

MEMO

TO Executive Committee of the Academic Senate

FROM Dale Spartz, Ph.D., CHRO
Sarah E Sherer, Director of Employee Relations

DATE December 4, 2017

REGARDING **Policy 5-111: Corrective Action and Termination Policy for Staff Employees, Rule B**

We are currently seeking approval to create a mirror rule, 5-111B, to the already established Campus rule 5-111A. The purpose of this change is to create clear expectations for University of Utah Health, Hospitals and Clinics employees regarding employment and corrective action.

In the current rule, there are many sections that are incomplete. It also currently contains the ability for leaders to issue formal corrective action without the input or recommendation from Human Resources (HR). This current practice is concerning, and we want to ensure that we protect not only the organization, but also the employee with appropriate due diligence. This also allows the ability for HR to review the formal document to ensure that we have not violated any federal or state employment rights.

The rationale of the separate rule is to allow flexibility for both the Main Campus and the Hospitals & Clinics to make changes without impacting the other.

This has been approved by the Institutional Policy Committee (IPC) on November 10, 2017.

I appreciate your approval of moving this initiative forward.

Please do not hesitate to contact me with any further questions.

**Rule 5-111B: Corrective Action and Termination Approval Process for ~~UUHC~~
University of Utah Hospitals and Clinics Staff. Revision 1. Effective Date:
December 4, 2017**

- I. **Purpose and Scope** ~~To identify the level of corrective action and discipline that needs approval from Human Resources.~~
- A. To provide a corrective action process that gives managers the necessary tools to deal with concerns about a Staff Member's performance and conduct in an effective, fair and consistent manner. This Rule 5-111B is applicable to all University of Utah Hospitals and Clinics Staff Members holding a benefits eligible position who have completed their probationary period. (See the counterpart Rule 5-111A which governs University Staff members employed by units which are not part of the University Hospitals and Clinics).
1. This Rule applies to all permanent Staff Members employees holding a benefits eligible position of the University of Utah Hospitals and Clinics who have satisfactorily completed their probationary period.
 2. This Rule does not apply to Staff Members who are "at-will" as defined in Policy 5-001. Staff Members employed "at will" may be terminated by the University without advance notice and without staff appeal rights. However, Staff Members employed "at will" do have the right to file a complaint with the Office of Equal Opportunity and Affirmative Action (OEO/AA) pursuant to Policy 5-210, if they believe they have been subjected to illegal discrimination, sexual harassment, or a violation of the Americans with Disabilities Act (ADA)
 3. "At Will" Staff Members also include those who are in their probationary period. This is defined as the first six (6) months of employment beginning from the date of hire, unless otherwise extended pursuant to Human Resource's guidelines for extending probation
 4. Before any corrective action is taken the Staff Member's immediate Supervisor or Manager will make sure one of the following conditions has been met, including but not limited to:
 - i. The Staff Member was made aware of the expectations of the job as outlined in previous corrective actions.
 - ii. The Staff Member was made aware of the expectations of the job, through the job description, communicated in the hiring process, orientation, or performance evaluation processes.
 - iii. The behavior or performance concern, in the reasonable opinion of the immediate Supervisor, is such that no reasonable person should expect to receive prior warning.

II. Definitions (Reserved)

III. Rule

~~A. Prior to imposing Final Written Warnings, Suspension without pay, Demotions, and Terminations supervisors and managers must consult with the Human Resources Department for review of the action. Written Warnings are held at the discretion of Supervisors and Managers and, although are part of the formal discipline process, do not need to come through Human Resources for approval.~~

~~B. Although Written Warnings do not need to come through HR, we are available at the discretion of the supervisor for consultation and review.~~

A. Application of the Policy

1. Staff Members may be disciplined for unsatisfactory job performance, for any conduct described in Section 4.3 of the Utah Board of Regents Policy R841, or for any conduct or behavior of a nature that no reasonable person should expect to receive prior warning. Unsatisfactory job performance is defined by reference to University or any sub-unit expectations, including any verbal or written expectations communicated by a supervisor; University Regulations; and federal and state laws. Further, Staff Members may be disciplined for conduct off-duty or away from the University if that conduct impacts the University, violates University or department policy, or violates the law. In determining the level of corrective action which may be taken, consideration will be given to both the actual or potential impact or consequences of the behavior or performance concerns. The factors which will be considered within the decision making process will include:

