

Employee Grievance Policy and Procedures

Subject:	University Human Resources
Policy:	Employee Grievance Policy and Procedures
Effective Date:	January 1, 2019
Revised:	
Review Date:	Three (3) years from Effective Date above
Responsible Party:	University Human Resources
Applicability:	This policy applies to employees as noted in Section 2

1. INTRODUCTION AND PURPOSE

The university encourages the prompt, efficient, and effective resolution of complaints and concerns arising in the workplace. For this reason, the university has adopted grievance procedures for the fair, orderly, and timely resolution of employee grievances.

2. GRIEVANCE POLICIES FOR EMPLOYEES

- a. The grievance policy and procedures for tenured and tenurable faculty are contained in the [MSU Faculty Handbook](#).
- b. The grievance procedures for employees represented by a union are outlined in the applicable [collective bargaining agreement](#).
- c. Employees covered by this grievance policy and procedure are:
 - i. Classified employees who have completed a probationary period and nontenure track faculty who are not part of a collective bargaining unit.
 - ii. Contract employees on a Board of Regents Contract, MUS Contract, or Letter of Appointment in nonfaculty, professional, or administrative positions.
- d. Grievances alleging discrimination on the basis of race, color, religion, national origin, ethnicity, creed, service in the uniformed services (as defined in state and federal law), veteran status, gender, age, political beliefs, marital or family status, pregnancy, physical or mental disability, genetic information, gender identity, gender expression, or sexual orientation or preference will be referred to the Office of Institutional Equity for investigation under the [Discrimination Grievance Procedures for Allegations of Violations of the Discrimination](#).

[Harassment, Sexual Misconduct, Dating Violence, Domestic Violence, Stalking and Retaliation Policy.](#)

3. GRIEVABLE AND NON-GRIEVABLE ISSUES

- a. Employees may file a grievance if they believe they are adversely affected by an improper application or interpretation of an employment-related rule, regulation, policy, or procedure that is not specifically excluded in 3(c) below.
- b. Formal discipline imposed on an employee under the [Performance Management and Discipline](#) policy may be grieved.
- c. The following issues are not grievable:
 - i. Complaints involving discretionary judgments such as salary increases, work standards, performance evaluations, organizational structures, work assignments, and staffing levels;
 - ii. Complaints which seek a change in the language of a policy or procedure;
 - iii. Expiration of a Letter of Appointment with or without renewal of the employment contract;
 - iv. A decision not to offer renewal of any employment contract;
 - v. Informal discipline; and
 - vi. Complaints that are subject to other university procedures, such as, research misconduct policies, intellectual property determinations, environmental health and safety concerns, parking violations, or worker's compensation claims. Such complaints should be handled through procedures established for the specific topic.

4. RULES FOR GRIEVANCE PROCESSING

- a. Reference to "days" refers to business days unless specifically stated otherwise. A business day is defined as all week days, Monday - Friday, that are not designated as official university holidays.
- b. In computing time periods, the day of the incident that starts the timeline is not included.
- c. The grievant carries the burden of moving the grievance forward within the time period specified for that step, unless the time period has been extended by mutual agreement of the parties. Failure of the grievant to comply with the established time limits will result in dismissal of the grievance.
- d. If a step in the following procedure is deemed inappropriate (for example, the supervisor is the person alleged to have violated the policy or a second level of supervision does not exist), the step may be bypassed by submitting the grievance to the next step.
- e. If an employee is not sure how, or to whom, to file a grievance, the employee may contact University Human Resources for guidance on the process.

5. STEPS IN GRIEVANCE PROCEDURE

Informal Discussion

Most employee concerns can be settled by informally discussing the problem with the immediate supervisor. Employees are encouraged to present work-related concerns to their supervisor for informal resolution and are protected from discrimination, coercion, restraint, or reprisal in initiating either an informal or formal action.

The steps of formal grievance processing are as follows:

Step 1: Within ten (10) days of the grievable incident, or the employee's initial knowledge of the grievable incident, the employee may initiate a grievance by submitting a written grievance to the immediate supervisor. The grievance should contain a complete statement of the action or situation being grieved, the university policy that is being violated or misapplied, and the remedy being sought. The supervisor must provide the employee a written decision addressing the matters raised by the grievant within five (5) days of receipt of the grievance.

Step 2: If the employee is not satisfied with the Step 1 response, or did not receive a timely response under Step 1, the employee may, within five (5) days of receipt of the response or expiration of the time for response under Step 1, submit the grievance to the next level of supervision. The supervisor at this level shall, within five (5) days of receipt of the grievance, submit a written decision to the employee and the immediate supervisor. This action shall be repeated for each additional level of supervision until the appropriate vice president has been provided an opportunity to resolve the grievance.

If the Grievant reports directly to the president or the Chief Human Resources Officer [CHRO], the president or CHRO may elect to refer the grievance to a Grievance Hearing Board before rendering a decision.

Step 3: If the employee is not satisfied with the final Step 2 response, the employee may request a hearing before the Grievance Hearing Board by submission of the grievance to the CHRO within five (5) days of the receipt of the final Step 2 response. If the CHRO has a conflict of interest because the person works for University Human Resources or for other reasons, all actions designated to be conducted by the CHRO will be conducted by the Vice President for Administration and Finance or designee.

Step 4: The employee may appeal the CHRO's decision to the Office of the Commissioner of Higher Education under the procedures set forth in [Section 203.5.2](#), "Appeals," [Board of Regents Policy and Procedures Manual](#). This appeal must be made within five (5) days of receipt of the CHRO's decision.

