abusive conduct and other actions in the list of issues and conditions for which an employee may file a grievance and complaint;
- ▶ prohibits retaliatory action against an employee who represents or advocates for an employee at any level of the grievance procedure as provided in statute;
- ▶ amends deadlines for submitting certain grievances;
- ▶ allows an employee to make a grievance after voluntary termination of employment in certain circumstances;



- 26           ▶ allows an employee to submit a grievance to higher steps in the grievance process if
- 27 the grievance relates to a supervisor or administrator to whom the employee would
- 28 otherwise submit a grievance;
- 29           ▶ provides for an administrative appeal to the administrator of the Career Service
- 30 Review Office; and
- 31           ▶ makes technical and conforming changes.

32 **Money Appropriated in this Bill:**

33           None

34 **Other Special Clauses:**

35           None

36 **Utah Code Sections Affected:**

37 AMENDS:

- 38           67-19-44, as enacted by Laws of Utah 2015, Chapter 211
- 39           67-19a-101, as last amended by Laws of Utah 2013, Chapter 427
- 40           67-19a-202, as last amended by Laws of Utah 2015, Chapter 258
- 41           67-19a-301, as last amended by Laws of Utah 2013, Chapter 427
- 42           67-19a-303, as last amended by Laws of Utah 2013, Chapter 427
- 43           67-19a-401, as last amended by Laws of Utah 2010, Chapter 249
- 44           67-19a-402, as last amended by Laws of Utah 2010, Chapter 249
- 45           67-19a-402.5, as last amended by Laws of Utah 2015, Chapter 258
- 46           67-19a-406, as last amended by Laws of Utah 2013, Chapter 109
- 47           67-21-3.5, as enacted by Laws of Utah 2013, Chapter 427 and last amended by
- 48 Coordination Clause, Laws of Utah 2013, Chapter 427

49 ENACTS:

- 50           67-19a-102, Utah Code Annotated 1953
- 51           67-19a-205, Utah Code Annotated 1953
- 52           67-19a-409, Utah Code Annotated 1953

53 REPEALS AND REENACTS:

- 54           67-19a-302, as last amended by Laws of Utah 2013, Chapter 427

55 

---

---

56 *Be it enacted by the Legislature of the state of Utah:*

57 Section 1. Section **67-19-44** is amended to read:

58 **67-19-44. Abusive conduct.**

59 (1) As used in this section:

60 (a) (i) "Abusive conduct" means verbal, nonverbal, or physical conduct of an employee  
61 to another employee that, based on its severity, nature, and frequency of occurrence, a  
62 reasonable person would determine:

63 (A) is intended to cause intimidation, humiliation, or unwarranted distress;

64 (B) results in substantial physical or psychological harm as a result of intimidation,  
65 humiliation, or unwarranted distress; or

66 (C) exploits an employee's known physical or psychological disability.

67 (ii) A single act does not constitute abusive conduct, unless it is an especially severe  
68 and egregious act that meets the standard under Subsection (1)(a)(i)(A), (B), or (C).

69 (b) "Employee" means an employee of a state executive branch agency.

70 (c) "Physical harm" means the impairment of a person's physical health or bodily  
71 integrity, as established by competent evidence.

72 (d) "Psychological harm" means the impairment of a person's mental health, as  
73 established by competent evidence.

74 (2) It is the policy of the state of Utah to provide and maintain a work environment free  
75 from abusive conduct.

76 ~~[(2)]~~ (3) By July 1, [2015] 2019, the department shall [make a] amend the department's  
77 rule, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, consistent  
78 with the definitions in Subsection (1) and Title 67, Chapter 19a, Grievance Procedures.

79 ~~[(3)(a) On and after July 1, 2015, the]~~

80 (4) (a) The department shall provide biennial training to educate employees and  
81 supervisors about how to prevent abusive workplace conduct.

82 (b) The training shall include information on:

83 (i) what constitutes abusive conduct and the ramifications of abusive conduct;

84 (ii) resources available to employees who are subject to abusive conduct; and

85 (iii) the grievance process.

