

**UCOP Human Resources Procedure 70 – COMPLAINT RESOLUTION**

**I. POLICY REFERENCES**

UC-PPSM 70, Complaint Resolution  
All UC-PPSMs unless otherwise noted

**II. APPLICABILITY**

Professional and Support Staff (PSS)/Managers and Senior Professionals (MSP)

**III. ELIGIBILITY (UC-PPSM 70.C)**

All UCOP staff employees covered by the UC-PPSM are eligible to file a complaint under this policy with the following exceptions: Managers and Senior Professionals appointed to salary grades VIII and IX; Senior Managers; employees who voluntarily terminate employment or retire from the University; employees appointed to per diem positions; and employees covered by the collective bargaining unit agreements.

**IV. SCOPE (UC-PPSM 70.B)**

A complaint is defined as follows:

- (1) a claim by an individual employee that a specific management act is arbitrary, and that it has adversely affected the employee's existing terms and conditions of employment; or
- (2) a claim by an individual employee adversely affected by a management action that a provision of PPSM has been violated.

Concerns or inquiries regarding classification standards, benefits, salary rates or ranges for classes, or the personnel policies that relate to these items are not covered by the Complaint Resolution Policy but may be submitted to the Director, UCOP Human Resources for consideration (see UC-PPSM 70.A). For more details, please refer to the local UCOP Human Resources Procedure 36 Classification of Positions.

***GENERAL RESPONSIBILITIES***

**V. INFORMAL RESOLUTION**

Employees shall attempt to resolve the issues of a prospective complaint with their immediate supervisor before filing a formal complaint. Informal resolution may include, but is not limited to alternative intervention services of a third-party communicator, facilitator, or mediator through the assistance of the UCOP Office of Employee and Labor Relations. However, attempts at informal resolution shall not extend the thirty (30) calendar day time limit for filing a formal complaint.

**VI. TIMELINESS**

To qualify for formal review, a written request must be received by the UCOP Office of Employee and Labor Relations within thirty (30) calendar days from the date on which the employee knew or could reasonably be expected to have known of the event or action which gave rise to the complaint, or within thirty (30) calendar days from the date of separation from University employment, whichever is earlier. In the case of a layoff, a written request for review must be filed within thirty (30) calendar days from the date of the notice informing the employee that he/she is to be laid off (UC-PPSM 70.D). Time limits that expire on a Saturday, Sunday or University holiday are automatically extended to the next business day.

When a complainant alleges sexual harassment, the complainant may elect to file a complaint under the UCOP Human Resources Sexual Harassment Complaint Resolution Procedure, specifically developed to

accommodate the sensitive nature of sexual harassment complaints, instead of filing a complaint under UC-PPSM 70.

## **VII. SUBMISSION OF EMPLOYEE REQUEST FOR REVIEW**

- A. Employee complaints filed under UC-PPSM 70, must be submitted in writing on a UCOP formal complaint form, and must be received by the Manager, UCOP Employee and Labor Relations (or designee), 300 Lakeside Drive, 12<sup>th</sup> Floor, Oakland, CA 94607-5200 within thirty (30) calendar days as referenced above under “Timeliness.” *Facsimile transmissions of complaints will not be accepted.*
- B. Employee complaints alleging sexual harassment or discrimination on the basis of race, color, national origin, religion, sex, physical or mental disability, medical condition, ancestry, marital status, age, sexual orientation, citizenship, or status as a veteran may be submitted to the UCOP Affirmative Action Officer. Complaints that fail to meet these timelines will be disqualified from further review under these Procedures.
- C. The Manager, UCOP Employee and Labor Relations (or designee) may extend time limits for cause, provided a request to do so is received prior to the expiration of the established deadline.
- D. Employee complaints submitted for review must contain the following information as specified in UC-PPSM 70.F:
  - 1. Identify (including the date) the specific management act(s) to be reviewed;
  - 2. Specify how the employee was adversely affected;
  - 3. List the section(s) and specific provision(s) of these Personnel Policies for Staff Members (PPSM) alleged to have been violated, if any, and how the provisions were violated, and/or explain why you believe the management act(s) was arbitrary;
  - 4. Specify the remedy requested; and
  - 5. Provide any other information that may be required pursuant to these local procedures.

Employee complaints must also clearly state the date on which the employee knew of the management act for which review is requested. Should information be missing, the Manager, UCOP Employee and Labor Relations (or designee) may grant the employee up to fifteen (15) additional calendar days within which to submit the missing information needed. Except by mutual agreement of the parties, no new issue may be added to a complaint or introduced at Step II or III that was not included in the written complaint as initially submitted.

