

Article
NON-DISCRIMINATION AND HARASSMENT

The University affirms that a diverse and equitable work environment, and policies that achieve it, are integral to the core academic purposes of the University. The University recognizes that any form of discrimination or harassment is inimical to its core missions including its research and education missions, and will not tolerate any form of discrimination, bullying, or harassment by faculty, administrators, supervisors, students, co-workers, vendors, University visitors or anyone else. The University also recognizes that filing a complaint or grievance or participating or cooperating in an investigation of alleged discrimination, bullying or harassment **is** protected activity. Retaliatory actions against any SW for initiating or otherwise participating in such protected activity shall be expressly forbidden.

Section 1. Prohibition of Discrimination and Harassment.

- A. The University shall not discriminate against or harass any SW on the basis of sex, race, color, age, ethnicity, religious creed, national origin, citizenship, immigration or visa status, ancestry, native language or dialect, happenstance of birth, sexual orientation, gender identity or expression, marital status, parental status, pregnancy status or pregnancy-related condition, HIV status or other health status, genetic information, physical or mental disabilities—including but not limited to, learning disabilities, intellectual disabilities, past/present history of a mental disorder and/or mental illness, veteran status, military service, political affiliation or belief, prior conviction of a crime, union membership or activity, or membership in other protected status under federal, Massachusetts, or local law.
- B. The University shall also ensure the medical confidentiality of all SWs.
- C. The University shall not engage in unwelcome conduct as described in Section 5, B or power-based harassment as described in Section 5, C of this Article.
- D. The University shall ensure a wholly nondiscriminatory process in all phases of employment, including, but not limited to, recruiting, employment, placement, promotion, demotion or transfer, reduction of workforce and termination, rates of pay or other form of compensation, scholarship and loan programs, selection for training, and participation in all University-sponsored social and recreation activities. The University will also ensure that outside agencies with which it contracts will comply with all applicable anti-discrimination laws.
- E. The University shall uphold its affirmative action policy and provide equal employment opportunity.

Section 2. Promoting Equity and Inclusion

- A. The University shall provide educational, preventative, and training programs regarding discrimination and harassment as described in Section 1A of this Article, jointly developed by the Union and the University, and completed by all SWs, University personnel, faculty members, and supervisors, or any person(s) supervised by University personnel. The parties shall complete development of comprehensive training programs no later than ninety (90) days after the effective date of this Agreement and the University shall implement these training programs no later than the next academic term.
- B. The University shall encourage reporting of incidents; ~~for the following reasons: to~~ prevent incidents of harassment and discrimination from denying or limiting an individual's ability to participate in, or benefit from, the University's programs or activities; make available timely services for those who have been affected by discrimination or harassment; and provide prompt and equitable methods of investigation and resolution to stop discrimination, remedy any harm, and prevent its recurrence, and prevent disparate treatment due to implicit biases and other forms of bias that may affect the investigation, the treatment of the complainant or the respondent, or the decision thereafter.
- C. The University shall establish or maintain for all SWs access to existing or comparable resources such as the Women's Center, the Office of BGLTQ Life, the Office of Equity and Inclusion, Office of Diversity and Minority Affairs, W.E.B. Du Bois Graduate Society, Harvard University Native American Program, Accessible Education Office, the Harvard Foundation, Committee on Ethnicity, Migration, Rights, and the International Office.
- D. The University shall appoint a qualified coordinator in each school for the purpose of enforcing employment practices contained in Title VI and Title VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, and Section 504 of the Rehabilitation Act of 1973 and any other federal, Massachusetts or municipal laws that prohibit discrimination and harassment.
- E. The University shall demonstrate its strong, ongoing commitment to understanding and addressing the concerns of vulnerable populations on campus by; 1. conducting an annual, University-wide, comprehensive assessment of their progress on inclusion, accessibility, sex and gender-based harassment and assault, in addition to all forms of discrimination as described in Section 1A for all SWs that will be publicly available and 2. by administering exit surveys to SWs who leave Harvard prior to their employment end date and SWs who graduate, which includes a comprehensive assessment. The University shall jointly design the survey with the Union.
- F. The University will employ at least four (4) 0.5 FTE Union representatives, who shall be paid a standard PhD-level RA or TA/TF rate, to serve on an Equity and Inclusion Committee. The University and the Union shall jointly agree on a work plan for these SWs to promote equity, inclusion, transparency, and accountability. The Committee shall meet at least three (3) times a semester with the University and produce an annual report

that will be publicly available on the University and the Union websites. The University shall designate office spaces for Union representatives to perform this work.

