

HB0383S02 compared with HB0383S01

~~deleted text~~ shows text that was in HB0383S01 but was deleted in HB0383S02.

Inserted text shows text that was not in HB0383S01 but was inserted into HB0383S02.

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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: _____

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;

HB0383S02 compared with HB0383S01

- ▶ includes abusive conduct and other actions ~~{in the list of issues and}~~ as 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}~~ in 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
- ▶ 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
Coordination Clause, Laws of Utah 2013, Chapter 427

ENACTS:

HB0383S02 compared with HB0383S01

67-19a-102, Utah Code Annotated 1953

67-19a-205, Utah Code Annotated 1953

~~{67-19a-409}~~ 67-19a-501, Utah Code Annotated 1953

REPEALS AND REENACTS:

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

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 severity, nature, and frequency of occurrence, a reasonable person would determine:

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

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

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

(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).

(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.

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

~~[(2)]~~ ~~(3)~~ (4) 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

HB0383S02 compared with HB0383S01

Procedures.

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

~~(4)(5)~~ (a) The department shall provide 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) On and after July 1, 2015, each]~~

~~(5)(6)~~ (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)(6)~~.

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

(b) The requirement in Subsection (6)(7)(a) includes ~~full disclosure and~~ notification to all employees at the time of hiring and in alternating years thereafter of the abusive conduct complaint procedures and the grievance procedures provided in Title 67, Chapter 19a.

Grievance Procedures.

~~[(6)]~~ ~~(7)(8)~~ 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;

HB0383S02 compared with HB0383S01

- (v) accountability;
- (vi) coaching;
- (vii) leadership; or
- (viii) ethics.

~~[(7)]~~ ~~(18)9~~ 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)]~~ ~~(19)10~~ 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.]~~

(c) an annual report of the total number and outcomes of abusive conduct ~~{claims}~~ complaints that employees filed and the department investigated.

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

67-19a-101. Definitions.

As used in this chapter:

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

~~[(1)]~~ (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 discharge" means an employee's voluntary termination of employment after having been subjected to abusive conduct.

~~}~~ (5)4) "Department" means the Department of Human Resource Management.

HB0383S02 compared with HB0383S01

[(3)] (~~(6)~~5) "Employer" means the state of Utah and all supervisory personnel vested with the authority to implement and administer the policies of an agency.

(~~(7)~~6) "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.

[(4)] (~~(8)~~7) "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 an employee regarding}~~ that the employer subjected the employee to conditions that a reasonable person would consider intolerable, including abusive conduct.

[(5)] (~~(9)~~8) "Office" means the Career Service Review Office created under Section 67-19a-201.

[(6)] (~~(10)~~9) "Public entity" [~~is as~~] means the same as that term is defined in Section 67-21-2.

[(7)] (~~(11)~~10) "Reporting employee" means an employee of a public entity who alleges that the public entity engaged in retaliatory action against the employee.

[(8)] (~~(12)~~11) "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;

or

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

or]

HB0383S02 compared with HB0383S01

~~[(f)]~~ [(e)] threaten to take an action described in Subsections ~~[(8)]~~ ~~[(12)]~~ [(11)](a) through ~~[(e)]~~ (d).

~~[(9)]~~ ~~[(13)]~~ [(12)] "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 }~~ Work environment policy ~~{ and complaint procedure }~~.

~~[(1)]~~ 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.~~

~~‡~~ 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)] a dismissal;

~~[(ii)]~~ [(b)] a demotion;

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

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

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

~~[(vi)]~~ [(f)] a wage grievance if an employee is not placed within the salary range of the employee's current position;

~~[(vii)]~~ [(g)] a violation of a rule adopted under Chapter 19, Utah State Personnel Management Act; ~~{ } or { }~~

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

HB0383S02 compared with HB0383S01

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

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

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

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

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

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

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

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

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

~~[(b)]~~ (2) The office shall serve as the final administrative body to review a grievance by a reporting employee alleging retaliatory action.

~~[(c)]~~ (3) 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.

~~[(e)]~~ ~~[(d)]~~ (4) The office may not review or take action on:

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

~~[(g)]~~ (b) a grievance personnel matter listed in ~~[Subsection (1)(a) or (b)]~~ Subsections (1)(a) through (c) that alleges discrimination ~~{f} or {g}~~ 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

~~[(h)]~~ (c) a grievance related to a claim for which an administrative review process is provided by statute and administered by:

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

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

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

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

HB0383S02 compared with HB0383S01

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

67-19a-205. Employment transfer.

At any point during the grievance process, the ~~department may, upon the request of~~ employer and the employee ~~}, }~~ may mutually agree to a transfer of 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.

(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 described in Subsection 67-19a-202(1) 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}~~ desires to initiate an administrative review challenging the findings of an abusive conduct investigation shall use and follow the ~~grievance }~~ procedure described in Section ~~67-19a-409}~~ 67-19a-501.

