

1 **WORK ENVIRONMENT AND GRIEVANCE**

2 **PROCEDURE AMENDMENTS**

3 2018 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: LaVar Christensen**

6 Senate Sponsor: J. Stuart Adams

8 **LONG TITLE**

9 **General Description:**

10 This bill clarifies and amends grievance procedures for state employees in the executive
11 branch.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ defines terms;
- 15 ▶ incorporates in statute the state's policy and commitment to provide and maintain a
16 work environment free of abusive conduct;
- 17 ▶ requires biennial training and annual reports to a legislative committee regarding
18 abusive conduct and grievances;
- 19 ▶ includes abusive conduct and other actions as conditions for which an employee
20 may file a grievance and complaint;
- 21 ▶ prohibits retaliatory action against an employee who represents or advocates for an
22 employee in the grievance procedure as provided in statute;
- 23 ▶ amends deadlines for submitting certain grievances;
- 24 ▶ allows an employee to submit a grievance to higher steps in the grievance process if
25 the grievance relates to a supervisor or administrator to whom the employee would
26 otherwise submit a grievance;
- 27 ▶ provides for an administrative appeal to the administrator of the Career Service
28 Review Office; and

29 ▶ makes technical and conforming changes.

30 **Money Appropriated in this Bill:**

31 None

32 **Other Special Clauses:**

33 None

34 **Utah Code Sections Affected:**

35 AMENDS:

36 **67-19-44**, as enacted by Laws of Utah 2015, Chapter 211

37 **67-19a-101**, as last amended by Laws of Utah 2013, Chapter 427

38 **67-19a-202**, as last amended by Laws of Utah 2015, Chapter 258

39 **67-19a-301**, as last amended by Laws of Utah 2013, Chapter 427

40 **67-19a-303**, as last amended by Laws of Utah 2013, Chapter 427

41 **67-19a-401**, as last amended by Laws of Utah 2010, Chapter 249

42 **67-19a-402**, as last amended by Laws of Utah 2010, Chapter 249

43 **67-19a-402.5**, as last amended by Laws of Utah 2015, Chapter 258

44 **67-19a-406**, as last amended by Laws of Utah 2013, Chapter 109

45 **67-21-3.5**, as enacted by Laws of Utah 2013, Chapter 427 and last amended by

46 Coordination Clause, Laws of Utah 2013, Chapter 427

47 ENACTS:

48 **67-19a-102**, Utah Code Annotated 1953

49 **67-19a-205**, Utah Code Annotated 1953

50 **67-19a-501**, Utah Code Annotated 1953

51 REPEALS AND REENACTS:

52 **67-19a-302**, as last amended by Laws of Utah 2013, Chapter 427



54 *Be it enacted by the Legislature of the state of Utah:*

55 Section 1. Section **67-19-44** is amended to read:

56 **67-19-44. Abusive conduct.**

57 (1) As used in this section:

58 (a) (i) "Abusive conduct" means verbal, nonverbal, or physical conduct of an employee
59 to another employee that, based on its severity, nature, and frequency of occurrence, a
60 reasonable person would determine:

61 (A) is intended to cause intimidation, humiliation, or unwarranted distress;

62 (B) results in substantial physical or psychological harm as a result of intimidation,
63 humiliation, or unwarranted distress; or

64 (C) exploits an employee's known physical or psychological disability.

65 (ii) A single act does not constitute abusive conduct, unless it is an especially severe
66 and egregious act that meets the standard under Subsection (1)(a)(i)(A), (B), or (C).

67 (b) "Employee" means an employee of a state executive branch agency.

68 (c) "Physical harm" means the impairment of a person's physical health or bodily
69 integrity, as established by competent evidence.

70 (d) "Psychological harm" means the impairment of a person's mental health, as
71 established by competent evidence.

72 (2) It is the policy of the state of Utah to provide and maintain a work environment free
73 from abusive conduct.

74 (3) An employee may file a written complaint of abusive conduct with the department
75 and subject to further administrative review in accordance with Section [67-19a-501](#).