- ~~G.~~ 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.
- H. The University shall also consider any time spent by SWs on campus climate, equity, inclusion or related issues (e.g. as departmental Title IX liaison, Diversity and Inclusion Fellows, representatives on a department climate committee) as part of the SW's paid work time. SWs who perform such work shall be paid a standard PhD-level RA or TA/TF rate.
- I. The University shall ensure that all SWs have convenient access to gender-neutral bathrooms, gender-neutral showers, and gender-neutral changing rooms in the building where they are assigned to work. All single-occupant bathrooms shall be labeled as gender-neutral and no SW should be required to use a segregated facility apart from other employees because of their gender identity. No SW will be prevented from using a restroom that they are comfortable using. The University shall post on a central website the location of all such facilities.
- J. The University shall ensure that all SWs have convenient access to prayer spaces on the campus where they are assigned to work.
- K. The University shall guarantee access, support and services for all SWs with disabilities or illness, including, but not limited to, transport to their workplace(s), provision of accessible workspaces and bathroom facilities, and effective communication between offices that provide accommodations for a disability or illness. The University shall provide at no cost to SWs all required and/or recommended accommodations for SWs with disabilities and do so through a non-burdensome and efficient manner to ensure SW's timely access to their workspaces. Any delays in providing accommodations should be considered as paid time-off. No employee should be required to use a segregated facility apart from other employees because of their disability or health status.
- L. The University shall make reasonable efforts to ensure that SWs are referred to by the names and pronouns with which they identify, both in communications to and about them, regardless of whether a SW has requested or made any updates to their legal name, "preferred name," or gender marker in University or external systems. Upon request from the SW, the University will work to update aspects of a SW's employment record to reflect their name or gender.

- M. 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. The University shall respect the highly confidential status of all SWs medical records that contain information about their transgender status (such as the sex they were assigned at birth).
- N. 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; bathrooms with changing tables; and assistance with manual labor. No such accommodations can result in decreased pay or benefits for the SW. 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.
- O. The university shall establish University-wide policies and procedures to deal with other forms of discrimination besides sexual and gender-based harassment, and abusive and intimidating behavior.

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 design University-wide policy and procedures to address:

- 1. 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
- 2. 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.

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.

The Working Groups shall make recommendations for the establishment of such a 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.

Section 3. Recourse and Grievance Procedure.

A. Expedited processing.

In order to expedite processing of grievances of this Article, SWs or the Union shall have the right to initiate such grievances at the final pre-arbitration step of the grievance procedure outlined in Article ____.

B. Interim measures and remedies.

The University shall immediately implement interim measures to protect a SW survivor of discrimination or harassment who has filed a grievance alleging a violation of this Article. Such measures shall ensure that the SW continues working in an environment free from harassment and/or discrimination up to and through a final arbitration decision. Appropriate measures shall include, but not be limited to: change to a different workstation, schedule, SW location, supervisor, unit, department, or position appropriate for the SW, provision for medical services; and provisions for escort services, provided that the change is voluntary and equitable to the complainant/grievant; training and education is provided and/or discipline for the respondent, consistent with any collective bargaining agreement. None of these measures shall result in loss of pay. In the case of a Respondent, interim measures may include; a no-contact order, transfer, suspension, and other measures. Such interim measures, and/or additional appropriate measures including dismissal, shall be implemented as remedies when a grievance is sustained.

C. Non-Retaliation.

The University will not tolerate any form of retaliation against a SW. Retaliation includes, but is not limited to, threats, intimidation, reprisals, coercion, discrimination, harassment or any adverse action against a SW based on the SW's attempt to access services, file a complaint, report of, or participation in, the complaint, report, investigation, compliance review, hearing, remedial and/or disciplinary process of violations, actual or perceived, of this Agreement, University policy or law.

Section 4. Enhancing Access to Recourse, Representation and Advocacy

- A. The University shall notify any SW complainant in a Harvard complaint procedure that the Office of Dispute Resolution (or any other similar Harvard office such as the Title IX appointed investigatory team at the Harvard Law School, Harvard College Honor Council and the Committee on Professional Conduct) has an investigatory role and does not represent the SW. The University shall also provide the SW 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.
- B. The University shall notify the Union of all SW complaints filed in such offices outlined in Section 4A above.

