

University proposal 5-1-20

Article __ NON-DISCRIMINATION, HARASSMENT AND ABUSE OR INTIMIDATION

Section 1. Prohibition of Discrimination, Harassment and Abusive or Intimidating Behavior

- A. Harvard University provides equal opportunity in employment for all qualified persons and shall not discriminate against any SW on the basis of race, color, religion, creed, sex, sexual orientation, , marital status, parental status, pregnancy and pregnancy-related condition, gender identity, genetic information, national origin, ancestry, age, veteran status, military service, physical or mental disability, political beliefs, union activity or membership , or membership in other protected status under Massachusetts, federal or local law, or any University Policy.

The University shall not tolerate abusive or intimidating behavior by individuals who hold supervisory authority over SWs.

Section 2. Definitions of Sexual and Gender-Based Harassment and Abusive or Intimidating Behavior

A. Sexual and Gender-Based Harassment

Consistent with the University's Policy on Sexual and Gender-Based Harassment for students, faculty, staff and other Harvard appointees, Harvard University is committed to maintaining a safe and healthy educational and work environment in which no member of the University community is, on the basis of sex, sexual orientation, or gender identity, excluded from participation in, denied the benefits of, or subjected to discrimination in any University program or activity. Gender-based and sexual harassment, including sexual violence, are forms of sex discrimination in that they deny or limit an individual's ability to participate in or benefit from University programs or activities.

1. **Sexual harassment** is unwelcome conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, graphic, or physical conduct of a sexual nature, when: (1) submission to, or rejection of, such conduct is made either explicitly or implicitly a condition of an individual's employment or academic standing or is used as the basis for employment decisions or for academic evaluation, grades, or advancement (quid pro quo); or (2) such conduct interferes with or limits a person's ability to participate in, or benefit from, the University's education or work programs or activities (hostile environment). A hostile environment can be created by persistent or pervasive conduct or by a single severe episode.

Quid pro quo sexual harassment can occur whether a person resists and suffers the threatened harm, or the person submits and avoids the threatened harm. Both situations could constitute discrimination on the basis of sex.

2. **Gender-based harassment** is verbal, nonverbal, graphic, or physical aggression, intimidation, or hostile conduct based on sex, sex-stereotyping, sexual orientation or gender identity, but not involving conduct of a sexual nature, when such conduct is sufficiently severe, persistent, or pervasive that it interferes with or limits a person's ability to participate in or benefit from the University's education or work programs or activities. For example, persistent disparagement of a person based on a perceived lack of stereotypical masculinity or femininity or exclusion from an activity based on sexual orientation or gender identity also may violate this Policy.

- B. **Abusive or intimidating behavior (power-based harassment)** by individuals who hold supervisory authority over SWs, when such conduct interferes with or limits a person's ability to participate in, or benefit from their employment at the University is prohibited.

It is the intent of the University to establish University-wide policies and procedures to deal with abusive behavior and to form a Working Group to define such behavior in more detail and establish policies and procedures to address such misconduct and the handling of complaints over such misconduct.

Section 3. Sexual and Gender-Based Harassment Training.

- A. It is the policy of the University to provide educational, preventative and training programs regarding sexual or gender-based harassment; to encourage reporting of incidents; to prevent incidents of sexual and gender-based harassment from denying or limiting an individual's ability to participate in or benefit from the University's programs or activities; to make available timely services for those who have been affected by discrimination; and to provide prompt and equitable methods of investigation and resolution to stop discrimination, remedy any harm, and prevent its recurrence.
- B. Consistent with current policy, all faculty, staff and students are required to take on-line training in sexual and gender-based harassment as determined by the University. The content and delivery of the training is reserved to and determined by the University. However, the Union is free at any time to offer suggestions on how such training can be improved.

Section 4. Right to notice and representation

- A. SWs are free to have a Union representative accompany them in preliminary discussions about possible incidents of harassment and discrimination if they so choose.
- B. SWs have the right to be accompanied by a Union representative at any and all steps of the formal complaint procedures regarding any complaints of any type of alleged

discrimination or harassment under Section 1 of this Article.

C. The University shall notify any SW complainant in a University complaint procedure that the Office of Dispute Resolution (or any similar University office that might conduct investigations) has an investigatory role and, as such, does not represent the SW.

D. The University shall also provide any SW complainant in a University Complaint procedure with a letter from the Union, incorporated herein as Appendix __, outlining the various avenues of recourse, right to Union representation and contact information for the union. [Union draft letter to be reviewed by University.]

E. The University will report to the Union, once a year, summaries of violations of the non-discrimination and harassment policy involving SWs, the department or the school of the complainant and the respondent, and the academic year in which the report was made.

