I. REFERENCES AND RESOURCES

PPSM-70: Complaint Resolution

II. DEFINITIONS

Administrative Review: An appeal at Step II of the Step I decision. For PSS employees, Administrative Review is one of three possible options available at Step II if an employee appeals the Step I decision.

Administrative Review Officer: Administrator from outside the department or reporting line assigned to review the complaint.

Appeal: A request for a review of a decision.

Complaint: A written claim by an employee regarding a specific management action(s) that meets the criteria in PPSM 70 Section III.A.3, III.B.4.a.i, or III.B.4.a.ii, as applicable.

Complaint Resolution Officer: The individual designated locally to receive complaints eligible for review under this policy, and manage the complaint process.

Conflict of Interest: For purposes of this policy, a situation where a factfinder, University hearing officer, and/or decision-maker has a bias or personal interest in the outcome that would prevent him/her from serving impartially.

Employee: For the purposes of this policy, an “employee” is defined as an active or a former employee who was involuntarily separated.
Factfinder: A person appointed by a location to determine whether the material allegations of the complaint are supported by the preponderance of the evidence.

Make Whole Remedy: Restoration of University pay, University benefits, and/or rights provided under University policy that the employee could have been awarded if the employee prevailed at a Step III Hearing (PSS) or Step III Factfinding (MSP-Manager 3 and below and equivalent positions) under this policy. See PPSM 70 Sections III.B.8 and III.B.12

Preponderance of Evidence: The standard that the employee or University must meet in order to prevail. It is satisfied when one party has shown that its version of the relevant events is more likely than not the correct version.

Remedy: Relief that addresses the adverse effect(s) of the management action(s) that was reviewed under this policy.

III. PROCEDURE SUMMARY AND SCOPE

It is in the interest of everyone—staff members and the University—to resolve differences as quickly and as informally as possible. Employees should attempt to resolve problems through informal discussions with their supervisors. Resources available include local HR Partners, Employee Relations, the Resolution Center and Staff Ombuds Office. An attempt to resolve the issue informally does not extend the deadline for filing a written complaint (PPSM 70 Section III.B.5.).

An employee who alleges sexual violence or sexual harassment may choose to substitute the local implementing procedures for the Policy on Sexual Violence and Sexual Harassment rather than attempting informal resolution with their immediate supervisor.

GENERAL

A. Administration of Policy. Employee and Labor Relations is the office designated to administer this policy, including responsibility for the time limits for filing and appealing complaints, and for official receipt of written complaints and appeals. Employee and Labor Relations is the office of record of the maintenance of documentation related to all complaints and appeals.

B. Consolidation of Complaints. Multiple complaints regarding the same or related action or issue, arising out of actions taken or events occurring in the same department, may be consolidated into one complaint for review under this policy at the discretion of Employee and Labor Relations.

C. Right to Representation. An employee is entitled to be represented by the person of her/his choice at every stage of the complaint resolution process. However, if you are not a supervisor and wish to have a fellow employee represent you, then you must ask an employee who is also not a supervisor. If you are a supervisor and wish to have a fellow employee represent you, then you must ask an employee who is also a supervisor.
D. **Pay Status.** Active complainants, and their representative (UCB employee) shall be afforded reasonable time on pay status to attend meetings called by the University, and for attendance at hearings under the complaint resolution policy. Said employees are required to obtain prior approval for their absences during normal work hours for attendance at meetings related to complaint resolution.

E. **Time Limits.** Initial complaints and appeals to Step II or Step III must be filed within the time limits as stated in the complaint review procedure below. An appeal that is not received within the time limits will be considered resolved on the basis of the last University response. Time limits that fall on a Saturday, Sunday, or University holiday are extended to the next business day.

**IV. PROCEDURES**

A. **PROCESSES**

1. **Informal Resolution**
   At any stage of the process, either the employee or the University may attempt to resolve the complaint informally. However, attempts at informal resolution do not extend the time limits for the initial filing of the complaint. When the employee and the University agree in writing to pursue informal resolution, the Complaint Resolution Officer shall confirm in writing the suspension of deadlines during informal resolution. If either the employee or the University wishes to stop pursuing informal resolution at any time, written notification must be provided to the other party. The employee must also provide written notification to the Complaint Resolution Officer. Any suspension of deadlines will end **ten (10) calendar days** after the notification is provided and then the formal complaint resolution process will resume where it left off.

