

## WINTHROP UNIVERSITY

### POLICY AND PROCEDURE FOR EMPLOYEE GRIEVANCES AND APPEALS

THIS DOCUMENT IS NOT A CONTRACT BETWEEN EMPLOYEES AND WINTHROP UNIVERSITY, EITHER EXPRESSED OR IMPLIED. THIS DOCUMENT DOES NOT CREATE ANY CONTRACTUAL RIGHTS OR ENTITLEMENTS. WINTHROP UNIVERSITY RESERVES THE RIGHT TO REVISE THE CONTENT OF THIS DOCUMENT, IN WHOLE OR IN PART. NO PROMISES OR ASSURANCES, WHETHER WRITTEN OR ORAL, WHICH ARE CONTRARY TO OR INCONSISTENT WITH THE TERMS OF THIS PARAGRAPH CREATE ANY CONTRACT OF EMPLOYMENT.

#### A. Applicability

The State Employee Grievance Procedure Act requires that Winthrop University establish a grievance procedure for all covered employees. This policy does not apply to either non-covered employees or employees exempt from the State Employee Grievance Procedure Act.

Non-covered employees include:

- probationary employees
- temporary employees
- temporary grant employees
- time-limited project employees
- research grant employees

Employees exempt from the State Employee Grievance Procedure Act include but are not limited to:

- TERI participants who enter the program after June 6, 2005
- \*teaching or research faculty
- \*professional librarians
- \*academic administrators
- \*other persons holding faculty appointments
- athletic coaches
- unclassified employees in the athletic department
- SCRS and SC PORS retirees occupying FTE positions

\*Teaching and research faculty, professional librarians, academic administrators, and all other persons holding faculty appointments are exempt from the State Employee Grievance Procedure Act and this policy. These employees are, however, covered under the Winthrop University Faculty Grievance Procedure.

## B. Intent of Policy

Any employee who believes that the status of his/her employment with the university has been changed in violation of law and/or university requirements may seek a grievance or appeal, as outlined below in Section C.

No employee shall be disciplined or otherwise prejudiced for testifying or exercising rights under the provisions of this policy.

The employee shall be entitled to such time off from his/her regular duties as may be necessary and reasonable for the presentation and processing of the grievance or appeal.

## C. Grievance Actions

As provided for in the Act, grievances or appeals shall include: terminations, suspensions, involuntary reassignments in excess of thirty miles from the prior work station, and demotions.

Reclassifications, reassignments, and transfers within the same state salary range are not considered grievances or appeals. However, reclassifications are considered a grievance only if Winthrop University, or an appeal if the State Human Resources Director, determines that there is a material issue of fact that the action is a punitive reclassification.

Promotions are not adverse employment actions which may be considered grievances or appeals except in instances where Winthrop University, 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 Winthrop University has considered a qualified employee for a position for which the employee formally applied or would have applied if the employee had known of the promotional opportunity. However, when an employee is promoted one organizational level above the promoted employee's former level, that action is not a grievance or appeal for any other qualified employee. Failure to be selected for a promotion is not considered an adverse employment action which can be considered a grievance or an appeal.

A salary decrease based on performance as the result of a performance appraisal is an adverse employment action that may be considered as a grievance or an appeal.

A reduction in force is also an adverse employment action considered as a grievance only if Winthrop University, or in the case of an appeal, the State Human Resources Director, determines that there is a material issue of fact that Winthrop University inconsistently or improperly applied its reduction in force policy or plan.

## D. Procedure

### a. Step 1

Whenever possible, a grievance should be resolved by the employee and the supervisor during informal discussions. A covered employee who has a grievance which has not been resolved informally during this process may file a formal grievance by submitting a letter to the Vice President for Human Resources, Employee Diversity and Wellness stating the nature of the grievance and the relief sought. The grievance must be filed within 14 calendar days from the effective date of the action. "Calendar days" means sequential days of a year. The time shall be computed by excluding the first day and including the last. If the last day falls on a Saturday, Sunday or an official state or university holiday, it shall be excluded.

