

[Proposed amendments as of 5/17/2016, on top of the amended version from the 5/11/2016 Senate meeting.](#)

[Responsible Employee Reporting of Prohibited Discrimination, Harassment, and Sexual Assault](#)

Number:

US15/16-23

Date of Notice:

Wed, 04/20/2016

Legislation, Resolution, or Policy Adoption:

Policy Proposal

Current Status:

Notice Given

Motion:

Section I

1.1 WHEREAS, sexual harassment and other forms of prohibited discrimination are prohibited by law and the University has a duty to protect its students and employees from discriminatory harassment, and most particularly from sexual assault; and

1.2 WHEREAS, the University [wants to ensure that students and employees who might be considering discussing instances of prohibited discrimination with university employees understand when those employees will be required to report the details of those discussions, and when they may keep them confidential;](#)

Section II

2.1 THEREFORE, the University Senate [Responsible Employee Reporting of Prohibited Discrimination, Harassment, and Sexual Assault](#), This policy repeals university policies 580-15-005 through 580-15-010 and 571-03-L(1) through L(4) [and makes permanent the temporary changes to the remaining 571-003 sections enacted by the President in February of 2016.](#)

Financial Impact:

TBD

Sponsor:

Committee on Sexual and Gender-Based Violence (CSGBV)

Notes:

[University Policies 580-15-005 through 580-15-010 can be found at](http://policies.uoregon.edu/discrimination-0)

<http://policies.uoregon.edu/discrimination-0>

[Policy 571-003 with changes is at](https://dl.dropboxusercontent.com/u/971644/uomatters/sexassault/UO%20Policy%20571%20003%20emp%20Redline%20Section%20L.pdf)

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I. Policy Statement

The university is committed to equal access to programs, course offerings, facilities, admission and employment for all of its: (1) employees; (2) students; and (3) campus community members. It is the policy of the university to maintain an environment free of prohibited harassment and discrimination against any person because of:

<u>age</u>	<u>veteran status</u>
<u>race</u>	<u>sex</u>
<u>color</u>	<u>sexual orientation</u>
<u>ancestry</u>	<u>gender identity</u>
<u>national or ethnic origin</u>	<u>perceived gender</u>
<u>religion</u>	<u>marital or family status</u>
<u>gender</u>	<u>pregnancy-related conditions</u>
<u>disability</u>	<u>genetic information</u>
<u>service in the uniformed services (as defined in state and federal law)</u>	
<u>the use of leave protected by state or federal law</u>	

Discriminatory harassment, including sexual harassment, regardless of the relative power of the harasser, is disruptive of workplace and campus life, and denies its subject equal opportunity as a student, employee or campus community member. Prohibited discrimination (as defined in state and federal law), discriminatory harassment, including sexual harassment and retaliation impede the realization of the university's educational mission and shall not be tolerated at the University of Oregon.

II. Definitions

- A. **Prohibited Discrimination** is defined as any act that either in form or operation, and whether intended or unintended, unreasonably discriminates among individuals on the basis of age, race, color, ancestry, national or ethnic origin, religion, service in the uniformed services (as defined in state and federal law), veteran status, sex, sexual orientation, marital or family status, pregnancy, pregnancy-related conditions, disability, gender, perceived gender, gender identity, genetic information or the use of leave protected by state or federal law. "Unintentional discrimination" is a concept applicable only to situations where a policy, requirement, or regularized practice, although neutral on its face, can be shown to have disparately impacted members of a protected class. The concept is inapplicable to sexual or other forms of harassment which, by definition, result from volitional actions.
- B. **Discriminatory Harassment** is defined as any conduct that either in form or operation unreasonably discriminates among individuals on the basis of age, race, color, ancestry, national or ethnic origin, religion, service in the uniformed services (as defined in state and federal law), veteran status, sex, sexual orientation, marital or family status, pregnancy, pregnancy-related conditions, physical or mental disability, gender, perceived gender, gender identity, genetic information or the use of leave protected by state or federal law and that is sufficiently severe or pervasive that it interferes with work or participation in any university program or activity, including academic activities because it creates an intimidating, hostile, or degrading working or university environment for the individual who is the subject of such conduct, and where the conduct would have such an effect on a reasonable person who is similarly situated.

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C. **Sexual Harassment** is a type of sex discrimination which is defined as any sexual advance, any request for sexual favors, or other verbal or physical conduct of a sexual nature when:

1. Submission to such advances, requests, or conduct is made either explicitly or implicitly a term or condition of an individual's employment, academic experience or participation in any university program or activity;
2. Submission to or rejection of such advances, requests, or conduct by an individual is used as a basis or condition for employment, participation in any university program or activity or academic experience; or
3. Such 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 working, university or academic environment for the individual who is the subject of such conduct, and where the conduct would have such an effect on a reasonable person who is similarly situated.

