Human Resources & Payroll Department – Procedures for Handling Investigations into Alleged Violations of University or Commonwealth Workplace Policy

I. Scope

This procedure applies to all George Mason University employees who are full-time and part-time benefitted Administrative Professional and Instructional/Research Faculty. This procedure does not apply to classified or wage employees.

II. Procedure Statement

The Human Resources & Payroll Department (“HR”) is responsible for conducting and/or overseeing personnel investigations into allegations of violations of University, or Commonwealth workplace policy. These procedures may be amended as necessary. Anyone who believes that they have information related to a possible violation of University or Commonwealth workplace policy, should follow the complaint process herein. No individual who participates in any way in a workplace investigation shall be subject to retaliation. Retaliation is “overt or covert acts of reprisal, interference, restraint, penalty, discrimination, intimidation, or harassment against an individual or group” who have made a complaint or participated in a workplace investigation because of the complaint or participation.

HR is not charged with administering or enforcing applicable federal and state laws and university policies related to discrimination, Title IX prohibited conduct, or ethics violations, nor does it investigate such complaints. The sole office responsible for investigating such complaints is Compliance, Diversity and Ethics (CDE).

III. Values Statement

Part of HR’s mission is to support a positive workplace culture that ensures that employees are treated fairly, equitably, and with respect. To that end, HR may undertake an investigation when allegations of violations of University or Commonwealth workplace

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1 https://universitypolicy.gmu.edu/
3 If the allegation(s) involve potential criminal behavior, the matter will be referred to University Police who will investigate the matter.
4 See DHRM Policy 2.35 – Civility in the Workplace.
policy are brought to its attention. During this investigation, HR will make every effort to support and encourage full participation from all individuals involved, including those against whom complaints are made.

HR Investigators are to act ethically and with integrity and should be free from any actual or reasonably perceived conflicts of interest that would prevent them from investigating an allegation. Therefore, matters will be reassigned to another Investigator (internal or external to the University) where there exists an actual or reasonably perceived conflict of interest.\(^5\)

IV. Complaint Procedure

If anyone has information related to a possible violation of University or Commonwealth workplace policy, they may report, without fear of retaliation, to Employee Relations (“ER”), a unit within HR responsible for investigating such allegations.

Employee Relations  
HR & Payroll  
Merten Hall, Suite 4100  
(703) 993-3878  
emrel@gmu.edu

The Complainant will meet with a member of the ER team to discuss their allegations. If the alleged conduct violates a University or Commonwealth workplace policy under the purview of HR, ER will assess whether the allegation is credible\(^6\). If the allegation is credible, ER\(^7\) will undertake an investigation.

V. Investigative Procedures

When ER determines that an investigation is warranted, it will notify in writing the employee who is alleged to have violated University or Commonwealth workplace policy. The written notice will contain a description of the allegation(s), a reference to the relevant policy, a statement on confidentiality, and a copy of these procedures which describe how the investigation is conducted. The employee’s supervisor\(^8\) will also be notified. If during the course of the investigation, additional credible allegations arise that are not encompassed in the original written notice, another written notice will be issued that will include the information listed above and the employee’s supervisor will be notified of the new

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\(^5\) Whether there exists an actual or reasonably perceived conflict of interest will be determined by the Director of Employee Relations. In the event the actual or perceived conflict of interest is with the Director of Employee Relations, the Assistant Vice President, HR Strategy and Talent Management will determine whether a conflict exists.

\(^6\) Assessment may include reviewing personnel records, reviewing information provided by the Complainant, and speaking with individuals described to have knowledge of the allegation(s).

\(^7\) There are occasions when ER will engage the services of a third party investigator. In those instances, the third party investigator will be bound to comply with these procedures. Their work will be subject to supervision and oversight by ER and/or HR personnel.

\(^8\) In cases where the employee is an instructional or research faculty member, the college administrator will also be copied on each notification issued to the faculty member’s supervisor.
allegations. Additionally, if during the course of an investigation it becomes apparent that there are credible allegations against another Administrative Professional or Instructional/Research Faculty member, that employee will receive a separate written notice that will contain a description of the allegation(s), a reference to the relevant policy, a statement on confidentiality, and a copy of these procedures which describe how the investigation is conducted. That employee’s supervisor will also be notified.

