

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

1                                   **WORK ENVIRONMENT AND GRIEVANCE**

2                                   **PROCEDURE AMENDMENTS**

3                                   2018 GENERAL SESSION

4                                   STATE OF UTAH

5                                   **Chief Sponsor: LaVar Christensen**

6                                   Senate Sponsor: J. Stuart Adams

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8                                   **LONG TITLE**

9                                   **General Description:**

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

12                                  **Highlighted Provisions:**

13                                  This bill:

- 14                                  ▶ defines terms;
- 15                                  ▶ incorporates in statute the state's policy and commitment to provide and maintain a  
16 work environment free of abusive conduct;
- 17                                  ▶ requires biennial training and annual reports to a legislative committee regarding  
18 abusive conduct and grievances;
- 19                                  ▶ includes abusive conduct and other actions as conditions for which an employee  
20 may file a grievance and complaint;
- 21                                  ▶ prohibits retaliatory action against an employee who represents or advocates for an  
22 employee in the grievance procedure as provided in statute;
- 23                                  ▶ amends deadlines for submitting certain grievances;
- 24                                  ▶ allows an employee to submit a grievance to higher steps in the grievance process if  
25 the grievance relates to a supervisor or administrator to whom the employee would



- 26 otherwise submit a grievance;
- 27       ▶ provides for an administrative appeal to the administrator of the Career Service
- 28 Review Office; and
- 29       ▶ makes technical and conforming changes.

30 **Money Appropriated in this Bill:**

31       None

32 **Other Special Clauses:**

33       None

34 **Utah Code Sections Affected:**

35 AMENDS:

- 36       **67-19-44**, as enacted by Laws of Utah 2015, Chapter 211
- 37       **67-19a-101**, as last amended by Laws of Utah 2013, Chapter 427
- 38       **67-19a-202**, as last amended by Laws of Utah 2015, Chapter 258
- 39       **67-19a-301**, as last amended by Laws of Utah 2013, Chapter 427
- 40       **67-19a-303**, as last amended by Laws of Utah 2013, Chapter 427
- 41       **67-19a-401**, as last amended by Laws of Utah 2010, Chapter 249
- 42       **67-19a-402**, as last amended by Laws of Utah 2010, Chapter 249
- 43       **67-19a-402.5**, as last amended by Laws of Utah 2015, Chapter 258
- 44       **67-19a-406**, as last amended by Laws of Utah 2013, Chapter 109
- 45       **67-21-3.5**, as enacted by Laws of Utah 2013, Chapter 427 and last amended by
- 46 Coordination Clause, Laws of Utah 2013, Chapter 427

47 ENACTS:

- 48       **67-19a-102**, Utah Code Annotated 1953
- 49       **67-19a-205**, Utah Code Annotated 1953
- 50       **67-19a-501**, Utah Code Annotated 1953

51 REPEALS AND REENACTS:

- 52       **67-19a-302**, as last amended by Laws of Utah 2013, Chapter 427



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

- 55       Section 1. Section **67-19-44** is amended to read:
- 56       **67-19-44. Abusive conduct.**

57 (1) As used in this section:

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

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

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

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

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

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

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

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

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

74 (3) An employee may file a written complaint of abusive conduct with the department  
75 and subject to further administrative review in accordance with Section [67-19a-501](#).

76 ~~[(2)]~~ (4) 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 (5) (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 (6) (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)]~~ (6).

94 ~~[(5) Employees]~~ (7) (a) Employers shall provide and employees shall participate in the  
95 training described in Subsections ~~[(3) and (4)]~~ (5) and (6) at the time the employee is hired and  
96 in alternating years thereafter.

97 (b) The requirement in Subsection (7)(a) includes notification to all employees at the  
98 time of hiring and in alternating years thereafter of the abusive conduct complaint procedures  
99 and the grievance procedures provided in Title 67, Chapter 19a, Grievance Procedures.

100 ~~[(6)]~~ (8) 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)]~~ (9) 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)]~~ (10) 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 complaints  
127 that 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) "Department" means the Department of Human Resource Management.

137 ~~[(3)]~~ (5) "Employer" means the state of Utah and all supervisory personnel vested with  
138 the authority to implement and administer the policies of an agency.

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

143 ~~[(4)]~~ (7) "Grievance" means:

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

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

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

149 (d) a complaint that the employer subjected the employee to conditions that a

150 reasonable person would consider intolerable, including abusive conduct.

