

Prohibited Discrimination and Retaliation Policy Updates & Resource Training

Nicole Commissiong, AVP and Chief, Civil Rights
Compliance and Investigations & Title IX Coordinator



UNIVERSITY OF
OREGON

Human
Resources

In this training:

- Relevant State and Federal Civil Rights Laws
- New: Prohibited Discrimination and Retaliation Policy
- Protected Statuses Under UO Policy
- Reporting Statuses & Obligations Under UO Policy
- University Procedures for Resolving Complaints
- Responding to Disclosures
- Support Resources



Does the University Enforce Civil Rights Laws?

The University is responsible for ensuring compliance with state and federal civil rights laws. However, the University investigates allegations that its Prohibited Discrimination and Retaliation Policy was violated. The University may find a policy violation even where a civil rights law has not been violated.



What Are the Relevant State Laws?

- ORS 659A.020 to 659A.033: Prohibit discrimination in employment on the basis of race, color, religion, sex, sexual orientation, national origin, marital status, age or disability.
- ORS 659.850: Prohibits discrimination in higher education on the basis of race, color, religion, sex, sexual orientation, national origin, marital status, age or disability.



What Are the Relevant Federal Laws?

- Title VI is a federal civil rights statute that prohibits race, color and national origin discrimination in any educational program or activity that receives federal financial assistance.
- Title VII is a federal civil rights statute that prohibits discrimination on the basis of race, color, religion, sex, and national origin in employment.
- Title IX is a federal civil rights law that prohibits discrimination on the basis of sex in any educational program or activity that receives federal financial assistance.
- Americans with Disabilities Act prohibits discrimination against individuals with disabilities in all areas of public life, including work and education.



Prohibited Discrimination & Retaliation Policy

- New policy, effective August 15, 2021
- Prohibits discrimination, harassment, and retaliation in employment, admission, and all university programs/activities
- Protected Characteristics: race, color, religion, national origin, sex, sexual orientation, gender identity, gender expression, pregnancy (including pregnancy-related conditions), age, physical or mental disability, genetic information (including family medical history), ancestry, familial status, citizenship, service in the uniformed services (as defined in federal and state law), veteran status, expunged juvenile record, and/or the use of leave protected by state or federal law.



Prohibited Discrimination & Retaliation Policy

- Defines discrimination, harassment, sexual misconduct, sexual harassment, stalking, dating violence, domestic violence, and sexual exploitation.
- Requires the University to stop the unwelcome behavior and prevent its recurrence.
- Provides for supportive measures for employees and students who have experienced discrimination and/or harassment
- Prohibits retaliation against any person who participates in a University process. Retaliation is punishable even where underlying conduct cannot be substantiated.



Discrimination

- **Disparate Treatment:** Treating someone less favorably than another person *based on* their sex/gender, race, or other protected characteristic.
- **Disparate Impact:** A policy or practice that is neutral on its face that has an impact on one group that another group of a different sex/gender, race, etc. does not experience.



Harassment

- **Hostile environment:** Conduct is unwelcome and sufficiently severe or pervasive that it interferes with work, participation in any university program or activity and/or academic experience because it creates an intimidating, hostile, or offensive work or academic environment. Can be based on any protected characteristic (race, age, sex, etc.)
- **Quid Pro Quo:** Sexual favor in exchange for something of value.
- **Sexual assault,** dating violence, domestic violence, stalking



Examples of Harassment

- The use of words, epithets or symbols that are historically demeaning or oppressive.
- Showing comic strips, pictures or other images that are degrading or offensive.
- Making jokes, insinuations, humiliating comments or intolerant remarks.
- Making assumptions about a person's abilities.
- Criticizing another person's differences including, but not limited to, their accent, clothing, hairstyle, customs, beliefs, or abilities.
- Assuming a person lacks the ability to accomplish a task.
- Using stereotypes to make decisions about how to treat someone.
- Taking intimate images (video and/or photographs) or sharing another person's intimate images without that person's consent.



Examples of Harassment

- Finding excuses to not work with the someone, avoiding someone, or ignoring a person's questions or concerns while being responsive to the same questions or concerns when expressed by a member of a different group.
- Interfering with or denying a person's opportunity to participate in a religious observance, making fun of or hiding/removing cultural or religious symbols.