86 ~~[(4)(a) On and after July 1, 2015, each]~~

87 (5) (a) Each state agency shall provide professional development training approved by

88 the department to promote:

- 89 (i) ethical conduct; [~~and~~]
- 90 (ii) organizational leadership practices based in principles of integrity[-]; and
- 91 (iii) the state policy described in Subsection (2).

92 (b) A state agency may request assistance from the department in developing training  
93 under this Subsection [~~(4)~~] (5).

94 [~~(5) Employees~~] (6) (a) Employers shall provide and employees shall participate in the  
95 training described in Subsections [~~(3) and~~] (4) and (5) at the time the employee is hired and in  
96 alternating years thereafter.

97 (b) The requirement in Subsection (6)(a) includes full disclosure and notification to all  
98 employees at the time of hiring and in alternating years thereafter of the grievance procedures  
99 provided in Title 67, Chapter 19a, Grievance Procedures.

100 [~~(6)~~] (7) The department may use money appropriated to the department or access  
101 support from outside resources to:

- 102 (a) develop policies against workplace abusive conduct; and
- 103 (b) enhance professional development training on topics such as:
  - 104 (i) building trust;
  - 105 (ii) effective motivation;
  - 106 (iii) communication;
  - 107 (iv) conflict resolution;
  - 108 (v) accountability;
  - 109 (vi) coaching;
  - 110 (vii) leadership; or
  - 111 (viii) ethics.

112 [~~(7)~~] (8) This section does not:

- 113 (a) exempt or relieve a person from a liability, duty, or penalty provided by another  
114 federal or state law;
- 115 (b) create a private right of action;
- 116 (c) expand or diminish rights or remedies available to a person before July 1, 2015; or
- 117 (d) expand or diminish grounds for discipline that existed before July 1, 2015.

118 [~~(8)~~] (9) The department shall annually report to the Economic Development and

119 Workforce Services Interim Committee by no later than the November [2015] interim meeting  
120 regarding:

121 (a) the implementation of this section;

122 (b) recommendations, if any, to appropriately address and reduce workplace abusive  
123 conduct or to change definitions or training required by this section; and

124 ~~[(c) if the department finds a change in a definition or training is needed, the  
125 department's efforts to work with stakeholders to make recommendations for change.]~~

126 (c) an annual report of the total number and outcomes of abusive conduct claims that  
127 employees filed and the department investigated.

128 Section 2. Section **67-19a-101** is amended to read:

129 **67-19a-101. Definitions.**

130 As used in this chapter:

131 (1) "Abusive conduct" means the same as that term is defined in Section 67-19-44.

132 ~~[(1)]~~ (2) "Administrator" means the person appointed under Section 67-19a-201 to  
133 head the Career Service Review Office.

134 ~~[(2)]~~ (3) "Career service employee" means a person employed in career service as  
135 defined in Section 67-19-3.

136 (4) "Constructive discharge" means an employee's voluntary termination of  
137 employment after having been subjected to abusive conduct.

138 (5) "Department" means the Department of Human Resource Management.

139 ~~[(3)]~~ (6) "Employer" means the state of Utah and all supervisory personnel vested with  
140 the authority to implement and administer the policies of an agency.

141 (7) "Excusable neglect" means harmless error, mistake, inadvertence, surprise, a failure  
142 to discover evidence that, through due diligence, could not have been discovered in time to  
143 meet the applicable time period, misrepresentation or misconduct by the employer, or any other  
144 reason justifying equitable relief.

145 ~~[(4)]~~ (8) "Grievance" means:

146 (a) a complaint by a career service employee concerning any matter touching upon the  
147 relationship between the employee and the employer;

148 (b) any dispute between a career service employee and the employer; ~~and~~

149 (c) a complaint by a reporting employee that a public entity has engaged in retaliatory

150 action against the reporting employee[-]; and

151 (d) a complaint by an employee regarding abusive conduct.

