

UCOP Human Resources Procedure 70 – COMPLAINT RESOLUTION

POLICY REFERENCES

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

Sections I through X of this procedure apply to PPSM 70 complaints filed by PSS and MSP I-VII employees.

I. ELIGIBILITY

With the exception of current and former per diem appointees, all current PSS and MSP I-VII employees are eligible to file a complaint under this policy. In addition, a former PSS or MSP I-VII employee who was involuntarily separated is eligible to file a complaint under this policy if the complaint is timely filed in accordance with PPSM 70 - Section D. (Timeliness).

A former PSS employee, separated by layoff, who elected recall or preference for reemployment as provided in Personnel Policies for Staff Members 60 (Layoff and Reduction in Time from Professional and Support Staff Career Positions), may file a complaint alleging violations of recall and/or preference for reemployment rights.

II. SCOPE

A. A complaint is a written claim by an employee regarding a specific management action(s) that is alleged to have:

1. Adversely affected that employee's existing terms and conditions of employment in a material way; or,
2. Adversely affected that employee's existing terms and conditions of employment in a material way and violated a provision of the *Personnel Policies for Staff Members (PPSM)*.

B. Matters outside of the scope of PPSM 70:

1. Concerns or inquiries regarding classification standards, benefits, salary rates for job titles, salary ranges for classes, or the contents of the personnel policies;
2. Concerns or inquiries regarding an individual employee's rate of pay or change in rate of pay, unless the employee's complaint alleges that the action was taken for discriminatory or retaliatory reasons;
3. A request for review of a decision on the classification of a position;
4. A management action taken pursuant to a policy or Presidentially-approved program that states that such an action may be taken at the "discretion," sole discretion," or "judgment" of the University or its management, unless the complaint alleges that the action was taken for discriminatory or retaliatory reasons.

Concerns or inquiries about matters outside of the scope of PPSM 70 may be submitted to the Executive Director, Local Human Resources Officer for consideration.

III. TIMELINESS

[Refer to PPSM 70, Section D. Timeliness.](#) Deadlines which fall on a Saturday, Sunday, University observed holiday or during a period of curtailment will automatically be extended to the next business day.

The Executive Director, Local Human Resources may approve or deny, in writing, requests for extension of time limits. Requests for extension of time limits must be in writing and in advance of the deadline. If the request is made in advance of a deadline (other than the initial filing), the extension can be made for cause e.g. illness, unavailability of the Hearing Officer or Factfinder, attorney calendar's, administrative workload, etc. In order to extend a missed deadline or to extend the initial filing period the reason(s) for extension must be compelling e.g. incapacitating illness.

IV. FILING A PPSM 70 COMPLAINT

- A. An employee complaint must be submitted in writing to the Executive Director, Local Human Resources, at 1111 Franklin Street, 6th floor, Oakland, CA 94607, or by email or fax, on the UCOP formal complaint form. The complaint must be received within thirty (30) calendar days after the date on which the employee knew or could reasonably be expected to have known of the event or action giving rise to the complaint, or within 30 calendar days after the date of separation from University employment, whichever is earlier.
- B. The complaint must:
 - 1. Identify the specific management action(s) to be reviewed;
 - 2. Identify the date on which each management action to be reviewed occurred;
 - 3. Specify how the employee was adversely affected;
 - 4. If filing under PPSM 70, Section C.1.b. that a management action also violated a provision of the Personnel Policies for Staff Members, list the section(s) and specific provision(s) of the policy or policies alleged to have been violated and how each of those provisions was violated;
 - 5. Specify the remedy requested; and,
 - 6. Provide any other information that may be required by local procedures

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.

V. COMPLAINT REVIEW PROCESS

- A. The Executive Director, Local Human Resources (or designee¹) will review the complaint to determine if the complaint is timely, whether the complaint is within scope of PPSM 70, whether additional information or detail is required to process the complaint, and whether the complaint qualifies for review. The Executive Director, Local Human Resources will acknowledge, in writing, receipt of the complaint and inform the employee of what issues have been or have not been accepted for review, if the complaint is considered untimely, is out of scope, or if additional informing is required to process the complaint and of the employee's appeal rights. The acknowledgement letter will be issued no later than ten (10) calendar days after receipt of the complaint.