1. Physical/Safety Issues
2. Service Impact
3. Financial Implications
4. Resultant Disruption Level
5. Violation of University or Department policies, Procedures, or standards
6. Violation of Law
7. Patient Safety

B. The level of corrective action will be the result of an evaluation of each current incident based on the following factors:

1. 7 factors listed above (actual and potential impact)
2. Past history:
 - a. previous corrective actions taken.
 - b. the current incident need not be of the same type as previous incidents.
3. The corrective action will fall into one of the following general categories of increasing seriousness:

- a. corrective actions based on a concern, typically resulting in a written warning.
 - b. substantial corrective actions, typically resulting in a final written warning.
 - c. Serious corrective actions, typically resulting in a demotion, suspension, or termination of employment. Performance or behavior on the Egregious Behavior List (see Rule 5-111C) typically falls into this category.
4. Supervisors or Managers, in consultation with Human Resources Employee Relations and others as deemed appropriate, will determine the category of seriousness. The decision will stand unless found during appeal to be arbitrary and capricious.
- C. Possible formal corrective actions include Written Warning, Final Written Warning, Suspension Without Pay, Demotion and Termination.
- D. In the event of future circumstances requiring corrective action, higher levels of seriousness will be assigned based on either violations of prior written warnings or the seriousness of future behavior.
- E. In some instances corrective action may be applied without prior warnings having been issued to the Staff Member, depending on the nature and severity of the concern.
- F. Prior to imposing any formal corrective action including Written Warning, Final Written Warning, Suspension Without Pay, Demotion or Termination, supervisors or managers must consult with the Human Resources Department for review and approval of the action.
- G. Where institutional issues, rather than departmental issues, are involved, the appropriate institutional representative may take responsibility for any corrective action to be taken.
- H. The Staff Member will be advised, in writing, of the corrective action being taken and the general information regarding the relevant appeal process. Documentation of formal corrective actions will be entered into the personnel files.
- I. A Staff Member may be assigned a designation of “Not Eligible for Re-application” (NER) upon termination of employment for reasons consistent with the Egregious Behavior Examples under policy 5-111.
 1. An NER designation prohibits a former Staff Member from re-applying or being hired for a minimum of five (5) years from the date of termination and/or designation of NER. After five (5) years the former Staff Member may petition for removal of NER designation by submitting a detailed request to the Chief Human Resources Officer or designee.
 2. An NER designation prohibits a former employee from:

Becoming employed by the University, this includes but is not limited to University departments, divisions, affiliates, or entities.

Providing services to or on behalf of the University including but not limited to services provided as a consultant and/or contractor.

Participating in any Volunteer services or capacity.

[Note: Parts IV-VII of this Regulation (and all other University Regulations) are Regulations Resource Information – the contents of which are not approved by the Academic Senate or Board of Trustees, and are to be updated from time to time as determined appropriate by the cognizant Policy Officer and the Institutional Policy Committee, as per Policy 1-001 and Rule 1-001.]

IV. Procedures, Guidelines, Forms, and Other Related Resources

- A. Procedures (reserved)
- B. Guidelines (reserved)
- C. Forms (reserved)

V. References

- A. [Policy 5-111](#): Corrective Action and Termination Policy for Staff Employees

VI. Contacts:

The designated contact officials for this Policy are:

Policy Owner (primary contact person for questions and advice): Director of Employee Relations for Human Resources
Policy Officer: Chief Human Resources Officer

These officials are designated by the University President or delegee, with assistance of the Institutional Policy Committee, to have the following roles and authority, as provided in University Rule 1-001:

"A 'Policy Officer' will be assigned by the President for each University Policy, and will typically be someone at the executive level of the University (i.e., the President and his/her Cabinet Officers). The assigned Policy Officer is authorized to allow exceptions to the Policy in appropriate cases.... "