2. **Filing**

   a. To file a request for formal review, the complaint must be submitted on the PPSM 70 Complaint Form. The complaint must be filed with Central Human Resources, Employee and Labor Relations 2199 Addison Street, Suite 190, Berkeley, CA 94720, within **thirty (30) calendar days** after the date on which the employee knew, or reasonably should 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. If the complaint alleges a series of policy violations or pattern of management actions that are subject to review under this policy, the complaint must be filed within 30 calendar days after the most recent policy violation or management action.
An employee may file a complaint regarding sexual violence or sexual harassment under both this policy and the Policy on Sexual Violence and Sexual Harassment. If an employee chooses to do this, the complaint under this policy must be timely filed in accordance with this section.

b. A complaint is considered “filed” on the date it is postmarked, the date it is personally delivered, the date it is faxed, or the date it is emailed.

c. Upon receipt of a formal complaint, the Employee and Labor Relations Office will determine:

i. Whether the employee is eligible to file a complaint, PPSM 70, Section III. B.3;

ii. Whether the complaint is within the scope of PPSM 70, Section III. B.4; and

iii. Whether the complaint is timely, PPSM 70, Section III.B.5;

d. The Complaint Resolution Officer may require the employee to provide additional details related to their complaint. In such cases, the employee will be notified of the additional detail needed. The complainant shall be granted up to ten (10) calendar days to correct and resubmit his/her complaint. If the employee does not provide the additional detail within the time frame established in these procedures, the incomplete claim(s) will not be accepted for review. If multiple claims are raised in the complaint, the Complaint Resolution Officer may choose to process the claims separately.

e. A complainant may not raise new issues or claims after a PPSM 70 complaint has been accepted for Step 1 Review without the Complaint Resolution Officer’s approval.

f. If the complaint is eligible for review, the Complaint Resolution Officer will send an admissibility letter to the complainant specifying what issues have been accepted for review.

g. If a complaint is rejected by the Complaint Resolution Officer, the employee will be notified in writing, including the reasons for the rejection. If the employee decides to appeal this decision, the appeal must be received by the Office of the President, Human Resources, within 20 calendar days of the campus decision.

h. An employee may appeal only the following local decisions to the Office of the President, Human Resources: (1) whether the complaint was timely; (2)
whether the complaint is within the scope of PPSM 70; (3) whether the remedy granted as an early resolution constitutes a make whole remedy, and/or; (4) the closure of the complaint due to the employee’s failure to participate.

B. FORMAL REVIEW PROCESS

**Step I – Department Response**

Upon acceptance of a formally filed request for review, the Complaint Resolution Officer shall request a written Departmental response from the next higher level authority in the reporting hierarchy of the person whose action(s) gave rise to the complaint. The response may not be delegated to or written by the individual whose action(s) gave rise to the complaint.

The written response should include any relevant facts and reasons for granting, in whole or in part, or denying, in whole or in part, the requested remedy, and instructions for further appeal, if necessary. The response shall be transmitted in writing to the employee within **thirty (30) calendar days** from the date the Department received the complaint from the Complaint Resolution Officer. The written response shall be in letter or memo format and forwarded via email with a copy to the Complaint Resolution Officer.

Any complaint filed under this policy regarding sexual violence or sexual harassment will be referred to the local Title IX Office for processing under the Policy on Sexual Violence and Sexual Harassment. The review conducted under that policy will serve as Step I under this policy. After that process has concluded, the employee may submit a written appeal to Step II under this policy if there are sexual violence or sexual harassment claims that were not resolved to the employee’s satisfaction. The investigative report issued under the Policy on Sexual Violence and Sexual Harassment may be used as evidence in proceedings under this policy.