152 ~~[(5)]~~ (9) "Office" means the Career Service Review Office created under Section  
153 67-19a-201.

154 ~~[(6)]~~ (10) "Public entity" ~~[is-as]~~ means the same as that term is defined in Section  
155 67-21-2.

156 ~~[(7)]~~ (11) "Reporting employee" means an employee of a public entity who alleges that  
157 the public entity engaged in retaliatory action against the employee.

158 ~~[(8)]~~ (12) "Retaliatory action" means to do any of the following to an employee in  
159 violation of Section 67-21-3:

160 (a) dismiss the employee;

161 (b) reduce the employee's compensation;

162 (c) fail to increase the employee's compensation by an amount that the employee is  
163 otherwise entitled to or was promised;

164 (d) fail to promote the employee if the employee would have otherwise been promoted;

165 (e) ~~[cause]~~ subject the employee to ~~[resign by subjecting the employee to]~~ conditions  
166 that a reasonable person would consider intolerable, including abusive conduct; or

167 (f) threaten to take an action described in Subsections ~~[(8)]~~ (12)(a) through ~~[(e)]~~ (d).

168 ~~[(9)]~~ (13) "Supervisor" means the person:

169 (a) to whom an employee reports; or

170 (b) who assigns and oversees an employee's work.

171 Section 3. Section **67-19a-102** is enacted to read:

172 **67-19a-102. Grievance policy and complaint procedure.**

173 (1) As recognized and provided in Section 67-19-44, it is the policy of the state of Utah  
174 to provide and maintain a work environment free from abusive conduct.

175 (2) Management shall permit employees who allege abusive conduct or other  
176 grievances to file a complaint and engage in a review process free from bias, collusion,  
177 intimidation, or retaliation.

178 (3) (a) An aggrieved employee may file a written complaint in accordance with this  
179 chapter.

180 (b) A complaint described in Subsection (3)(a) shall be promptly and fairly

181 administered in accordance with this chapter.

182 Section 4. Section **67-19a-202** is amended to read:

183 **67-19a-202. Powers -- Scope of authority.**

184 (1) (a) The office shall serve as the final administrative body to review a grievance  
185 from a career service employee and an agency of a decision regarding:

186 (i) a dismissal;

187 (ii) a demotion;

188 (iii) a suspension;

189 (iv) a reduction in force;

190 (v) a dispute concerning abandonment of position;

191 (vi) a wage grievance if an employee is not placed within the salary range of the  
192 employee's current position;

193 (vii) a violation of a rule adopted under Chapter 19, Utah State Personnel Management  
194 Act; ~~or~~

195 (viii) except as provided by Subsection (1)(c)(iii), equitable administration of the  
196 following benefits:

197 (A) long-term disability insurance;

198 (B) medical insurance;

199 (C) dental insurance;

200 (D) post-retirement health insurance;

201 (E) post-retirement life insurance;

202 (F) life insurance;

203 (G) defined contribution retirement;

204 (H) defined benefit retirement; and

205 (I) a leave benefit.

206 (b) The office shall serve as the final administrative body to review a grievance by a  
207 reporting employee alleging retaliatory action.

208 (c) The office shall serve as the final administrative body to review a grievance by a  
209 complaining employee challenging the findings of an abusive conduct investigation that the  
210 department conducts.

211 ~~(c)~~ (d) The office may not review or take action on:

212 (i) a personnel matter not listed in [~~Subsection (1)(a) or (b)~~] Subsections (1)(a) through  
213 (c);

214 (ii) a grievance listed in [~~Subsection (1)(a) or (b)~~] Subsections (1)(a) through (c) that  
215 alleges discrimination [~~or~~], retaliation, or abusive conduct related to a claim of discrimination  
216 that is a violation of a state or federal law for which review and action by the office is  
217 preempted by state or federal law; or

218 (iii) a grievance related to a claim for which an administrative review process is  
219 provided by statute and administered by:

220 (A) the Utah State Retirement Systems under Title 49, Utah State Retirement and  
221 Insurance Benefit Act;

222 (B) the Public Employees' Benefit and Insurance Program under Title 49, Chapter 20,  
223 Public Employees' Benefit and Insurance Program Act; or

224 (C) the Public Employees' Long-Term Disability Program under Title 49, Chapter 21,  
225 Public Employees' Long-Term Disability Act.