76 ~~[(2)]~~ (4) By July 1, ~~[2015]~~ 2019, the department shall ~~[make a]~~ amend the department's
77 rule, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, consistent
78 with the definitions in Subsection (1) and Title 67, Chapter 19a, Grievance Procedures.

79 ~~[(3)(a) On and after July 1, 2015, the]~~

80 (5) (a) The department shall provide biennial training to educate employees and
81 supervisors about how to prevent abusive workplace conduct.

82 (b) The training shall include information on:

- 83 (i) what constitutes abusive conduct and the ramifications of abusive conduct;
- 84 (ii) resources available to employees who are subject to abusive conduct; and
- 85 (iii) the grievance process.

86 [~~(4)~~(a) ~~On and after July 1, 2015, each~~]

87 (6) (a) Each state agency shall provide professional development training approved by
88 the department to promote:

- 89 (i) ethical conduct; [~~and~~]
- 90 (ii) organizational leadership practices based in principles of integrity[-]; and
- 91 (iii) the state policy described in Subsection (2).

92 (b) A state agency may request assistance from the department in developing training
93 under this Subsection [~~(4)~~] (6).

94 [~~(5) Employees~~] (7) (a) Employers shall provide and employees shall participate in the
95 training described in Subsections [~~(3) and (4)~~] (5) and (6) at the time the employee is hired or
96 within a reasonable time after the employee commences employment and in alternating years
97 thereafter.

98 (b) The requirement in Subsection (7)(a) includes notification to all employees at the
99 time of hiring or within a reasonable time after the employee commences employment and in
100 alternating years thereafter of the abusive conduct complaint procedures and the grievance
101 procedures provided in Title 67, Chapter 19a, Grievance Procedures.

102 [~~(6)~~] (8) The department may use money appropriated to the department or access
103 support from outside resources to:

- 104 (a) develop policies against workplace abusive conduct; and
- 105 (b) enhance professional development training on topics such as:
 - 106 (i) building trust;
 - 107 (ii) effective motivation;
 - 108 (iii) communication;
 - 109 (iv) conflict resolution;

- 110 (v) accountability;
- 111 (vi) coaching;
- 112 (vii) leadership; or
- 113 (viii) ethics.

114 ~~[(7)]~~ (9) This section does not:

115 (a) exempt or relieve a person from a liability, duty, or penalty provided by another
116 federal or state law;

117 (b) create a private right of action;

118 (c) expand or diminish rights or remedies available to a person before July 1, 2015; or

119 (d) expand or diminish grounds for discipline that existed before July 1, 2015.

120 ~~[(8)]~~ (10) The department shall annually report to the Economic Development and
121 Workforce Services Interim Committee by no later than the November ~~[2015]~~ interim meeting
122 regarding:

123 (a) the implementation of this section;

124 (b) recommendations, if any, to appropriately address and reduce workplace abusive
125 conduct or to change definitions or training required by this section; and

126 ~~[(c) if the department finds a change in a definition or training is needed, the
127 department's efforts to work with stakeholders to make recommendations for change.]~~

128 (c) an annual report of the total number and outcomes of abusive conduct complaints
129 that employees filed and the department investigated.

130 Section 2. Section **67-19a-101** is amended to read:

131 **67-19a-101. Definitions.**

132 As used in this chapter:

133 (1) "Abusive conduct" means the same as that term is defined in Section [67-19-44](#).

134 ~~[(1)]~~ (2) "Administrator" means the person appointed under Section [67-19a-201](#) to
135 head the Career Service Review Office.

136 ~~[(2)]~~ (3) "Career service employee" means a person employed in career service as

137 defined in Section 67-19-3.

138 (4) "Department" means the Department of Human Resource Management.

139 ~~[(3)]~~ (5) "Employer" means the state of Utah and all supervisory personnel vested with
140 the authority to implement and administer the policies of an agency.

