

6C6-2.029 Grievance Process for Employees Not Covered by a Bargaining Unit.

(1) A grievance is an employee's complaint presented in writing and is based on one of the following:

(a) An act or omission by the University which substantially affects a term(s) and/or condition(s) of employment that is unjust;

(b) In non-disciplinary matters, a University Rule or Policy that has been wrongfully applied or applied in a manner that violates the Rule or Policy; or

(c) A disciplinary action taken that is inappropriate.

(2) Definitions:

(a) "Grievant" means an employee who believes his/her rights have been affected by an act or omission of the University or its representative and who has filed a grievance; and

(b) "Days" in this rule mean calendar days. In the event an action falls due on a Saturday, Sunday, or holiday, the action shall be considered timely if it is accomplished by 5:00 p.m. on the following business day.

(3) University Work Force (UWF) employees who have completed their orientation period and non-bargaining unit Faculty may file a grievance in accordance with paragraph (1) above.

(4) The following employees may not file grievance, but may resolve disputes through the Informal Dispute Resolution Process.

(a) Faculty and University Work Force (UWF) employees who have not completed their orientation period;

(b) Other Personal Services (OPS) employees; and

- (c) Temporary or visiting employees.
- (5) The following actions may not be grieved:
 - (a) Administrative leave;
 - (b) Voluntary reduction in pay;
 - (c) Voluntary demotion;
 - (d) Oral and written counselings (these are not disciplinary actions);
 - (e) Removal of pay additives or temporary pay increases;
 - (f) Correction of overpayments;
 - (g) Separation With Advance Notice;
 - (h) Termination of an employment contract or appointment that states, in substance, that employment shall cease on the date indicated in the appointment with no further notice of cessation of employment required;
 - (i) Voluntary resignation by an employee; and
 - (j) Notice of layoff or layoff.
- (6) Disciplinary Actions may be grieved as follows:
 - (a) Oral Reprimands are only grievable through Step 1;
 - (b) Written reprimands are only grievable through Step 2; and
 - (c) Suspensions, demotions, disciplinary reductions in pay and terminations are grievable through Step 3.
- (7) Non-disciplinary matters that do not involve a substantial interest are only grievable through Step 1. Non-disciplinary matters that involve a substantial interest are grievable through Step 3.
- (8) A performance evaluation may not be grieved unless it is alleged that the evaluation is based on factors other than performance. Such evaluations are grievable only through Step 1.
- (9) Claims of illegal discrimination shall be investigated by the University's Human Resource Office or designee.
- (10) The University encourages open communication between employees and supervisors to address employee concerns before an employee believes it is necessary to file a grievance.
- (11) It is the intent of the grievance process to provide a complete response to a grievant, but not to encourage multiple processing of the same issue. Therefore, if prior to or while seeking resolution of the dispute under this rule, a grievant seeks resolution of the matter in any other forum, administrative or judicial, the University shall have no obligation to entertain or proceed further with the matter, but may choose to do so at its discretion.
- (12) Upon failure of the University of West Florida or its representative to provide a decision within the time limits within this rule, the Grievant may appeal to the next step, where appropriate.
- (13) In any non-disciplinary matter or as to any non-disciplinary issue, the Grievant has the burden of proof and the burden of going forward on those issues at all times.
- (14) In any disciplinary matter or as to any disciplinary issue, the University has the burden of proof and the burden of going forward on those issues at all times.
- (15) Step 1 of the Grievance Process.
 - (a) To maintain his/her rights, an employee must submit a Step 1 Grievance to Human Resources. The grievance must be received in Human Resources by the close of regular business hours within thirty (30) days after the act(s) or omission(s) which, the employee knows or should have known, constitutes the basis for the Grievance.
 - (b) The Step 1 Grievance must be in writing signed by the Grievant, and must include the following information, at a minimum:
 1. The name of the Grievant and of the Grievant's representative, if any, including contact information;
 2. A statement specifying which University Rule(s) or Policy(s) the Grievant believes was violated, if any;
 3. A brief description of the act(s) or omission(s) which the Grievant alleges is the basis for the grievance;
 4. The names (including contact information) of any witnesses or of those who have direct knowledge of the alleged act(s) or omission(s); and
 5. An explanation of what the Grievant is seeking in order to resolve the matter. A Grievant may also provide any documents that he/she believes support the grievance and is encouraged to do so.
 - (c) If the Grievant fails to file a signed, Step 1 Grievance, by the deadline or to include all of the information required for a Step 1 Grievance, the Grievant has no right to further processing of the grievance. The University shall be under no further obligation to process the grievance, and shall so notify the Grievant.
 - (d) Human Resources shall forward the Grievance to the University's Step 1 Representative. The Step 1 Representative shall schedule the Step 1 meeting with the Grievant within thirty (30) days after the Step 1 Representative receives the Grievance. The purpose of the Step 1 meeting is to provide the Grievant with an opportunity to present his/her grievance.
 - (e) In advance of the Step 1 meeting, the grievant has the right, upon request, to a copy of any public records relevant to the Grievance.
 - (f) At the Step 1 meeting, the Grievant may present information or documents for consideration by the Step 1 Representative. The Step 1 Representative may review and/or use business records of the University that are believed to be relevant to the processing of the Grievance.