1. **Appeal - Professional & Support Staff**

   a. **Step II – Administrative Review or Fact-finding**

      If the complaint is not resolved at Step I, the employee may file a written notice of appeal to Step II, but only on issues and remedies remaining unresolved that were accepted for review at Step I. The request must be in writing, in letter or memo format, signed by the employee and filed with the Employee and Labor Relations Office within **ten (10) calendar days** following the issuance of the Step I response. In the appeal, the employee must select one of the following Step II options:

      i. **Administrative Review.** Refer to Section C – Administrative Review.
ii. **Fact-finding.** If the employee selects fact-finding, the employee is not eligible to appeal the Step II decision to Step III, even if the complaint alleged a policy violation that would otherwise be eligible for review at Step III. *Refer to Section E – Fact Finding.*

iii. **Proceed Directly to Step III.** If the University agrees, a career employee may select to proceed directly to Step III for hearing, provided that the complaint alleged a policy violation eligible for review at Step III (PPSM-70, Section V.E.2.a.). *Refer to Section D – University Hearing.*

b. **Step III – Hearing**
If the complaint is eligible for review at Step III (In accordance with policies listed in PPSM -70, Section V.E.2.a.), and the claims have not been satisfactorily resolved at Step I or Step II, the employee may submit a request for a Step III hearing. Such request shall be in writing, in letter or memo format, signed by the employee and filed with the Policy and Labor Relations Office within **ten (10) calendar days** of the date the Step II response was issued. Expenses for the cost of a non-UC Hearing Officer will be borne equally by the parties pursuant to PPSM-70, Section V.E.2.b.

2. **Appeal - Management & Senior Professional – Manager 3 and Below and Equivalent Positions**

a. **Step II – Administrative Review**
If the complaint is not resolved at Step I, the employee may file a written notice of appeal for Administrative Review at Step II, but only on issues and remedies remaining unresolved that were accepted for review at Step I. The appeal must state which claims alleged in the complaint were not resolved at Step I and specify the remedy requested. The decision is final and binding unless the complaint is eligible for review at Step III. *Refer to Section C – Administrative Review.*

The request must be in writing, in letter or memo format, signed by the employee and filed with the Employee and Labor Relations Office within **ten (10) calendar days** following the issuance of the Step I response. Alternatively, if the University agrees, a career 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 (Section C. 2.b)

b. **Step III – Fact-finding**
If the complaint is eligible for review at Step III (In accordance with
policies listed in PPSM -70, Section V.E.2.a.), and the claims have not been satisfactorily resolved at Step I or Step II, the employee may submit a request for fact-finding and specify the remedy requested. Such request shall be in writing, in letter or memo format, signed by the employee and filed with the Employee and Labor Relations Office within ten (10) calendar days of the date the step II decision was issued or, if not issued, the date due. Refer to Section E – Fact Finding.

C. Administrative Review

The Director of Employee & Labor Relations, or assignee, 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) calendar days of being appointed. The meeting(s), at which the ARO presides, is held with the complainant and/or with other individuals 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.

D. University Hearing

1. Appointment of University Hearing Officers
   The AVC HR, or designee, shall select and appoint a panel of University employees to serve as University Hearing Officers for such terms of office as the AVC HR deems appropriate.

2. Non-University Hearing Officer
   If the employee elects a non-University Hearing Officer, the Complaint Resolution Officer shall furnish the employee and the department with a Hearing Officer. Employees selecting a non-University Hearing Officer will be required to pay one-half of all fees associated with the selection and services of the Hearing Officer.

3. Hearing Process
   a. The Employee and Labor Relations Office shall coordinate the time and place of the hearing.

   b. The Department Head/Employee and/or their representative, shall have the opportunity to call and examine witnesses and submit relevant documentary evidence at the hearing. Each party shall provide the other with relevant material, including a written list of all witnesses, which either intends to introduce at the hearing. To the extent possible, this material should be
provided at least **seven (7) calendar days** prior to the hearing. At the request of either party, all witnesses other than the principal parties, their representatives (if any), and a representative of the Employee Labor Relations Office, shall be excluded from the hearing except when testifying. Witnesses at the hearing who are employees covered by these policies shall appear on University time.

c. The Hearing Officer shall provide the parties with a written final and binding decision within **thirty (30) calendar days** of the close of the hearing.

4. **Hearing Officer**

   a. Shall conduct a hearing to determine the facts and whether the management action grieved was in violation of the Personnel Policies for Staff Members or the campus implementing procedures, or if the complaint involves corrective action or dismissal, whether the management action was reasonable under the circumstances.

   b. Shall not add to, delete from, or otherwise modify personnel policy or campus implementing procedures, issue subpoenas, or order stenographic records.

   c. Is limited to restoring any pay, benefits, or rights lost as a result of the action taken.

