

# UC Davis Policy and Procedure Manual

## Chapter 380, Personnel--General

### Section 15, Staff Complaints of Discrimination

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Supersedes: 4/14/03

Responsible Department: [Offices of the Chancellor and Provost](#)

Source Document: [University of California Nondiscrimination and Affirmative Action Policy Regarding Academic and Staff Employment](#); [Fair Employment and Housing Act, Government Code 12900](#)

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#### [Exhibit A. Complaint Form](#)

#### **I. Purpose**

This section provides procedures for staff to report allegations of discrimination and harassment, and procedures for responding to those reports.

All complaints of sexual harassment will be handled pursuant to the procedures set forth in [Section 380-12](#). Such complaints are not subject to review under this section.

Student complaints of discrimination will be handled under [Section 280-05](#). Such complaints are not subject to review under this section.

Complaints of discrimination from academic appointees will be handled under [Academic Senate Bylaw 335](#) or Academic Personnel Manual [Sections 035](#), [140](#), and [UCD-140](#). Such complaints are not subject to review under this section.

#### **II. Definitions**

- A. Discrimination—an illegal or prohibited adverse employment action or harassment based on race, color, national origin, religion, sex, gender identity, pregnancy (including childbirth and related medical conditions), physical or mental disability, medical condition (cancer-related or genetic characteristics), genetic information (including family medical history), ancestry, marital status, age, sexual orientation, citizenship, or service in the uniformed services (includes membership, application for membership, performance of service, application for service, or obligation for service in the uniformed services).
- B. Harassment—verbal or physical conduct that unreasonably interferes with a person's work or creates an intimidating, hostile or offensive working environment when that conduct is based on the categories identified in II.A, above.

#### **III. Policy**

- A. The University of California is committed to creating and maintaining a community where all persons who are employed by the University can work in an atmosphere free from all forms of discrimination, harassment, exploitation, or intimidation.
- B. The University shall respond promptly and effectively to reports of discrimination and take appropriate action to prevent and correct behavior that violates this policy, which may include discipline.
- C. Retaliation against a person who reports discrimination, helps someone with a report of discrimination, or takes any part in an investigation or resolution of a discrimination complaint is prohibited. Retaliation includes threats, intimidation, reprisals, or adverse actions related to employment.

#### **IV. Procedures for Reporting**

- A. Reporting discrimination
  - 1. Staff who experience or observe behavior that may be discrimination may report the behavior to any of the following designated officials:

- a. The Early Resolution Discrimination Coordinator in the Office of Campus Community Relations
  - b. The Compliance Director on the Davis campus
  - c. The Manager of Equal Employment Opportunity at UCDHS
  - d. Any department chair, manager, supervisor, or human resource coordinator
  - e. Any Early Resolution Discrimination Advisor
2. Use of the Discrimination Complaint Form is encouraged but not mandatory.
  3. Reports should provide as much information as possible. If insufficient information is provided (e.g., certain anonymous reports, reports that do not identify the respondent), the University may not be able to respond other than by general outreach and education.
  4. Reports shall be made within one year of the alleged discriminatory action.
  5. The University cannot guarantee anonymity (see VII, below).
- B. Allegations of discrimination made under other complaint resolution or grievance procedures
1. A staff member who believes s/he has been subjected to discrimination may file a complaint or grievance through PPSM Section 70 or the applicable collective bargaining agreement subject to the provisions of the appropriate policy or agreement.
  2. Such complaint or grievance may be filed either instead of or in addition to making a report to an individual identified in IV.A.1, above.
  3. A complaint or grievance alleging discrimination must meet all of the requirements of the applicable complaint resolution or grievance procedure, including time limits for filing.
  4. If a complaint or grievance alleging discrimination is filed in addition to a report made to an individual identified in IV.A.1, above, the complainant will be asked to place the complaint or grievance in abeyance pending the outcome of the early resolution or formal investigation procedures described in V, below.
- C. Reporting retaliation
1. Individuals who believe they have been subjected to retaliation for any of the reasons described in III.C, above, may file a report under the procedures described in IV.A, above.
  2. The University shall respond to reports of retaliation following the procedures described in V, below.
- D. Complaint that University response failed to follow policy
1. A complainant may file a complaint or grievance under PPSM 70 or the applicable collective bargaining agreement, alleging that actions taken by the University in response to a report filed under this policy did not follow appropriate procedures.
  2. The complaint or grievance must be filed in a timely manner.
    - a. The time period for filing begins on the date the individual was notified of the outcome of the investigation or other resolution process, or of the actions taken by the University in response to the report, whichever is later.
    - b. The time period for filing a complaint differs based on the applicable complaint resolution or grievance procedure.
  3. A complaint or grievance may not be filed under this section to challenge or seek modification of a disciplinary sanction imposed on the respondent.