"The Policy Officer will identify an "Owner" for each Policy. The Policy Owner is an expert on the Policy topic who may respond to questions about, and provide interpretation of the Policy; and will typically be someone reporting to an executive level position (as defined above), but may be any other person to whom the President or a Vice President has delegated such authority for a specified area of University operations. The Owner has primary responsibility for maintaining the relevant portions of the Regulations Library... [and] bears the responsibility for determining which reference materials are helpful in understanding the meaning and requirements of particular Policies... ." University Rule 1-001-III-B & E

VII. History

. A. Current version : Revision 1

Presented for the information of the Academic Senate [date].

Legislative History for Revision 1. {embed link to history file, Revision 1 }

B. Earlier versions.

Revision 0. {embed link to Rev0}. Effective dates October 3, 2011 to [date of approval of Rev 1 }

For comparison, this is existing Rule A, which is the model for revising Rule B, Dec.2017

Rule 5-111A: Implementation of Staff Corrective and Disciplinary Actions (non-Hospital and Clinics-UUHC).

Revision 0. Effective Date: October 11, 2011

I. Purpose and Scope

To provide a corrective action process that gives managers the necessary tools to deal with concerns about a Staff Member's performance and conduct in an effective, fair and consistent manner. This Rule is applicable to all University Staff Members holding a benefits eligible position who have completed their probationary period, with the exception of University of Utah Hospitals and Clinics (UUHC) Staff Members (see Rule 5-111B).

- A. This Rule applies to all permanent Staff Members employees holding a benefits eligible position of the University of Utah who have satisfactorily completed their probationary period.
- B. This Rule does not apply to Staff Members who are “at-will” as defined in Policy 5-001. Staff Members employed "at will" may be terminated by the University without advance notice and without staff appeal rights. However, Staff Members employed “at will” do have the right to file a complaint with the Office of Equal Opportunity and Affirmative Action (OEO/AA) pursuant to Policy 5-210, if they believe they have been subjected to illegal discrimination, sexual harassment, or a violation of the Americans with Disabilities Act (ADA)
- C. “At Will” Staff Members also include those who are in their probationary period. This is defined as the first six (6) months of employment beginning from the date of hire, unless otherwise extended pursuant to Human Resource's guidelines for extending probation

D. Before any corrective action is taken the Staff Member's immediate Supervisor or Manager will make sure one of the following conditions has been met, including but not limited to:

1. The Staff Member was made aware of the expectations of the job as outlined in previous corrective actions.
2. The Staff Member was made aware of the expectations of the job, through the job description, communicated in the hiring process, orientation, or performance evaluation processes.
3. The behavior or performance concern, in the reasonable opinion of the immediate Supervisor, is such that no reasonable person should expect to receive prior warning.

II. Definitions (Reserved)

III. Rule

A. Application of the Policy

Staff Members may be disciplined for unsatisfactory job performance, for any conduct described in Section 4.3 of the Utah Board of Regents Policy R841, or for any conduct or behavior of a nature that no reasonable person should expect to receive prior warning. Unsatisfactory job performance is defined by reference to University or any sub-unit expectations, including any verbal or written expectations communicated by a supervisor; University Regulations; and federal and state laws. Further, Staff Members may be disciplined for conduct off-duty or away from the University if that conduct impacts the University, violates University or department policy, or violates the law. In determining the level of corrective action which may be taken, consideration will be given to both the actual or potential impact or consequences of the behavior or performance concerns. The factors which will be considered within the decision making process will include:

1. Physical/Safety Issues
 2. Service Impact
 3. Financial Implications
 4. Resultant Disruption Level
 5. Violation of University or Department policies, Procedures, or standards
 6. Violation of Law
 7. Patient Safety
- B. The level of corrective action will be the result of an evaluation of each current incident based on the following factors:
1. 7 factors listed above (actual and potential impact)
 2. Past history:
 - a. previous corrective actions taken.
 - b. the current incident need not be of the same type as previous incidents.
 3. The corrective action will fall into one of the following general categories of increasing seriousness:
 - a. corrective actions based on a concern, typically resulting in a written warning.
 - b. substantial corrective actions, typically resulting in a final written warning.
 - c. serious corrective actions, typically resulting in a demotion, suspension, or termination of employment. Performance or behavior on the Egregious Behavior List (see Rule 5-111C) typically falls into this category.

