

## HB0383S01 compared with HB0383

~~deleted text~~ shows text that was in HB0383 but was deleted in HB0383S01.

Inserted text shows text that was not in HB0383 but was inserted into HB0383S01.

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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: \_\_\_\_\_

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#### 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 ~~annual~~biennial training and ~~cumulative~~annual reports to a legislative

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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;
- ▶ allows an employee to submit a grievance to higher steps in the grievance process if the grievance relates to a supervisor or administrator to whom the employee would otherwise submit a grievance;
- ▶ provides for an administrative appeal to the administrator of the Career Service Review Office ~~{ and for certain judicial review of a decision of the administrator of the office }~~; and
- ▶ makes technical and conforming changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

**67-19-44**, as enacted by Laws of Utah 2015, Chapter 211

**67-19a-101**, as last amended by Laws of Utah 2013, Chapter 427

**67-19a-202**, as last amended by Laws of Utah 2015, Chapter 258

**67-19a-301**, as last amended by Laws of Utah 2013, Chapter 427

**67-19a-303**, as last amended by Laws of Utah 2013, Chapter 427

**67-19a-401**, as last amended by Laws of Utah 2010, Chapter 249

**67-19a-402**, as last amended by Laws of Utah 2010, Chapter 249

**67-19a-402.5**, as last amended by Laws of Utah 2015, Chapter 258

**67-19a-406**, as last amended by Laws of Utah 2013, Chapter 109

**67-21-3.5**, as enacted by Laws of Utah 2013, Chapter 427 and last amended by

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Coordination Clause, Laws of Utah 2013, Chapter 427

ENACTS:

**67-19a-102**, Utah Code Annotated 1953

**67-19a-205**, Utah Code Annotated 1953

**67-19a-409**, Utah Code Annotated 1953

REPEALS AND REENACTS:

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

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

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

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

(1) As used in this section:

(a) (i) "Abusive conduct" means ~~{} verbal, nonverbal, or physical conduct of an employee to another employee that, based on its {} conduct or a course of conduct that, through acts, omissions, or both, and based on the conduct's pattern, duration, direct or indirect effect, {} severity, nature, {} and {} or {} frequency of occurrence, {} constitutes what {} a reasonable person {} would determine: {} would consider to be unfair, intolerable, and contrary to the state's policy of providing and maintaining a work environment free from abusive conduct, as provided in Section 67-19a-202.~~

~~—— (ii) "Abusive conduct" includes:~~

~~—— (A) {}~~

~~(A) is intended to cause {} repeated verbal abuse such as the use of derogatory remarks, insults, or epithets;~~

~~—— (B) verbal, nonverbal, or physical conduct that causes {} intimidation, humiliation, or unwarranted distress;~~

~~{} (C) the sabotage or undermining of work performance;~~

~~—— {} (B) {} {} (D) conduct that {} results in substantial physical {}, emotional, {} or psychological harm {} as a result of intimidation, humiliation, or unwarranted distress; or {} {}~~

~~{} (C) exploits an {}~~

~~—— (E) conduct that adds to the {} employee's known physical or psychological disability {} . {}~~

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~~(F) abuse of authority; or~~

~~(G) other unfair or wrongful employment practices as recognized and provided in Title 67, Chapter 19a, Grievance Procedures.~~

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

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

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

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

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

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

~~(3)(a) (i) On and after July 1, 2015, the~~ (i)

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

(b) The training shall include information on:

- (i) what constitutes abusive conduct and the ramifications of abusive conduct;
- (ii) resources available to employees who are subject to abusive conduct; and
- (iii) the grievance process.

~~(4)(a) (i) On and after July 1, 2015, each~~ (i)

(5)(a) Each state agency shall provide professional development training approved by the department to promote:

(i) ethical conduct; ~~[and]~~

(ii) organizational leadership practices based in principles of integrity~~[-]; and~~

(iii) the state policy described in Subsection (2).

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

~~(5)(a) Employees~~ (6)(a) Employers shall provide and employees shall participate

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in the training described in Subsections ~~[(3) and]~~ (4) ~~{} and (5)~~ at the time the employee is hired and in alternating years ~~{}; {} annually;~~ thereafter.

(b) The requirement in Subsection ~~(5) (6)~~ (a) includes full disclosure and notification to all employees at the time of hiring and ~~{} annually;~~ in alternating years thereafter of the grievance procedures provided in Title 67, Chapter 19a, Grievance Procedures.

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

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

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

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

~~[(8)] (9)~~ The department shall annually report to the Economic Development and Workforce Services Interim Committee by no later than the November ~~[2015]~~ interim meeting regarding:

- (a) the implementation of this section;
- (b) recommendations, if any, to appropriately address and reduce workplace abusive conduct or to change definitions or training required by this section; ~~{} and {}~~

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

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~~(c) an annual report of the {administration of the total grievances filed and administered by};~~ total number and outcomes of abusive conduct claims that employees filed and the department ~~{and the office for the year since the department made the last report to the committee; and~~

~~—— (d) the extent to which the state policy of providing and maintaining a work environment free from abusive conduct, as described in Section 67-19a-102, has been achieved};~~ investigated.