- E. False reports
  - 1. A person who makes a report of discrimination or retaliation that is later found to have been intentionally false or made maliciously without regard for the truth may be subject to disciplinary action.
  - 2. This provision does not apply to reports made in good faith, even if the facts alleged in the report cannot be substantiated by an investigation.

**V. University Response**

- A. The University shall inform staff members making reports of discrimination of the resolution processes (e.g., early resolution, formal investigation, complaint resolution or grievance procedures), confidentiality policies, and the range of possible outcomes (e.g., interim protections, remedies for staff members harmed by discrimination, possible disciplinary actions).
- B. Early resolution
  - 1. Early resolution may be used when parties want to resolve the situation cooperatively or when a formal investigation is unlikely to lead to a satisfactory outcome.
  - 2. Early resolution may include but is not limited to the following:
    - a. No-fault conversation with written confirmation.
    - b. Mediating agreement between the parties.
    - c. Separating the parties.
    - d. Administrative review or preliminary inquiry, including fact-finding.
    - e. Negotiating agreement for disciplinary action.
    - f. Conducting targeted educational and training programs.
    - g. Referring parties to a counseling program.
    - h. Providing remedies or referral to support services for the individual harmed by the harassment.
  - 3. The early resolution process shall be coordinated by the Early Resolution Discrimination Coordinator at the Davis campus or by the Department of Equal Employment Opportunity at UCDHS. Steps taken to encourage early resolution and agreements shall be documented.
  - 4. The University encourages parties to participate in early resolution but retains the right to resolve reports of discrimination through early resolution when appropriate even if one or both parties choose not to participate.
    - a. Some reports may not be appropriate for early resolution.
    - b. The University reserves the right to require an investigation.
- C. Formal investigation
  - 1. In cases where early resolution is inappropriate or unsuccessful, the University may conduct a formal investigation.

The wishes of the individual reporting discrimination shall be considered but are not determinative in the University's decision to initiate a formal investigation.
  - 2. The Campus Compliance Director or UCDHS Manager of Equal Employment Opportunity (hereafter "Charging Administrator") may initiate an investigation by:
    - a. Identifying an investigator familiar with this policy and trained in discrimination

