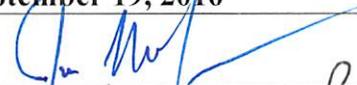
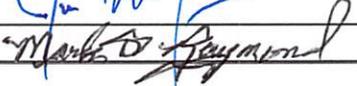


610
GRIEVANCE AND APPEAL

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PURPOSE

Employees and the County benefit from a procedure established for the purpose of resolving complaints on specific issues. This process allows for the free discussion of matters of concern.

SCOPE

This policy applies to career service employees and establishes grounds for grievances; standing to file a grievance; rights and responsibilities of the employee and management when a grievance is submitted; procedures and deadlines.

CROSS REFERENCES

Employee Classification, Policy 320
Progressive Discipline, Policy 600
County Personnel Management Act, Utah Code 17-33
Government Records Access and Management Act, 63G-2-301

POLICY AND PROCEDURES

1. Eligibility
 - A. Only career service employees may submit grievances.
 - B. When several employees allege the same grievance, they may submit a joint grievance and each sign a written statement either jointly or separately. If a decision at one level of review resolves the grievance for some but not all of the grievants, those remaining unsatisfied may continue the grievance on the unresolved items.
 - C. A person who voluntarily terminates employment with the County may not submit or pursue a grievance after the date of termination.
2. Grounds for Grievance
 - A. A career service employee may file a grievance based upon a decision resulting in actual harm or condition of employment (unpaid suspensions, transfers, demotions, or dismissals) or unlawful discrimination.

- B. Whenever a question or dispute exists as to whether a decision resulted in actual harm or condition of employment or if the employee is qualified to use this grievance procedure, the HR Director shall forward the grievance to the Career Service Council, who shall then resolve the question or dispute.
- C. A career service employee may grieve all other matters only to the employee's Department Head.

3. Employee Rights

- A. For the purpose of submitting a grievance, an employee may: Obtain assistance by one (1) representative to act as an advocate; request a reasonable amount of time during work hours to confer with a representative to prepare the grievance and attend hearings; call employees or others as witnesses at a grievance hearing before the Career Service Council; and invoke the subpoena power of a court in the same manner as the Career Service Council to compel attendance at a hearing.
- B. Department Heads and employees shall not retaliate against any employee for the use of or participation in grievance procedures.
- C. Employees called to appear as witnesses at a grievance hearing shall be permitted to attend a hearing held during their scheduled work shift if the party calling the employee notifies the employee and the employee's supervisor at least two regular working days prior to the hearing.

4. Timelines for Submission of Grievances and Appeals

- A. The employee shall submit the grievance within 10 calendar days after the event giving rise to the grievance or within 10 calendar days after the employee knows of, or with the exercise of reasonable diligence, should have known of the event giving rise to the grievance.
- B. If the employee fails to appeal a decision on a grievance to the next level of review within the time permitted, the employee shall be deemed to have waived all right of further review, and the grievance shall be deemed disposed on the basis of the last decision.

5. Procedure for Submitting Grievances and Appeals

- A. The employee(s) shall submit the grievance in writing to the HR Director. The HR Director shall review the grievance and applicable documents, and issue a written decision to the employee(s) on the grievance within ten (10) business days. The decision shall include the reasons for the decision. If the decision is not issued within ten (10) business days, the grievance shall be deemed denied.
- B. If the grievance remains unresolved or if the employee is dissatisfied with the decision, the employee shall submit the grievance (to include all prior decisions)

in writing to the County Commission within five (5) business days after receipt of the decision. The Commission shall issue a written decision to the employee(s) on the grievance within five (5) business days after its submission. The decision shall include the reasons for the decision. If the decision is not issued within five (5) business days, the grievance shall be deemed denied.

- C. If the grievance remains undecided, or if the employee is dissatisfied with the decision, the employee shall submit the grievance in writing to the HR Director within five (5) business days after the receipt of the decision, asking for Career Service Council review.
- D. If the grievance comes about because of a dismissal, both HR Director review and review by the Commission shall not be available. Instead, the affected employee shall submit the grievance directly to the HR Director for review by the Career Service Council.
- E. Depending on the type of grievance, the grievant may invoke a State of Utah authority to resolve the issue.

1. If the grievance comes about because of a decision resulting in actual harm or condition of employment, the grievance may be filed in district court within 30 days of the issuance of the Council's decision. In reviewing a decision of the Council, the district court shall be limited to the record of the Council, and shall presume that the decision is valid and may determine only whether the decision is arbitrary or capricious.

2. If the grievance comes about because of unlawful discrimination, the grievance may be filed with the Division of Antidiscrimination and Labor within the Labor Commission within thirty (30) days of the issuance of the Council's decision.

6. Career Service Council

- A. A Career Service Council (Council) is in effect for the benefit of Uintah County career service employees as per U.C.A 17-33-4.
- B. A member of the Council may not otherwise be employed by the County.
- C. Each July, the Council members shall choose a Chairman from among themselves.
- D. Members of the Council shall receive a stipend of \$50 for performing official duties for up to four (4) hours in a twenty-four hour period, and a stipend of \$100 for four (4) or more hours of service within a twenty-four hour period. They also shall be reimbursed for expenses necessarily incurred in the performance of their duties.

- E. The HR Director is the secretary of the Council. Copies of documents filed with the Council shall be maintained in the HR office in a grievance file. The HR Director shall serve a copy of all orders and decisions of the Council upon the parties to the grievance. Service upon a party represented by counsel shall be made upon counsel.