(g) The Step 1 Representative must issue a written decision no later than thirty (30) days after the Step 1 meeting, unless the Step 1 Representative and the Grievant mutually agree to an extension in writing.

(16) Step 2 of the Grievance Process – Grievance Review.

(a) If the Grievant is not satisfied with the Step 1 decision and the matter involves a written reprimand, suspension, disciplinary reduction in pay, demotion, termination and/or substantial interest, the Grievant may request a Step 2 Review. The Step 2 Review must be received by the Office of Human Resources within thirty (30) days of the date of the Step 1 decision.

(b) The purpose of the Step 2 Review is to provide the grievant with the opportunity to obtain a review of his/her grievance.

(c) The Step 2 Representative must issue a written decision no later than thirty (30) days after the Step 2 meeting, unless the Step 2 Representative and the Grievant mutually agree to an extension in writing.

(17) Step 3 of the Grievance Process – Administrative Hearing or Arbitration.

(a) Request for Administrative Hearing – If the Grievant is not satisfied with the Step 2 decision and the matter involves a substantial interest, the Grievant may request an Administrative Hearing in accordance with Chapter 120, Administrative Procedure Act, F.S., and Chapter 28-106, F.A.C., Decisions Determining Substantial Interests.

(b) Request for Arbitration.

1. If the Grievant is not satisfied with the Step 2 decision and the matter involves a substantial interest, the Grievant may request Arbitration. A request for Arbitration must be filed with Human Resources by the close of regular business hours no later than thirty days (30) after the date of the written Step 2 decision.

2. The Arbitration Request must be signed by the Grievant and must include the following:

a. A copy of the Step 1 Grievance and all associated documents;

b. A copy of the Step 1 and Step 2 decisions;

c. If applicable, a list of the Rule(s) and/or Policy(s) the Grievant believes may have been inappropriately applied in the Step 2 decision; and

d. A brief description of the basis for challenging the Step 2 decision.

e. The Grievant may also provide any documents that he/she believes will support the Request for Arbitration.

3. Selection of the Arbitrator.

a. Human Resources shall select an arbitrator on a rotational basis from an odd-numbered panel of at least seven (7) arbitrators maintained by the University and shall notify the employee of the arbitrator selected. If the parties do not agree on the arbitrator selected, the selection shall be made by alternately striking names from the panel. The right of first strike shall be determined by a coin toss.

b. The University will coordinate with the arbitrator to arrange the date, time, and place of the arbitration, and such communications will not be deemed to be an inappropriate, unethical, or ex parte communication.

4. For purposes of this section only, all notices and/or objections must be received by the other party within the required time period, unless extenuating circumstances interfere with the party's ability to comply.

5. The arbitrator's authority is to determine whether the University complied with University Rules and Policies. The arbitrator shall not review managerial decisions other than to ensure that such actions are in accordance with the applicable procedures under review.

6. The arbitrator may award back salary where it is determined that an employee did not receive the appropriate salary; however, the award may not be retroactive earlier than fourteen (14) working days prior to initiation of the Arbitration Request. The arbitrator may not award other monetary damages, punitive damages or penalties and may not award attorney fees to either party.

7. The arbitrator must issue his/her decision within sixty (60) calendar days of the completion of the arbitration. The arbitrator's decision is binding.

8. Neither party may appeal the arbitrator's decision except in accordance with Florida law.

(c) Election of Remedies.

1. The election of Arbitration in accordance with this Rule constitutes the Grievant's waiver of any right to a Request for Administrative Hearing and the election of Request for Administrative Hearing in accordance with this Rule constitutes the Grievant's waiver of any right to request Arbitration.

2. The election of either Arbitration or Request for Administrative Hearing constitutes the Grievant's waiver of any right to any other processes, rights, and/or remedies that may be available in any other process. Once the election is made, a Grievant may not withdraw the request for the purpose of initiating another type of review or process. A Grievant's withdrawal of a Request for Administrative Hearing or Arbitration will constitute a dismissal of the action with prejudice.

Specific Authority 1001.74(4), (19) FS. Law Implemented 1001.74(4), (34), 1001.75(3), (16) FS. History–New 2-9-05.