5. **Hearing Record**

   a. A single tape recording or stenographic report of the hearing shall be arranged by the Employee and Labor Relations Office.

   b. Fees for stenographic services shall be paid by the party requesting such services, unless both parties agree otherwise in advance.

   c. Copies of the stenographic reports may be provided to a party only upon payment of one-half of the total cost for stenographic services.

   d. The Employee and Labor Relations Office shall be the official custodian of the original hearing record and of all documents introduced at the hearing.

6. **Observers**

   Observers may not attend a hearing unless prior authorization is received by the AVC HR.
E. **Fact Finding**

1. **Appointment of Fact Finder:**
   
   a. The Employee and Labor Relations Director, or designee, shall appoint a fact finder and notify the parties of the appointment.

   b. The fact finder shall arrange a timely meeting with each party to the complaint. The fact finder shall take whatever steps reasonably necessary to investigate the complaint and report findings of fact. The fact finder shall provide a written non-binding report within **thirty (30) calendar days** of the close of the investigation. The fact finder may request a time limit extension through the Complaint Resolution Officer.

   The fact-finding report shall not contain any recommendations or remedies. It shall contain the following information:

   i. A clear statement of the issues under review;
   
   ii. The position of the parties;
   
   iii. A brief summary of the information received, people interviewed and documents relied upon;
   
   iv. Findings of fact; and
   
   v. Policy violations, if any

   c. The Employee and Labor Relations Director, or designee (OR "The administrator") shall render a decision based on the facts in the report and issue a final and binding written decision within thirty (30) calendar days after receipt of the fact finder's report.

F. **Representation**

1. The employee may have a representative present at any stage of the complaint process; however, the representative may not disrupt the proceedings. If the representative is present during fact finding, the representative may not respond on behalf of the employee. An employee who has been designated managerial, supervisory, or confidential by the University shall not represent a non-managerial, supervisory or confidential employee and vice versa.

2. When an employee decides to be represented, they shall furnish in writing the name, business address and telephone number of the representative to the Complaint Resolution Officer. Changes in representation shall also be made in writing to the Complaint Resolution Officer.
G. Pay Status for Time Spent on Complaint Resolution

1. Time spent by an employee and/or the employee’s representative (covered under UC Personnel Policies for Staff Members) in preparing a case (other than interviewing otherwise unavailable employee witnesses) shall be during non-work hours and without pay.

2. Requests by an employee and/or the employee’s representative for amounts of paid time off to investigate in preparation for the hearing shall be submitted in writing to the AVC HR, or designee. Such absence will be either vacation, compensatory time off, or leave without pay.

3. Request for reasonable time off with pay during scheduled working hours from an employee and an employee’s representative (covered under UC Personnel Policies for Staff Members and is not paid for such representation by the employee filing the complaint or others) for hearings or meetings convened by the University to consider and resolve complaints shall not be unreasonably denied.

H. Conflict of Interest

If an employee has concerns about a conflict of interest on the part of the fact finder, University hearing officer, and/or decision-maker, the employee should raise those concerns with the Complaint Resolution Officer. The Complaint Resolution Officer will determine whether an actual conflict of interest exists. In situations where it is determined that the fact finder, University hearing officer, and/or decision-maker has an actual conflict of interest that would prevent him or her from serving impartially, the Employee and Labor Relations Office will designate a different fact finder, University hearing officer, or decision-maker.

I. Witnesses

Witnesses requesting approval to participate in a hearing and/or meetings convened by the University shall be approved on an operational needs basis, however, shall not be unreasonably denied.

J. Settlement Agreements

The terms of settlement shall be subject to approval by the AVC HR, or designee, and the Office of General Counsel. Such settlement agreements shall be reduced to writing and shall be filed with other documents of the complaint in Central Human Resources.
K. Extension of Time Limits

The Complaint Resolution Officer, prior to the expiration of a time limit, may grant an extension for cause upon the written request of either party. Absent an extension of time requested in advance and granted in writing, failure of the employee to comply with the time limits established and cited in Policy 70 and the Complaint Resolution Procedures shall result in the dismissal of the complaint.