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POLICY STATEMENT

Clemson University provides a process for the filing and review of grievances by covered employees regarding adverse employment actions as described in Section 8-17-330 of the South Carolina Code of Laws.

Employees may not be retaliated against for exercising their grievance rights or for testifying under the provisions of this policy. Likewise, South Carolina state law and Clemson University policy prohibit retaliation against any employee who cooperates with a workplace investigation or makes a good faith allegation of wrongdoing to an appropriate authority.

REASON FOR POLICY

- To comply with South Carolina law
- To provide a consistent grievance process for covered employees
- To provide guidance regarding the grievance process, such that the steps, deadlines, limitations and appeals are clear and actionable

ENTITIES AFFECTED BY THIS POLICY

- This policy applies to all colleges and divisions of the University.
- The grievance process outlined in this policy applies to all covered employees of Clemson University.
- This policy does not apply to probationary employees, temporary employees (employees in temporary, temporary grant, time-limited, intermittent or seasonal positions) or employees exempted from coverage by the State Employee Grievance Procedure Act.
- This policy does not apply to faculty. (See the *Faculty Manual*.)

WEB ADDRESS FOR THIS POLICY

http://media.clemson.edu/humanres/policies_procedures/grievance/Grievance%20Policy.02.pdf

CONTACTS

Subject Matter	Office	Telephone	E-mail/Web Address
Policy Clarification and Interpretation	Office of Human Resources	(864) 656-2000	http://www.clemson.edu/employment/contact_hr/
Informal Resolution	Office of Ombudsman	(864) 656-1750	http://www.clemson.edu/administration/ombudsman/

PROCEDURES**Eligibility**

In accordance with the procedures established by this policy, any covered employee is eligible to file a grievance in response to an adverse employment action. A covered employee who is promoted, reclassified to a higher salary range, or moved to an unclassified position with a higher rate of pay and subsequently demoted prior to the expiration of a trial period in the class with the higher salary range or higher rate of pay cannot grieve the demotion, unless such demotion is to a class with a lower salary range or lower rate of pay than the position in which the employee was serving prior to the promotion, reclassification, or movement to an unclassified position with a higher rate of pay.

A complaint of unlawful discrimination, by itself, is not grievable under this policy but may be pursued under the University's anti-discrimination policy administered by the Office of Inclusion and Equity and/or under applicable state and federal anti-discrimination laws.

Definition of Covered Employee

A covered employee is a full-time or part-time employee occupying a part or all of an 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 before the performance review date, the employee is considered to have performed in a satisfactory manner and be a covered employee.

Definition of Adverse Employment Action

The following constitute adverse employment actions for which an employee can file a grievance or an appeal:

- Involuntary separation (Termination)
- Suspension
- Involuntary reassignment in excess of thirty (30) miles from the prior work station
- Demotion
- Punitive reclassification but only if the University's chief human resources officer (CHRO) or designee or (in the case of appeals) the state human resources director determines that there is a material issue of fact that the action was solely done to penalize the covered employee. However, reclassification, reassignment, and transfer within the same state salary range are not considered grievable or appealable.
- Promotion only if the University's CHRO or designee or (in the case of appeals) the state human resources director determines that there is a material issue of fact as to whether or not the University has considered a qualified covered employee for a position for which the employee formally applied or would have applied if the employee had known of the promotional opportunity. If the University promotes an employee one organizational

level above the promoted employee's former level, that action is not a grievance or appeal for any other qualified covered employee. Failure to be selected for a promotion is not considered a grievable adverse employment action which can be considered grievable or appealable.

- Salary decrease based on performance as the result of an employee performance management evaluation
- A reduction in force only if the University's CHRO or designee 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.

For more definitions, see the Additional Definitions section below.

Overview

Workplace complaints should be resolved whenever possible in an informal manner. Employees are encouraged to discuss complaints with an appropriate supervisor prior to filing a grievance. Informal complaints may be presented verbally or in writing. Note that, at this stage, discussion is considered an informal attempt to resolve the matter and cannot be substituted for the formal resolution outlined in step one of the formal grievance procedure. The employee and/or the supervisor may seek the assistance of the University's Ombudsman office. Informal resolution is not mandatory in order to proceed with a formal grievance and does not affect the time requirements for initiating a formal grievance.

A covered employee can initiate a formal grievance by submitting the grievance, in writing, to the CHRO. If the decision of the CHRO or designee is not satisfactory, the employee can appeal to the University president. The University president or designee is required to render a decision within 45 calendar days of the date the initial grievance was filed. If the decision by the University president or designee is not satisfactory, the employee can appeal to the state human resources director. For the purposes of this policy, "calendar days" is defined as sequential days of the year, computed by excluding the first day and including the last day. If the last day falls on a Saturday, Sunday or legal holiday, it is excluded.