151 [(5)] (8) "Office" means the Career Service Review Office created under Section  
152 67-19a-201.

153 [(6)] (9) "Public entity" [is as] means the same as that term is defined in Section  
154 67-21-2.

155 [(7)] (10) "Reporting employee" means an employee of a public entity who alleges that  
156 the public entity engaged in retaliatory action against the employee.

157 [(8)] (11) "Retaliatory action" means to do any of the following to an employee in  
158 violation of Section 67-21-3:

159 (a) dismiss the employee;

160 (b) reduce the employee's compensation;

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

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

164 or

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

167 [(f)] (e) threaten to take an action described in Subsections [(8)] (11)(a) through [(e)]

168 (d).

169 [(9)] (12) "Supervisor" means the person:

170 (a) to whom an employee reports; or

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

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

173 **67-19a-102. Work environment policy.**

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

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

177 **67-19a-202. Powers -- Scope of authority.**

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

180 [(i)] (a) a dismissal;

181            [(ii)] (b) a demotion;

182            [(iii)] (c) a suspension;

183            [(iv)] (d) a reduction in force;

184            [(v)] (e) a dispute concerning abandonment of position;

185            [(vi)] (f) a wage grievance if an employee is not placed within the salary range of the

186 employee's current position;

187            [(vii)] (g) a violation of a rule adopted under Chapter 19, Utah State Personnel

188 Management Act; or

189            [(viii)] (h) except as provided by Subsection (1)(c)(iii), equitable administration of the

190 following benefits:

191            [(A)] (i) long-term disability insurance;

192            [(B)] (ii) medical insurance;

193            [(C)] (iii) dental insurance;

194            [(D)] (iv) post-retirement health insurance;

195            [(E)] (v) post-retirement life insurance;

196            [(F)] (vi) life insurance;

197            [(G)] (vii) defined contribution retirement;

198            [(H)] (viii) defined benefit retirement; and

199            [(I)] (ix) a leave benefit.

200            [(b)] (2) The office shall serve as the final administrative body to review a grievance by

201 a reporting employee alleging retaliatory action.

202            (3) The office shall serve as the final administrative body to review the findings of an

203 abusive conduct investigation.

204            [(c)] (4) The office may not review or take action on:

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

206 through (3);

207            [(ii)] (b) a [~~grievance~~] personnel matter listed in [~~Subsection (1)(a) or (b)~~] Subsections

208 (1) through (3) that alleges discrimination or retaliation related to a claim of discrimination that

209 is a violation of a state or federal law for which review and action by the office is preempted by

210 state or federal law; or

211            [(iii)] (c) a grievance related to a claim for which an administrative review process is

212 provided by statute and administered by:

213 ~~[(A)]~~ (i) the Utah State Retirement Systems under Title 49, Utah State Retirement and  
214 Insurance Benefit Act;

215 ~~[(B)]~~ (ii) the Public Employees' Benefit and Insurance Program under Title 49, Chapter  
216 20, Public Employees' Benefit and Insurance Program Act; or

217 ~~[(C)]~~ (iii) the Public Employees' Long-Term Disability Program under Title 49,  
218 Chapter 21, Public Employees' Long-Term Disability Act.

219 ~~[(2)]~~ (5) The time limits established in this chapter supersede the procedural time limits  
220 established in Title 63G, Chapter 4, Administrative Procedures Act.

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

222 **67-19a-205. Employment transfer.**

223 At any point during the grievance process, the employer and the employee may  
224 mutually agree to a transfer of the employee to another equivalent position, if and to the extent  
225 that such a position is available, in accordance with department rules for transfer and  
226 reassignment.

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

228 **67-19a-301. Charges submissible under grievance procedure.**

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

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

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

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

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



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

245 (5) A career service employee who desires to bring a grievance described in Subsection  
246 [67-19a-202\(1\)](#) shall use and follow the grievance procedure described in Part 3, Grievance  
247 Procedures, and Part 4, Procedural Steps to Be Followed by Aggrieved Employee.

248 (6) An employee who desires to initiate an administrative review challenging the  
249 findings of an abusive conduct investigation shall use and follow the procedure described in  
250 Section [67-19a-501](#).