226 (2) The time limits established in this chapter supersede the procedural time limits  
227 established in Title 63G, Chapter 4, Administrative Procedures Act.

228 Section 5. Section **67-19a-205** is enacted to read:

229 **67-19a-205. Employment transfer.**

230 At any point during the grievance process, the department may, upon the request of the  
231 employee, transfer the employee to another equivalent position, if and to the extent that such a  
232 position is available, in accordance with department rules for transfer and reassignment.

233 Section 6. Section **67-19a-301** is amended to read:

234 **67-19a-301. Charges submissible under grievance procedure.**

235 (1) This grievance procedure may only be used by career service employees who are  
236 not:

237 (a) public applicants for a position with the state's work force;

238 (b) public employees of the state's political subdivisions;

239 (c) public employees covered by other grievance procedures; or

240 (d) employees of state institutions of higher education.

241 (2) (a) Whenever a question or dispute exists as to whether an employee is qualified to  
242 use this grievance procedure, the administrator shall resolve the question or dispute.



243 (b) The administrator's decision under Subsection (2)(a) is reviewable only by the  
244 Court of Appeals.

245 (3) Any career service employee may submit a grievance based upon a claim or charge  
246 of injustice or oppression, including dismissal from employment, resulting from an act,  
247 occurrence, omission, or condition for solution through the grievance procedures set forth in  
248 this chapter.

249 (4) A reporting employee who desires to bring an administrative claim of retaliatory  
250 action shall use the grievance procedure described in Section [67-19a-402.5](#).

251 (5) A career service employee who desires to bring a grievance shall use and follow the  
252 grievance procedure described in Part 3, Grievance Procedures, and Part 4, Procedural Steps to  
253 Be Followed by Aggrieved Employee.

254 (6) An employee who brings a complaint challenging the findings of an abusive  
255 conduct investigation shall use and follow the grievance procedure described in Section  
256 [67-19a-409](#).

257 Section 7. Section [67-19a-302](#) is repealed and reenacted to read:

258 **[67-19a-302](#). Levels of procedure.**

259 (1) The administration of all grievances and complaints under this chapter occurs on  
260 the following four levels:

261 (a) Level 1 - the supervisor;

262 (b) Level 2 - the division director or the director's designee;

263 (c) Level 3 - the agency director or the director's designee; and

264 (d) Level 4 - the office.

265 (2) (a) Except as provided in Subsection (2)(b) and Section [67-19a-409](#), an employee  
266 shall file a grievance or complaint at Level 1 and proceed through the levels of procedure  
267 within the applicable time limits provided in this chapter.

268 (b) If a supervisor or division director is the subject of a grievance or complaint, the  
269 employee may proceed directly to Level 2 or Level 3, respectively.

270 (3) A career service employee may advance all grievances to Level 3.

271 (4) In accordance with Section [67-19a-402.5](#) and subject to Section [67-21-4](#), a  
272 reporting employee may file a grievance alleging retaliatory action directly at Level 4.

273 (5) All matters described in Section [67-19a-202](#) are subject to an administrative appeal

274 to the office.

275 Section 8. Section **67-19a-303** is amended to read:

276 **67-19a-303. Employees' rights in grievance procedure.**

277 (1) For the purpose of submitting and advancing a grievance, a career service  
278 employee, or a reporting employee alleging retaliatory action, may:

279 (a) obtain assistance by a representative of the employee's choice to act as an advocate  
280 at any level of the grievance procedure;

281 (b) request a reasonable amount of time during work hours to confer with the  
282 representative and prepare the grievance; and

283 (c) call other employees as witnesses at a grievance hearing.