F. SWs who believe they may have experienced any form of discrimination or harassment in employment under this Article, or have been subject to abusive or intimidating behavior that does not violate a discrimination policy, must process their complaints with the internal investigation and complaint procedures developed by the University or the individual schools. Such claims shall not be processed under Article ---, Grievance and Arbitration.

G. Under no circumstances should a SW in any of the Schools of the University be pressured by Title IX Coordinators or staff or any other University officials to accept informal resolution of their complaint or interim measures, in place of filing a formal complaint. SWs are free to file a formal complaint at any time if they so choose.

H. A SW also may contact the US Department of Education's Office for Civil Rights (OCR) or any state or federal agency that has jurisdiction over claims of discrimination.

Section 5 Internal University Processes

A. Sexual and Gender-Based Harassment

1. Complaints by SWs regarding sexual and gender-based harassment in are processed in accordance with the University's Sexual and Gender-Based Harassment Policy dated February 10, 2017 and related procedures, which may be amended from time to time by the University. That policy also provides definitions for terms such as Sexual Harassment, Unwelcome Conduct and Gender-Based Harassment.
2. The University encourages any SW to contact one of the School or Unit Title IX Coordinators, or the University Title IX Office or ODR staff about any incidents of possible sexual or gender-based harassment and to learn about the options that are available to the SW if they wish to pursue that matter. Members of the bargaining unit are also free to have a Union representative accompany them in such discussions if they so choose.

3. SWs may file formal complaints or seek informal resolution of violations of the University's Sexual and Gender-Based Harassment Policy. There is no time limit for the filing of such a complaint under University policies or procedures. However, SWs are encouraged to file complaints as soon as reasonably possible.
4. Both the respondent and the complainant may appeal any final decision of the Investigative Team to the Title IX Officer or designee who will in turn address the appeal to a standing committee of faculty and administrators. All members of the standing committee receive training from the Director of the Office of Dispute Resolution or designee, including training on the nature of sexual or gender-based harassment and all relevant Title IX policies and procedures as well as the appeals process.

Impartial and unbiased panels of three members shall be drawn in each case from the standing committee.

Potential appeals panel members are provided with the names and affiliations of the individuals in the appeal and are asked to review to determine whether they have a potential conflict of interest. If so, they are removed from consideration for the appeals panel, and another member of the standing committee is selected for consideration. If there are any questions regarding conflicts of interest, the Office of General Counsel is engaged to help in a determination.

Both the complainant and respondent will be notified as to who will sit on the appeals panel. If a complainant or respondent believes that a particular member of the proposed appeals panel has a conflict of interest and cannot fairly sit upon the panel, such objection should be raised with the Title IX Officer or designee and such objection will be considered in good faith. If the proposed panel member is removed, another member of the standing committee will be selected in their place.

Grounds for appeal shall be

1. A procedural error occurred, which may change the outcome of the decision; or
2. The appellant has substantive and relevant new information that was not available at the time of the investigation and that may change the outcome of the decision.

The decision of the Appeals Panel shall be final decision.

B. Other forms of discrimination and abusive or intimidating behavior.

1. Complaints by SWs regarding other forms of discrimination in employment besides sexual and gender-based harassment should be directed to the Dean of Students of each School or their designee and will be investigated in accordance with any School policies and procedures.

2. Complaints by SWs regarding other forms of abusive or intimidating behavior in employment should be directed to the Dean of Students or their designee and will be investigated in accordance with any School policies and procedures.
- C. Nothing in this Article shall preclude an individual School from establishing or following local procedures crafted to address sexual and gender-based harassment, discrimination and abusive or intimidating behavior.

D Interim measures. During the processing of complaints of sexual or gender-based harassment, the University shall promptly provide, as appropriate, interim measures to individuals involved in a formal complaint or informal report. Possible interim measures may include, but not be limited to: no-contact orders; change to a different workstation or schedule for the SW; leave time; suspension of respondent without loss of pay while investigating the complaint; change of supervisor, unit, department, or position appropriate for the SW, provided that the change is voluntary and equitable; provision for medical services; provision for escort services. None of these measures shall result in loss of pay for the complainant, or for the respondent (if the respondent is a SW), except if a complainant or respondent chooses to take voluntary leave of absence and such leave is approved, that leave will be unpaid.

E. **Non-Retaliation.** Filing a complaint of sexual and gender-based harassment, discrimination or abusive or intimidating behavior or cooperating in an investigation shall be a protected activity. Retaliatory actions against any SW for initiating or otherwise participating in such protected activities shall be expressly forbidden.