In some circumstances, a supervisor may decide to reallocate tasks or reassign temporarily the employee during the investigation. Alternatively, the employee may be placed on paid leave during the investigation. If the employee is a faculty member, and it is determined that a temporary relief of duties is appropriate, the provisions of Section 2.10.9 of the Faculty Handbook are applied.

Investigations may include interviewing witnesses, collecting evidence, and conducting research. Investigations also include interviewing the employee and reviewing any information, including documentation that they provide. The employee may also suggest potential witnesses for the Investigator to interview, but the final decision regarding which witnesses to interview shall be made by the Investigator based on relevance of the witness. While the employee is not required to participate in an investigation, it is strongly recommended that they do so. If an employee chooses not to participate, the investigation will continue without the benefit of their input.

At the end of the investigation, the Investigator will draft a written determination that will state (i) whether a violation of University or Commonwealth workplace policy occurred and (ii) the basis and justification for such determination. The Investigator’s supervisor will review their findings to ensure that they are supported by the Investigator’s records. After that review, the determination will become final. The final written determination will then be provided to the employee and their supervisor(s).

At any point during the investigative process, an employee may bring with them an individual of their choosing to any meeting they may have with the Investigator. This individual is not to be an active participant in the process. Rather, the selected individual will be allowed the opportunity to interact with the employee, provided that the interaction is not disruptive or disrespectful to others present. If the chosen individual is an attorney, the employee must notify the Investigator 72 hours ahead of the meeting.

Investigations will be conducted and concluded as promptly as possible. Many factors can affect the timeline for completing an investigation, including unavailability of witnesses or the complexity of the issues involved. Relevant parties may request a status update from the Investigator at any time. The Investigator(s) will respond in writing to such requests within two business days.

VI. Standard of Proof

9 In the event a third party investigator is used, the Director of Employee Relations will review the draft determination.
The Investigator’s findings of fact will be made using the “preponderance” standard. Under this objective standard, individuals are presumed not to have engaged in the alleged conduct unless a “preponderance of the information” supports a finding that the conduct occurred. This “preponderance” standard requires that the information supporting each finding be more convincing than the information offered in opposition to it.

VII. Appeal Process

Employees found to have violated University or Commonwealth workplace policy will be afforded an opportunity to file one comprehensive appeal after receiving a determination letter and prior to the issuance of any corrective action and/or sanction. A determination from an investigation may be appealed, in writing, within 10 business days from the date the determination letter is transmitted. The employee will submit their appeal and any supporting documentation and evidence, via email, to the Employee Relations Assistant (emprel@gmu.edu). The Employee Relations Assistant will confirm receipt of the appeal and attachments (if any), and forward the materials to the Appeals Coordinator of the Appeals Panel described below. The Employee Relations Assistant will notify the employee’s supervisor that they are in receipt of an appeal.

An appeal must be based only on the discovery of new information that was not previously available that could affect the outcome, an irregularity in the procedural process that could affect the outcome, or a misapplication of the standard of proof. Appellants should be as specific as possible in setting out a basis for appeal; general dissatisfaction with the outcome will not be sufficient.

Upon receipt of an appeal, the Appeals Coordinator\(^{10}\) will convene an Appeals Panel, randomly selected from a standing list of trained employees\(^{11}\). The Appeals Panel will consist of five members, one of whom the Appeals Panel will appoint to act as Chair. Three members of the Appeals Panel must be of the same employment classification as the appellant (Instructional/Research or Administrative Professional Faculty). None of the members are to be from the same college or administrative department as the Complainant or Appellant. The Appeals Panel will meet as soon as possible to thoroughly review the appeal and any other materials it deems relevant based on the appellant’s submission. Within 10 business days of concluding its review, the Chair will either:

1) Inform the VPHR that a majority of the Appeals Panel recommends that the Investigator’s determination should stand; or

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\(^{10}\) The Appeals Coordinator’s role is administrative in nature. The Appeals Coordinator receives the Appeal materials from the Employee Relations Assistant, convenes the Appeals Panel, and provides the Appeal materials to the Appeals Panel.

\(^{11}\) The standing list will consist of employees selected by the Chair of the Faculty Senate, the VPHR, and the Provost’s designee. The Chair of the Faculty Senate, VPHR, and the Provost’s designee will further define the processes related to the Appeals panel, including, but not limited to, duration on the standing list, adding or removing employees from the standing list, and the random selection of panelists.
2) Inform the Director of Employee Relations, copying the VPHR, that a majority of the Appeals Panel determined that the appellant has shown by a preponderance of the evidence that there is (1) new information that was not previously available that could affect the outcome, (2) an irregularity in the procedural process that could affect the outcome, and/or (3) a misapplication of the standard of proof. The Appeals Panel shall remand the matter for further investigation and provide the rationale for its decision.