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

252 **[67-19a-302](#). Levels of procedure.**

253 (1) The administration of all grievances under Subsection [67-19a-202\(1\)](#) occurs on the  
254 following four levels:

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

259 (2) (a) Except as provided in Subsection (2)(b) and Section [67-19a-501](#), an employee  
260 shall file a grievance or complaint at Level 1 and proceed through the levels of procedure  
261 within the applicable time limits provided in this chapter.

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

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

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

267 Section 8. Section [67-19a-303](#) is amended to read:

268 **[67-19a-303](#). Employees' rights in grievance procedure.**

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

- 271 (a) obtain assistance by a representative of the employee's choice to act as an advocate  
272 at any level of the grievance procedure;
- 273 (b) request a reasonable amount of time during work hours to confer with the

274 representative and prepare the grievance; and

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

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

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

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

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

284 (4) If the individual acting as an advocate for a career service employee under  
285 Subsection (1)(a) is a state employee, the individual may not receive state compensation for the  
286 time the employee spends in the course of that representation unless the individual uses  
287 approved leave during that time.

288 [(4)] (5) (a) The employing agency of an employee who files a grievance may not place  
289 grievance forms, grievance materials, correspondence about the grievance, agency and  
290 department replies to the grievance, or other documents relating to the grievance in the  
291 employee's personnel file.

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

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

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

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

301 **67-19a-401. Time limits for submission and advancement of grievance by**  
302 **aggrieved employee -- Voluntary termination of employment -- Group grievances.**

303 (1) [~~Subject to the provisions of Part 3, Grievance Procedures, and the restrictions~~  
304 ~~contained in this part,] When a career service employee [~~may have~~] files a grievance [~~addressed~~~~

305 ~~by following the procedures]~~ at Level 1, as described in Section 67-19a-302, the employee  
306 shall advance the grievance through the proper levels of procedure specified in this [part]  
307 chapter.

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

311 (3) Any writing made under Subsection (2) shall be submitted to the administrator.

312 (4) Except as provided under ~~[Subsection (6)]~~ Subsections (6) and (7), if the employee  
313 fails to advance the grievance to the next procedural step within the time limits established in  
314 this part:

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

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

319 (5) ~~[(a)]~~ An employee may ~~[submit]~~ file a grievance for review under this chapter  
320 ~~[only]~~, except as provided in Subsections (6) and (7), if the employee submits the grievance  
321 within 30 working days after:

322 ~~[(i) within 20 working days after]~~ (a) the most recent event giving rise to the  
323 grievance; or

324 ~~[(ii)]~~ (b) ~~[within 20 working days after]~~ the employee has knowledge of the most  
325 recent event giving rise to the grievance.

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

328 (6) (a) An employee may file with the office a motion for an enlargement of a time  
329 limit described in Subsection (5).

330 (b) In determining whether to grant a motion described in Subsection (6)(a), the office  
331 shall consider, giving reasonable deference to the employee, whether:

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

333 or

334 (ii) the enlargement is necessary to remedy the employee's excusable neglect.

335 ~~[(6)]~~ (7) The provisions of Subsections (4) and (5)~~[(a)]~~ do not apply if the employee

336 meets the requirements for excusable neglect [~~established by rule~~] as that term is defined in  
337 Section 67-19a-101.

338 ~~[(7) A person who has voluntarily terminated the person's employment with the state~~  
339 ~~may not submit a grievance after the person has terminated the employment.]~~

340 (8) (a) If several employees allege the same grievance, the employees may submit a  
341 group grievance by following the procedures and requirements of this chapter.

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

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

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

346 **67-19a-402. Procedural steps to be followed by aggrieved employee.**

347 (1) (a) [~~A~~] Subject to the provisions and levels of procedure provided in Section  
348 67-19a-302, a career service employee who has a grievance shall submit the grievance in  
349 writing to:

350 (i) the employee's supervisor; and

351 (ii) the administrator.

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

354 (2) (a) If the employee's supervisor fails to respond to the grievance within five  
355 working days or if the aggrieved employee is dissatisfied with the supervisor's written decision,  
356 the employee may advance the written grievance to the employee's agency or division director  
357 within 10 working days after the expiration of the period for response or receipt of the written  
358 decision, whichever is first.

359 (b) Within five working days after receiving the written grievance, the employee's  
360 agency or division director may issue a written response to the grievance stating the decision  
361 and the reasons for the decision.

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

367 (b) Within 10 working days after the employee's written grievance is submitted, the  
368 department head may issue a written response to the grievance stating the decision and the  
369 reasons for the decision.