4. Supervisors or Managers, in consultation with Human Resources Department and others as deemed appropriate, will determine the category of seriousness. The decision will stand unless found during appeal to be arbitrary and capricious.
- C. Possible formal corrective actions include Written Warning, Final Written Warning, Suspension Without Pay, Demotion and Termination.
- D. In the event of future circumstances requiring corrective action, higher levels of seriousness will be assigned based on either violations of prior written warnings or the seriousness of future behavior.
- E. In some instances corrective action may be applied without prior warnings having been issued to the Staff Member, depending on the nature and severity of the concern.
- F. Prior to imposing any formal corrective action of including Written Warning, Final Written Warning, Suspension Without Pay, Demotion or Termination, supervisors or managers must consult with the Human Resources Department for review and approval of the action.
- G. Where institutional issues, rather than departmental issues, are involved, the appropriate institutional representative may take responsibility for any corrective action to be taken.
- H. The Staff Member will be advised, in writing, of the corrective action being taken and the general information regarding the relevant appeal process.
Documentation of formal corrective actions will be entered into the personnel files.
- I. A Staff Member may be assigned a designation of "Not Eligible for Re-application" (NER) upon termination of employment for reasons consistent with the Egregious Behavior Examples under policy 5-111.

1. An NER designation prohibits a former Staff Member from re-applying or being hired for a minimum of five (5) years from the date of termination and/or designation of NER. After five (5) years the former Staff Member may petition for removal of NER designation by submitting a detailed request to the Vice President of Human Resources.
2. An NER designation prohibits a former employee from:
 - a. Becoming employed by the University, this includes but is not limited to University departments, divisions, affiliates, or entities.
 - b. Providing services to or on behalf of the University including but not limited to services provided as a consultant and/or contractor.
 - c. Participating in any Volunteer services or capacity.

IV. Procedures, Guidelines, Forms and other Related Resources

A. Procedures (reserved)

B. Guidelines

1. G5-111---Additional information regarding staff corrective action

C. Forms (reserved)

V. References

A. Policy 5-203, Staff Appeals

B. Rule 5-111C, Egregious Behavior Examples

C. Rule 5-111D, Removing Written Warnings

D. Policy 5-210, Complaints of Discrimination and Sexual Harassment

- E. Regents Policy R-841, Minimum Guidelines for Disciplinary Sanctions and Termination of Staff Personnel: <http://higheredutah.org/sbr/policy/pdf/R841.pdf>

VI. Contacts

The designated contact officials for this Policy are:

Policy Owner (primary contact person for questions and advice): Director of Employee Relations for Human Resources.

Policy Officer: Chief Human Resource Officer and the Sr. Vice President for Health Sciences.

- A. These officials are designated by the University President or delegee, with assistance of the Institutional Policy Committee, to have the following roles and authority, as provided in University Rule 1-001:
- B. *"A 'Policy Officer' will be assigned by the President for each University Policy, and will typically be someone at the executive level of the University (i.e., the President and his/her Cabinet Officers). The assigned Policy Officer is authorized to allow exceptions to the Policy in appropriate cases.... "*
- C. *"The Policy Officer will identify an 'Owner' for each Policy. The Policy Owner is an expert on the Policy topic who may respond to questions about, and provide interpretation of the Policy; and will typically be someone reporting to an executive level position (as defined above), but may be any other person to whom the President or a Vice President has delegated such authority for a specified area of University operations. The Owner has primary responsibility for maintaining the relevant portions of the Regulations Library.... [and] bears the responsibility for determining -requirements of particular Policies...." University Rule 1-001-III-B & E*

VII. History

Current Version: Revision 0

Presented for the Information of the Academic Senate: October 3, 2011

Presented for the Information of the Board of Trustees: October 11, 2011

Effective Date: October 11, 2011