The numerical vote of the panel must be included in its decision. If the Appeals Panel determines that the Investigator’s determination should stand, the decision is final and there is no further appeal. If the Appeals Panel remands the matter for further investigation, the Director of Employee Relations will re-open the investigation, focusing on the recommendations and justifications provided by the Appeals Panel. The Director of Employee Relations will then address the Appeals Panel’s basis for the remand decision in writing, and submit that information to the VPHR for their consideration, along with the appeal materials. Only one appeal to the Appeals Panel is permitted.

The VPHR will take into consideration all materials received in making a final decision. The VPHR may request additional information if such information is necessary in making their determination. The VPHR will, within 10 business days of receipt of the appeal materials, inform the employee and their supervisor of the outcome of the appeal. The VPHR’s decision is final and there is no further appeal.

If an employee does not file a timely appeal, or the appeal is unsuccessful, the matter will move to the corrective action and sanctions phase.

VIII. Corrective Action and Sanctions

If the investigation substantiates violation(s) of University or Commonwealth workplace policy, the employee’s supervisor or a University Official\(^{12}\) ("supervisor" or supervisors") will determine and issue appropriate corrective action and/or sanction in writing (unless the corrective action and/or sanction is a verbal warning), up to and including termination for an administrative/professional faculty member or a recommendation for termination for an instructional or research faculty member, in accordance with the guidance provided in Considerations When Contemplating Corrective Action/Sanction and the appropriate faculty handbook. Corrective action and/or sanction imposed on individuals found to have violated University or Commonwealth workplace policy shall be commensurate with the severity and/or frequency of the conduct, and shall be adequate and sufficient to prevent such conduct in the future.\(^{13}\) While the appropriate response to the violation of policy is determined by the employee’s supervisor, HR will provide recommendations as to the level of response it deems appropriate. The supervisor will submit a copy of any corrective action and/or sanction issued pursuant to these procedures to Employee Relations for retention in its files.

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\(^{12}\) In most instances, an employee’s direct supervisor will determine and issue correction action and/or sanctions. However, there may be times when someone other than the employee’s direct supervisor, or a University Official will make that determination.

\(^{13}\) Corrective actions and/or sanctions should include a clearly communicated duration.
A supervisor who issues corrective action and/or sanction is responsible for supporting the employee and monitoring the employee’s compliance towards meeting the requirements. To that end, supervisors should meet with the employee to provide periodic updates regarding the employee’s progress as well as inform the employee that the elements of the corrective action and/or sanction were fulfilled. The Office of Organizational Development and Learning\textsuperscript{14} and the Office of Employee Relations\textsuperscript{15} are resources within HR that are available to support the supervisor and the employee and to facilitate the supervisor working with the employee towards compliance with the corrective actions and sanctions.

IX. Confidentiality

HR takes allegations of violation(s) of University and Commonwealth workplace policy seriously and is committed to protecting the integrity of the investigation process including confidentiality and the rights afforded to all individuals under these procedures. Note that all those have privacy interests. Therefore, outside the scope of the investigation, all parties are encouraged not to publicize or divulge the nature of the proceedings or the identity of those involved.

X. Protection from Bad Faith Complaints

It is the responsibility of the University to balance the rights of all parties. Therefore, if the University’s investigation reveals that any complaint is malicious or knowingly false, such allegations will be dismissed and the person who filed the complaint may be subject to disciplinary action according to the applicable policies and employee handbooks.

XI. Effective Date

These procedures will become effective upon the date of approval by the Senior Vice President for Administration and Finance and the Provost and Executive Vice President. The applicable substantive policy in effect at the time of the alleged conduct shall be used to determine whether the alleged conduct constitutes a violation of the policy. These investigative procedures shall apply to the investigation of all complaints made after the effective date of these procedures (until superseded by a future revision of these procedures), regardless of when the conduct occurred.

\textsuperscript{14} Organizational Development and Learning can be reached at 703-993-6764.

\textsuperscript{15} Employee Relations can be reached at 703-993-3878.