**The accused person need not have intended to cause harm for the policy to have been violated.*

***Conduct must be severe, pervasive, objectively offensive. Whether conduct constitutes harassment is always a fact-specific inquiry.*



UNIVERSITY OF
OREGON

Human
Resources

Navigating Unwelcome Conduct

- Not all unwelcome conduct violates a University policy:
 - One unwelcome comment is unlikely to be a policy violation.
 - However, tell the person the conduct is unwelcome. Supervisors should address conduct when it is observed/reported to them.
- A single threat and any unwelcome touching should be reported to OICRC. Report emergencies to UOPD.
- Confidential Support is available through the Employee Assistance Program, the Ombuds Office, Dean of Students.
- Help is available. Contact OICRC or ELR for assistance.



Procedures for Resolving Complaints

- OICRC investigates allegations that may constitute a policy violation. Procedures for student and employee investigations are available on the OICRC website.
- Anyone going through the investigative process may request supportive measures, designed to help them continue with their education and/or support them at work.
- Where there is serious misconduct, the University may have to investigate over the objection of the person alleging harm. Occurs where there is significant health/safety concern.
- Respondents are presumed not responsible. But if found responsible, sanctions may be imposed, up to termination or suspension/expulsion.



Employee Reporting Status

Designated Reporters

- Must share information disclosed to them with the Office of Investigations and Civil Rights Compliance (OICRC).
- List of relevant job titles on OICRC website (e.g., President, Provost, Board Trustees, Deans, Department Heads, Directors, Resident Assistants).
- Supervisors: those with supervisory authority over other employees (exception if only supervise student employees).
- If you teach, include your reporting status in course syllabi.



Employee Reporting Status

Assisting Employees

- Replacing “Student-Directed Employees” in prior policy.
- All employees (other than designated reporters and supervisors) may keep disclosures from both students and employees private. This represents a change for those who have been on campus for the past few years.
- Important to explicitly ask the person making the disclosure if they want to report to OICRC.
- If you teach, include your reporting status in course syllabi.



Employee Reporting Status

Confidential Employees

- Confidential Advocates in the Dean of Students Office
- Respondent Resource Coordinator, also in DOS
- All Counseling and Health Center employees, as well as other healthcare employees on campus
- Employees with other legally protected privilege, (e.g., attorney in Student Survivor Legal Services Office) -- only when acting in confidential role.
- If you teach, include your reporting status in course syllabi and clarify not confidential in teaching role.



Employee Reporting Obligations

Mandatory Child Abuse Reporting

- Employees of higher education institutions in Oregon are mandatory child abuse reporters, even when not at work, where there is reasonable cause to believe child abuse is occurring or has occurred.
- Report to Department of Human Services or law enforcement, including UOPD.
- A child is any person under the age of 18:
 - Ask a person who appears young how old they are.
 - Obligation extends to students and non-students.
 - Extends where a person over 18 reports past abuse & there are minors currently in the home.



Other Employee Responsibilities

Conflicts of Interest and Abuses of Power: Sexual, Physically Intimate, or Romantic Relationships with Students Policy

All employees must comply with the Conflicts of Interest and Abuses of Power Policy which prohibits intimate relationships between employees and students where employees have power over a student, i.e., where there is or may be supervisory or evaluative relationship with a student.

Campus Security Authorities

CSAs are employees who are in a professional position that makes it likely that students or others could report crimes to them. If you are a CSA, you will receive notice of your obligations on an annual basis.



Responding to Disclosures

- Acknowledge. Thank the person for reaching out and inform them if you have a reporting obligation.
- Use non-judgmental language. It is important that you not blame the person making disclosure for what happened.
- Care, connect, consult. let the person know they will be supported.
 - Employees may contact the EAP or Ombuds
 - Student Sexual Harassment/Assault Disclosures: connect students with a Dean of Students Confidential Advocate, 541.346.3216



Support Resources

- **Confidential:**

- Support for Student Survivors: <https://safe.uoregon.edu/>
- Ombuds Office : <https://ombuds.uoregon.edu/>
- Employee Assistance Program, <https://hr.uoregon.edu/er/general-information/employee-assistance-program>

- **Non-Confidential:**

- Dean of Students Office: <https://dos.uoregon.edu/help>
- Office of Investigations and Civil Rights Compliance: <https://investigations.uoregon.edu/>
- Employee & Labor Relations: <https://hr.uoregon.edu/er>

- **For a more complete list of resources (confidential & non-confidential for employees & students):** <https://investigations.uoregon.edu/how-get-support/>