Sexual harassment includes sex and gender-based stalking, sex and gender-based harassment and bullying, dating violence, and domestic violence, defined as follows:

- i. *Sex and gender based stalking* occurs when, based on a person's sex or gender: (1) a person knowingly alarms or coerces another person or a member of that person's immediate family or household by engaging in repeated and unwanted contact with the other person; (2) it is objectively reasonable for a person in the complainant's situation to have been alarmed or coerced by the contact; and (3) the repeated and unwanted contact causes the complainant reasonable apprehension regarding the personal safety of the complainant or a member of the complainant's immediate family or household.
- ii. *Sex and gender-based harassment and bullying* means any act that: (1) Substantially interferes with work or academic performance; (2) Has the effect of: a. Physically harming a student or employee or damaging their property; b. Knowingly placing a person in reasonable fear of physical harm to the person or damages the person's property; or c. Creating a hostile environment, including interfering with the psychological well-being of a person; and (3) May be based on, but not be limited to, the sex, sexual orientation, or gender identity of the person. Gender-based harassment and bullying includes cyberbullying, which means the use of any electronic communication device to perform gender-based harassment or bullying.
- iii. *Dating Violence* means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant. The existence of such a relationship shall be determined based on the complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of the interaction between the persons involved in the relationship. For the purpose of this definition: (1) Dating violence includes, but is not limited to, causing or attempting to cause sexual or physical abuse, placing~~placing another in fear of imminent sexual or physical abuse or~~

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the threat of such abuse; and (2) Dating violence does not include acts covered under the definition of Domestic Violence.

- iv. **Domestic Violence** means violence between family or household members. Family or household members means: Spouses or former spouses; adults related by blood, marriage or adoption; persons cohabitating or who have cohabitated; persons in a past or present sexually intimate relationship; unmarried parents of a child. Abuse means: The occurrence of one or more of the following acts within a domestic or dating relationship: a. Attempting to cause or intentionally, knowingly or recklessly causing bodily injury. b. Intentionally, knowingly or recklessly placing another in fear of imminent bodily injury. c. Causing another to engage in involuntary sexual relations by force or threat of force.

D. **Responsible Employee:** University employees are responsible employees, with the following exceptions:

1. Confidential employees;
2. Student Employees, as that term is defined by this policy; and
3. Exempt Employees.

E. **Retaliation:** Retaliation means an adverse action taken against a Student, Employee or Campus Community Member because the individual engaged in a protected activity. Adverse action means any action that is reasonably likely to deter a person from engaging in a protected activity. Adverse action does not include petty slights or trivial annoyances. Protected activity means: (1) fulfilling the responsible employee obligations described in this policy; (2) filing a good faith Prohibited Discrimination (including harassment and sexual harassment) complaint with the university or with an outside agency; (3) participating as a witness, advisor, etc. in the university's resolution process or an outside agency's resolution process; or (4) participating in the university's reasonable accommodation processes.

F. **Student Employee:** Student Employee means an enrolled student employed by the university whose employment is contingent on their student status. For purposes of this policy, the term Student Employee does not include Residential Advisors and graduate students with GTF appointments or other student employees who supervise two or more employees. Although student employees are not required by university policy to report, a student employee's supervisor may set expectations for a position that include reporting obligations. Further, student employees are encouraged to report as outlined below.

G. **Confidential Employee:** The following employees are confidential employees, meaning that in most instances, they will not share information disclosed to them with the university at large:

1. Health care professionals working at the University Counseling and Testing Center (available to students);
2. Health care professionals working at the University Health Center (available to students);
3. Office of Crisis Intervention and Sexual Violence Support Services employees (available to students); and

4. The university's Ombudsperson (available to students and employees).

H. **Credible Evidence:** Credible Evidence is evidence of the kind that prudent people would rely on in making personal or business decisions, which is not obtained: (1) during public awareness events (For example, "Take Back the Night," and "survivor speak outs"); or (2) as part of an Institutional Review Board-approved human subjects research protocol focused on Prohibited Discrimination.