If the complaint has been filed within established time limits, the Executive Director, Local Human Resources may grant an extension of up to fifteen (15) calendar days for the employee to provide

¹ The Executive Director, Local Human Resources may assign a designee to review and process employee PPSM 70 complaints. For ease of administration the Executive Director, Local Human Resources is referenced in this procedure, however, the assigned designee will have authority to process a PPSM 70 complaint, including but not limited to determining if the complaint is within scope or timely, appointing factfinders, Administrative Review Officers, Hearing and Fact-finding Officers, and/or facilitating the informal and early resolution processes.

additional information, as requested in the acknowledgement letter, needed to process the complaint. If the employee does not provide the requested information within the timeframe specified in the acknowledgement letter the employee will be notified, in writing, that the complaint is incomplete and will not be accepted for review.

- B. If an employee fails to participate in a timely manner in key aspects of the review process, which includes, but is not limited to, scheduling of and participation in fact-finding, selection of the hearing officer, scheduling of and attendance at the hearing, and/or and responding in a timely basis to communications, the complaint may be considered resolved and closed on the basis of the Executive Director, Human Resources' last response.
- C. A decision by the Executive Director, Local Human Resources' regarding the following issues may be appealed to the Vice President, Human Resources, Office of the President:
 - 1. Whether the complaint is timely;
 - 2. Whether the complaint is within the scope of PPSM 70;
 - 3. Whether the remedy granted as an early resolution is a make whole remedy (see section VII below); and/or,
 - 4. The dismissal or closure of the complaint due to the employee's failure to participate.

Appeals to the Office of the President shall include copies of the original grievance and related documents, and must be received within twenty (20) calendar days from the date of the local decision. The Assistant Vice President, Human Resources (or designee) shall issue a final and binding written decision on the appeal.

VI. INFORMAL COMPLAINT RESOLUTION

Employees and departments are encouraged to resolve disputes at any stage of the complaint process. Except as provided in VI.B below, attempts at dispute resolution do not automatically extend any deadline established by Policy or this procedure. After a complaint has been accepted, the parties may agree to voluntarily participate in a dispute resolution process.

- A. The Executive Director, Local Human Resources will identify an individual to mediate or to facilitate the informal complaint resolution process (ICR Facilitator).
- B. The informal complaint resolution process will begin after the parties agree to participate in the process and shall be completed within twenty (20) calendar days of the date of the of the parties agreement to participate in the informal complaint resolution process. When requested by the ICR Facilitator, and with the mutual agreement of the parties, the Executive Director, Local Human Resources may extend the completion date of the informal resolution process by up to ten (10) calendar days. The Executive Director, Local Human Resources will notify the ICR Facilitator and the parties of the decision. The processing of the complaint will be held in abeyance during the period the parties are participating in the complaint resolution process.
- C. The ICR Facilitator will advise the Executive Director, Local Human Resources, in writing, of the outcome of the process. If the parties are able to reach agreement, the ICR Facilitator will formalize the agreement which will be signed by the parties to the complaint, provide a copy of the agreement to the Executive Director, Local Human Resources who will notify the employee that the complaint is considered resolved. If the parties are unable to reach agreement, the ICRP Fascinator will inform the Executive Director, Local Human Resources and the complaint will be processed in accordance with Policy and these procedures.

VII. EARLY COMPLAINT RESOLUTION (Career Employees only)

The Executive Director, Local Human Resources has discretion to grant a career PSS or MSP I-VII employee a make whole remedy in order to conserve resources and resolve the complaint more quickly ([Refer to PPSM 70, Section G. Early Complaint Resolution \(Career Employees Only\)](#)). In the event a decision is made to grant an employee a make whole remedy, the Executive Director, Local Human Resources will notify the employee in writing that a make whole remedy is being granted, specify what the remedy will be and the employee's right to appeal.

VIII. 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 Executive Director, Local Human Resources (or designee) shall represent departments in complaint hearings and fact-finding meetings and investigations.

IX. RELEASE TIME

- A. 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.
- B. 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.
- C. 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.

X. CONFLICT OF INTEREST

- A. If an employee has concerns about a conflict of interest on the part of the factfinder, University hearing officer, and/or decision-maker, the employee must raise those concerns the Executive Director, Local Human Resources. Such concerns must be raised as soon as the employee believes a conflict exists and before fact-finding and/or hearing begins or, in the case of an Early Resolution, a decision has been made.
- B. The Executive Director, Local Human Resources will determine whether an actual conflict of interest exists. In situations where it is determined that the factfinder, University hearing officer, and/or decision-maker has an actual conflict of interest that would prevent him or her from serving impartially, the Executive Director, Local Human Resources will designate a different factfinder, University hearing officer, or decision-maker.

