

FRANCIS MARION UNIVERSITY
Human Resources Office

SUBJECT: Employee Grievance Procedure

Originated: 12/13/93
Revised: 1/13/95
Revised: 11/8/96
Revised: 5/16/01

EMPLOYEE GRIEVANCE PROCEDURE

THE LANGUAGE USED IN THIS POLICY DOES NOT CREATE A BINDING EMPLOYEE CONTRACT BETWEEN THE EMPLOYEE AND THE UNIVERSITY. THE UNIVERSITY RESERVES THE RIGHT TO REVISE THE CONTENTS OF THIS POLICY, IN WHOLE OR IN PART.

INTRODUCTION

This procedure has been established in accordance with The State Employee Grievance Procedure Act (hereinafter referred to as the "Act") to assure covered employees a fair response without delay to a grievance or appeal concerning treatment that they feel has been unfair and be assured of a prompt, orderly and fair response to the grievance or appeal without fear of discipline or prejudice.

As used in this Act, grievances or appeals shall include terminations, suspensions, involuntary reassignments in excess of thirty miles (30) from the prior workstation, 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 Francis Marion 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 Francis Marion 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 Francis Marion University has considered a qualified covered 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 Francis Marion University promotes an employee one organizational level above the promoted employee's former level, that action is not a grievance or appeal for any other qualified covered employee. Failure to be selected for a promotion is not considered an adverse employment action, which can be considered a grievance or an appeal.

Salary decreases, based on performance as indicated on EPMS evaluations, are adverse employment actions that may be considered as grievances or appeals. A reduction in force is also an adverse employment action considered as a grievance only if Francis Marion University, or an appeal if the State Human Resources Director, determines that there is a material issue of fact that Francis Marion University inconsistently or improperly applied its reduction in force policy or plan.

Prior to filing a formal grievance, the covered employee may first attempt to resolve the matter informally with his/her immediate supervisor. This matter may be presented verbally or in writing. However, this is merely an informal attempt to resolve the matter and cannot be substituted for the requirements of Step One in the following procedure:

PROCEDURE

STEP ONE

If the matter was not resolved informally with the covered employee's immediate supervisor, the covered employee must notify the Vice President for Administration in writing to initiate a formal grievance. The covered employee must initiate the grievance with the Vice President for Administration within fourteen (14) calendar days of the effective date of the action, which caused the concern.

The Vice President for Administration (or his/her designee) shall initially review the grievance to determine whether the complaint involves a grievance as defined by the State Employee Grievance Procedure Act. The Vice President for Administration may conduct appropriate investigations and fact-findings, as he/she may consider necessary to make this determination. If it is determined that the matter is not grievable, the covered employee shall be notified in writing by the President or the Vice President for Administration, normally within five (5) calendar days of receipt of the grievance. Such determination shall be a final decision of Francis Marion University, which may be appealed to the State Human Resources Director.

If it is determined that the matter is grievable, the Vice President for Administration (or his/her designee) will contact the covered employee and the appropriate Francis Marion University representative(s), normally within five (5) calendar days of receipt of the grievance, to inform them the issue can be heard under this grievance procedure and inquire whether or not they desire to participate in voluntary mediation. Both parties must make a written decision to the Vice President for Administration within two (2) calendar days of this notification. Failure by either party to respond in a timely manner to this notification is deemed a refusal to participate in the voluntary mediation. Any initial determination by the Vice President for Administration that the matter may be grieved shall only entitle the covered employee to have the matter considered in accordance with this grievance procedure and shall in no way be construed to be an adjudication of the merits of the grievance.