- E. The Manager, UCOP Employee and Labor Relations (or designee) shall issue a written (threshold) determination as to whether the complaint is timely, within the scope of policy, and state the steps in the review process for which it qualifies. For complaints alleging a violation of UC-PPSM 12, Non-Discrimination in Employment, the letter shall also include a statement specifying that civil law remedies may also be available.

## **VIII. APPEAL PROCESS**

An employee may appeal the local UCOP decision as to whether the complaint is timely and/or within the scope of this policy to the Assistant Vice President, Human Resources Office of the President (or designee), who has been delegated final authority for interpreting this policy.

Appeals to the Office of the President pursuant to this Section VIII shall include copies of the original grievance and related documents, and shall be received within twenty (20) calendar days from the date of the local decision (UC-PPSM 70.E). The Assistant Vice President, Human Resources and Benefits (or designee) shall issue a final and binding written decision on the appeal under this Section VIII.

## **IX. PROFESSIONAL AND SUPPORT STAFF (PSS) COMPLAINT RESOLUTION PROCESS**

**A. Step I: Review by Department Head**

The Manager, UCOP Employee and Labor Relations (or designee) will forward the written complaint to the employee's department head with a dated cover letter. Within fifteen (15) calendar days after the date of the cover letter, the department head will issue a written decision to Manager, UCOP Employee and Labor Relations (or designee) to be forwarded onto the employee. The department head is encouraged to meet with the employee and anyone else the department head deems necessary in order to formulate the response during the Step I review process.

**B. Step II: Human Resources Review “or” Fact-finding**

1. If the written decision at Step I does not resolve the complaint, or if no decision is issued, the employee may submit a written appeal for further review to the Manager, UCOP Employee and Labor Relations (or designee) within fifteen (15) calendar days from the date the Step I written decision was issued or due to be issued.
2. The appeal from Step I may proceed in alternative ways, as follows:
  - a) The employee may request on a form attached to the departmental response, a meeting with the Director, UCOP Human Resources on complaint issues not subject to a final and binding decision at Step III. Such meeting may include the employee, his or her representative, and other departmental personnel, as appropriate. The Director, UCOP Human Resources (or designee) shall issue a final written decision on the matter within fifteen (15) calendar days of the date of the meeting.

**OR**

- b) The employee may request or the University may appoint a Fact-Finder to review the complaint. If either party chooses fact-finding, the complaint will be sent to a Fact-Finder appointed by the Manager, UCOP Employee and Labor Relations (or designee). The appointed Fact-Finder shall be from outside the department and/or the reporting line in which the complaint arises.
3. The Fact-Finder will conduct an investigation as appropriate to determine the pertinent facts, which may include meeting with each party to the complaint individually and/or jointly. The Fact-Finder shall then submit a written report to the Manager, UCOP Employee and Labor Relations (or designee). There is no time limit provided for the fact-finding process. It is expected that the fact-finding process will be completed as expeditiously as possible based on the circumstances and complexities of each case.

The fact-finding report shall contain the following information:

- A clear statement of the issues under review;
- The position of opposing parties;
- A summary of the information received during the investigation;
- Findings of fact; and
- Conclusions, including policy violations, if any.

The report shall not recommend any specific actions or remedies.

4. The fact-finding report, along with the complaint information and a dated cover letter, will be forwarded to the Director, UCOP Human Resources (or designee). Within fifteen (15) calendar days from the date of the cover letter, the Director shall either issue a final and binding written decision or remand the matter back to the Fact-Finder for additional information and/or clarification of the report. If the matter is remanded, the Director shall issue a final and binding written decision within fifteen (15) calendar days from the date of the Fact-Finder's cover letter re-submitting the amended report.

**C. Step III: Hearing**

1. Employee complaints that alleged certain and specific UC-PPSM provisions (as enumerated below) that were not satisfactorily resolved in the written decision (resulting from the requested meeting) at Step II, or where no written decision was issued, may be appealed in writing to Step III and submitted to the Manager, UCOP Employee and Labor Relations (or designee) within fifteen (15) calendar days of the date the Step II written decision was issued or due to be issued.
2. Employees may submit appeals for alleged violations of one or more of the following **specific** policies (but no others) for a final and binding decision at Step III before a Hearing Officer, *unless the employee has requested a fact-finding review at Step II, in which case the Step II written decision is final and binding* (UC-PPSM 70 F):

PSS UC-PPSM alleged violations eligible for review at Step III are as follows:

