



University of California, Merced  
 Complaint Resolution Procedures:  
 Professional & Support Staff (PSS) and  
 Manager & Senior Professionals (MSP)-  
 Manager 3 and Below and Equivalent Positions

<b>Responsible Official:</b>	Human Resources
<b>Responsible Office:</b>	Human Resources check policy
<b>Issuance Date:</b>	<b>TBD</b>
<b>Effective Date:</b>	<b>8/2011 Date Revised 10/2016</b>
<b>Summary:</b>	Provides information to be utilized to resolve complaints.

<b>Contact:</b>	Fabiola Elizalde, ELR Manager
<b>Email:</b>	laborrelations@ucmerced.edu

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**I. REFERENCES AND RESOURCES**

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[PPSM- 70: Complaint Resolution](#)

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**II. PROCEDURE SUMMARY & SCOPE**

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It is in the interest of everyone—staff members and the University—to resolve differences as quickly and as informally as possible. Employees shall attempt to resolve problems through informal discussions with their supervisors. Resources available include the Employee & Labor Relations (ELR) Unit and Staff Ombudsperson.

**GENERAL**

- A. **Informal Resolution.** It is in the interest of everyone—staff members and the University—to resolve differences as quickly and as informally as possible. Employees shall attempt to resolve problems through informal discussions with their supervisors. Resources available include the Employee & Labor Relations (ELR) Unit and Staff Ombudsperson. An attempt to resolve the issue informally does not extend the deadline for filing a written complaint (PPSM-70 Section III.B.5.).
  
- B. **Administration of Policy.** Employee & 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 & Labor Relations is the office of record of the maintenance of documentation related to all complaints and appeals.

- C. **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 ELR.
- D. **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.
- E. **Pay Status.** Employees, and their representative (UCM 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. Employees are required to obtain prior approval for their absences during normal work hours for attendance at meetings related to complaint resolution.
- F. **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.

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### III. DEFINITIONS

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**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.

**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 Liaison:** The office or individual designated locally to receive complaints eligible for review under this policy.

**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 Fact-finding (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.

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## IV. PROCEDURES

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### A. PROCESSES

#### 1. Informal Resolution

The employee shall make every effort to resolve the complaint through informal discussion(s) with their immediate supervisor. Such discussion is a condition for filing a request for formal review.

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 \(SVSH\)](#).

#### 2. Filing

- a. To file a request for formal review, the complaint must be submitted on the [Request for Formal Review Form](#), Attachment A. The complaint must be filed with the Employee & Labor Relations Office, 5200 North Lake Rd, Merced, CA 95340, 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.

For a complaint regarding a layoff, the employee must file the written complaint within 30 calendar days after the effective date of the layoff. If a laid off employee alleges that his or her recall or preference for reemployment rights have been violated, the employee must file the complaint within 30 calendar days after the date on which the employee could reasonably be expected to have known of the alleged violation, but no later than 30 calendar days after the employee's recall or preferential reemployment eligibility period ends, whichever is earlier.

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 & Labor Relations Office will determine:
  - i. Whether the complaint is within the scope of [PPSM-70](#), Section III. B.4;
  - ii. Whether the complaint is timely, Section III.B.5; and
  - iii. Whether the complaint qualifies for review through Step II or Step III
  - iv. The Employee & Labor Relations Office may require the employee to provide additional details. 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 timeframe established in these procedures, the incomplete claim(s) will not be accepted for review. If multiple claims are raised in the complaint, the Employee & Labor Relations Office may choose to process the claims separately.
  - v. If the complaint is eligible for review, the Employee & Labor Relations Office sends an acknowledgement letter to the complainant specifying what issues, if any, have been accepted for review. Notice will include whether the complaint qualifies for review through Step II or Step III.
  - vi. If a complaint is rejected by the Employee & Labor Relations Office, 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.

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

## **B. FORMAL REVIEW PROCESS**

### Step I – Department Head

Upon acceptance of a formally filed request for review, the Employee and Labor Relations Office shall transmit a copy of the complaint to the Department Head for response. The Department Head may elect to review the complaint or may designate a Step 1 reviewer.

After considering the facts to the matter, the Department Head, or designee, shall transmit a written response to the employee within **twenty (20) calendar days** from the date the Department Head received the complaint from the Employee and Labor Relations Office. The written response shall be in letter or memo format and forwarded by U.S. mail, delivered in person, with Proof of Service, or via email with a copy to the Employee and Labor Relations Office.

