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SUMMARY:

To provide a process for review of grievances filed by covered employees regarding certain adverse employment actions.

POLICY:

I. AUTHORITY

State Employee Grievance Procedure Act, S.C. Code §§ 8-17-310 et seq.

II. POLICY

To provide a process for review of grievances filed by covered employees regarding certain adverse employment actions.

III. DEFINITIONS.

As used in this Grievance Policy & Procedure, unless the context clearly indicates otherwise, the following words or phrases will mean:

A. "Adverse employment action": demotion, involuntary reassignment, salary
decreases based on EMPS evaluation, suspension, and termination. A reclassification may be considered a grievable adverse employment action only if the Office of Human Resources and Equal Opportunity (HREO), or in the case of appeals, the State Human Resources Director, determines that there is a material issue of fact that the action is a punitive reclassification. An allegation by an employee that he/she was allegedly denied the opportunity for consideration for a promotion for which he/she was qualified when the promotional opportunity occurred and the employee applied or would have applied if he/she had known of the promotional opportunity may also be an adverse employment action when the Office of Human Resources and Equal Opportunity, or in the case of appeals, the State Human Resources Director, determines that there is a material issue of fact. A reduction in force may be considered a grievable adverse employment action if the Office of Human Resources and Equal Opportunity, or in the case of appeals the State Human Resources Director, determines that there is a material issue of fact that the University inconsistently or improperly applied its reduction-in-force policy or plan.

B. "Calendar days": the sequential days of a year. The time will be computed by excluding the first day and including the last day. If the last day falls on a Saturday, Sunday or an official legal holiday, it will be excluded.

C. "Covered employee": a full-time or part-time employee occupying a part or all of an established full-time equivalent (FTE) position who has completed the probationary period and has a “successful” or higher overall rating on the employee's performance evaluation and who has grievance rights. If an employee does not receive an evaluation within this time frame the employee will be a covered employee. However, the State Grievance Procedure Act exempts certain positions in section 8-17-370.

D. "Demotion": the assignment of an employee by the appointing authority from one established position to a different established position having a lower state salary range.

E. "Grievance": a complaint filed by a covered employee or the employee's representative regarding an adverse employment action (NOTE: see, “A. Adverse Employment Action”, above).

F. "Involuntary reassignment": the movement of an employee's principal place of employment in excess of thirty (30) miles from the prior work station at the initiative of the University, but the reassignment of an employee by the University in excess of thirty (30) miles from the prior work station to the nearest facility with an available position having the same state salary range for which the employee is qualified is not considered involuntary reassignment. (NOTE: see “I. Reassignment”, below).

G. "Probationary employee": a full-time or part-time employee occupying a part or all of an established FTE position in the initial working test period of employment with the State of twelve months' duration. An employee who receives an unsatisfactory performance appraisal during the probationary period must be terminated before
becoming a covered employee; this is not an adverse employment action that can be considered as a grievance or an appeal.

H. "Promotion": an employee's change from a position in one class to a position in another class having a higher state salary range. Failure to be selected for a promotion is not an adverse employment action that can be considered as a grievance or an appeal.

I. "Reassignment": the movement within the University of an employee from one position to another position having the same state salary range or the movement of a position within the University which does not require reclassification. A reassignment is not a grievable or appealable adverse employment action. (NOTE: see, “F. Involuntary Reassignment”, above).

J. "Reclassification": the assignment of a position in one class to another class which is the result of a natural or an organizational change in duties or responsibilities of the position. A reclassification is not a grievable or appealable adverse employment action.

K. "Reduction in force": a determination by the University to eliminate one or more filled positions within the University due to reorganization, work shortage, loss of funding, outsourcing or privatization. A reduction in force is not normally grievable or appealable as an adverse employment action, unless the University, or in the case of appeals, the State Human Resources Director, determines that there is a material issue of fact that the University inconsistently or improperly applied its reduction-in-force policy or plan.

L. "Salary decrease based on performance": the reduction of a covered employee's compensation based on the results of an Employee Performance Management System (EPMS) evaluation.

M. "Suspension": an enforced leave of absence without pay pending investigation of charges against an employee or for disciplinary purposes.

N. "Temporary employee": a full-time or part-time employee who does not occupy an FTE position and whose employment is not to exceed one year. Temporary employees are not covered employees under this grievance policy & procedure.

O. "Termination": an action taken against an employee by the appointing authority to separate the employee involuntarily from employment.

P. "Transfer": the movement to a different agency of an employee from one position to another position having the same salary range, or the movement of an employee from one agency to another agency which does not require reclassification. A transfer is not a grievable or appealable adverse employment action.
IV. ELIGIBILITY

As defined above, any covered employee is eligible to file a grievance regarding an adverse employment action in accordance with the procedures defined by this policy.

V. INFORMAL RESOLUTION

Complaints should be resolved whenever possible in an informal manner. Employees are encouraged to discuss their complaints with appropriate supervisor prior to filing a grievance. The employee and/or his/her supervisor may seek the assistance of the Office of Human Resources and Equal Opportunity (HREO). However, this is merely an informal attempt to resolve the matter and cannot be substituted for the requirements of the Formal Resolution procedure. Informal resolution is not mandatory in order to proceed with a formal grievance but it is encouraged.

VI. ASSISTANCE BY ADVISOR OR COUNSEL

The grievant must be present at each scheduled conference of the grievance process. The grievant has the right to be represented throughout the grievance and appeal process by an individual of his/her preference, including legal counsel, at his/her own expense. The University may also have legal representation.

VII. PROCEDURE

A. Formal Resolution.

If informal resolution is not successful or was not pursued, an employee may file a formal grievance with the Office of Human Resources and Equal Opportunity (HREO). The Grievant must follow the procedure outlined below to file a grievance.