Procedure for a formal grievance

Step 1: Formal Resolution

If informal resolution is not successful or if the employee chooses not to pursue informal resolution, the employee must file a formal grievance with the University's Office of Human Resources (OHR) within 14 calendar days of the effective date of the action being grieved or the date the employee was notified of the action, whichever is later.

- A. A covered employee who wishes to file a grievance must initiate the grievance with the CHRO. The grievance must be in writing and must be received (or, if mailed, postmarked) within 14 calendar days of the effective date of the action or 14 calendar days from when the employee is notified of the action, whichever is later. The employee should include a written summary of the facts of the grievance and the relief sought. To ensure that all pertinent information surrounding the grievance is conveyed, OHR highly recommends that the grievance be submitted using the Statement of Employee Grievance Petition form attached as Appendix A to this policy.
- B. The CHRO or designee determines if the submitted matter is grievable, normally within three calendar days, and takes one of the following actions:
 - i. If the CHRO decides the matter is not grievable, the CHRO sends a letter to the grievant explaining the decision. Such determination shall be the final decision within the University and may be appealed to the state human resources director.

- ii. If the matter is deemed grievable, the CHRO or designee forwards a copy of the grievance to the vice president (VP)/division head¹ in charge of the grievant's area for review.
- C. Upon receipt of the grievance, the VP/division head conducts any investigation and review of the grievance and the underlying facts he or she deems necessary or appropriate. This may include consulting individuals and/or appointing a committee for advice. The responsible VP/division head performs the following tasks, normally within 10 calendar days of his or her receipt of the grievance:
 - i. Render a decision to uphold or reverse the adverse employment action
 - ii. In consultation with the CHRO or designee, render a decision to grant, deny or adjust requested relief
 - iii. Send a written decision to the grievant, the grievant's immediate supervisor, the CHRO and other interested parties

Step 2: Formal Appeal

If the grievant is not satisfied with the VP/division head's decision, the grievant can request review of the decision by the president of the University or the president's designee. The appeal must be in writing and must be received by the Office of the President (or, if mailed, postmarked) within four calendar days of the receipt of the VP/division head's decision. OHR recommends the appeal be submitted using the Statement of Employee Grievance Appeal form. (See Appendix B.)

- A. Following receipt of an appeal, the president or designee appoints a committee (generally made up of three people) to conduct a review of the facts and circumstances of the case. This appointment normally occurs within three business days. After the committee has conducted its review, the committee makes a written recommendation to the president concerning the disposition of the grievance. The recommendation is normally delivered to the president within 14 calendar days of the committee's appointment.
- B. During the committee's investigation and recommendation making:
 - i. The State Administrative Procedures Act does not apply.
 - ii. The rules of civil procedure and evidence do not apply. The committee will rule on all matters of evidence and procedure.
 - iii. The committee does not have the authority to compel attendance or to subpoena witnesses except that employees of the University may be required to attend provided the committee determines that their attendance is relevant to the proceedings and that their attendance is not unduly disruptive to the operation of the University. Prior to the committee commencing its work, the grievant is responsible for notifying the committee of any witnesses he or she would like to have participate in the committee's review.
 - iv. The committee may seek advice from the University's Office of General Counsel.
- C. The recommendation of the committee shall be determined by majority vote. The committee submits its written recommendation to the president.
- D. The president, who may accept or reject the committee's recommendation in whole or in part, renders the final decision of the University within 45 days of the date the initial grievance was filed.
 - i. The president's decision is ordinarily rendered within seven calendar days of receipt of the committee's recommendation.
 - ii. The president sends a written decision to the grievant with copies to the members of the committee, the appropriate VP/division head, the grievant's immediate supervisor, the CHRO and other interested parties.
- E. A covered employee can appeal the final decision of the University to the state human resources director. A covered employee also can appeal to the state human resources director if the University has not rendered a final decision within 45 days of the date the grievance was initially filed.

¹ For the purposes of this policy, "division head" refers to those budget center heads who hear grievances, which includes the following titles: chief diversity officer; director of athletics; director of governmental affairs; executive vice president for academic affairs and provost; general counsel and assistant to the president; vice president for development and alumni relations; vice president for finance and operations; vice president for public service and agriculture; vice president for research; and vice president for student affairs.

