

# HUMAN RESOURCES / EMPLOYMENT POLICY

## Procedural Guidelines for Addressing Discriminatory Misconduct (1.08a)

### (Including Harassment, Sexual Harassment/Misconduct, or Illegal Discrimination)

#### **Purpose:**

Willamette University strives to provide a community where students, faculty, staff and others work and live together in an environment free of all forms of harassment, exploitation, intimidation and discrimination. Harassment and discrimination is demeaning to all persons involved, and subverts the mission of the University.

This policy provides procedural guidelines for how the University will address complaints of discriminatory misconduct in employment, or where an employee is otherwise accused of such misconduct.

#### **Policy:**

The following procedures are to be used for addressing complaints that a faculty or staff member has violated [Willamette's Discriminatory Misconduct Policy for Employees](#). In most cases, such misconduct comes in the form of "harassment" within the employment environment. If you are still unsure of what constitutes "harassment," please consult with the University's Human Resources department for training and other information that can help you make such determinations. These procedures do not apply to allegations of student-to-student misconduct. Student-to-student misconduct is addressed under the standards of conduct for students of Willamette University and specifically under the [Sexual Misconduct Policy and Protocols for Students](#) in the case of sexual misconduct.

Willamette's Discriminatory Misconduct Policy for Employees, and these procedures, address complaints of harassment, or other forms of misconduct based on race, color, religion, sex, national origin, marital status, veteran status, actual or perceived sexual orientation, gender identity, gender expression or status with regard to pregnancy, disability, age, or any other basis protected by applicable local, state or federal law. "Harassment" as described in the policy is a form of discrimination under Title VII of the Civil Rights Act of 1964 and under Title IX of the Education Amendments of 1972. Failure to respond to written or verbal concerns of sexual discrimination or harassment, or failure to report incidents of sexual discrimination or harassment, is a violation of University policy. The University will not tolerate harassment or discrimination against any individual.

#### **Procedure:**

1. **Addressing Harassing Behavior** - If a person believes that he/she has been harassed by a staff or faculty member, nothing in this policy or procedural guidelines precludes that person from addressing the harasser directly and asking that it stop as a first means of ending the behavior. This is often a successful first step. However, one should only take such action if it can be done safely. The more egregious the behavior, the more important it may be to seek assistance. Confidential assistance is available that can help you make such decisions.

2. **Confidential Assistance** –Filing a complaint can be a difficult decision. Counseling resources can assist in understanding the implications of coming forward with a complaint, as well as help with the emotional impact before, during, and after an investigation. In all cases, Willamette encourages those who have experienced any form of discriminatory misconduct to seek help in dealing with the potential emotional and physical trauma of such experiences. Counseling resources may also be helpful for those accused of harassment. Whether a person has experienced discriminatory harassment or sexual misconduct at work, home, or elsewhere, there are resources available to employees that can help:
- Any faculty or staff member who feels a need for confidential assistance is encouraged to contact the University's Employee Assistance Program (EAP) for confidential counseling. Cascade Centers (EAP) can be reached 24 hours a day at (800) 433-2320.
  - Salem Hospital: Sexual Assault Nurse Examiner (SANE Program): Confidential medical response, 24/7, at the Emergency Department. No appointment necessary. Location: 890 Oak St. Salem (across Bellevue St. on the south-side of campus. You have a right to have a support person during the process. Support advocates are available from the Marion County District Attorney's Office and Mid-Valley Women's Crisis Service.
  - Center for Hope & Safety: which provides support for people of all genders, is an off-campus resource which is also confidential – their 24-hour hotline is 503-399-7722 or toll free in Oregon at 866-399-7722.
  - National Sexual Assault Hotline provides anonymous and confidential support – their 24-hour hotline is 800-656-4673.
  - National Domestic Violence Hotline and online chat 800-799-7233
  - Students are encouraged to contact the Counseling Center in Bishop Wellness Center at 503-370-6471, the Chaplain at 503-370-6213, or Sexual Assault Response Allies (SARA) at 503-851-4245. More resources are identified in the student policy governing Sexual Misconduct.
3. **Duty to Conduct Inquiry** - If a harassment complaint or other type of discriminatory misconduct is reported to the Director of Human Resources or any other appropriate University official, the University may proceed to conduct an inquiry, even if that is not consistent with the complainant's wishes. An official inquiry is intended to protect the well-being of involved parties, others in the community, and the University at-large.
- Willamette may investigate suspected instances of harassment even if individual complaints are not made. If a supervisor or other managerial employee has reason to believe that an environment of harassment exists, or that any other provision of the University's policy prohibiting discriminatory misconduct is being violated, it should be reported immediately to the Director of Human Resources.
  - It should be noted that this duty to conduct an inquiry, regardless of whether the alleged recipient of discriminatory behavior wishes to proceed, is different than the policy that applies for cases of sexual misconduct between students. To this end, where employment is involved, the University must proceed with the intent to eliminate a hostile work environment and protect all community members from the potential of future discriminatory misconduct.