WITH MEDIATION

When the covered employee and Francis Marion University's representative(s) both agree in writing to participate in voluntary mediation, the Vice President for Administration (or his/her designee) will schedule a mediation conference to occur within five (5) calendar days and make the necessary arrangements for mediation. The Vice President for Administration will make arrangements for a Mediator. The Mediator serves as an impartial third party who will encourage and facilitate a resolution to the dispute without advising what the result should be. The mediation conference(s) will be confidential and limited to the parties and their representatives. Other persons may attend with the permission of the Mediator and both parties. The Mediator may not be compelled by subpoena or otherwise to divulge any records or discussions or to testify in regard to the mediation conference in any adversary proceeding or judicial forum. If the parties agree to settle the matter, the Mediator will draft a mediation agreement, which both parties must sign. The Vice President for Administration may share terms of the settlement agreement with the President or the appropriate Vice President who need to finalize and assist in implementing the agreement. If the matter is not settled within eight (8) calendar days of the initial mediation conference, the Vice President for

Administration will inform the President that settlement has not occurred. The Vice President for Administration (or his/her designee) will then schedule a conference to occur between the covered employee's next level supervisor and the covered employee within five (5) calendar days. At the conference with the covered employee's next level supervisor, the covered employee will have an opportunity to present his/her position regarding the grievance. The next level supervisor may conduct appropriate investigations and fact-findings to determine whether to accept, reject, or modify the disciplinary action taken against the covered employee. The covered employee will be advised of his/her next level supervisor's decision in writing by the Vice President for Administration within five (5) calendar days of the conference.

WITHOUT MEDIATION

If the matter is grievable and the covered employee or Francis Marion University submits a written decision not to participate or fails to respond in a timely manner concerning voluntary mediation, the Vice President for Administration (or his/her designee) will promptly schedule a conference to occur between the covered employee's next level supervisor and the covered employee, normally within five (5) calendar days. At the conference with the covered employee's next level supervisor, the covered employee will have an opportunity to present his/her position regarding the grievance. The next level supervisor may conduct appropriate investigations and fact-findings to determine whether to accept, reject, or modify the disciplinary action taken against the covered employee. The covered employee will be advised of his/her next level supervisor's decision in writing within five (5) calendar days of the conference.

STEP TWO

To continue the grievance, the covered employee must notify the President or the Vice President for Administration in writing within five (5) calendar days after receiving the Step One decision. The President or the Vice President for Administration must promptly schedule and conduct a conference with the covered employee, normally within five (5) calendar days. The covered employee will be provided an opportunity at this time to present his/her position regarding the grievance. The President or the Vice President for Administration may conduct appropriate investigations and fact-findings to determine whether to accept, reject, or modify the disciplinary action taken against the covered employee. The President or the Vice President for Administration must advise the covered employee of the decision in writing within five (5) calendar days of the conference. This decision will be final within the agency.

GENERAL INFORMATION

The Act provides for an appeal of a grievance beyond Francis Marion University to the State Human Resources Director. Any covered employee may appeal the decision of the President or Vice President for Administration. Such appeal must be in writing and submitted to the State Human Resources Director within ten (10) calendar days of receipt of Francis Marion University's final decision or 55 calendar days from the initial date the grievance was filed with Francis Marion University, whichever occurs later. As to the 55 calendar days, the Act provides that a covered employee may appeal directly to the State Human Resources Director in the event Francis Marion University does not complete its entire internal grievance procedure within 45 calendar days from the time the grievance is initially filed with Francis Marion University. Failure by Francis Marion University to issue a final decision within this 45 calendar day period is considered an adverse decision. The failure to issue a final decision allows the covered employee to proceed with an appeal to the State Human Resources Director after 45 calendar days, but no later than 55 calendar

days from the initial date the grievance was filed with Francis Marion University. Failure by the covered employee to file an appeal within the time periods referenced in this paragraph shall constitute a waiver of the right to appeal.

The internal time periods of Francis Marion University's grievance procedure may be waived upon the mutual written agreement of both parties. The 45 calendar day period for action by Francis Marion University may not be waived except by mutual written agreement of both parties.

The Act allows the covered employee to appeal to the State Human Resources Director any grievance involving the issues specified in the Act after all administrative remedies to secure relief with Francis Marion University have been exhausted.

The Act provides that a covered employee has the right during the grievance and appeal process to a representative, including counsel; and, if the covered employee chooses to exercise the right to counsel, Francis Marion University's Vice President for Administration must be notified in writing prior to the first conference in which counsel is retained. If the covered employee chooses to exercise the right of counsel, it shall be at his/her expense.