6. GRIEVANCE HEARING BOARD

A formal grievance hearing shall be conducted by a specially constituted "Grievance Hearing Board" (hereinafter referred to as 'Board'), which shall be appointed by the CHRO. The Board shall be comprised of one classified employee recommended by the Staff Senate, one nonfaculty contract employee recommended by the Professional Council, and one dean

appointed by the CHRO. The CHRO will also appoint a non-voting Hearing Officer to assist the Board.

If a recommendation for an appointee is not received within five (5) days of the request, or the recommended appointee otherwise cannot serve, the CHRO may appoint another employee in the same employee category to serve.

The Board will determine:

- a. Whether there has been a violation of an applicable university and Board of Regents policy that adversely affected the employee.
- b. Whether, in cases of formal disciplinary action, there existed good cause for the action taken.

7. PRE-HEARING CONFERENCE

The Hearing Officer will schedule a pre-hearing conference to be conducted within ten (10) days of receipt of the Statement of Grievance. The appropriate supervisor(s) making the decision that is the basis for the grievance will participate in the Pre-Hearing Conference and the hearing.

The purpose of the pre-hearing conference is to:

- a. Narrow and define the issue(s) to be considered at the hearing.
- b. Identify and list any/all witnesses for the hearing. No witnesses may be called at the grievance hearing who have not been identified by the time specified for exchange of witness lists by the Hearing Officer at the pre-hearing conference. Limitations on the number of witnesses for the hearing may be established for the parties by the Hearing Officer during the pre-hearing conference.
- c. Identify and list any/all documents to be submitted at the hearing. No documents may be submitted at the grievance hearing that were not identified and exchanged by the time specified for exchange of documents by the Hearing Officer at the pre-hearing conference.
- d. Provide a time for the pre-hearing exchange (between all parties) of witness lists and any documents or other information to be submitted at the hearing.
- e. Set a time and place for the formal hearing. The hearing shall be held within ten (10) days of the pre-hearing conference unless good cause for a delay is shown by any party.

The grievant may have the assistance of an advisor or attorney at the pre-hearing conference. However, the parties are responsible for representing themselves and, therefore, advisors or attorneys are not permitted to participate directly in the pre-hearing conference.

8. THE GRIEVANCE HEARING

The grievance hearing will be conducted according to the following procedures:

- a. The Hearing Officer shall preside at the grievance hearing and will make all decisions regarding evidentiary and procedural questions.

- b. The grievant may have the assistance of an advisor or attorney during the hearing. The grieving parties are responsible for representing themselves and, therefore, advisors and attorneys are not permitted to participate directly in the hearing.
- c. The grievant and the person(s) making the decision being grieved will be given a reasonable opportunity to present their case, including presenting testimony of witnesses and documentary evidence. However, the Hearing Officer may preclude the presentation of duplicative, irrelevant, or unnecessary evidence.
- d. Each party will be granted a reasonable opportunity to question the other party's witnesses.
- e. The grievance hearing is an internal process to resolve employee grievances and is not a formal judicial process; therefore, the *Montana Rules of Evidence* and the *Rules of Civil Procedure*, including the power to subpoena witnesses, do not apply. Every reasonable effort will be made to elicit and consider the most reliable evidence. Sworn statements may be admitted in lieu of testimony only if the witness is not available and the statement is necessary for a resolution of the matter. The decision of the Hearing Officer on questions of admissibility of evidence or procedural matters shall be final.
- f. Because of the privacy interests involved in the subject matter of many grievances, grievance hearings will be closed to the public unless the grievant and all other participants in the hearing waive their rights to individual privacy. Only the Board members, the grievant, appropriate university officials, advisors/attorneys, and any witnesses called by the Board or either party, will be allowed to attend proceedings of the hearing.
- g. Deliberations of the Board will be in a closed session and will be considered confidential proceedings.

9. FINAL UNIVERSITY DECISION

The Board shall issue a written recommendation to the CHRO, who will make the final decision for the university. A grievant who is dissatisfied with the final university decision may appeal to the Commissioner of Higher Education under the provisions of [BOR Policy 203.5.2](#)

10. GRIEVANCE PROCEDURES FOR TERMINATION OF STUDENT/TEMPORARY EMPLOYEES

Student employees and temporary employees may use the following grievance procedures if they believe they were terminated from their employment with MSU without good cause. For purposes of this procedure, good cause will include reasonable job-related grounds for dismissal based on a failure to satisfactorily perform job duties, disruption of the employer's operation, or other legitimate business reason.

The grievant carries the burden of moving the grievance forward within the time period specified for each step, unless the time period has been extended by mutual agreement of the parties. Failure of the grievant to comply with the established time limits shall result in dismissal of the grievance.

Step 1: Within ten (10) working days of the termination, the employee may submit a written grievance to their immediate supervisor. The grievance should contain a complete statement of why the employee believes the termination was not for good cause and the

remedy being sought. The supervisor must provide the employee a written decision within five (5) working days of receipt of the grievance.

Step 2: If the employee is not satisfied with the Step 1 response, the employee may, within five (5) working days of the receipt of the response, submit the grievance to the next level of supervision. The supervisor at this level shall, within five (5) working days of receipt of the grievance, submit a written decision to the employee and the immediate supervisor. This shall be repeated for each additional level of supervision until the appropriate dean or director has ruled on the grievance. The decision of the appropriate dean or director is intended to be the final decision of the university. If the dean or director is the immediate supervisor, the grievance will be submitted to the appropriate vice president/provost for the final university decision.