- issues and procedures to conduct the investigation.
- b. Providing the investigator with a charge letter describing the nature of the complaint, a definition of the standard or review, and a date for the report to be completed.
  - c. Notifying the individual who reported the discrimination and the respondent that an investigation has been initiated. The notification shall include a statement of the allegations, the name of the investigator, a date for completion of the investigation, and a link to this policy Web page.
3. The following procedures shall be used to ensure a full, fair, and impartial investigation:
- a. The investigator will interview the parties, if available, as well as other witnesses as needed.
    - 1) On request, the parties may each have a representative present when interviewed by the investigator.
    - 2) Other witnesses may be accompanied by a representative if required by applicable University policy or at the investigator's discretion.
    - 3) A representative who impedes or interferes with the investigative process may be excluded from the proceedings.
  - b. The investigator will review relevant evidence, including documents.
  - c. Parties and witnesses will be instructed that maintaining confidentiality is necessary to protect the integrity of the investigation. Disclosure of facts or allegations to parties and witnesses will be limited to what is reasonably necessary to conduct a full and fair investigation.
  - d. The investigator may recommend interim protections or remedies for the complainant or witnesses at any time during the investigation. Failure to comply with the terms of any interim protections may be considered a separate violation of this policy.
  - e. The investigator will prepare and submit a written report containing the following components:
    - 1) A statement of the allegations and issues.
    - 2) The positions of the parties.
    - 3) A summary of the evidence.
    - 4) Findings of fact.
    - 5) The investigator's determination as to whether University policy has been violated.
    - 6) If directed to do so, a recommendation of remedies to resolve the complaint.
  - f. The Charging Administrator shall submit the report to the appropriate University official with authority to implement the actions necessary to resolve the complaint. The report may be used as evidence in other procedures, such as subsequent complaints, grievances, or disciplinary action.
4. The investigation shall be conducted and completed as promptly as possible, usually within 60 working days from the date of initiation.
- a. The deadline may be extended by the Charging Administrator.
  - b. Written notice of the extension shall be provided to the complainant and the respondent.
5. Within 30 days of receiving the final report, the Charging Administrator shall notify the complainant and the respondent in writing that the investigation has been completed. The

notification shall indicate:

- a. whether or not there was a finding that University policy was violated;
  - b. whether, consistent with law and policies regarding confidentiality, any action was taken to resolve the complaint; and
  - c. information about requesting a copy of the final report.
6. The complainant and respondent may request a copy of the final report from the Information Practices Coordinator (530-752-3949). The release of the report is subject to University policy regarding privacy and confidentiality (see VII, below).
- D. Disciplinary action shall be considered following a finding of violation of the policy, including engaging in discrimination, retaliation, violating interim actions, or filing intentionally false charges of discrimination, and will be pursued according to the procedures described in the appropriate policy.

## **VI. Responsibilities**

- A. Designated Officials
1. Maintaining a work environment free from all forms of discrimination or harassment.
  2. Responding promptly to reports of discrimination by contacting the Early Resolution Discrimination Coordinator (on the Davis campus) or the Department of Equal Employment Opportunity (at UCDHS) immediately upon receipt of report.
  3. Implementing appropriate interim actions, in consultation with the Early Resolution Discrimination Coordinator (on the Davis campus) or the Department of Equal Employment Opportunity (at UCDHS).
- B. The Campus Compliance Director
1. Develops and implements procedures for prompt and effective response to reports of discrimination.
  2. Appoints and oversees the Sexual Harassment and Discrimination Case Management Team (SHDCMT).
- C. The Early Resolution Discrimination Coordinator/UCDHS Department of Equal Employment Opportunity
1. Maintains accurate contact information on the Web for the Early Resolution Discrimination Coordinator and Early Resolution Discrimination Advisors.
  2. Plans and manages the local discrimination education and training programs and ensures the following:
    - a. Wide dissemination of this policy to the University community.
    - b. Availability of educational and training materials to promote compliance with this policy and familiarity with reporting procedures.
  3. Receives reports of discrimination directly and from designated officials, and ensures that the timelines, rights of the complainant, procedures, and remedies provided herein are met.
  4. Maintains records of reports of discrimination and actions taken in response to reports, including records of investigations, voluntary resolutions, and disciplinary action as appropriate.
    - a. Records shall be kept for at least five years after closure.