284 (2) The state shall allow employees to attend and testify at the grievance hearing as  
285 witnesses if the employee has given reasonable advance notice to the employee's immediate  
286 supervisor.

287 (3) No person may take any reprisals against a career service employee or a reporting  
288 employee for:

289 (a) use of or participation in a grievance procedure described in this chapter[-]; or

290 (b) representing and providing assistance to a career service employee as an advocate  
291 in accordance with Subsection (1)(a).

292 (4) (a) The employing agency of an employee who files a grievance may not place  
293 grievance forms, grievance materials, correspondence about the grievance, agency and  
294 department replies to the grievance, or other documents relating to the grievance in the  
295 employee's personnel file.

296 (b) The employing agency of an employee who files a grievance may place records of  
297 disciplinary action in the employee's personnel file.

298 (c) If any disciplinary action against an employee is rescinded through the grievance  
299 procedures described in this chapter, the agency and the Department of Human Resource  
300 Management shall remove the record of the disciplinary action from the employee's agency  
301 personnel file and central personnel file.

302 (d) An agency may maintain a separate grievance file relating to an employee's  
303 grievance, but shall discard the file after three years.

304 Section 9. Section **67-19a-401** is amended to read:

305           **67-19a-401. Time limits for submission and advancement of grievance by**  
306 **aggrieved employee -- Voluntary termination of employment -- Group grievances.**

307           (1) ~~[Subject to the provisions of Part 3, Grievance Procedures, and the restrictions~~  
308 ~~contained in this part,]~~ When a career service employee [may have] files a grievance [addressed  
309 by following the procedures] at Level 1, as described in Section 67-19a-302, the employee  
310 shall advance the grievance through the proper levels of procedure specified in this [part]  
311 chapter.

312           ~~[(2) The employee and the person to whom the grievance is directed may agree in~~  
313 ~~writing to waive or extend grievance steps specified under Subsection 67-19a-402(1), (2), or~~  
314 ~~(3) or the time limits specified for those grievance steps, as outlined in Section 67-19a-402.]~~

315           ~~[(3) Any writing made under Subsection (2) shall be submitted to the administrator.]~~

316           ~~[(4)]~~ (2) Except as provided under ~~[Subsection (6)]~~ Subsections (4) through (6), if the  
317 employee fails to advance the grievance to the next procedural step within the time limits  
318 established in this part:

319           (a) the employee waives the right to advance the grievance or to obtain judicial review  
320 of the grievance; and

321           (b) the grievance is considered to be settled based on the decision made at the last  
322 procedural step.

323           ~~[(5)(a) An]~~ (3) Except as provided in Subsections (4) through (6), an employee may  
324 [submit] file a grievance for review under this chapter [only if the employee submits], if the  
325 employee, in general, submits the grievance within 30 working days after:

326           ~~[(i) within 20 working days after]~~ (a) the event giving rise to the grievance or, if an  
327 ongoing course of abusive conduct or the work environment gives rise to the grievance, the  
328 most recent event; or

329           ~~[(ii) within 20 working days after]~~ (b) the employee has knowledge of:

330           (i) the event giving rise to the grievance[;] or, if an ongoing course of abusive conduct  
331 or the work environment gives rise to the grievance, the most recent event; and

332           (ii) the procedures and entitlements provided in this chapter.

333           ~~[(b) Notwithstanding Subsection (5)(a), an employee may not submit a grievance more~~  
334 ~~than one year after the event giving rise to the grievance.]~~

335           (4) (a) An employee may file with the office a motion for an enlargement of a time

336 limit established in this part.

337 (b) In determining whether to grant a motion described in Subsection (4)(a), the office  
338 shall consider, giving reasonable deference to the employee, whether:

339 (i) the employee filed the motion before the time limit the employee seeks to enlarge;

340 (ii) the enlargement is necessary to remedy the employee's excusable neglect; or

341 (iii) the employee reasonably delayed the filing of the grievance while seeking to  
342 overcome or endure the abusive conduct or work environment that gives rise to the grievance.