The Vice President for Human Resources, Employee Diversity and Wellness (or designee) shall initially review the grievance to determine whether the action may be considered as a grievance as defined by the Act. Appropriate information may be gathered by the Vice President for Human Resources, Employee Diversity and Wellness (or designee) to make this determination. If it is determined that the action is not an action that may be grieved, the employee shall be so advised in writing by the President (or designee), normally within eight calendar days of receipt of the grievance. In the event that the Vice President for Human Resources, Employee Diversity and Wellness and/or the President (or their designees) are unavailable to review the findings within eight calendar days due to circumstances beyond the university's control, the time period may be waived upon the mutual written agreement of both parties. Such determination shall be a final decision within Winthrop University and may be appealed to the State Human Resources Director.

If it is determined that the action is a grievance, the Winthrop University Office of Human Resources will promptly schedule a conference to occur between the employee and the senior administrative officer for the division in which the employee works. "Senior administrative officer" shall be defined as the vice presidents and other supervisory personnel who report directly to the President.

The conference will be scheduled normally within eight calendar days of receipt of the grievance. However, in the event that the conference cannot be scheduled within eight calendar days due to circumstances beyond the university's control, the time period may be waived upon the mutual written agreement of both parties.

During the conference, the employee and/or his/her representative will have an opportunity to present his/her case regarding the grievance. All parties involved

in the conference will conduct themselves in an orderly and cooperative manner. Each side can present witnesses and information that may be pertinent to its case. Each side can cross-examine witnesses presented by the other side.

At least three days before the scheduled conference, the employee should inform the Winthrop University Office of Human Resources if they will be bringing legal counsel or another representative with them to the conference. An employee who solicits advice from legal counsel or another representative must do so at his/her own expense. The university will not be responsible for costs incurred by the employee during the grievance or appeal process.

The senior administrative officer may conduct appropriate investigations to determine whether to accept, reject or modify the action taken against the employee. The senior administrative officer will give a written decision to the employee with a copy to the Winthrop University Office of Human Resources within five calendar days of the conference.

b. Step 2

If the employee is not satisfied with the decision reached in Step 1, the employee may continue the grievance by sending a written request within five calendar days after the receipt of the Step 1 decision to the Vice President for Human Resources, Employee Diversity and Wellness, stating the reason for the grievance and requesting to proceed to Step 2 of the grievance procedure.

Within five calendar days following receipt of the request to proceed to Step 2, the Vice President for Human Resources, Employee Diversity and Wellness (or designee) will present to the President (or designee) a written summary of the facts of the case and the findings and recommendations. Within eight calendar days after receipt of the findings and recommendations, the President (or designee) will make the final decision for the university and provide a copy of the written decision to the employee, the employing department, and the Winthrop University Office of Human Resources. In the event that the President (or designee) is unavailable to review the findings and recommendations within eight calendar days due to circumstances beyond the university's control, the time period may be waived upon the mutual written agreement of both parties.

The President's (or designee's) decision should reference the employee's right to appeal the decision to the State Human Resources Director within ten calendar days of receipt of the decision. The entire record shall be available to the employee for copying.

E. Appeals to the State Human Resources Director

The covered employee may appeal the decision of Winthrop University's President to the State Human Resources Director. The appeal must be in writing and submitted within ten calendar days of receipt of the President's final decision or 55 calendar days from the initial date the grievance was filed within Winthrop University, whichever occurs later.

The covered employee may appeal to the State Human Resources Director any grievance involving the issues specified by the State Employee Grievance Procedure Act after all administrative remedies to secure relief within the university have been exhausted.

In accordance with the provisions of the State Employee Grievance Procedure Act, it is the policy of Winthrop University that final action shall be taken within 45 calendar days following the date the grievance was initiated by the covered employee. The internal time periods of the covered employee grievance process, however, may be waived upon the written mutual agreement of both parties. The 45 calendar day period for action by the university may not be waived except by mutual written agreement of both parties.

The covered employee may appeal directly to the State Human Resources Director if the university fails to complete its entire grievance procedure within 45 calendar days from the time the grievance is initially filed with Winthrop University. Failure by the covered employee to comply with the internal time periods in Winthrop University's grievance procedure constitutes a failure to exhaust administrative remedies and waives the covered employee's right to further continue the grievance. If Winthrop University fails to render a final decision within 45 calendar days, it is considered an adverse decision and the covered employee may file an appeal to the State Human Resources Director. The appeal to the State Human Resources Director must be made no later than 55 calendar days from the initial date the grievance was filed within Winthrop University.