- b. Records may be kept longer at the discretion of the Charging Official.
- D. The Sexual Harassment and Discrimination Case Management Team (SHDCMT)
  - 1. Includes the Campus Compliance Director, UCDHS Manager of Equal Employment Opportunity, the Sexual Harassment Officers, Early Resolution Discrimination Coordinator, and representatives from Campus Counsel, Human Resources, Academic Personnel, Student Judicial Affairs, and other members as required.
  - 2. Meets regularly and on an as-needed basis to serve as a resource to the Campus Compliance Director, UCDHS Manager of Equal Employment Opportunity and Early Resolution Discrimination Coordinator.
- E. Early Resolution Discrimination Advisors
  - 1. Serve under the auspices of the Early Resolution Discrimination Coordinator, the Campus Compliance Director and the UCDHS Manager of Equal Employment Opportunity as an additional resource to the campus.
  - 2. Respond to questions regarding this policy.
  - 3. Provide copies of the policy upon request.
  - 4. Provide information about complaint resolution options.
  - 5. Notify the Early Resolution Discrimination Coordinator/UCDHS Department of Equal Employment Opportunity of reports of alleged discrimination.
  - 6. Assist the Early Resolution Discrimination Coordinator/UCDHS Department of Equal Employment Opportunity in early resolution efforts.

## VII. Privacy and Confidentiality

- A. The University shall protect the privacy of individuals involved in a report of discrimination to the extent permitted or required by law and University policy.
  - 1. The University shall comply with requests for confidentiality whenever possible, but may need to make disclosures to complete a fair investigation and ensure a working environment free from discrimination.
  - 2. If disclosure is required by law or University policy, the records shall be redacted to protect the privacy of all persons other than the one requesting the report (see [Section 320-20](#)).
  - 3. A staff member who has made a report of discrimination may be advised of the specific sanctions imposed against a respondent when necessary for the sanction to be fully effective (e.g., restrictions on communication or contact).
  - 4. Information on disciplinary actions taken against the respondent shall not be disclosed without the respondent's consent unless it is necessary to ensure compliance with the action, the safety of individuals, or is required by law.
- B. University employees designated in IV.A.1.a-e, above, have an obligation to respond to reports of discrimination, even if the individual making the report requests that no action be taken.
- C. Confidential resources
  - 1. Staff in the following units are identified as confidential resources who can be consulted for advice and information, and are not designated officials:
    - a. Academic and Staff Assistance Program (530-752-2727; 916-734-2727).
    - b. Mediation Services (530-297-4480; 916-734-5335).

- c. Legal, medical, or other advisers whose communication is protected by statutory privilege.
2. Consultation with these resources will not lead to a report of discrimination unless additional action is taken by the individual seeking advice.

#### **VIII. Further Information**

- A. The Federal [Equal Employment Opportunity Commission](#) (EEOC) and [California Department of Fair Employment and Housing](#) (DFEH) investigate complaints of employment discrimination. Contact information for the nearest office is available in local telephone books or on the agencies' Web sites.
- B. For additional information regarding campus programs and resources, contact Wendi Delmendo, Compliance Director, (530) 752-9466. At UCDHS, contact Cindy Oropeza, Manager of Equal Employment Opportunity, (916) 734-8104,

#### **IX. References and Related Policies**

- A. Office of the President:
  1. [University of California Nondiscrimination and Affirmative Action Policy Regarding Academic and Staff Employment.](#)
  2. [Nondiscrimination and Affirmative Action Policy Statement for University of California Publications Regarding Employment Practices.](#)
- B. [Title VII of the Civil Rights Act of 1964, 42 US Code 2000e et seq.](#)
- C. [EEOC Guidelines on Discrimination Because of Sex, 29 CFR 1604.11.](#)
- D. [Title IX Regulations, 34 CFR Part 106.](#)
- E. [California Fair Employment and Housing Act, Government Code 129000 et seq.](#)
- F. UCD Policy and Procedure Manual:
  1. [Section 320-20, Privacy of and Access to Information.](#)
  2. [Section 380-10, Affirmative Action in Employment.](#)
  3. [Section 380-17, Improper Governmental Activities.](#)
- G. Personnel Policies for Staff Members:
  1. [Policy](#) and [UCD Procedure 12](#), Nondiscrimination.
  2. [Policy](#) and [UCD Procedure 14](#), Affirmative Action.
  3. [Policy](#) and [UCD Procedure 70](#), Complaint Resolution.
- H. [Collective Bargaining Agreements.](#)
- I. [UCD Principles of Community.](#)