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

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

As used in this chapter:

(1) ~~{(a)}~~ "Abusive conduct" means ~~{conduct or a course of conduct that, through acts, omissions, or both, and based on the conduct's pattern, duration, direct or indirect effect, severity, nature, or frequency of occurrence, constitutes what a reasonable person would consider to be unfair, intolerable, and contrary to the state's policy of providing and maintaining a work environment free from abusive conduct.~~

~~—— (b) "Abusive conduct" includes:~~

~~—— (i) repeated verbal abuse such as the use of derogatory remarks, insults, or epithets;~~

~~—— (ii) verbal, nonverbal, or physical conduct that causes intimidation, humiliation, or unwarranted distress;~~

~~—— (iii) the sabotage or undermining of work performance;~~

~~—— (iv) conduct that results in substantial physical, emotional, or psychological harm;~~

~~—— (v) conduct that adds to an employee's known physical or psychological disability;~~

~~—— (vi) abuse of authority; or~~

~~—— (vii) other unfair or wrongful employment practices as recognized and provided in this chapter};~~ the same as that term is defined in Section 67-19-44.

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

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

(4) "Constructive ~~{termination}~~ discharge" means an employee's voluntary termination of employment after having been subjected to ~~{intolerable conditions and, for understandable~~

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~~and appropriate reasons, striving to individually endure and overcome those conditions}~~ abusive conduct.

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

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

(7) "Excusable neglect" means harmless error, mistake, inadvertence, surprise, a failure to discover evidence that, through due diligence, could not have been discovered in time to meet the applicable time period, misrepresentation or misconduct by the employer, or any other reason justifying equitable relief ~~and fairness as full due process requires to satisfy the recognized policy of preventing abusive conduct in the workplace~~.

~~(4)~~ (8) "Grievance" means:

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

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

(c) a complaint by a reporting employee that a public entity has engaged in retaliatory action against the reporting employee~~[-]; and~~

(d) a complaint by ~~a reporting~~ an employee ~~that a public entity has engaged in~~ regarding abusive conduct.

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

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

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

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

(a) dismiss the employee;

(b) reduce the employee's compensation;

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

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

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

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

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

(a) to whom an employee reports; or

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

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

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

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

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

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

(b) A complaint described in Subsection (3)(a) shall be promptly and fairly administered in accordance with this chapter.

~~{~~ (4) ~~When an employee files an abusive conduct grievance, the department shall conduct an investigation as necessary to:~~

~~—— (a) substantiate all claims and fulfill the department's responsibilities under this chapter; and~~

~~—— (b) prevent abusive conduct.~~

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

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

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

(i) a dismissal;

(ii) a demotion;

(iii) a suspension;

(iv) a reduction in force;



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- (v) a dispute concerning abandonment of position;
- (vi) a wage grievance if an employee is not placed within the salary range of the employee's current position;
- (vii) a violation of a rule adopted under Chapter 19, Utah State Personnel Management Act; ~~[or]~~

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

- (A) long-term disability insurance;
- (B) medical insurance;
- (C) dental insurance;
- (D) post-retirement health insurance;
- (E) post-retirement life insurance;
- (F) life insurance;
- (G) defined contribution retirement;
- (H) defined benefit retirement; and
- (I) a leave benefit~~{[.];~~

~~— (ix) abusive conduct; or~~

~~— (x) disciplinary action imposed subsequent to an abusive conduct investigation under this chapter.}~~

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

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

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

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

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

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

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

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

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

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

Section 5. Section ~~{67-19a-301}~~; 67-19a-205 is ~~{amended}~~ enacted to read:

### 67-19a-205. Employment transfer.

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

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

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

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

- (a) public applicants for a position with the state's work force;
- (b) public employees of the state's political subdivisions;
- (c) public employees covered by other grievance procedures; or
- (d) employees of state institutions of higher education.

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

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

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

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

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

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

Section ~~67~~7. Section **67-19a-302** is repealed and reenacted to read:

### **67-19a-302. Levels of procedure.**

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

- (a) Level 1 - the supervisor;
- (b) Level 2 - the division director or the director's designee;
- (c) Level 3 - the agency director or the director's designee; and
- (d) Level 4 - the office.

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

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

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

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

(5) ~~(a)~~ All matters described in Section 67-19a-202 are subject to an administrative appeal to the office.