XI. PROFESSIONAL AND SUPPORT STAFF (PSS) COMPLAINT RESOLUTION PROCESS

A. Step I: Review by Department Head

1. The Executive Director, Local Human Resources will forward the complaint to the employee's Department Head, or other designed OP representative who is not directly involved in the complaint or issue giving rise to the complaint, with a dated cover letter. 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.
2. Within twenty (20) calendar days after the date of the cover letter, the Department Head (or designated OP representative) will issue a written decision to the Executive Director, Local Human Resources to be forwarded onto the employee.

C. Step II: Administrative 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 Executive Director, Local Human Resources within ten (10) calendar days from the date the Step I written decision was issued or should have been issued. The employee's appeal must identify or state which alleged claims were not satisfactorily resolved at Step I, the remedy requested and select one of the Step II options below.
2. An employee appealing a Step I decision must select one of the following Step II options:
 - a. **Administrative Review:** The Executive Director, Local Human Resources will appoint an Administrative Review Officer (ARO) from outside the department or the reporting line in which the complaint arose to review the complaint. The ARO will convene a meeting within thirty (30) days of being appointed. The meeting(s), at which the ARO presides, is held with the complainant and/or with other individuals, individually and/or jointly, whom the ARO determines would be helpful to obtain sufficient facts to render a fair decision. The purpose of the Step II meeting is to provide the complainant with a fair opportunity to present evidence in support of the employee's complaint. The ARO shall issue a written response to the complaint within thirty (30) calendar days after the conclusion of the Step II meeting(s).

The ARO's decision is final and binding unless the complaint is eligible for review at Step III.

- b. **Fact-finding:** The Executive Director, Local Human Resources will appoint a Factfinder to review the complaint. The appointed Factfinder shall be from outside the department and/or the reporting line in which the complaint arises.

The Factfinder will conduct an investigation to determine the pertinent facts, which may include meeting with the parties to the complaint individually and/or jointly, providing participants with an opportunity to present factual information, relevant documents and witnesses, and to comment on information provided by others. 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.

The completed Factfinder's Report will be sent to the Executive Director, Local Human Resources. The Executive Director, Local Human Resources, will transmit the Factfinder's report, and all relevant documentation received by the fact finder, to the Executive Director, UCOP Administrative Services.

Within fifteen (15) calendar days from the date of transmittal of the Factfinder's Report, the Executive Director, UCOP Administrative Services shall either issue a final and binding written decision or remand the matter back to the Factfinder for additional information and/or clarification of the report. If the matter is remanded, the Executive Director, UCOP Administrative Services shall issue a final and binding written decision within fifteen (15) calendar days from the date of the Factfinder's cover letter re-submitting the amended report.

If an employee selects fact-finding, the decision of the Executive Director, UCOP Administrative Services is final and binding and the complaint is not eligible for appeal to Step III, Hearing.

- c. **Proceed Directly to Step III:** If the Executive Director, Local Human Resources agrees, an employee may select to proceed directly to Step III (Hearing), provided the complaint alleged a policy violation eligible for review at Step III (see below).

D. Step III: Hearing (Career Employees Only)

1. Employee complaints that alleged certain and specific PPSM Policy provisions (as enumerated below) that were not satisfactorily resolved at Step II Administrative Review, or where no written decision was issued, may be appealed to Step III, Hearing. The appeal to Step III must be in writing and submitted to the Executive Director, Local Human Resources within ten (10) calendar days of the date the Step II written decision was issued or due to be issued.
2. Complaints alleging violations of the specific policies below are eligible for review at Step III:
 - a. PPSM 12 - Nondiscrimination in Employment, provided the complaint alleged the discriminatory application of a personnel policy listed in section.
 - b. PPSM 31 - Hours of Work
 - c. PPSM 32 - Overtime (Non-exempt employees only)
 - d. PPSM 33 - Shift and Weekend Differential (Non-exempt employees only)
 - e. Absence from Work (PPSM 2.210), provided the complaint alleges violation of one of the following sections of his policy:
 - Vacation Leave (Section II.B), except with regard to scheduling
 - Sick Leave (Section II.C)
 - Leaves Related to Life Events (Section III.D.1-10)
 - Military Leave, Civil Duty, and Service Leaves (Section III.E)
 - Holidays (Section III.H)
 - f. PPSM - 60 Layoff and Reduction in Time from Professional and Support Staff Career Positions, provided the complaint alleges violation of the provisions pertaining to notice, order of layoff, recall, preference for reemployment, or severance.
 - g. PPSM - 62 Corrective Actions, provided the complaint alleges violation of Section A, B or C of that policy.
 - h. PPSM - 64 Termination of Career Employees – Professional and Support Staff
 - j. PPSM – 66 Medical Separation
 - k. Reprisal for utilizing the Complaint Resolution process