343 (c) The office may determine that a motion described in Subsection (4)(a), an  
344 advancement of a grievance to the next procedural level, or an appeal to the office is untimely.

345 ~~[(6)]~~ (5) The provisions of Subsections ~~[(4) and (5)(a)]~~ (2) and (3) do not apply if the  
346 employee meets the requirements for excusable neglect established by rule.

347 ~~[(7)]~~ (6) ~~[A]~~ Except in the case of constructive discharge, a person who has voluntarily  
348 terminated the person's employment with the state may not submit a grievance after the person  
349 has terminated the employment.

350 ~~[(8)]~~ (7) (a) If several employees allege the same grievance, the employees may submit  
351 a group grievance by following the procedures and requirements of this chapter.

352 (b) In submitting a group grievance, each aggrieved employee shall sign the grievance.

353 (c) The administrator may not treat a group grievance as a class action, but may select  
354 one aggrieved employee's grievance and address that grievance as a test case.

355 Section 10. Section **67-19a-402** is amended to read:

356 **67-19a-402. Procedural steps to be followed by aggrieved employee.**

357 (1) (a) ~~[A]~~ Subject to the provisions and levels of procedure provided in Section  
358 67-19a-302, a career service employee who has a grievance shall submit the grievance in  
359 writing to:

360 (i) the employee's supervisor; and

361 (ii) the administrator.

362 (b) Within five working days after receiving a written grievance, the employee's  
363 supervisor may issue a written decision on the grievance.

364 (2) (a) If the employee's supervisor fails to respond to the grievance within five  
365 working days or if the aggrieved employee is dissatisfied with the supervisor's written decision,  
366 the employee may advance the written grievance to the employee's agency or division director

367 within 10 working days after the expiration of the period for response or receipt of the written  
368 decision, whichever is first.

369 (b) If a career service employee has a grievance that applies to the conduct or behavior  
370 of the employee's supervisor or conditions that the employee's supervisor creates or allows, the  
371 employee may submit the grievance in writing at Level 2, as described in Section [67-19a-302](#).

372 [~~(b)~~] (c) Within five working days after receiving the written grievance, the employee's  
373 agency or division director may issue a written response to the grievance stating the decision  
374 and the reasons for the decision.

375 (3) (a) If the employee's agency or division director fails to respond to the grievance  
376 within five working days after its submission, or if the aggrieved employee is dissatisfied with  
377 the agency or division director's written decision, the employee may advance the written  
378 grievance to the employee's department head within 10 working days after the expiration of the  
379 period for decision or receipt of the written decision, whichever is first.

380 (b) If a career service employee has a grievance that applies to the conduct or behavior  
381 of the employee's agency or division director or conditions that the employee's agency or  
382 division director creates or allows, the employee shall submit the grievance in writing at Level  
383 3, as described in Section [67-19a-302](#).

384 [~~(b)~~] (c) Within 10 working days after the employee's written grievance is submitted,  
385 the department head may issue a written response to the grievance stating the decision and the  
386 reasons for the decision.

387 [~~(c)~~] (d) The decision of the department head is final in all matters except those matters  
388 that the office may review under the authority of Part 3, Grievance Procedures.

389 (4) If the written grievance submitted to the employee's department head meets the  
390 subject matter requirements of Section [67-19a-202](#) and if the employee's department head fails  
391 to respond to the grievance within 10 working days after submission, or if the aggrieved  
392 employee is dissatisfied with the department head's written decision, the employee may  
393 advance the written grievance to the administrator within 10 working days after the expiration  
394 of the period for decision or receipt of the written decision, whichever is first.

395 Section 11. Section **67-19a-402.5** is amended to read:

396 **67-19a-402.5. Procedural steps to be followed by reporting employee alleging**  
397 **retaliatory action.**

398 (1) A reporting employee who desires to assert an administrative grievance of  
399 retaliatory action:

400 (a) shall submit the grievance in writing within [~~20~~] 30 days after the day on which the  
401 retaliatory action occurs;

402 (b) is not required to comply with Section [63G-7-402](#) to file the grievance; and

403 (c) is subject to the provisions of Section [67-21-4](#).