Please note that credible evidence *excludes* information obtained during a conversation that is otherwise privileged or confidential under state or federal law. [Examples of this exclusion include, but are not limited to:](#) attorneys, [who are not required to disclose information covered by the attorney client privilege;](#) union stewards [and union representatives, who are not required to disclose information obtained during a conversation with a member regarding workplace issues \(including grievances\);](#) and [licensed mental health professionals \(counselors, psychologists, etc. \), who are not required to disclose information covered by an applicable privilege.](#)

I. **Student:** For purposes of this policy, the term Student has the meaning set forth in the Student Conduct Code.

J. **Employee:** A person in an employment relationship with the university.

K. **Campus Community Member:** Campus Community Member means a person [participating in a university-sponsored program or activity](#), attending or wanting to attend an event on university owned or leased property, an independent contractor or vendor, a volunteer, a person applying for admissions, a person applying for employment, or a campus visitor [or a person living on university-owned property](#). The term Campus Community Member excludes Employees and Students.

L. **Exempt Employees:** Exempt employees are those employees who are certified as such by the Title IX coordinator and who: (1) pass annual training requirements approved by the Title IX coordinator; (2) provide students who they interact with a notice approved by the Title IX coordinator relating to their status as an exempt employee and their privacy practices. The Title IX coordinator may decline to certify as exempt those employees whose duties or other reporting obligations make exemption inappropriate due to their role as supervisors or others deemed campus security authorities or individuals with a role in investigation or responding to incidents of sexual misconduct.

Exempt employees are not required to report instances of prohibited discrimination relating to students; however, exempt employees are encouraged to report all instances of prohibited discrimination in the manner described in this policy. If a student shares information regarding prohibited discrimination with an exempt employee, the employee is required to provide that individual with information regarding available resources, reporting options, including confidential reporting options, the university's complaint process and the university's policy regarding retaliation. Such information will be provided to exempt employees during their annual training. Exempt employees are also required to consult confidentially with the Crisis Intervention and Sexual Violence Support Services Program after receiving a report. Exempt

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employees who fail to comply with these requirements may be subject to discipline up to and including a letter for reprimand.

III. Responsible Employees Reporting Obligations

Responsible Employees who receive Credible Evidence of Prohibited Discrimination, Harassment or Sexual Harassment [involving an Employee, Student or Campus Community Member](#) are required to promptly report that information as follows:

- A. If the Credible Evidence relates to Sex Discrimination of a Student, Responsible Employees should report any information received to the Title IX Coordinator or to the Office of Crisis Intervention and Sexual Violence Support Services.
- B. In all other instances, Responsible Employees should report any information received to the Office of Affirmative Action and Equal Opportunity (AAEO).

[Employees should be aware that AAEO is tasked with ensuring compliance with this policy and state and federal law. Therefore, while AAEO will work with employees, students and campus community members to ensure that they understand their complaint options, are protected from retaliation and are provided with interim measures as appropriate, AAEO employees are not advocates for individuals participating in the process.](#)

IV. Confidential Employees

Students and Employees have the option to share their experience with a Confidential Employee. However, it is important to understand that in most instances, Confidential Employees will not report the underlying actions to the university at large, which means that the university will not take action to stop the discrimination or harassment, remedy its effects or prevent future instances of discrimination and harassment. Further, Students and Employees who report to Confidential employees always retain the choice to make a complaint, as outlined below. Students, Employees and Campus Community Members with questions regarding the university's processes are encouraged to contact the Title IX Coordinator or AAEO. For further information regarding Confidential Employees' privacy practices, please visit the website referenced below.

[We recognize that employees who experience Prohibited Discrimination, Harassment or Sexual Harassment within departments, institutes, or programs face unique obstacles. Rather than reporting to other employees who are Responsible Employees, and who may have conflicts of interest based on existing relationships within those units, we encourage employees experiencing Prohibited Discrimination, Harassment or Sexual Harassment to utilize the confidential resources available to them in order to explore forms of support and protection and to fully understand their options relating to filing a complaint.](#)

Note: Information reported by Responsible Employees to the Office of Crisis Intervention and Sexual Violence Support Services will be passed on to the Title IX Coordinator.

V. Prohibited Discrimination Complaints

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Students, Employees and Campus Community Members who have been subject to Prohibited Discrimination, Harassment, Sexual Harassment or Retaliation are encouraged to file complaints with the university as set forth below. [Individuals may also exercise applicable grievance rights, which are referenced below.](#) Complaints should generally be filed within 365 days of the date the person knew or should have known of the underlying conduct.

- A. **Student complaints relating to Sex Discrimination or Retaliation:** Students may file a complaint relating to Sex Discrimination, including Sexual Harassment, or Retaliation relating to Sex Discrimination or Sexual Harassment with the Title IX Coordinator or AAEO. Complaints can be made by e-mailing, calling or visiting any one of these two offices. Students may also discuss their options with a Confidential employee.
- B. **All other complaints (including Employee and Campus Community Member complaints):** All other complaints of Prohibited Discrimination including Harassment, Sexual harassment or Retaliation, may be filed with AAEO. Complaints may be made by e-mailing, calling or visiting AAEO's office. Employees and students [are encouraged to discuss their options for filing complaints](#) with a Confidential Employee.