141 (6) "Excusable neglect" means harmless error, mistake, inadvertence, surprise, a failure
142 to discover evidence that, through due diligence, could not have been discovered in time to
143 meet the applicable time period, misrepresentation or misconduct by the employer, or any other
144 reason justifying equitable relief.

145 ~~[(4)]~~ (7) "Grievance" means:

146 (a) a complaint by a career service employee concerning any matter touching upon the
147 relationship between the employee and the employer;

148 (b) any dispute between a career service employee and the employer; ~~[and]~~

149 (c) a complaint by a reporting employee that a public entity has engaged in retaliatory
150 action against the reporting employee~~[-]; and~~

151 (d) a complaint that the employer subjected the employee to conditions that a
152 reasonable person would consider intolerable, including abusive conduct.

153 ~~[(5)]~~ (8) "Office" means the Career Service Review Office created under Section
154 67-19a-201.

155 ~~[(6)]~~ (9) "Public entity" ~~[is as]~~ means the same as that term is defined in Section
156 67-21-2.

157 ~~[(7)]~~ (10) "Reporting employee" means an employee of a public entity who alleges that
158 the public entity engaged in retaliatory action against the employee.

159 ~~[(8)]~~ (11) "Retaliatory action" means to do any of the following to an employee in
160 violation of Section 67-21-3:

161 (a) dismiss the employee;

162 (b) reduce the employee's compensation;

163 (c) fail to increase the employee's compensation by an amount that the employee is

164 otherwise entitled to or was promised;

165 (d) fail to promote the employee if the employee would have otherwise been promoted;

166 or

167 ~~[(e) cause the employee to resign by subjecting the employee to conditions that a~~
168 ~~reasonable person would consider intolerable; or]~~

169 ~~[(f)] (e)~~ threaten to take an action described in Subsections ~~[(8)] (11)~~(a) through ~~[(e)]~~

170 (d).

171 ~~[(9)] (12)~~ "Supervisor" means the person:

172 (a) to whom an employee reports; or

173 (b) who assigns and oversees an employee's work.

174 Section 3. Section **67-19a-102** is enacted to read:

175 **67-19a-102. Work environment policy.**

176 As recognized and provided in Section [67-19-44](#), it is the policy of the state of Utah to
177 provide and maintain a work environment free from abusive conduct.

178 Section 4. Section **67-19a-202** is amended to read:

179 **67-19a-202. Powers -- Scope of authority.**

180 (1) ~~[(a)]~~ The office shall serve as the final administrative body to review a grievance
181 from a career service employee and an agency of a decision regarding:

182 ~~[(i)] (a)~~ a dismissal;

183 ~~[(ii)] (b)~~ a demotion;

184 ~~[(iii)] (c)~~ a suspension;

185 ~~[(iv)] (d)~~ a reduction in force;

186 ~~[(v)] (e)~~ a dispute concerning abandonment of position;

187 ~~[(vi)] (f)~~ a wage grievance if an employee is not placed within the salary range of the
188 employee's current position;

189 ~~[(vii)] (g)~~ a violation of a rule adopted under Chapter 19, Utah State Personnel
190 Management Act; or

191 ~~[(viii)]~~ (h) except as provided by Subsection (1)(c)(iii), equitable administration of the
192 following benefits:

193 ~~[(A)]~~ (i) long-term disability insurance;

194 ~~[(B)]~~ (ii) medical insurance;

195 ~~[(C)]~~ (iii) dental insurance;

196 ~~[(D)]~~ (iv) post-retirement health insurance;

197 ~~[(E)]~~ (v) post-retirement life insurance;

198 ~~[(F)]~~ (vi) life insurance;

199 ~~[(G)]~~ (vii) defined contribution retirement;

200 ~~[(H)]~~ (viii) defined benefit retirement; and

201 ~~[(I)]~~ (ix) a leave benefit.

202 ~~[(b)]~~ (2) The office shall serve as the final administrative body to review a grievance by
203 a reporting employee alleging retaliatory action.