4. **Procedures for Reporting** - Staff members, faculty members, or students who believe they have been harassed by an employee of the University are encouraged to report the issue immediately to the Director of Human Resources. Alternatively, a report can be made to the claimant's supervisor, Vice President, or Dean responsible for the accused offender's department. Upon making a report of harassment or other misconduct, you may be asked to provide the information in writing. Reports may also be made through online reporting systems maintained by the University. Both the bias incident reporting system and the sexual misconduct reporting system provide web-based options for reporting discriminatory misconduct. Following are websites for these reporting systems:

- a. <https://secure.willamette.edu/cgi-bin/datastore.cgi/biasreport>
- b. [https://publicdocs.maxient.com/reportingform.php?WillametteUniv&layout\\_id=5](https://publicdocs.maxient.com/reportingform.php?WillametteUniv&layout_id=5)

A staff member, faculty member, or student may contact the Director of Human Resources without first contacting other officials identified above. Any party may have an advisor or advocate in these proceedings; however the advisor or advocate may not participate in, or represent, a complainant in this process. Every effort will be made to ensure the confidentiality of the information received as a part of the process.

5. **Supervisor Reporting Requirement** - Supervisors and other University officials receiving complaints of potential harassment or other discriminatory misconduct are required to consult with the Director of Human Resources, or a responsible Vice President or Dean, immediately upon receiving a complaint. A supervisor should not attempt to resolve a complaint of harassment without assistance from the Director of Human Resources, a Vice-President or Dean, or other Human Resources designee.

6. **Timing of the Complaint** - Because prompt reporting provides the best opportunity for the University to conduct a thorough investigation, complaints of discriminatory misconduct or harassment should be made as soon as possible after the alleged discriminatory behavior occurs, or within one year. Generally, the longer a delay in reporting, the more difficult it is for the university to conduct a thorough investigation. Complaints brought more than one year after the last alleged conduct occurs may not be pursued if the University believes that a fair and thorough investigation is not possible due to such delay.

7. **Preliminary Review** - Upon receiving a complaint, the Director of Human Resources will make a preliminary determination as to whether or not the complaint is appropriately brought under the process for addressing violations of the University's discriminatory misconduct policy. In the case of a student-related complaint involving a staff or faculty member, the Director of Human Resources will work closely with the student Title IX investigator in campus life to make a preliminary determination.

The Director, and/or the Title IX Coordinator if a student is involved, shall convey that preliminary determination to the complainant. The Director of Human Resources may choose to refer the complaint to a designee if warranted. Such determinations may be made to better serve the complainant in the process, or to avoid any issues of conflict of interest.

If the complainant disagrees with the determination by the Director of Human Resources, the complainant may appeal this decision under the Procedures for Reconsideration to the University's Title IX Coordinator within ten (10) working days of the date on the notice received of the determination. The Title IX Coordinator will either affirm the Director's determination, or remand the complaint back to the Director of Human Resources to proceed with further review, which may include direction that a

third party conduct a renewed and independent inquiry. The Title IX Coordinator's decision will be delivered within ten (10) working days of receipt of any appeal, and the decision is final.

8. **Procedures for Informal Complaint Resolution Option** - The parties concerned may request an informal resolution of allegations of harassment. An informal resolution is one in which a satisfactory resolution to the issue is reached without a formal investigation, findings or unilateral disciplinary action.