Retaliation against an individual for raising an allegation for cooperating in an investigation of such a complaint, or for opposing discriminatory practices is prohibited. Submitting a complaint that is not in good faith or providing false or misleading information in any investigation is also prohibited.

F. **Discipline** –Sanctions for any respondent found to have violated policy shall be handled in accordance with the appropriate disciplinary procedures of the School or unit depending on whether the respondent is a student, faculty member, staff or other University appointee. -Disagreement with the severity of any imposed sanction cannot be raised or contested in any way by the complainant.

It is understood that the determination of appropriate penalties for SWs, faculty, staff or other University appointees of the University found to have engaged in prohibited conduct under this Article or related policies is handled at the School level and in accordance with School policies and procedures. A SW who is disciplined for engaging in conduct prohibited under this Article or related policies may grieve the level of discipline imposed but neither the SW or the Union may dispute the factual findings in the investigatory report.

Section 6. Pregnancy and Lactation. The University shall provide reasonable accommodations for pregnancy or pregnancy-related conditions (examples include but are not limited to, morning sickness and lactation) unless to do so would impose an undue hardship on the University.

Examples of such accommodations include, but are not limited to, a modified work schedule; more frequent restroom, food, or water breaks; providing equipment for seating; limits on lifting; more frequent or longer paid or unpaid breaks; time off, with or without pay, to attend to a pregnancy-related complication; private non-bathroom space for expressing breast milk; and assistance with manual labor. No such accommodations can result in decreased pay or benefits for the SW.

The University provides many lactation rooms across the University. Any nursing SW or their spouses/partners who are breastfeeding can register to use a Harvard lactation room. Locations of such lactation rooms can be found on the HARVie website.

Section 7. Bathroom Equity. The University will work with local facilities management to label existing gender-neutral bathrooms in office, classroom and lab buildings. Gender-neutral bathrooms shall be posted on a central website within three months of the ratification of this Agreement. The University will not prevent SWs from using a workplace bathroom appropriate to the SW's gender identity.

Section 8. Gender Identity. The University shall respect the SW's decision to choose to discuss their own sexual orientation, gender identity, or gender expression openly, or to keep that information private.

Upon request from the SW, the University will work to update aspects of a SW's employment record to reflect a change in name or gender.

Section 9. Disability. Upon request from a SW with a disability, the University shall engage in an interactive process and will provide reasonable accommodation to enable the SW to perform the essential functions of their job, consistent with state, federal and local law as well as the University's policies.

Section 10. Prayer Space - The University shall post the location and hours of all known prayer spaces on campus on a central website within three months of the ratification of this Agreement.

Section 11. Medical Confidentiality –In accordance with the requirements of HIPAA and FERPA, the University shall respect the highly confidential status of all SWs medical records maintained by the University, including those that contain information about their transgender status (such as the sex they were assigned at birth).

SIDE LETTER

- A. Title IX Advisory Committee:** The University's Title IX Policy Review Advisory Committee provides recommendations on how the University Policy on Sexual and Gender-Based Harassment is working and whether modifications to the policy should be made. Within three (3) months of ratification of the Agreement, the Union shall select two (2) of the four (4) student representatives who serve on that Advisory Committee. The SW appointed should be willing to serve for two (2) years but will not be required to do so.

B. University Working Groups. It is the intent of the University to establish University-wide policies and procedures to deal with other forms of discrimination besides sexual and gender-based harassment, including but not limited to race and ethnicity discrimination, and abusive and intimidating behavior.

- a. Within three (3) months of the ratification of this Agreement, the University shall establish two University-wide Working Groups (Non-discrimination Policy Working Group and Anti-bullying Policy Working Group) with representatives from various constituencies, including the HGSU-UAW, to recommend a University-wide policy and procedures to address:
 - i. complaints about forms of prohibited discrimination other than sexual and gender-based harassment and suggest procedures by which such complaints will be investigated and resolved, and
 - ii. complaints about misconduct that do not constitute policy violations on sexual and gender-based harassment or other forms of prohibited discrimination but which nonetheless may be abusive and/or intimidating to SWs and other members of the Harvard community.
- b. Two (2) SWs selected by the Union shall serve on each Working Group. Any SW appointed should be willing to serve for two (2) years but will not be required to do so.
- c. The Working Groups shall make recommendations for the establishment of such policies and procedures. The parties agree that any such recommendations regarding policies and procedures will include, at a minimum, a final appeals panel of impartial and unbiased members similar to that provided by the ODR Procedures for Handling Complaints Involving Students Pursuant to the Sexual and Gender-Based Harassment Policy.
- d. The University in its discretion may decide to combine the two Working Groups identified in Sections 7 and 8, in which case four (4) SWs selected by the Union shall serve on such a combined Working Group.