204 (3) The office shall serve as the final administrative body to review the findings of an
205 abusive conduct investigation without an evidentiary hearing.

206 ~~[(c)]~~ (4) The office may not review or take action on:

207 ~~[(i)]~~ (a) a personnel matter not listed in ~~[Subsection (1)(a) or (b)]~~ Subsections (1)
208 through (3);

209 ~~[(ii)]~~ (b) a ~~[grievance] personnel matter~~ listed in ~~[Subsection (1)(a) or (b)]~~ Subsections
210 (1) through (3) that alleges discrimination or retaliation related to a claim of discrimination that
211 is a violation of a state or federal law for which review and action by the office is preempted by
212 state or federal law; or

213 ~~[(iii)]~~ (c) a ~~[grievance] personnel matter~~ related to a claim for which an administrative
214 review process is provided by statute and administered by:

215 ~~[(A)]~~ (i) the Utah State Retirement Systems under Title 49, Utah State Retirement and
216 Insurance Benefit Act;

217 ~~[(B)]~~ (ii) the Public Employees' Benefit and Insurance Program under Title 49, Chapter

218 20, Public Employees' Benefit and Insurance Program Act; or
219 [~~(c)~~] (iii) the Public Employees' Long-Term Disability Program under Title 49,
220 Chapter 21, Public Employees' Long-Term Disability Act.
221 [~~(2)~~] (5) The time limits established in this chapter supersede the procedural time limits
222 established in Title 63G, Chapter 4, Administrative Procedures Act.

223 Section 5. Section **67-19a-205** is enacted to read:

224 **67-19a-205. Employment transfer.**

225 At any point during the grievance process, the employer and the employee may
226 mutually agree to a transfer of the employee to another equivalent position, if and to the extent
227 that such a position is available, in accordance with department rules for transfer and
228 reassignment.

229 Section 6. Section **67-19a-301** is amended to read:

230 **67-19a-301. Charges submissible under grievance procedure.**

231 (1) This grievance procedure may only be used by career service employees who are
232 not:

- 233 (a) public applicants for a position with the state's work force;
- 234 (b) public employees of the state's political subdivisions;
- 235 (c) public employees covered by other grievance procedures; or
- 236 (d) employees of state institutions of higher education.

237 (2) (a) Whenever a question or dispute exists as to whether an employee is qualified to
238 use this grievance procedure, the administrator shall resolve the question or dispute.

239 (b) The administrator's decision under Subsection (2)(a) is reviewable only by the
240 Court of Appeals.

241 (3) Any career service employee may submit a grievance based upon a claim or charge
242 of injustice or oppression, including dismissal from employment, resulting from an act,
243 occurrence, omission, or condition for solution through the grievance procedures set forth in
244 this chapter.

245 (4) A reporting employee who desires to bring an administrative claim of retaliatory
246 action shall use the grievance procedure described in Section [67-19a-402.5](#).

247 (5) A career service employee who desires to bring a grievance described in Subsection
248 [67-19a-202](#)(1) shall use and follow the grievance procedure described in Part 3, Grievance
249 Procedures, and Part 4, Procedural Steps to Be Followed by Aggrieved Employee.

250 (6) An employee who desires to initiate an administrative review challenging the
251 findings of an abusive conduct investigation shall use and follow the procedure described in
252 Section [67-19a-501](#).

253 Section 7. Section [67-19a-302](#) is repealed and reenacted to read:

254 **[67-19a-302](#). Levels of procedure.**

255 (1) The administration of all grievances under Subsection [67-19a-202](#)(1) occurs on the
256 following four levels:

- 257 (a) Level 1 - the supervisor;
- 258 (b) Level 2 - the division director or the director's designee;
- 259 (c) Level 3 - the agency director or the director's designee; and
- 260 (d) Level 4 - the office.

261 (2) (a) Except as provided in Subsection (2)(b) and Section [67-19a-501](#), an employee
262 shall file a grievance or complaint at Level 1 and proceed through the levels of procedure
263 within the applicable time limits provided in this chapter.