VI. University's Response

The university will take prompt and equitable corrective measures to stop Prohibited Discrimination or Harassment, to remedy the effects of Prohibited Discrimination or Harassment, and to prevent future instances of Prohibited Discrimination, Harassment and Retaliation. If the university initiates an investigation, it will be impartial. In responding to incidents of Prohibited Discrimination, the university will follow state and federal law, university policies and any applicable collective bargaining agreements. Employees and Students may also choose to exercise applicable grievances rights. A complaining party's options will be explained to that person by AAEO or the Title IX Coordinator, as appropriate.

- A. **Against a Student:** If the underlying incident involves Sex Discrimination, Sexual Harassment or Retaliation arising out of an act of Sex Discrimination against a Student, meaning that the Student is the alleged bad actor, the university will follow the process outlined in the sexual misconduct standard operating procedures, referenced below. If it relates to other forms of Prohibited Discrimination, Harassment or Retaliation against a Student, the University will follow the process outlined in the Student Conduct Code.
- B. **Against an Employee or Campus Community Member:** If the underlying action involves Prohibited Discrimination, Harassment, Sexual Harassment or Retaliation against an Employee or Campus Community Member, meaning that the Employee or Campus Community Member is the alleged bad actor, the university will generally follow: (1) The employee discrimination complaint process for complaints made by Employees and Campus Community Members; or (2) The Student discrimination complaint process for complaints made by Students. Both of these processes are referenced below.

VII. Interim Measures

Regardless of whether an investigation or university process is initiated, the university will provide interim measures as appropriate, which for Students may include academic accommodations, housing accommodations, workplace or transportation accommodations, reasonable protective measures,

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health and counseling services, financial aid, visa and immigration assistance, safety planning, legal support options and information regarding other on and off-campus resources and for employees may include change of employment conditions, information and assistance regarding employee resources and other reasonable measures. In deciding which interim measures to implement, the university will attempt to mitigate the impact on affected parties, while also balancing the rights of the alleged wrongdoer.

VIII. Confidentiality

To the extent possible, the university will protect the confidentiality of Responsible Employees, complainants, witnesses and accused parties and, if information is disclosed, will disclose it on a need to know basis. However, it is important to understand that: (1) in order to investigate the matter and provide the other party with notice of the underlying allegations and an opportunity to respond, the university may need to reveal the identity of the complaining party, the Responsible Employee and relevant witnesses; and (2) Employees and Students have rights under federal or state law or pursuant to applicable bargaining agreements to review and inspect records relating to an investigation. That being said, for purposes of public records requests and to the extent allowed by law, the university will treat all materials submitted during an investigation relating to a report or a complaint of prohibited discrimination as submitted in confidence, unless otherwise noted.

IX. Free Expression and Academic Freedom

In all its actions, the university will respect the rights of freedom of expression and academic expression, as set forth in university policies and applicable bargaining agreements.

X. External Complaints

The university encourages all individuals with a pertinent complaint to follow the process in this policy. However, individuals may always choose to make a discrimination complaint directly with outside agencies [or law enforcement](#), including, but not limited to, the Office for Civil Rights of the U.S. Department of Education and the U.S. Equal Employment Opportunity Commission, the Educational Opportunities Section of the Civil Rights Division of the U.S. Department of Justice. Contact information for these agencies can be found on AAEO's website.

XI. Corrective Action

If the university finds that an Employee, Student or Campus Community Member has engaged in Prohibited Discrimination, it will take immediate and appropriate corrective action. This means that Employees who have engaged in Prohibited Discrimination or Retaliation may face discipline up to and including termination. Students who have engaged in Prohibited discrimination may face sanctions up to and including suspension or expulsion. Individuals who make bad-faith complaints may be subject to disciplinary action, student conduct code violations or other appropriate corrective action. Responsible employees who fail to report as required by this policy may be subject to discipline, which may include a letter of reprimand or other appropriate corrective measures. [Campus Community Members who violate this policy may be trespassed from campus and may otherwise lose their right to use university property and/or to participate in university-sponsored programs and activities.](#)

XII. Contact Information

[insert hyperlinks to the contact info pages for all offices listed in this policy and insert appropriate references.]

Notes:

This policy repeals university policies 580-15-005 through 580-15-010 and 571-03-L(1) through L(4) and makes permanent the temporary changes to the remaining 571-003 sections enacted by the President in February of 2016.

University Policies 580-15-005 through 580-15-010 can be found at <http://policies.uoregon.edu/discrimination-0>

Policy 571-003 with changes is at

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