- C. The University will report to the Union, twice a year, summaries of violations of the non-discrimination and harassment policy, which will specify the findings of investigations and process durations if an investigation was held, the department or school of the complainant and the respondent, and the academic year in which the report was made.
- D. SWs are free to have a Union representative accompany them in preliminary discussions about possible incidents of harassment and discrimination if they so choose. SWs also 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 under Section 1 of this Article.
- E. 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 rise to the level of a discrimination policy violations, may, but are not required to, process their complaints with the internal investigation and complaint procedures developed by the University or the individual schools. 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.
- F. 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. Definition of Sexual Harassment, Unwelcome Conduct, Gender-based harassment and Power-based Harassment

A. Sexual harassment

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).
2. 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.
3. A hostile environment can be created by persistent or pervasive conduct or by a single episode. The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment. Sexual violence, including rape, sexual assault, and domestic and dating violence, is a form of sexual harassment.

Other verbal, nonverbal, graphic, or physical conduct may create a hostile environment if the conduct is sufficiently persistent, pervasive, or severe so as to deny a person equal access to the University's programs or activities. Whether the conduct creates a hostile environment may depend on a variety of factors, including: the degree to which the conduct affected one or more person's education or employment; the type, frequency, and duration of the conduct; the relationship between the parties; the number of people involved; and the context in which the conduct occurred.

B. Unwelcome Conduct

1. Conduct is unwelcome if a person (1) did not request or invite it and (2) regarded the unrequested or uninvited conduct as undesirable or offensive. That a person welcomes some sexual contact does not necessarily mean that person welcomes other sexual contact. Similarly, that a person willingly participates in conduct on one occasion does not necessarily mean that the same conduct is welcome on a subsequent occasion.

2. Whether conduct is unwelcome is determined based on the totality of the circumstances, including various objective and subjective factors. The following types of information may be helpful in making that determination: statements by any witnesses to the alleged incident; information about the relative credibility of the parties and witnesses; the detail and consistency of each person's account; the absence of corroborating information where it should logically exist; information that the Respondent has been found to have harassed others; information that the Complainant has been found to have made false allegations against others; information about the Complainant's reaction or behavior after the alleged incident; and information about any actions the parties took immediately following the incident, including reporting the matter to others.

3. In addition, when a person is so impaired or incapacitated as to be incapable of requesting or inviting the conduct, conduct of a sexual nature is deemed unwelcome, provided that the Respondent knew or reasonably should have known of the person's impairment or incapacity. The person may be impaired or incapacitated as a result of drugs or alcohol or for some other reason, such as sleep or unconsciousness. A Respondent's impairment at the time of the incident as a result of drugs or alcohol does not, however, diminish the Respondent's responsibility for sexual or gender-based harassment.

C. 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 constitutes gender-based harassment.

D. Power-Based Harassment

Power-based harassment is verbal, nonverbal, graphic, or physical aggression, intimidation, or hostile conduct based on the individual's status as a member of a protected group defined under section 1A of this Article (traditionally called "identity-based harassment"), or based on the perpetrator's higher rank, differential power in the relationship or circumstance involving the individual and the harasser (traditionally called "bullying") but not involving conduct of a sexual nature, when 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.

E. Other Examples: In addition, conduct such as, but not limited to the following conduct, may count as a violation of this Article, whether it is on-duty or off-duty:

- 1 Observing, photographing, videotaping, or making other visual or auditory records, without the knowledge and consent of all parties
- 2 Sharing visual or auditory records without the knowledge and consent of all recorded parties and recipient(s)
- 3 Sexual advances, whether or not they involve physical touching
- 4 Commenting about, inappropriately touching, massaging, or standing too close to an individual's body
- 5 Requests for favors sexual or otherwise in exchange for actual or promised job benefits, such as favorable reviews, salary increases, promotions, increased benefits, or continued employment
- 6 Lewd, sexually suggestive, demeaning, or offensive comments, pictures, cartoons, jokes, innuendoes, gestures, or story-telling in person, or via email or other electronic media
- 7 Repeatedly asking a person to socialize during off duty hours when the person has said not or has indicated that they are not interested (supervisors, in particular, should be careful not to pressure a SW to socialize)
- 8 Pranks
- 9 Giving gifts or leaving objects that are suggestive
- 10 Stalking
- 11 Attempts to humiliate, slander, ridicule, malign the SW or those close to them
- 12 Name-calling, gossip
- 13 Excessive compliments and comments about performance, intimidation, seeking to compete, attempts to destroy confidence, gaslighting
- 14 Manipulating the impression others have of SW, splitting the work group into taking sides, isolating, damaging reputation
- 15 Forwarding offensive, demeaning comments or material created by others
- 16 Making SW private information public, or doxing
- 17 Other verbal, nonverbal, graphic, or physical conduct may create a hostile environment if the conduct denies a person equal access to the University's programs or activities.