Appeals to the State Human Resources Director

If a grievant is not satisfied with the University's response to a grievance and after all administrative remedies to secure relief within the University have been exhausted, the grievant has the right to appeal the University's final decision to the state human resources director. A covered employee who wishes to appeal the final decision of the University to the state human resources director must file a written appeal within 10 calendar days of receipt of that final decision from the university or within 55 calendar days of the filing of the grievance with the University, whichever occurs later. A covered employee has not exhausted administrative remedies to secure relief within the University until the University's internal grievance process is completed or the 45 calendar days provided for the University to issue a decision has elapsed, whichever occurs sooner. Failure by the University to issue a final decision within 45 calendar days is considered an adverse decision and allows the covered employee to proceed with an appeal to the state human resource director after 45 calendar days, but no later than 55 calendar days from the initial date the grievance was filed with the University.

Failure to file an appeal within 10 calendar days of receipt of the University's final decision or within 55 calendar days of the initiation of the grievance, whichever is later, constitutes a waiver of the right to appeal.

The time periods related to filing an appeal with the state human resources director may not be waived.

General Information

Failure by the covered employee to comply with the internal time periods in the University grievance procedure constitutes a failure to exhaust administrative remedies and waives the covered employee's right to pursue the grievance further. The 45 calendar day period for action by the University may not be waived except by mutual written agreement of both parties.

The employee may be represented throughout the grievance and appeal process by an individual of his or her preference and at his or her own expense, including legal counsel.

RESPONSIBILITIES

Responsible Party	List of Responsibilities
Grievant	<ul style="list-style-type: none"> To file a formal grievance or appeal, follow the procedures and comply with the timeframe outlined by this policy.
CHRO	<ul style="list-style-type: none"> Receive written grievance. Determine if the matter is grievable. Forward grievances that are determined to be grievable under this policy to the VP/division head responsible for the employee's area.
Vice President/ Division Head	<ul style="list-style-type: none"> Conduct any investigation/review of the grievance necessary to reach a decision. Render a decision to reverse or uphold the adverse employment action. In consultation with the University's Office of Human Resources (OHR), render a decision to grant, deny or adjust the grievant's requested relief. Send a written decision to the grievant and other interested parties.
President	<ul style="list-style-type: none"> Upon receipt of an appeal from grievant, appoint a committee to conduct a review of the case. After receiving final recommendation from committee, render the final decision of the University. Send a written final decision to grievant and other interested parties.
Ombudsman	<ul style="list-style-type: none"> At the request of an employee, attempt informal resolution of conflict prior to a formal grievance.
Staff Grievance Committee	<ul style="list-style-type: none"> Upon request from the president, conduct a review of the facts and circumstances of the case. Make a written recommendation to the president with supporting reasons. Seek advice from the Office of General Counsel as needed.

ADDITIONAL DEFINITIONS

Appeal	The request by a covered employee to the State Human Resources Director for review of the University's final decision concerning a grievance.
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.
Full Time Equivalent (FTE) Position	A value expressing a percentage of time in hours and of funds related to a particular position authorized by appropriations acts enacted by the General Assembly.
Grievance	A complaint filed by a covered employee or the employee's representative regarding an adverse employment action designated in 8-17-330 of the South Carolina Code of Laws.
Involuntary Reassignment	The movement of an employee's principal place of employment in excess of 30 miles from the prior work station at the initiative of the University. The reassignment of an employee by the University in excess of 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. (See "Reassignment.")
Involuntary Separation	See "Termination."
Mediation	An alternative dispute resolution process whereby a mediator who is an impartial third party acts to encourage and facilitate the resolution of a dispute without prescribing what it should be. The process is informal and nonadversarial with the objective of helping the disputing parties reach a mutually acceptable agreement.
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 for noninstructional personnel, of the academic year duration for instructional personnel except for those at state technical colleges, or of not more than two full academic years' duration for faculty at state technical colleges. An employee who receives an unsatisfactory performance appraisal during the probationary period must be terminated before becoming a covered employee.
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 grievance or appeal.
Punitive Reclassification	The assignment of a position in one class to a different lower class with the sole purpose to penalize the covered employee.
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.
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.
Reduction in Force	A determination by the University to eliminate one or more filled positions in one or more organizational units within the University due to budgetary limitations, shortage of work, or organizational changes.
State Human Resources Director	The head of the Office of Human Resources of the Department of Administration, or his designee.
Suspension	An enforced leave of absence without pay pending investigation of charges against an employee or for disciplinary purposes.
Temporary Employee	A full-time or part-time employee who does not occupy an FTE position, whose employment is not to exceed one year, and who is not a covered employee.