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. Professional & Support Staff**

#### a. Step II – Appeal

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 **twenty (20) calendar days** following the issuance of the Step I response, or if not issued, the date due.

In that 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 this option 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 Employee and Labor Relations Office within **twenty (20) calendar days** of the date the Step II response was issued or, if not issued, the date due. Expenses for the cost of a non-UC Officer will be borne equally by the parties pursuant to PPSM-70, Section V.E.2.b.

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

a. Step II – Appeal

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 **twenty (20) calendar days** following the issuance of the Step I response, or if not issued, the date due. 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 twenty (20) calendar days of the date the step II decision was issued or, if not issued, the date due. Refer to Section F – Fact Finding.

### **C. Administrative Review**

The AVC HR, or designee, 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.

### **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 Employment & Labor Relations Manager 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 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) working days of the close of the hearing.

#### **4. Hearing Authority**

- 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 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 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 AVC HR, or designee, shall appoint the fact finder from this campus or another location with the University of California system. If from this campus, the fact finder shall be from outside the campus unit or reporting line in which the complaint arose.
- b. The fact finder shall arrange a timely meeting with each party to the complaint, separately or jointly, as necessary. The fact finder shall take whatever steps reasonably necessary to investigate the complaint and report findings of fact to the AVC HR. The fact finder shall provide a written report to the AVC HR within twenty (20) calendar days of the close of the investigation.

The fact-finding report 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 report and all documentation received by the fact finder shall be attached to the AVC HR final and binding decision.

## **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 cannot speak for 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 Employee Labor Relations Office. Changes in representation shall also be made in writing to the Employee Labor Relations Office.

## **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 factfinder, University hearing officer, and/or decision-maker, the employee should raise those concerns with the Employee & Labor Relations Office. The ELR Office 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 ELR Office will designate a different factfinder, 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. Such settlement agreements shall be reduced to writing and shall be filed with other documents of the complaint in the Human Resources Department.

#### **K. Extension of Time Limits**

The AVC HR, or designee, 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.

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**VI. POLICY OR PROCEDURE REVISION HISTORY**

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**APPENDICES**

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**ATTACHMENT A – Request for Formal Review**

**PPSM 70 Complaint (Required by UC Merced Procedure 70)**

<b>A. Complainant</b>		
Last Name:	First Name:	Middle Initial:
Department:	Payroll Title:	Hire Date (M/D/Y):
Home Address:	Home/Cell Phone No.:	Work Phone No.:
	Email Address:	

<b>B. Supervisor</b>	
Last Name:	First Name:
Email Address:	Work Phone No.:

<b>C. Representative (if any)</b>	
Last Name:	First Name:
Address:	Phone No.:
	Email Address:

<b>D. Informal Resolution</b>
Please attach a statement that identifies and details your informal resolution attempt(s), including the dates of such attempts, and the name(s) of the person(s) contacted.

<b>E. Statement</b>
Please attach a statement detailing: <ul style="list-style-type: none"> <li>(1) which University policies were violated, including the specific sections of such policies;</li> <li>(2) the specific management act(s) that gave rise to your complaint;</li> <li>(3) when the act(s) occurred (or when you became aware of such act(s));</li> <li>(4) how the act(s) violated the specified University policies; and</li> <li>(5) how you were adversely affected.</li> </ul>

<b>F. Remedy</b>
Please describe your requested remedy.

<b>G. Complainant's Signature:</b>	<b>Date:</b>
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<b>For Human Resources Use Only</b>	
Complaint No.: _____	Date Received: _____
Appealable to Step II Eligible for Factfinding	Appealable to Step III

<b>H. Complaint Review – Step I</b>		
Date Received:	Date of Response:	Decision Attached:
Signature of Step I Reviewer:		Email Address:
Printed Name and Title:		Work Phone No.:
<b>I. Complaint Review – Step II</b>		
<input type="checkbox"/> I do <u>not</u> accept and appeal to Step II (state reason below)	Complainant's Signature:	Date:
<input type="checkbox"/> I request Administrative Review	<input type="checkbox"/> I request Factfinding	
Reason(s) for appeal and unresolved issue(s):		
Date Received:	Date of Response:	Decision Attached:
Signature of Step II Reviewer:		Email Address:
Printed Name and Title:		Work Phone No.:
<b>J. Complaint Review – Step III</b>		
<input type="checkbox"/> I do <u>not</u> accept and appeal to Step III (state reason below)	Complainant's Signature:	Date:
<input type="checkbox"/> I request a University Hearing Officer	I request a Non-University Hearing Officer	
Reason(s) for appeal and unresolved issue(s):		