264 (b) If a supervisor or division director is a subject of a grievance or complaint, the
265 employee may proceed directly to Level 2 or Level 3, respectively.

266 (3) A career service employee may advance all grievances to Level 3.

267 (4) In accordance with Section [67-19a-402.5](#) and subject to Section [67-21-4](#), a
268 reporting employee may file a grievance alleging retaliatory action directly at Level 4.

269 Section 8. Section [67-19a-303](#) is amended to read:

270 **[67-19a-303](#). Employees' rights in grievance procedure.**

271 (1) For the purpose of submitting and advancing a grievance, a career service

272 employee, or a reporting employee alleging retaliatory action, may:

273 (a) obtain assistance by a representative of the employee's choice to act as an advocate
274 at any level of the grievance procedure;

275 (b) request a reasonable amount of time during work hours to confer with the
276 representative and prepare the grievance; and

277 (c) call other employees as witnesses at a grievance hearing.

278 (2) The state shall allow employees to attend and testify at the grievance hearing as
279 witnesses if the employee has given reasonable advance notice to the employee's immediate
280 supervisor.

281 (3) No person may take any reprisals against a career service employee or a reporting
282 employee for:

283 (a) use of or participation in a grievance procedure described in this chapter[-]; or

284 (b) representing and providing assistance to a career service employee as an advocate
285 in accordance with Subsection (1)(a).

286 (4) If the individual acting as an advocate for a career service employee under
287 Subsection (1)(a) is a state employee, the individual may not receive state compensation for the
288 time the employee spends in the course of that representation unless the individual uses
289 approved leave during that time.

290 ~~[(4)]~~ (5) (a) The employing agency of an employee who files a grievance may not place
291 grievance forms, grievance materials, correspondence about the grievance, agency and
292 department replies to the grievance, or other documents relating to the grievance in the
293 employee's personnel file.

294 (b) The employing agency of an employee who files a grievance may place records of
295 disciplinary action in the employee's personnel file.

296 (c) If any disciplinary action against an employee is rescinded through the grievance
297 procedures described in this chapter, the agency and the Department of Human Resource
298 Management shall remove the record of the disciplinary action from the employee's agency

299 personnel file and central personnel file.

300 (d) An agency may maintain a separate grievance file relating to an employee's
301 grievance, but shall discard the file after three years.

302 Section 9. Section **67-19a-401** is amended to read:

303 **67-19a-401. Time limits for submission and advancement of grievance by**
304 **aggrieved employee -- Voluntary termination of employment -- Group grievances.**

305 (1) [~~Subject to the provisions of Part 3, Grievance Procedures, and the restrictions~~
306 ~~contained in this part,]~~ When a career service employee [~~may have]~~ files a grievance [~~addressed~~
307 ~~by following the procedures]~~ at Level 1, as described in Section 67-19a-302, the employee
308 shall advance the grievance through the proper levels of procedure specified in this [~~part]~~
309 chapter.

310 (2) The employee and the person to whom the grievance is directed may agree in
311 writing to waive or extend grievance steps specified under Subsection 67-19a-402(1), (2), or

312 (3) or the time limits specified for those grievance steps, as outlined in Section 67-19a-402.

313 (3) Any writing made under Subsection (2) shall be submitted to the administrator.

314 (4) Except as provided under [~~Subsection (6)]~~ Subsections (6) and (7), if the employee
315 fails to advance the grievance to the next procedural step within the time limits established in
316 this part:

317 (a) the employee waives the right to advance the grievance or to obtain judicial review
318 of the grievance; and

319 (b) the grievance is considered to be settled based on the decision made at the last
320 procedural step.

321 (5) [~~(a)]~~ An employee may [~~submit]~~ file a grievance for review under this chapter
322 [~~only]~~, except as provided in Subsections (6) and (7), if the employee submits the grievance
323 within 30 working days after:

324 [~~(i) within 20 working days after]~~ (a) the most recent event giving rise to the
325 grievance; or

326 [(ii)] (b) [~~within 20 working days after~~] the employee has knowledge of the most
327 recent event giving rise to the grievance.