~~(b) In an administrative appeal of a grievance filed under Subsection 67-19a-202(1)(a)(ix), the administrator shall conduct an administrative review of the department's abusive conduct files and records in accordance with this Subsection (5):~~

~~(c) The department shall make the abusive conduct investigative file available for the administrator's review.~~

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~~— (d) The administrator may request additional relevant documents and interview the investigator who conducted the investigation.~~

~~— (e) The administrator shall substantiate the investigative findings and conclusions if based on a review of the file, the findings and conclusions are reasonable and rational.~~

~~— (f) If the investigative findings and conclusions are not reasonable and rational, the administrator may overturn the findings and remand the investigation to the department for further review, with instructions.~~

~~— (g) To preserve privacy of employees and participants in the investigation, the investigative findings and the decision upon administrative review may be kept confidential.~~

~~— (h) (i) Whether an administrative appeal of an abusive conduct grievance is subject to an evidentiary hearing is at the discretion of the administrator and based upon the administrator's findings.~~

~~— (ii) The administrator's decision described in Subsection (5)(h)(i) regarding the investigative file is final and may not be appealed.~~

‡ Section ~~{7}~~8. Section **67-19a-303** is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

Section ~~{8}9~~. Section **67-19a-401** is amended to read:

**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,~~] When a career service employee [~~may have~~] files a grievance [~~addressed by following the procedures~~] at Level 1, as described in Section 67-19a-302, the employee shall advance the grievance through the proper levels of procedure specified in this [part] chapter.

~~[(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) (2) Except as provided under [Subsection (6)] Subsections (~~{7}4~~) ~~and~~ through (~~{8}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 ~~{ may have waived}~~ the right to advance the grievance or to obtain judicial review of the grievance; and

(b) the grievance ~~{}~~is ~~{ may be}~~ considered to be settled based on the decision made at the last procedural step ~~{ unless otherwise excused by what may constitute harmless error,~~

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~~excusable neglect, or other fair and equitable considerations~~.

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

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

~~[(ii) within 20 working days after]~~ (b) the employee has ~~{ actual or effective}~~ knowledge of:

(i) the event giving rise to the grievance~~[-]~~ or, if ~~fa pattern, practice,~~ ~~an~~ ongoing course of abusive conduct~~[-]~~ or the work environment gives rise to the grievance, the most recent event ~~{ within the pattern, practice, course of conduct, or work environment}~~; and

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

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

~~(4) { The employer shall, at all times, meet and satisfy the standard and policy of maintaining a work environment free of abusive conduct or other wrongful employment practices as provided in Section 67-19a-202.~~

~~— (5)(a) An employee may file with the office a motion for an enlargement of a time limit established in this part.~~

~~(b) In determining whether ~~{an employee timely files a grievance, consideration shall be given to whether}~~ to grant a motion described in Subsection (4)(a), the office shall consider, giving reasonable deference to the employee, whether:~~

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

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

~~(iii) the employee reasonably delayed the filing of ~~fa~~ the grievance ~~{and sought}~~ while seeking to overcome or endure ~~{otherwise intolerable working conditions}.~~~~

~~— (6) The time limits for submission and ~~the~~ abusive conduct or work environment that gives rise to the grievance.~~

~~(c) The office may determine that a motion described in Subsection (4)(a), an~~

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advancement of a grievance ~~if the employee meets the requirements for excusable neglect or other equitable considerations as determined by the administrator.~~

~~to the next procedural level, or an appeal to the office is untimely.~~

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

~~(7)~~ ~~(8)(a)~~ (6) [A] Except in the case of constructive discharge, as provided in Subsection (8)(b), 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.

~~(b) Notwithstanding the filing requirements of this section, in the case of constructive discharge, the former employee:~~

~~(i) may, within 30 days, submit a grievance after the constructive discharge; and~~

~~(ii) retains a right to the entitlements and procedures in this chapter.~~

~~(8)~~ ~~(9)~~ (7) (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.

Section ~~9~~ 10. Section 67-19a-402 is amended to read:

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

(1) (a) [A] Subject to the provisions and levels of procedure provided in Section 67-19a-302, 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.

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

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

~~[(b)]~~ (c) 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)]~~ (d) 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.

~~{ — (5) The department head shall administer and issue a final response to the grievance stating the decision and the reasons for the decision within six months after the day on which the employee files and submits the grievance and subject to an extension of not more than 60 days if reasonably necessary and requested by the department head.~~

† Section ~~{10}~~ 11. Section **67-19a-402.5** is amended to read:



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### **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~~] 30 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

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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.

Section ~~67-19a-12~~12. Section **67-19a-406** is amended to read:

**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

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(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.

(6) An employee who files a grievance in accordance with this chapter may appeal a decision of the ~~administrator~~ office in reviewing a grievance under this section directly to the Utah Court of Appeals within ~~15~~ 30 days after the day on which the employee receives notice and the decision of the administrator.

Section ~~{12}~~ 13. Section ~~{67-21-3.5 is amended to read:~~  
~~}{67-19a-409 is enacted to read:~~

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

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

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

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

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

(c) The department shall make the abusive conduct investigative file available for the

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administrator's in camera review.

(d) The administrator may:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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67-21-4.

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

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

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

(c) full reinstatement of benefits;

(d) full reinstatement of other employment rights; or

(e) if the retaliatory action includes failure to promote, as described in Subsection 67-19a-101[(8)](12)(d), a pay raise that results in the employee receiving the pay that the employee would have received if the person had been promoted.

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

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

†

**Legislative Review Note**

**Office of Legislative Research and General Counsel†**