

# UNIVERSITY COUNTER

6-24-21

## ARTICLE 7

### 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 conditions, gender identity, gender expression, 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.

B. 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 policies on sexual and gender-based harassment and/or discrimination 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, including sexual orientation; or gender identity or expression, 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 without consent, 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.

Consent is defined in the University's Interim Title IX Policy and Interim Other Sexual Misconduct Policy.

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 or expression, 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.

### Section 3. Sexual and Gender-Based Harassment Training.

1. 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.
2. 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.

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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.

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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 A, outlining the various avenues of recourse (including the ability to pursue a resolution through the Department of Education Office of Civil Rights), right to Union representation and contact information for the union.

E. SWs may consult with advisors of their choice, including an attorney, at any point in the formal/informal University resolution process.

-The University will notify SWs that they may consult with advisors (including an attorney), and the names of potential advisors (including attorneys).

SWs have the right to have an advisor or attorney present in conversations with investigators,

F 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.

## Section 5. Recourse

### A. Processes

1 A SW's complaint of discrimination based on union activity or membership shall be handled through the Grievance and Arbitration Procedure in Article 6 of this Agreement. A grievance alleging such discrimination based on union membership or activity may not include additional allegations of other forms of discrimination or abusive behavior as defined under this Article.

2. All other SW complaints regarding discrimination or harassment in employment under this Article, as well as complaints regarding abusive or intimidating behavior that does not violate a discrimination-policy will-be processed in accordance with the internal policies and procedures developed by the University or the individual schools. Such claims under Section 1 and 2 of this Article shall not be processed under Article 6, Grievance and Arbitration.

3. Under no circumstances should a SW in any of the Schools of the University be pressured by Title IX Resource Coordinators or staff or any other University officials to accept informal resolution of their complaint or supportive measures, in place of filing a formal complaint. Pressure to accept informal resolution may include (but is not limited to) telling the SW they will not win a formal resolution, providing misinformation about the formal resolution process, and telling the complainant that the resolution process will harm the academic opportunities of the respondent. Discussing in good faith the pros and cons of various approaches

shall not be considered pressure to accept informal resolution. SWs are free to file a formal complaint at any time if they so choose.

4. 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.

B. -Internal University processes:

1. Sexual and Gender-Based Harassment

- a. Complaints by SWs regarding sexual and gender-based harassment in employment shall be processed in accordance with the University's Interim Title IX Sexual Harassment Policy that addresses sexual conduct that falls within the parameters of Title IX and occurred after August 14, 2020; the Interim Other Sexual Misconduct Policy that addresses sexual conduct that falls outside the jurisdiction of the Interim Title IX Sexual Harassment Policy and occurred on or after August 14, 2020; the Sexual and Gender-based Harassment Policy that address sexual harassment and other sexual misconduct occurring before August 14, 2020 and other applicable University policies and related procedures, all of which may be amended from time to time by the University. These policies also provide definitions for terms such as Sexual Harassment, Unwelcome Conduct and Gender-Based Harassment.
- b. 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.
- c. SWs may file formal complaints or seek informal resolution of violations of the University's policies on sexual and gender-based harassment and/or discrimination. 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.
- d. 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 trauma-informed 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 the final decision.

C. 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 and union discrimination and forms of abusive or intimidating behavior in employment may be directed to the Dean of Students or their designee and will be investigated in accordance with any applicable University or School policies and procedures.

D. Nothing in this Article shall preclude an individual School from establishing or following local procedures crafted to address identify-based harassment, discrimination and abusive or intimidating behavior.

E. Supportive measures. During the processing of complaints of any harassment and/or discrimination defined in Section 1, the University shall promptly provide, as appropriate, supportive measures to individuals involved in a formal complaint or informal report. Possible supportive 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.

F. Non-Retaliatiion. Filing a complaint in good faith of sexual and gender-based harassment and/or discrimination, other forms of 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.

Knowingly or deliberately providing false or misleading information in any investigation is also prohibited.

G. 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.

H. 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 nor 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. 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. University and department-level records should accurately reflect SW pronouns and honorifics. If an error is found in this regard, it will be promptly corrected when brought to the attention of the department.

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 SWs with disabilities 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 maintain a central website with the location and hours of all known prayer spaces on campus.

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).