328 [~~(b) Notwithstanding Subsection (5)(a), an employee may not submit a grievance more~~
329 ~~than one year after the event giving rise to the grievance.~~]

330 (6) (a) An employee may file with the office a motion for an enlargement of a time
331 limit described in Subsection (5).

332 (b) In determining whether to grant a motion described in Subsection (6)(a), the office
333 shall consider, giving reasonable deference to the employee, whether:

334 (i) the employee filed the motion before the time limit the employee seeks to enlarge;

335 or

336 (ii) the enlargement is necessary to remedy the employee's excusable neglect.

337 [~~(6)~~] (7) The provisions of Subsections (4) and (5)[~~(a)~~] do not apply if the employee
338 meets the requirements for excusable neglect [~~established by rule~~] as that term is defined in
339 Section [67-19a-101](#).

340 [~~(7) A person who has voluntarily terminated the person's employment with the state~~
341 ~~may not submit a grievance after the person has terminated the employment.~~]

342 (8) (a) If several employees allege the same grievance, the employees may submit a
343 group grievance by following the procedures and requirements of this chapter.

344 (b) In submitting a group grievance, each aggrieved employee shall sign the grievance.

345 (c) The administrator may not treat a group grievance as a class action, but may select
346 one aggrieved employee's grievance and address that grievance as a test case.

347 Section 10. Section **67-19a-402** is amended to read:

348 **67-19a-402. Procedural steps to be followed by aggrieved employee.**

349 (1) (a) [~~A~~] Subject to the provisions and levels of procedure provided in Section
350 [67-19a-302](#), a career service employee who has a grievance shall submit the grievance in
351 writing to:

352 (i) the employee's supervisor; and

353 (ii) the administrator.

354 (b) Within five working days after receiving a written grievance, the employee's
355 supervisor may issue a written decision on the grievance.

356 (2) (a) If the employee's supervisor fails to respond to the grievance within five
357 working days or if the aggrieved employee is dissatisfied with the supervisor's written decision,
358 the employee may advance the written grievance to the employee's agency or division director
359 within 10 working days after the expiration of the period for response or receipt of the written
360 decision, whichever is first.

361 (b) Within five working days after receiving the written grievance, the employee's
362 agency or division director may issue a written response to the grievance stating the decision
363 and the reasons for the decision.

364 (3) (a) If the employee's agency or division director fails to respond to the grievance
365 within five working days after its submission, or if the aggrieved employee is dissatisfied with
366 the agency or division director's written decision, the employee may advance the written
367 grievance to the employee's department head within 10 working days after the expiration of the
368 period for decision or receipt of the written decision, whichever is first.

369 (b) Within 10 working days after the employee's written grievance is submitted, the
370 department head may issue a written response to the grievance stating the decision and the
371 reasons for the decision.

372 (c) The decision of the department head is final in all matters except those matters that
373 the office may review under the authority of Part 3, Grievance Procedures.

374 (4) If the written grievance submitted to the employee's department head meets the
375 subject matter requirements of Section [67-19a-202](#) and if the employee's department head fails
376 to respond to the grievance within 10 working days after submission, or if the aggrieved
377 employee is dissatisfied with the department head's written decision, the employee may
378 advance the written grievance to the administrator within 10 working days after the expiration
379 of the period for decision or receipt of the written decision, whichever is first.

380 Section 11. Section **67-19a-402.5** is amended to read:

381 **67-19a-402.5. Procedural steps to be followed by reporting employee alleging**
382 **retaliatory action.**

383 (1) A reporting employee who desires to assert an administrative grievance of
384 retaliatory action:

385 (a) shall submit the grievance in writing within [~~20~~] 30 days after the day on which the
386 retaliatory action occurs;

387 (b) is not required to comply with Section [63G-7-402](#) to file the grievance; and

388 (c) is subject to the provisions of Section [67-21-4](#).