370 (c) The decision of the department head is final in all matters except those matters that  
371 the office may review under the authority of Part 3, Grievance Procedures.

372 (4) If the written grievance submitted to the employee's department head meets the  
373 subject matter requirements of Section 67-19a-202 and if the employee's department head fails  
374 to respond to the grievance within 10 working days after submission, or if the aggrieved  
375 employee is dissatisfied with the department head's written decision, the employee may  
376 advance the written grievance to the administrator within 10 working days after the expiration  
377 of the period for decision or receipt of the written decision, whichever is first.

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

379 **67-19a-402.5. Procedural steps to be followed by reporting employee alleging**  
380 **retaliatory action.**

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

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

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

386 (c) is subject to the provisions of Section 67-21-4.

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

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

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

392 (iii) whether, if the alleged grievance were found to be true, the reporting employee  
393 would be entitled to relief under Subsection 67-21-3.5(2); and

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

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

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

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

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

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

404 (4) (a) If the administrator determines the office has authority to review the grievance,  
405 the administrator shall provide for an evidentiary hearing in accordance with Section  
406 67-19a-404.

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

409 (i) finds that, even if the alleged grievance were found to be true, the reporting  
410 employee would not be entitled to relief under Subsection 67-21-3.5(2); and

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

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

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

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

418 (b) A court may not order the office to pay costs or attorney fees under this section.

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

420 **67-19a-406. Procedural steps to be followed by aggrieved employee -- Hearing**  
421 **before hearing officer -- Evidentiary and procedural rules.**

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

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

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

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

428 (3) (a) The hearing officer shall issue a written decision within 20 working days after

429 the hearing is adjourned.

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

433 (4) The hearing officer may:

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

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

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

440 (d) grant continuances according to rule; and

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

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

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

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

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

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

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

454 (6) An employee who files a grievance in accordance with this chapter may appeal a  
455 decision of the office directly to the Utah Court of Appeals in accordance with Title 63G,  
456 Chapter 4, Administrative Procedures Act.

457 Section 13. Section **67-19a-501** is enacted to read:

458 **Part 5. Abusive Conduct Administrative Review**

459 **67-19a-501. Procedural steps to be followed in an administrative review of an**

460 **abusive conduct investigation.**

461 (1) An employee may initiate an administrative review of the findings of an abusive  
462 conduct investigation within 10 days after the day on which the employee receives notification  
463 of the investigative findings.

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

466 (3) (a) When an employee initiates the review described in Subsection (2) with the  
467 office:

468 (i) the role of the administrative review is to review and rule upon the department's  
469 findings and decision; and

470 (ii) an evidentiary hearing is not required.

471 (b) The department shall make the abusive conduct investigative file available for the  
472 administrator's in camera review.

473 (c) The administrator may:

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

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

476 (4) (a) The administrator may uphold the department's investigative findings if, based  
477 on the administrative review, the administrator determines that the investigator's findings are  
478 reasonable, rational, and sufficiently supported by the record.

479 (b) If the administrator determines that the investigator's findings are not reasonable,  
480 rational, and sufficiently supported by the record, the administrator may overturn the findings.

481 (5) (a) Within 30 days after the day on which an employee files an administrative  
482 appeal under this section, the administrator shall issue a notice stating whether the  
483 administrator upheld or overturned the investigative findings.

484 (b) The office's determination upon administrative review of the findings resulting  
485 from an abusive conduct investigation is final and not subject to appeal.

486 (c) The following are classified as protected under Title 63G, Chapter 2, Government  
487 Records Access and Management Act, and any other applicable confidentiality provisions:

488 (i) the request for administrative review and any accompanying documents;

489 (ii) documents that any party provides;

490 (iii) the contents of the administrative review file; and



491 (iv) the office's determination.

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

493 **67-21-3.5. Administrative review of adverse action against a public entity**  
494 **employee.**

495 (1) A public entity employee who believes that the employee's employer has taken  
496 retaliatory action against the employee in violation of this chapter may file a grievance with the  
497 Career Service Review Office in accordance with Section [67-19a-402.5](#) and subject to Section  
498 [67-21-4](#).

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

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

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

505 (c) full reinstatement of benefits;

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

507 (e) if the retaliatory action includes failure to promote, as described in Subsection  
508 [67-19a-101\[\(8\)\]\(11\)\(d\)](#), a pay raise that results in the employee receiving the pay that the  
509 employee would have received if the person had been promoted.

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

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