7. Authority of the Career Service Council

- A. The Council has jurisdiction over appeals and grievances that have not been resolved at an earlier stage of the grievance process.
- B. Action by a majority of the Council is an action of the Council. All three members of the Council must be present for the Council to conduct business. Members of the Council may be present telephonically.
- C. The Council has no jurisdiction to review or decide personnel matters that are not grievable under the terms of this policy.
- D. A member of the Council may administer an oath or affirmation in conjunction with proceeding within the Council's jurisdiction.
- E. The Council may not issue subpoenas. The Council may petition any court with the authority to issue subpoenas to issue a subpoena on the Council's behalf. The Utah Rules of Civil Procedure regulating the issuance of a subpoena shall apply.
- F. The Council may not award costs or attorney fees to either party.
- G. The Council may make rules governing the conduct of its proceedings on a case-by-case basis.

8. Grievance Submission to the Career Service Council

- A. A member of the Commission, or a designee, shall represent the interest of the County before the Council.
- B. The Council may, at any time, confer with the parties, together or separately, to define the hearing proceedings: including the necessity of a formal hearing, the establishment of ground rules upon which the hearing will be conducted, defining the issues that will be the subject of contention, providing time allotments for arguments, identifying witnesses, and/or ascertaining stipulations of fact.
- C. Prior to a formal hearing, the Council shall require the parties to identify:
 - 1. Admitted and disputed allegations;
 - 2. The issues to be resolved;

3. Applicable Uintah County policies, procedures and other related regulations or laws;
 4. The harm suffered;
 5. The relief requested;
 6. A list of witnesses, exhibits, and other evidence to be offered at an adjudication hearing; and
 7. Possible dates for an adjudicative hearing.
9. Adjudicative Hearing – If the Council determines that a formal hearing is appropriate, the Council shall contact both the County and the grievant to schedule the hearing. All hearing requests will be granted or denied at the discretion of the Council.
- A. At the direction of the Council, both parties shall serve five (5) copies of documents to be presented in the hearing to the Council Secretary. The record served shall include a witness list.
 - B. Upon reasonable justification, additional issues may be verbally raised at the time of the hearing; however, the responding party will be allowed an extension of time, if necessary, to prepare a response. When needed, the Council may request that the parties submit post-hearing outlines or briefs of legal matters in order to clarify specific issues.
 - C. The adjudicative hearing shall be before the Council and shall be electronically recorded. A ruling to “strike” an answer from the record by the Council will signify that the Council will not consider such evidence in formulating its decision. The response, however, will not be physically removed from the recording.
 - D. All proceedings before the Council are considered closed meetings per U.C.A. §52-4-204.
 - E. The County has the burden of proof in all grievances resulting from unpaid suspensions, transfers, demotions, and dismissals. The employee has the burden of proof in all other grievances. The party that brings a fact shall have the burden of persuasion for the existence and relevance of that fact.
 - F. The party with the burden of proof shall prove the case by substantial evidence.
 - G. The Council shall conduct the proceeding to obtain full disclosure of relevant facts and to provide all parties a reasonable opportunity to present their positions.
 - H. The Council shall allow both parties the opportunity to present evidence and rebuttal evidence, conduct cross-examination, argue, and respond to arguments.

Each party may request the presence of up to two representatives (the representatives may be included as witnesses on the provided witness list) and shall identify each individual attending the hearing and state their purpose for attendance. Should a party have two representatives, the party shall identify the lead representative.

- I. The Council shall determine the order of presentation of the evidence.
- J. The Council shall consider evidence it determines to be material, relevant, credible, and reliable. The Council shall not exclude evidence solely because it is hearsay.
- K. The Council may request independent counsel for legal advice at County expense.
- L. The Council may ask questions of witnesses. If a witness testifies that he or she would not be able to speak freely in the presence of the department representative, the grievant may move to have the department representative excluded during that portion of the testimony. If the Council grants the request, an alternate department representative may be designated to remain during the testimony.
- M. All testimony shall be given under oath of affirmation.
- N. The Council shall issue a written decision within fifteen (15) calendar days after the hearing is adjourned. If the Council does not issue its decision within fifteen (15) calendar days after the hearing, the County shall not be liable for any claimed back salary or benefits between the time the decision is due and the decision is issued.
- O. The decision of the Council shall include a statement of: findings of fact; conclusions of law; the relief granted; and the reasons for the decision.
- P. The Council's initial decision is final and shall not reconsider a decision once issued.

10. Administrative Law Judge Review

A. Upon receipt of a grievance or during any stage of Council review, the Council may refer the grievance to an Administrative Law Judge (ALJ) for review.

B. When all earlier levels of the grievance process are exhausted (see section 5) and Career Service Council review becomes necessary, either party may request that an Administrative Law Judge settle the grievance. In such cases, the Administrative Law Judges' decision shall be final.

11. Records

- A. The official record of any proceedings required by these rules to be recorded shall be maintained by an electronic recording device. Transcription costs for a copy of the hearing shall be paid for by the party requesting the transcript.
- B. The HR Director shall establish a file for the grievance which shall contain all documents related to the grievance. The employee may request a copy of any document that pertains to the grievance placed in the file.
- C. The record shall consist of the agency file, the audio recording of any proceedings, and any evidence submitted by either party and accepted by the Council at any level of the grievance process.
- D. The record shall be considered public data under the Government Records Access Management Act of the State of Utah. The Council may designate any part of the record as protected or controlled.
- E. If disciplinary action against an employee is modified as a result of the grievance process, the HR Director shall take appropriate actions to ensure the modifications are appropriately reflected in the employee's personnel file.