Termination	The action taken by the University against an employee to separate the employee involuntarily from employment.
Transfer	The movement to a different agency of an employee from one position to another position having the same state salary range, or the movement of a position from one agency to another agency which does not require reclassification.

See the *OHR Glossary of Terms* for more definitions.

RELATED RESOURCES

University Policies and Documents
Discipline Policy Employee Performance Policy OHR Glossary of Terms Whistleblower Policy
External Documentation
Division of State Human Resources Grievance and Appeal Process State Employee Grievance Procedure Act State Employee Grievance Procedure State Appeal Form
University Forms and Systems
Statement of Employee Grievance Petition Statement of Employee Grievance Appeal

APPENDIX A

Statement of Employee Grievance Petition

Employee grievance petitions must be submitted in writing to the Chief Human Resources Officer (CHRO) no later than 14 calendar days after the receipt of the adverse employment action noted in section II below. Please complete all sections of this form.

Instructions for submitting a grievance petition:

Step 1: Print the form

Step 2: Complete all sections of the form. If you need additional space, please attach pages to this form.

Step 3: Return to: CHRO, Clemson University Office of Human Resources, 108 Perimeter Road, Clemson, SC, 29634, or via email to the CHRO. Email addresses can be found on myClemson or in the Clemson University Phonebook.

Section I: Grieving Party Name and Contact Information

This information is recommended for all grievances.

Name: _____

Department Name: _____

Supervisor Name: _____

Mailing Address*: _____

Home Address: _____

Home Telephone: _____

Cellular Telephone: _____

Email Address*: _____

* All written correspondences pertaining to this grievance will be sent to the mailing address or the email address specified in this petition.

Timing is critical in processing and reviewing grievance petitions. Please identify the best way to contact the grieving party during the process.

Best form of contact: _____

Statement of Employee Grievance Petition (continued)

Section II: Reason for Grievance

A. Identify, in detail, the reason for your grievance, including the specific adverse employment action you are grieving and the names of any individuals involved in the adverse employment action. If you have additional documents that you believe support your grievance petition, please attach items to this form. (**Note:** The Office of Human Resources will provide a copy of this grievance petition to any individual(s) named below when and if the adverse employment action is deemed grievable and the document is forwarded to the responsible vice president/division head for review and ruling.)

B. Provide the date on which you received notice of the adverse employment action:

Date Received: _____

C. Provide the names of any witnesses to the incidents or actions identified in Section II.A above:

Name(s) of Witness(es): _____

D. Identify the specific relief you are requesting from Clemson University:

E. Indicate the total number of pages (including the pages of this form) that you are submitting as part of this grievance petition.

Total number of pages: _____

Section III: Signature

I certify that the information contained in this grievance petition is true and accurate to the best of my knowledge.

Print Name: _____

Signature

Date

APPENDIX B

Statement of Employee Grievance Appeal

Employee grievance appeals must be submitted in writing to the Office of the President no later than four calendar days after receipt of the decision regarding the employee grievance petition submitted with this form. Please complete all sections of this form.

Instructions for submitting a grievance appeal:

Step 1: Print the form.

Step 2: Complete all sections of the form. If you need additional space, please attach pages to this form.

Step 3: Include a copy of the original Employee Grievance Petition with your submission.

Step 4: Return to: Office of the President, Clemson University, 201 Sikes Hall, Clemson, SC, 29634 or via email to president@clemson.edu.

Section I: Grieving Party Name and Contact Information

This information is recommended for all grievances.

Name: _____

Department Name: _____

Supervisor Name: _____

Mailing Address*: _____

Home Address: _____

Home Telephone: _____

Cellular Telephone: _____

Email Address*: _____

Date Received Decision of VP/division head: _____

* All written correspondences pertaining to this grievance will be sent to the mailing address or the email address specified in this petition.

Timing is critical in processing and reviewing grievance petitions. Please identify the best way to contact the grieving party during the process.

Best form of contact: _____

Statement of Employee Grievance Appeal (continued)

Section II: Reason for Appeal

- A. Identify, in detail, the reason for your appeal. If you have additional documents that you believe support your appeal, please attach them to this form.

- B. Identify the specific relief you are requesting from Clemson University.

- C. Indicate the total number of pages (including the pages of this form) that you are submitting as part of this grievance appeal.

Total number of pages: _____

Section III: Signature

I certify that the information contained in this grievance appeal is true and accurate to the best of my knowledge.

Print Name: _____

Signature

Date