389 (2) (a) When a reporting employee files a grievance with the administrator under
390 Subsection (1), the administrator shall initially determine:

391 (i) whether the reporting employee is entitled, under this chapter and Chapter 21, Utah
392 Protection of Public Employees Act, to bring the grievance and use the grievance procedure;

393 (ii) whether the office has authority to review the grievance;

394 (iii) whether, if the alleged grievance were found to be true, the reporting employee
395 would be entitled to relief under Subsection [67-21-3.5\(2\)](#); and

396 (iv) whether the reporting employee has been directly harmed.

397 (b) To make the determinations described in Subsection (2)(a), the administrator may:

398 (i) hold an initial hearing, where the parties may present oral arguments, written
399 arguments, or both; or

400 (ii) conduct an administrative review of the grievance.

401 (3) (a) If the administrator holds an initial hearing, the administrator shall issue a
402 written decision within 15 days after the day on which the hearing is adjourned.

403 (b) If the administrator chooses to conduct an administrative review of the grievance,
404 the administrator shall issue the written decision within 15 days after the day on which the
405 administrator receives the grievance.

406 (4) (a) If the administrator determines the office has authority to review the grievance,

407 the administrator shall provide for an evidentiary hearing in accordance with Section
408 [67-19a-404](#).

409 (b) The administrator may dismiss the grievance, without holding a hearing or taking
410 evidence, if the administrator:

411 (i) finds that, even if the alleged grievance were found to be true, the reporting
412 employee would not be entitled to relief under Subsection [67-21-3.5\(2\)](#); and

413 (ii) provides the administrator's findings, in writing, to the reporting employee.

414 (c) The office shall comply with Chapter 21, Utah Protection of Public Employees Act,
415 in taking action under this section.

416 (5) A decision reached by the office in reviewing a retaliatory action grievance from a
417 reporting employee may be appealed directly to the Utah Court of Appeals.

418 (6) (a) Except as provided in Subsection (6)(b), an appellate court may award costs and
419 attorney fees, accrued at the appellate court level, to a prevailing employee.

420 (b) A court may not order the office to pay costs or attorney fees under this section.

421 Section 12. Section **67-19a-406** is amended to read:

422 **67-19a-406. Procedural steps to be followed by aggrieved employee -- Hearing**
423 **before hearing officer -- Evidentiary and procedural rules.**

424 (1) (a) The administrator shall employ a certified court reporter to record the hearing
425 and prepare an official transcript of the hearing.

426 (b) The official transcript of the proceedings and all exhibits, briefs, motions, and
427 pleadings received by the hearing officer are the official record of the proceeding.

428 (2) (a) The agency has the burden of proof in all grievances.

429 (b) The agency must prove the agency's case by substantial evidence.

430 (3) (a) The hearing officer shall issue a written decision within 20 working days after
431 the hearing is adjourned.

432 (b) If the hearing officer does not issue a decision within 20 working days, the agency
433 that is a party to the grievance is not liable for any claimed back wages or benefits after the date

434 the decision is due.

435 (4) The hearing officer may:

436 (a) not award attorney fees or costs to either party;

437 (b) close a hearing by complying with the procedures and requirements of Title 52,
438 Chapter 4, Open and Public Meetings Act;

439 (c) seal the file and the evidence produced at the hearing if the evidence raises
440 questions about an employee's character, professional competence, or physical or mental
441 health;

442 (d) grant continuances according to rule; and

443 (e) decide a motion, an issue regarding discovery, or another issue in accordance with
444 this chapter.

445 (5) (a) A hearing officer shall affirm, rescind, or modify agency action.

446 (b) (i) If a hearing officer does not affirm agency action, the hearing officer shall order
447 back pay and back benefits that the grievant would have received without the agency action.

448 (ii) An order under Subsection (5)(b)(i) shall include:

449 (A) reimbursement to the grievant for premiums that the grievant paid for benefits
450 allowed under the Consolidated Omnibus Reconciliation Act of 1985; and

451 (B) an offset for any state paid benefits the grievant receives because of the agency
452 action, including unemployment compensation benefits.