- 12 Nondiscrimination in Employment
  - 31 Hours of Work
  - 32 Overtime (Non-exempt employees only)
  - 33 Shift and Weekend Differential (Non-exempt employees only)
  - 40 Holiday
  - 41 Vacation
  - 42 Sick Leave
  - 43 Leave of Absence
  - 60 Layoff and Reduction in Time from PSS Career Positions
  - 62 Corrective Action - PSS
  - 64 Termination of Career Employees - PSS
  - 66 Medical Separation
  - Reprisal for utilizing the Complaint Resolution process
3. The employee may elect a University Hearing Officer or a non-University Hearing Officer:
    - a) If the employee elects a University Hearing Officer, there shall be no charge to the employee for the Hearing Officer's fees.
    - b) If the employee elects a non-University Hearing Officer, the Hearing Officer's fees shall be split equally between the University and the employee. Costs incurred by the cancellation or postponement of the hearing shall be borne entirely by the requesting party.
  4. The Director, UCOP Human Resources (or designee) shall appoint University Hearing Officers. Non-University Hearing Officers will be selected from a list of five (5) names obtained from the American Arbitration Association using the selection procedures of the Association.
  5. The Hearing Officer shall have broad discretion regarding the admissibility and weight of evidence. The hearing need not be conducted according to the technical legal rules relating to evidence and witnesses. However, the Hearing Officer shall be guided by accepted standards regarding the admissibility of evidence. Each party shall have the right to be represented by counsel or a representative of her/his choosing, to present her/his case by oral and documentary evidence, to submit rebuttal evidence, and to conduct such cross examination as may be required for a full and true disclosure of the facts.

2. The Manager, UCOP Employee and Labor Relations (or designee) and the employee and/or his or her representative will schedule the hearing by mutual agreement. The hearing will be closed to non-party observers unless the University, the employee and his or her representative agree otherwise. The Hearing Officer will provide both parties with a written decision within thirty (30) calendar days from the close of the hearing.
3. Each party shall provide the other with copies of all exhibits and names of all witnesses the party plans to introduce at the hearing. To the extent possible, this material should be provided at least seven (7) calendar days prior to the hearing. Offers of settlement are not admissible. Hearings shall be recorded either by tap or other method as determined by the University. If the University determines to record the hearing on tape, the employee may, at the employee's expense, also record the hearing by stenography. If the University determines to record the hearing by use of a certified court reporter, the University shall bear the cost of same. If a certified court reporter is used, the parties and their representatives shall have the right to a copy of the transcript. However, the cost of the copy shall be borne by the requesting party.
8. If the complaint is sustained in whole or in part, the remedy shall not exceed restoring to the employee the pay, benefits, or rights lost as a result of the violation of the policy/policies at issue. No interest will be awarded on any amount restored to the employee. Compensation will not be granted for any period of time resulting from an extension of time requested by or on behalf of the employee.

**X. MANAGERS AND SENIOR PROFESSIONAL (MSP) EMPLOYEES COMPLAINT RESOLUTION PROCESS**

**A. Step I: Review by Department Head**

The Manager, UCOP Employee and Labor Relations (or designee) will forward the written complaint to the employee's department head with a dated cover letter. Within fifteen (15) calendar days from the date of the cover letter, the department head will issue a written decision to the Manager, UCOP Employee and Labor Relations (or designee) to be forwarded onto the employee. The department head is encouraged to meet with the employee and anyone else the department head deems necessary in order to formulate the response during the Step I review process.

**B. Step II: Review by Human Resources**

1. If the written decision at Step I does not resolve the complaint, or if no decision is issued, the employee may submit a written appeal for further review at Step II to the Manager, UCOP Employee and Labor Relations (or designee) within fifteen (15) calendar days from the date the Step I written decision was issued or due to be issued.
2. Within fifteen (15) calendar days from receipt of the written appeal to Step II, the Director, UCOP Human Resources (or designee) shall convene a meeting to attempt resolution of the complaint. Such meeting may include the employee, his or her representative, and other departmental personnel, as appropriate. If resolution of the complaint is not achieved, the Director, UCOP Human Resources (or designee) shall issue a written final decision on the matter within fifteen (15) calendar days from the date of the meeting.

**C. Step III: Fact-finding**

1. Employee complaints that allege violations of certain specific UC-PPSM provisions (as enumerated below) that were not satisfactorily resolved in the written decision (resulting from the meeting convened) at Step II, or if no written decision was issued, may be appealed in writing to Step III and submitted to the Manager, UCOP Employee and Labor Relations (or

designee) within fifteen (15) calendar days from the date the Step II written decision was issued or due to be issued.

2. Employees may submit alleged violations of one or more of the following specific policies (but no others) for fact-finding (UC-PPSM 70 F).