E. Hearing Process

1. 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.
2. The Executive Director, Local Human Resources shall appoint a University Hearing Officer. 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.
3. 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.
4. The Executive Director, Local Human Resources 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.
5. With the exception of rebuttal materials and witnesses, 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, documents prepared for mediation or other informal resolution efforts are not admissible.
6. Hearings shall be recorded either by tape 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 stenography, the University shall bear the cost of same. If a stenographer 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.
7. 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.

XII. MANAGERS AND SENIOR PROFESSIONAL (MSP) COMPLAINT RESOLUTION PROCESS

A. Step I: Review by Department Head

1. The Executive Director, Local Human Resources will forward the complaint to the employee's Department Head, or other designated OP representative who is not directly involved in the complaint or issue giving rise to the complaint, with a dated cover letter. 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.
2. Within twenty (20) calendar days after the date of the cover letter, the Department Head (or designated OP representative) will issue a written decision to the Executive Director, Local Human Resources to be forwarded onto the employee.

B. Step II: Administrative Review

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 Executive Director, Local Human Resources within ten (10) calendar days from the date the Step I written decision was issued or due to be issued. The appeal must state which claims alleged in the complaint were not resolved at Step I and specify the remedy requested.
2. The Executive Director, Local Human Resources will appoint an Administrative Review Officer (ARO) from outside the department or the reporting line in which the complaint arose to review the complaint. The ARO will convene a meeting within thirty (30) days of being appointed. The meeting(s), at which the ARO presides, is held with the complainant and/or with other individuals, individually and/or jointly, whom the ARO determines would be helpful to obtain sufficient facts to render a fair decision. The purpose of the Step II meeting is to provide the complainant with a fair opportunity to present evidence in support of the employee's complaint. The ARO shall issue a written response to the complaint within thirty (30) calendar days after the conclusion of the Step II meeting(s).

The ARO's decision is final and binding unless the complaint is eligible for review at Step III.

3. Alternatively, if the University agrees, a career MSP employee may elect to proceed directly to Step III for fact-finding, provided that the complaint alleged a policy violation eligible for review at Step III.

C. Step III: Fact-finding

1. Employee complaints that allege violations of certain specific PPSM Policies (as enumerated below) that were not satisfactorily resolved at Step I or Step II, or if no written decision was issued, may be appealed in writing to Step III and submitted to the Executive Director, Local Human Resources.
2. Alleged violations eligible for review at Step III:
 - a. PPSM 12 - Nondiscrimination of Employment
 - b. PPSM 65 - Termination of Career Employees (MSP Grades I - VII)
 - c. PPSM 66 - Medical Separation
 - d. Reprisal for utilizing the Complaint Resolution process
3. The Executive Director, Local Human Resources will appoint a Factfinder to review the complaint. The appointed Factfinder shall be from outside the department and/or the reporting line in which the complaint arises.

4. The Factfinder 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, to provide participants with an opportunity to present factual information, relevant documents and witnesses and to comment on information provided by others. 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.
5. The Factfinder shall submit a written report to the Executive Director, Local Human Resources. 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.

6. The completed Factfinder's Report will be sent to the Executive Director, Local Human Resources. The Executive Director, Local Human Resources, will transmit the Factfinder's report, and all relevant documentation received by the fact finder, to the Executive Director, UCOP Administrative Services.
7. Within fifteen (15) calendar days from the date of transmittal of the Factfinder's Report, the Executive Director, UCOP Administrative Services shall either issue a final and binding written decision or remand the matter back to the Factfinder for additional information and/or clarification of the report. If the matter is remanded, the Executive Director, UCOP Administrative Services shall issue a final and binding written decision within fifteen (15) calendar days from the date of the Factfinder's cover letter re-submitting the amended report.