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

HB0383S02 compared with HB0383S01

67-19a-302. Levels of procedure.

(1) The administration of all grievances ~~{and complaints }~~ under ~~{this chapter}~~ Subsection 67-19a-202(1) 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}~~ 67-19a-501, 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) All matters described in Section 67-19a-202 are subject to an administrative appeal to the office.~~

~~{~~ Section 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:

HB0383S02 compared with HB0383S01

(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).

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

~~[(4)]~~ (5) (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 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)]~~ (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)]~~

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

HB0383S02 compared with HB0383S01

administrator.}}

~~}}~~(4) ~~}}~~(2) Except as provided under [Subsection (6)] Subsections (~~}}~~4) ~~}}~~6) ~~}}~~through and (~~}}~~6) ~~}}~~7), if the employee fails to advance the grievance to the next procedural step within the time limits established in this part:

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

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

~~}}~~(5) [(a)] An ~~}}~~(3) ~~}}~~ Except as provided in Subsections (4) through (6), an} employee may [submit] file a grievance for review under this chapter [only], except as provided in Subsections (6) and (7), 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 an ongoing course of abusive conduct or the work environment gives rise to the grievance, the most recent event; or

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

—— (i) the} most recent event giving rise to the grievance ~~}}~~ or, if an ongoing course of abusive conduct or the work environment gives}; or

}}(ii) (b) }} within 20 working days after] the employee has knowledge of the most recent event giving rise to the grievance ~~}}~~, the most recent event; 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) ~~}}~~6) (a) An employee may file with the office a motion for an enlargement of a time limit ~~}}~~ established} described in this part} Subsection (5).

(b) In determining whether to grant a motion described in Subsection (~~}}~~4) ~~}}~~6)(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;

or

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

—— (iii) the employee reasonably delayed the filing of the grievance while seeking to

HB0383S02 compared with HB0383S01

~~overcome or endure 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 advancement of a grievance to the next procedural level, or an appeal to the office is untimely.~~

[(6)] ~~(5)~~ (7) The provisions of Subsections ~~(4)~~ (4) and (5) ~~[(a)] (2) and (3)~~ do not apply if the employee meets the requirements for excusable neglect ~~[established by rule]~~ as that term is defined in Section 67-19a-101.

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

~~(8) (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 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.

~~(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.~~

HB0383S02 compared with HB0383S01

~~†~~ ~~††(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.

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

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

HB0383S02 compared with HB0383S01

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

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

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

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

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

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

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

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

(ii) conduct an administrative review of the grievance.

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

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

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

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

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

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

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

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

(6) (a) Except as provided in Subsection (6)(b), an appellate court may award costs and

HB0383S02 compared with HB0383S01

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 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

(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

HB0383S02 compared with HB0383S01

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 office ~~{in reviewing a grievance under this section }~~ directly to the Utah Court of Appeals ~~{within 30 days after the day on which the employee receives notice and the decision of the administrator}~~ in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

Section 13. Section ~~{67-19a-409}~~ 67-19a-501 is enacted to read:

Part 5. Abusive Conduct Administrative Review

~~{67-19a-409}~~ 67-19a-501. Procedural steps to be followed in an administrative ~~{appeal}~~ review of an abusive conduct investigation.

(1) An employee may ~~{file}~~ initiate an administrative ~~{appeal}~~ review of the findings of an abusive conduct investigation ~~{that the department conducts }~~ within 10 days after the day on which the ~~{investigation is complete}~~ employee receives notification of the investigative findings.

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

(3) (a) When an employee ~~{files}~~ initiates the ~~{appeal}~~ review described in Subsection (2) with the office ~~{, the office may not conduct}~~:

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

(ii) an evidentiary hearing~~.~~

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

~~—— (c) is not required.~~

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

HB0383S02 compared with HB0383S01

~~(f)(c)~~ The administrator may:

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

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

(4) (a) The administrator ~~shall substantiate~~ may uphold the department's investigative findings if, based on ~~the administrative review of the abusive conduct investigative file~~, the administrator determines that the investigator's findings are reasonable ~~and~~, rational, and sufficiently supported by the record.

(b) If the administrator determines that the investigator's findings are not reasonable ~~and~~, rational, and sufficiently supported by the record, 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,~~ notice stating whether the administrator ~~, the department, and the employee shall keep~~ upheld or overturned the investigative findings ~~and conclusions and the decision upon administrative review confidential to the extent required by law~~.

~~(c)~~ (b) The office's ~~decision~~ determination 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)~~ (c) The following are ~~subject to~~ classified as protected under 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)~~ request for administrative review and any accompanying documents;

(ii) documents that any party provides;

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

~~(iii)~~ (iv) the office's decision that the department places in the employee's

HB0383S02 compared with HB0383S01

~~file~~ determination.

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 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~~11)(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.