The person receiving the complaint may explore whether the parties wish to seek an informal resolution or whether they wish to proceed directly to an investigation. An informal resolution typically includes the appropriate Dean or Vice President or his/her designee, and the Director of Human Resources, meeting separately with the complainant and the accused, discussing the problem, possible violation(s) of policy and possible solutions, mediating to establish satisfactory conditions for further University-related interactions, and coordinating on-going steps to foster a successful resolution. In all cases, the Director of Human Resources should be consulted before addressing a complaint.

An attempt at a mediated resolution is recommended but not required prior to an investigation of the complaint. In addition, informal resolution may not be appropriate under certain circumstances, even with agreement on the part of the complainant. The goal in all cases will be to ensure that the reported behavior stops, if acknowledged by the respondent, and that the complainant does not continue to work in a hostile work environment as defined in the discriminatory misconduct policy.

9. **Makeup of Investigatory Team** - Should a complainant choose not to use an informal complaint resolution, the Director of Human Resources will proceed with an inquiry. The investigation will always involve two investigators. The makeup of the investigatory team will take into consideration the unique needs of the complainant, the desire to foster confidentiality, and the employment circumstances of those involved. The University may choose to use a third party investigator or another trained investigator in the University community to assist in performing an inquiry. In general, if the complaint involves a student as either complainant or respondent, the University's Title IX investigative officer in Campus Life will serve as co-investigator.
10. **Notice to Respondent (Accused)** - The investigator will ordinarily start the process of a formal investigation by notifying the respondent (the accused) that he or she has been named in a complaint. This notice shall describe the nature of the complaint and advise the respondent of any preliminary remedial actions being taken, including restrictions related to contact with the complainant. Such notice may be delayed in light of circumstances of the complaint and to foster an effective investigation.
11. **Preliminary Remedies or Protective Measures** - Upon receipt of a report of alleged discriminatory misconduct, if necessary to protect the complainant, other members of the community, or the integrity of the investigation, the university will implement preliminary remedies or protective measures. Such measures may also have the effect or intent of best ensuring fairness and appropriate treatment of the respondent.

What measures are taken will be determined by the nature, substance and context of the complaint at hand. If the complainant is a student, the goal will be to ensure full access to educational resources and experiences as they would have had if the unwanted behavior had not occurred. If the complainant is an employee, the goal of such measures will be to ensure continued full access to the provisions of employment and elimination of a potential continuation of a "hostile work environment". Remedies and

protective measures may be implemented even if the complainant is not seeking such actions. Remedies may include, but are not limited to:

- No contact/restricted contact order.
- Required administrative leave (paid or unpaid) of respondent.
- Reassignment of respondent.
- No trespass order.
- Reassignment of complainant (usually only with complainant's agreement).
- Any provision for preliminary remedies of the student Sexual Misconduct Policy if a student is involved.

12. **Timely Warning** - If a report of misconduct involves a serious or continuing threat to the community, the university may issue a campus-wide timely warning to protect the health and safety of the community. The timely warning will not include any identifying information about the person who was the recipient of unwanted behavior as defined by this policy (claimant).

13. **Time Frame for Resolution** - The university strives to conclude all cases of discriminatory misconduct expeditiously, and will do so within 60 calendar days from the date of receiving an initial report. In the case of employment, the goal is to eliminate a potential "hostile work environment" immediately.

Extenuating circumstances may arise that require an extension of time for the resolution of a case beyond 60 days. Extenuating circumstances may include the complexity and scope of the allegations, the number of witnesses, the availability of involved parties or witnesses, the effect of a concurrent criminal investigation, any intervening university break or vacation, or other unforeseen circumstances. Best efforts will be made to complete the process in a timely manner by balancing principles of thoroughness and fundamental fairness with promptness.

14. **"Evidentiary" Standard Used to Issue Finding** - The purpose of an investigation is to establish whether there is sufficient evidence to determine whether the discriminatory misconduct policy has been violated. In conducting the investigation, the investigators may interview and/or obtain written statements from the complainant, the respondent, and other persons believed to have pertinent factual knowledge. The specific allegation(s) shall be given to the accused in writing. The accused must be given the opportunity to respond in writing to the allegations. An advisor or advocate may not participate in, or represent a party in this investigation process.