1. A formal grievance petition must be delivered to the Office of Human Resources and Equal Opportunity (HREO) no later than fourteen (14) calendar days after the effective date of the adverse employment action. If the grievance petitions are routed through the U.S Postal Service or any other bonded or licensed carrier, the time limit will have been met if the grievance is postmarked by the fourteen (14) calendar day deadline. The formal grievance petition must be completed using the Grievance Petition (Form A), and all information requested on the form must be completed by the grievant.

2. The Office of Human Resources and Equal Opportunity (HREO) will, within three (3) calendar days, determine if the adverse employment action is grievable and, if grievable, will forward a copy of the completed grievance petition to the responsible Vice President or designee, for the grievant’s area.

3. Upon receipt of the grievance petition, the responsible Vice President or designee, will conduct any necessary investigation and review of the grievance and the
underlying facts. The responsible Vice President or designee will render and deliver to the grievant a written decision within ten (10) calendar days of his/her receipt of the grievance petition. A copy of this decision will be transmitted to the grievant and other named parties.

4. If the grievant is not satisfied with the decision, he/she may request a review of the decision by the President or designee, of the University. This request must be submitted in writing using the Grievance Appeal Petition (Form B) and delivered to the Office of the President and to the Office of Human Resources and Equal Opportunity (HREO) within four (4) calendar days of the receipt of the decision by the Vice President. The President or designee will review the grievance petition and appoint a Board of Review.

B. The Board of Review

1. The President or designee appoints five employees to the Board of Review and designates one of the members as chair. The chair will take any action necessary to ensure an equitable, orderly and expeditious review.

2. The Office of Human Resources and Equal Opportunity (HREO) will provide procedural information to both parties and to the members of the Board of Review.

3. The Executive Director of Human Resources and Organizational Development or designee, will serve in a non-voting advisory capacity to the Board of Review.

C. Review of the Grievance by the Board Of Review

1. The grievant will be informed in writing of the time and place of the hearing within seven (7) calendar days from the receipt of the appeal to the President. The hearing will normally be held within fourteen (14) calendar days from the receipt of the appeal to the President. Both parties will be present during presentation of the case to the Board of Review. Neither party may interrupt the case being presented by the opposing side.

2. Each party will have the right to provide evidence or documentation relevant to the case. Both sides will be required to provide documentary material and witness lists, if any, three (3) calendar days prior to the review. Documentary material or witness names not provided by the stated time will be permitted only upon a majority affirmative vote of the Board of Review.

3. Prior to the hearing, the grievant will notify the Office of Human Resources and Equal Opportunity (HREO) as to whether he or she will be represented by counsel.

4. The Board of Review will rule on all matters of evidence and procedure. State rules of civil procedure and evidence do not apply.
5. Each party may pick-up a numbered copy of a binder containing documentation and a complete witness list at or after 12 noon on the University workday preceding the review. These documents will be available in the Office of Human Resources and Equal Opportunity (HREO).

6. Neither the department nor the grievant have the authority to compel witnesses to attend reviews. However, employees who have information related to the action are expected to attend and serve as witnesses.

7. Each party will have the right to call witnesses; however, witnesses will only be present during the time of their testimony. It will be the responsibility of the grievant and of the department representative to notify their witnesses of the time, place, and date of the review.

8. The grievant and the department representative may recommend the order of testimony and the appearance of witnesses for their respective sides. The chair of the Board of Review, in consultation with the other members of the Board, may determine the relevance of the documentary material and the testimony of the witnesses. Documentary material or testimony which is unnecessarily repetitive or irrelevant may be denied in the hearing.

9. The majority vote of the Board of Review will be the recommendation of the Board. The Board of Review will submit its recommendation to the President or designee and the Executive Director of Human Resources and Organizational Development within three (3) calendar days of the hearing.

10. The President, or designee, will render the final decision of the University within ten (10) calendar days of receipt of the Board of Review’s recommendation. The President or designee may accept the recommendation of the Board in whole or in part, may reject the Board’s recommendation or may call in the parties separately or together for further discussion. The President’s or designee’s written decision will be transmitted to the grievant with copies to the members of the Board of Review, the responsible Vice President, the grievant’s immediate supervisor and the Office of Human Resources and Equal Opportunity (HREO). The grievant has the right to appeal to the State Human Resources Director if the University has not rendered a final decision within forty-five (45) calendar days from the date the grievance was filed.

11. Failure by the grievant to comply with the internal time periods in the University grievance procedure constitutes a failure to exhaust administrative remedies and waives the grievant’s right to further continue the grievance. The internal time periods of the University grievance procedure may be waived upon the mutual written agreement of both parties. The forty-five (45) calendar day period for action by the University also may be waived by mutual written agreement of both parties.
VIII. APPEAL TO THE STATE HUMAN RESOURCES DIRECTOR

A grievant who wishes to appeal the final decision of the University must file a written appeal within ten (10) calendar days of receipt of the final decision of the University or within fifty-five (55) calendar days after the employee filed the grievance with the University, whichever occurs later. The written request for appeal will be filed with the State Human Resources Director. Failure to file an appeal as described above, within ten (10) calendar days of the University’s final decision or within fifty-five (55) calendar days of the grievance, is a waiver of the right to appeal. The grievant may appeal to the State Human Resources Director any grievance specified in the State Employee Grievance Procedure Act after all administrative remedies to secure relief within the University have been exhausted.

IX. RETALIATION

No employee will be disciplined or otherwise prejudiced in employment for exercising rights or testifying under this procedure.

Related Documents:
Grievance Petition (Form A)
Grievance Appeal Petition (Form B)