453 (c) In an order under Subsection (5)(b)(i), a hearing officer may not reduce the amount
454 of back pay and benefits awarded a grievant because of income that the grievant earns during
455 the grievance process.

456 (6) An employee who files a grievance in accordance with this chapter may appeal a
457 decision of the office directly to the Utah Court of Appeals in accordance with Title 63G,
458 Chapter 4, Administrative Procedures Act.

459 Section 13. Section **67-19a-501** is enacted to read:

460 **Part 5. Abusive Conduct Administrative Review**

461 **67-19a-501. Procedural steps to be followed in an administrative review of an**
462 **abusive conduct investigation.**

463 (1) An employee may initiate an administrative review of the findings of an abusive
464 conduct investigation within 10 days after the day on which the employee receives notification
465 of the investigative findings.

466 (2) (a) An employee bringing an administrative review of the findings described in
467 Subsection (1) may file the request for the administrative review directly with the office.

468 (b) The request for administrative review may set forth the reasons for the appeal and
469 include any submissions the employee desires to submit.

470 (3) (a) When an employee initiates the review described in Subsection (2) with the
471 office:

472 (i) the role of the administrative review is to review and rule upon the department's
473 findings and decision; and

474 (ii) an evidentiary hearing is not required.

475 (b) The department shall make the abusive conduct investigative file available for the
476 administrator's in camera review.

477 (c) The administrator may:

478 (i) request additional relevant documents from the department or the affected
479 employee; and

480 (ii) interview the department's investigators who conducted the investigation.

481 (4) (a) If the administrator determines that the investigator's findings are not
482 reasonable, rational, and sufficiently supported by the record, the administrator may overturn
483 the findings and remand to the agency for appropriate action.

484 (b) The administrator may uphold the department's investigative findings if, based on
485 the administrative review, the administrator determines that the investigator's findings are
486 reasonable, rational, and sufficiently supported by the record.

487 (5) (a) Within 30 days after the day on which an employee initiates an administrative

488 review under this section, the administrator shall issue a notice stating whether the
489 administrator upheld or overturned the investigative findings.

490 (b) The office's determination upon administrative review of the findings resulting
491 from an abusive conduct investigation is final and not subject to appeal.

492 (c) The following are classified as protected under Title 63G, Chapter 2, Government
493 Records Access and Management Act, and any other applicable confidentiality provisions:

494 (i) the request for administrative review and any accompanying documents;

495 (ii) documents that any party provides;

496 (iii) the contents of the administrative review file; and

497 (iv) the office's determination.

498 Section 14. Section **67-21-3.5** is amended to read:

499 **67-21-3.5. Administrative review of adverse action against a public entity**
500 **employee.**

501 (1) A public entity employee who believes that the employee's employer has taken
502 retaliatory action against the employee in violation of this chapter may file a grievance with the
503 Career Service Review Office in accordance with Section **67-19a-402.5** and subject to Section
504 **67-21-4.**

505 (2) If the Career Service Review Office determines that retaliatory action is taken in
506 violation of this chapter against the public entity employee, the Career Service Review Office
507 may order:

508 (a) reinstatement of the public entity employee at the same level held by the public
509 entity employee before the retaliatory action;

510 (b) the payment of back wages, in accordance with Subsection **67-19a-406(5)(b)**;

511 (c) full reinstatement of benefits;

512 (d) full reinstatement of other employment rights; or

513 (e) if the retaliatory action includes failure to promote, as described in Subsection
514 **67-19a-101[(8)](11)(d)**, a pay raise that results in the employee receiving the pay that the

515 employee would have received if the person had been promoted.

516 (3) A public entity employer has the burden to prove by substantial evidence that the
517 public entity employer's action was justified.

518 (4) A public entity employee or public entity employer may appeal a determination of
519 the Career Service Review Office as provided in Section [67-19a-402.5](#).