

# RISK COMMUNIQUÉ

## **Grievance Procedures – Risk Management for Management Liability & Employment Practices**

*Entities are challenged to demonstrate strict adherence to their personnel grievance procedures. Litigation often focuses on whether the entity mishandled the grievance in cases such as wrongful termination or discipline, harassment, or discrimination.*

*Before costly and time-consuming litigation arises, entities are encouraged to become intimately familiar with their grievance procedures. Many entity leaders and Board members have not been required to administer a grievance, nor have they been trained on how to administer their current written grievance policy and procedure. Entity leaders who have been required to process grievances on a more frequent basis would agree that following an unfamiliar or cumbersome grievance policy and procedure is challenging.*

*This Risk Communiqué provides risk management guidance for entities on examining the scope and functionality of their personnel grievance procedures.*

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### **Formal Grievances Procedure Versus Internal Reporting Process**

Often entities are unable to explain the differences between their formal written grievance procedures and the separate and distinct internal reporting procedures that typically accompany personnel policies prohibiting workplace wrongdoing such as harassment or discrimination. Generally, a stand-alone grievance procedure is more complicated and demanding for the entity and employee complaining about a personnel problem. An internal reporting process is considered more straightforward, while allowing for multiple avenues of complaint, prompt investigation and follow-up designed to stop workplace wrongs and prevent future occurrences.

Formal, multi-step grievance procedures are commonly part of a work environment that includes a union, collective bargaining agreement, or employee association. However, entities without unions or employee associations may publish grievance procedures in their personnel manuals or employee handbooks. If a written grievance procedure exists within your entity's personnel manual or handbook, determine whether the grievance steps are perceived as cumbersome, both for the complaining employee/volunteer and for the entity. Unless there is a requirement from a collective bargaining agreement, for example, implementing a straightforward internal reporting procedure may be easier for members and the entity.

### **Determine the Origins of the Grievance Procedure**

Entities are encouraged to analyze the origins of their written grievance procedure. They should determine whether the entities legal counsel (familiar with labor and employment issues), together with entity leaders and Board members, have developed a grievance process separate from reporting procedures that accompany workplace wrongdoing policies such as harassment.

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When an entity first develops its personnel policy manual, it is not uncommon to “cut and paste” a grievance procedure from another entity’s manual without understanding its ramifications. Without a union or employee association presence, an entity should assess whether the existence of a formal grievance process was intended and necessary, as opposed to more straightforward internal reporting procedures.

## **Grievance Procedure Steps**

A formal written grievance procedure may require that:

1. The employee put the grievance or complaint in writing.
2. The entity’s responses to a grievance or complaint be in writing.
3. Grievance procedure steps be time-sensitive. For instance, a grievance may need to be filed within 10 working days of the incident that generated the complaint, or the employee forfeits his or her right to complain. Similarly, the designated entity representative must respond in writing within 10 working days of receipt of the initial grievance.
4. Various entity members be responsible for handling different steps in the process, such as the complainant’s immediate supervisor, supervisor’s supervisor, top administrator, personnel committee, or Board members.
5. Grievance steps serve as an appeal process within the entity’s chain of command.
6. The acting human resources representative help guide the complaining employee through the various steps of the grievance process.
7. A personnel grievance committee, sometimes made up of Board members, serve as the final group to hear an employee’s appeal.
8. Employees be afforded a hearing during the final appellate step, which would include a review of all facts, documents, and call for testimony from the grievant, parties directly named, and other witnesses.
9. The employee filing the grievance seek legal representation or a union representative throughout the course of the grievance.

Entities must ensure that grievance procedures found in a collective bargaining agreement remain consistent with grievance procedures found in other entity documents, such as a personnel policy manual or employee handbook. Contrasting grievance procedures often lead to misapplication and confusion for those asked to utilize the process. To eliminate this problem, the entity’s legal counsel and a union representative should compare the documents to bring them into agreement.

## **Internal Reporting Procedures**

While it is not required that an entity incorporate formal grievance procedures, multiple avenues of internal complaint must be provided so employees’ concerns can be promptly investigated and resolved. Below is a sample internal reporting process:

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*If you are aware of workplace conflict or wrongdoing taking place, you must immediately report this to your direct supervisor. If you feel uncomfortable doing so, or if your direct supervisor is the source of the problem, condones the problem, or ignores the problem, immediately report the situation to your supervisor's supervisor, any other supervisor or manager, human resources manager, or lead/top administrator. If these alternatives are not satisfactory to you, then you can immediately direct your report, complaint, or questions to any member of the entity's personnel committee or Board of Directors. You are not required to directly confront the person who is the source of your report or complaint before notifying any of the individuals listed.*

## **Training On Formal Grievance Procedures**

Familiarity with and confidence in an entity's procedures is important when accessing or effectively addressing a grievance or complaint. The entity should periodically educate and train designated representatives regarding their responsibilities as spelled out in the formal grievance procedures. In addition to what is specified, to ensure equitable and consistent facilitation of grievances, the entity should train those persons tasked with preparing written responses, meeting time deadlines, assessing the credibility of the grievance, facilitating hearings, and generally resolving personnel conflicts. Entity employees will only be confident enough to utilize the formal grievance procedures if they know the entity is intimately familiar with how to manage the process.

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