404 (2) (a) When a reporting employee files a grievance with the administrator under  
405 Subsection (1), the administrator shall initially determine:

406 (i) whether the reporting employee is entitled, under this chapter and Chapter 21, Utah  
407 Protection of Public Employees Act, to bring the grievance and use the grievance procedure;

408 (ii) whether the office has authority to review the grievance;

409 (iii) whether, if the alleged grievance were found to be true, the reporting employee  
410 would be entitled to relief under Subsection [67-21-3.5\(2\)](#); and

411 (iv) whether the reporting employee has been directly harmed.

412 (b) To make the determinations described in Subsection (2)(a), the administrator may:

413 (i) hold an initial hearing, where the parties may present oral arguments, written  
414 arguments, or both; or

415 (ii) conduct an administrative review of the grievance.

416 (3) (a) If the administrator holds an initial hearing, the administrator shall issue a  
417 written decision within 15 days after the day on which the hearing is adjourned.

418 (b) If the administrator chooses to conduct an administrative review of the grievance,  
419 the administrator shall issue the written decision within 15 days after the day on which the  
420 administrator receives the grievance.

421 (4) (a) If the administrator determines the office has authority to review the grievance,  
422 the administrator shall provide for an evidentiary hearing in accordance with Section  
423 [67-19a-404](#).

424 (b) The administrator may dismiss the grievance, without holding a hearing or taking  
425 evidence, if the administrator:

426 (i) finds that, even if the alleged grievance were found to be true, the reporting  
427 employee would not be entitled to relief under Subsection [67-21-3.5\(2\)](#); and

428 (ii) provides the administrator's findings, in writing, to the reporting employee.

429 (c) The office shall comply with Chapter 21, Utah Protection of Public Employees Act,  
430 in taking action under this section.

431 (5) A decision reached by the office in reviewing a retaliatory action grievance from a  
432 reporting employee may be appealed directly to the Utah Court of Appeals.

433 (6) (a) Except as provided in Subsection (6)(b), an appellate court may award costs and  
434 attorney fees, accrued at the appellate court level, to a prevailing employee.

435 (b) A court may not order the office to pay costs or attorney fees under this section.  
436 Section 12. Section **67-19a-406** is amended to read:

437 **67-19a-406. Procedural steps to be followed by aggrieved employee -- Hearing**  
438 **before hearing officer -- Evidentiary and procedural rules.**

439 (1) (a) The administrator shall employ a certified court reporter to record the hearing  
440 and prepare an official transcript of the hearing.

441 (b) The official transcript of the proceedings and all exhibits, briefs, motions, and  
442 pleadings received by the hearing officer are the official record of the proceeding.

443 (2) (a) The agency has the burden of proof in all grievances.

444 (b) The agency must prove the agency's case by substantial evidence.

445 (3) (a) The hearing officer shall issue a written decision within 20 working days after  
446 the hearing is adjourned.

447 (b) If the hearing officer does not issue a decision within 20 working days, the agency  
448 that is a party to the grievance is not liable for any claimed back wages or benefits after the date  
449 the decision is due.

450 (4) The hearing officer may:

451 (a) not award attorney fees or costs to either party;

452 (b) close a hearing by complying with the procedures and requirements of Title 52,  
453 Chapter 4, Open and Public Meetings Act;

454 (c) seal the file and the evidence produced at the hearing if the evidence raises  
455 questions about an employee's character, professional competence, or physical or mental  
456 health;

457 (d) grant continuances according to rule; and

458 (e) decide a motion, an issue regarding discovery, or another issue in accordance with  
459 this chapter.

460 (5) (a) A hearing officer shall affirm, rescind, or modify agency action.

461 (b) (i) If a hearing officer does not affirm agency action, the hearing officer shall order  
462 back pay and back benefits that the grievant would have received without the agency action.