MSP UC-PPSM alleged violations eligible for review at Step III are as follows:

- 12 Nondiscrimination of Employment
  - 65 Termination of Career Employees (MSP Grades I - VII)
  - 66 Medical Separation
3. The employee complaint will be sent to a Fact-Finder appointed by the Manager, UCOP Employee and Labor Relations (or designee). The appointed Fact-Finder shall be from outside the department and/or the reporting line in which the complaint arises.
  4. The Fact-Finder will conduct an investigation as appropriate to determine the pertinent facts, which may include meeting with each party to the complaint individually and/or jointly. The Fact-Finder shall submit a written report to the Manager, UCOP Employee and Labor Relations (or designee). There is no time limit provided for the fact-finding process. It is expected that the fact-finding process will be completed as expeditiously as possible based on the circumstances and complexities of each case.

The fact-finding report shall contain the following information:

- A clear statement of the issues under review;
- The position of opposing parties;
- A summary of the information received during the investigation;
- Findings of fact; and
- Conclusions, including policy violations, if any.

The report shall not recommend any specific actions or remedies.

5. The fact-finding report, along with the complaint information and a dated cover letter, will be forwarded to the Director, UCOP Human Resources (or designee). Within fifteen (15) calendar days from the date of the cover letter, the Director shall either issue a final and binding written decision or remand the matter back to the Fact-Finder for additional information and/or clarification of the report. If the matter is remanded, the Director shall issue a final and binding written decision within fifteen (15) calendar days from the date of the Fact-Finder's cover letter re-submitting the amended report.

## **XI. REPRESENTATION**

- A. Employees may represent themselves or be represented by another person at any stage in the complaint process, except that supervisory or confidential employees shall not participate in the handling of complaints on behalf of non-supervisory or non-confidential employees, and non-supervisory and non-confidential employees shall not participate in the handling of complaints on behalf of supervisory or confidential employees.
- B. The Manager, UCOP Employee and Labor Relations (or designee) or someone else appointed by the Director, UCOP Human Resources shall represent departments in complaint hearings and fact-finding meetings and investigations.

## **XII. TIME LIMITS**

Complaints not appealed within the time limits at any step will be considered resolved on the basis of the preceding University decision. Failure of the University to issue a decision within the stated time limits will be the basis for the employee to appeal to the next step.

### **XIII. EXTENSION OF TIME LIMITS**

The Manager, UCOP Employee and Labor Relations (or designee) shall approve or deny in writing requests for extensions of time limits. Normally, requests for extension of time limits must be submitted in advance of a deadline. If the request is made in advance of a deadline (other than for initial filing), the extension may be based on cause, e.g., illness, unavailability of the Hearing Officer or Fact-finder, attorney's calendars, administrative workload, etc. In order to extend a missed deadline and/or to extend the initial filing period the reason(s) must be compelling, e.g. incapacitating illness.

### **XIV. CORRESPONDENCE**

The Manager, UCOP Employee and Labor Relations (or designee) shall send decisions and all mail related to the complaint to the employee's home address as provided on the complaint form. The employee is responsible throughout the complaint process for informing the Manager, UCOP Employee and Labor Relations (or designee) of any changes in his or her home address or telephone number.

### **XV. RELEASE TIME**

Upon advance request to the division or department, an employee and the employee's representative (if the representative is an employee who is also covered by these policies and is not being paid for such representation) shall be entitled to reasonable release time with pay for time spent in the informal or formal resolution of an employee complaint; or in presenting a complaint at a hearing and/or participating in a fact-finding investigation.

In addition, upon advance request to the division or department, an employee who is covered by these policies and who serves as a witness shall also receive release time with pay while testifying at a hearing and/or participating in a fact-finding investigation. In addition, the employee-witness shall be entitled to reasonable release time with pay for other meetings convened by the University related to the resolution of an employee complaint.

Release time shall include travel time only when (a) the hearing or meeting takes place away from Office of the President locations; or (b) the employee works at an off-site location outside of the immediate area. When an employee is required to attend hearings and/or participate in fact-findings involving the University, that attendance shall be counted as time worked.

### **XVI. RECORDS RETENTION**

All records regarding an individual employee's complaint shall be kept in a confidential file, separate from the employee's personnel file, for five (5) years following the final date of resolution.

### **XVII. SETTLEMENT AGREEMENTS AND GENERAL RELEASES**

The terms and conditions of settlement agreements and general releases shall be coordinated with the Manager, UCOP Employee and Labor Relations (or designee) and reviewed in advance by the UCOP Office of General Counsel before being an agreement is reached and/or finalized. Such settlement and general release agreements shall be in writing and be filed with the records of the complaint.