463 (ii) An order under Subsection (5)(b)(i) shall include:

464 (A) reimbursement to the grievant for premiums that the grievant paid for benefits  
465 allowed under the Consolidated Omnibus Reconciliation Act of 1985; and

466 (B) an offset for any state paid benefits the grievant receives because of the agency  
467 action, including unemployment compensation benefits.

468 (c) In an order under Subsection (5)(b)(i), a hearing officer may not reduce the amount  
469 of back pay and benefits awarded a grievant because of income that the grievant earns during  
470 the grievance process.

471 (6) An employee who files a grievance in accordance with this chapter may appeal a  
472 decision of the office in reviewing a grievance under this section directly to the Utah Court of  
473 Appeals within 30 days after the day on which the employee receives notice and the decision of  
474 the administrator.

475 Section 13. Section **67-19a-409** is enacted to read:

476 **67-19a-409. Procedural steps to be followed in an administrative appeal of an**  
477 **abusive conduct investigation.**

478 (1) An employee may file an administrative appeal of the findings of an abusive  
479 conduct investigation that the department conducts within 10 days after the day on which the  
480 investigation is complete.

481 (2) An employee bringing an administrative appeal of the findings described in  
482 Subsection (1) may file the appeal directly with the office.

483 (3) (a) When an employee files the appeal described in Subsection (2) with the office,  
484 the office may not conduct an evidentiary hearing.

485 (b) The administrator shall conduct an administrative review of the department's  
486 abusive conduct investigation and resulting findings.

487 (c) The department shall make the abusive conduct investigative file available for the  
488 administrator's in camera review.

489 (d) The administrator may:

490 (i) request additional relevant documents from the department; and



491 (ii) interview the department's investigator who conducted the investigation.

492 (4) (a) The administrator shall substantiate the department's investigative findings if,  
493 based on a review of the abusive conduct investigative file, the administrator determines that  
494 the investigator's findings are reasonable and rational.

495 (b) If the administrator determines that the investigator's findings are not reasonable  
496 and rational, the administrator may overturn the findings.

497 (5) (a) Within 30 days after the day on which an employee files an administrative  
498 appeal under this section, the administrator shall issue a written decision, subject to applicable  
499 confidentiality rules and statutes.

500 (b) To preserve privacy of employees and participants in the investigation, the  
501 administrator, the department, and the employee shall keep the investigative findings and  
502 conclusions and the decision upon administrative review confidential to the extent required by  
503 law.

504 (c) The office's decision upon administrative review of the findings and conclusions  
505 resulting from an abusive conduct investigation is final and not subject to appeal.

506 (d) If the office's decision overturns the findings of an abusive conduct investigation,  
507 the department shall place a copy of the office's decision in the employee's file.

508 (e) The following are subject to Title 63G, Chapter 2, Government Records Access and  
509 Management Act, and any other applicable confidentiality provisions:

510 (i) the contents of the abusive conduct investigative file;

511 (ii) the contents of the administrative review file; and

512 (iii) the office's decision that the department places in the employee's file.

513 Section 14. Section **67-21-3.5** is amended to read:

514 **67-21-3.5. Administrative review of adverse action against a public entity**  
515 **employee.**

516 (1) A public entity employee who believes that the employee's employer has taken  
517 retaliatory action against the employee in violation of this chapter may file a grievance with the  
518 Career Service Review Office in accordance with Section [67-19a-402.5](#) and subject to Section  
519 [67-21-4](#).

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

522 may order:

523 (a) reinstatement of the public entity employee at the same level held by the public  
524 entity employee before the retaliatory action;

525 (b) the payment of back wages, in accordance with Subsection 67-19a-406(5)(b);

526 (c) full reinstatement of benefits;

527 (d) full reinstatement of other employment rights; or

528 (e) if the retaliatory action includes failure to promote, as described in Subsection

529 67-19a-101[(8)](12)(d), a pay raise that results in the employee receiving the pay that the  
530 employee would have received if the person had been promoted.

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

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