In determining an outcome, the investigators will use a standard of "more likely to have occurred than not". Possible outcomes of the investigation are

- a determination that a violation of the discriminatory misconduct policy did occur;
- a determination that a violation of the discriminatory misconduct policy has not occurred;
- a determination that a violation of the discriminatory misconduct policy has not occurred, but inappropriate actions/behaviors have occurred which may warrant other disciplinary action;

- a determination that the allegations cannot be substantiated.

15. **Other Policy Violations** - If the investigation identifies inappropriate behaviors related to the incident that do not violate the discriminatory misconduct policy, but do violate other University policies, these behaviors may result in disciplinary action.

16. **Communication of Findings** - The investigator shall make a written summary of the investigation and findings of fact. If the Director of Human Resources delegated the investigation to a third party investigator, the summary of the findings will be conveyed in writing to the Director of Human Resources. The investigators, with assistance from the Director of Human Resources if the Director is not an investigator, shall communicate the findings to the complainant and respondent in writing. The investigators shall deliver the findings to the appropriate decision maker for determining sanctions. In general, this shall be done through an in-person conference with the decision-maker.

17. **Procedures for Determination of Sanction** - Any subsequent sanction to be taken shall be appropriate to prevent any recurrence, and shall be reasonably related to the gravity and/or frequency of the violation. Disciplinary action for administrative and classified staff will be considered using the Staff Disciplinary Guidelines (2.02) policy. Determination of the sanction (disciplinary action) will be made through collaboration of the direct supervisor of the respondent, the divisional Vice President or Dean with responsibility for the respondent's department, and the Director of Human Resources.

Sanctions for faculty will be considered with reference to faculty employment policies contained in the appropriate faculty handbook corresponding to the college in which the faculty member teaches. The Dean of each college is responsible for administering appropriate disciplinary procedures reflective of the policies in the faculty handbooks of their faculty, which may be in consult with faculty committees.

18. **Communicating Sanctions** - As described above, a final determination of the finding will be communicated in writing to the complainant and the respondent by the Director of Human Resources. In terms of communicating sanctions, an individual who has made a report of discriminatory misconduct may be advised of sanctions imposed against the respondent when the complainant needs to be aware of the sanction in order for it to be fully effective (such as restrictions on communication or contact with the individual who made the report). In general, information regarding disciplinary action taken against the respondent shall not be disclosed without the complaint respondent's consent, unless it is necessary to ensure compliance with the action or the safety or security of individuals. Privacy of employment actions will be maintained to the extent possible. However, the University reserves the right to disclose information necessary to reassure the complainant and the community that the matter has been resolved.

19. **Request for Reconsideration of Findings** - A written request for reconsideration of the findings may be made by either party to the University's Title IX Coordinator in the case of gender-based misconduct, or the Senior Vice President for Finance and Administration in the case of investigations of other types of discriminatory misconduct, and must be submitted within ten (10) working days of the date on the notice of finding from the investigators. Such requests, however, may only be made if there is belief that the finding was influenced by some failure of the process, or because the investigatory team was believed to have had a conflict of interest in reviewing the matter.

The written request shall set forth the procedures that allegedly were not properly handled in the investigation, or the reason there may have been a conflict. Each party will be allowed to review a reconsideration request and respond to the reconsideration request in writing within ten (10) working

days of when the information is sent. The Title IX Coordinator will determine whether the procedures outlined in these Guidelines were followed, and based on that assessment, may affirm, revise, reverse, or remand the decision. The determination concerning the request for reconsideration shall be made within a reasonable amount of time, generally within ten (10) working days. The Title IX Coordinator may extend the time of response by providing notice to the parties. The Title IX Coordinator's decision is final.

20. **Non-Retaliation** - The University will not tolerate any retaliatory treatment or adverse consequences as a result of an individual's acting in good faith to report discriminatory misconduct, or participating in an investigation. Retaliation may subject the person who retaliates to disciplinary action up to and including termination.

It is critical that a person responding to a claim of harassment or discrimination (the accused), and those who may be supportive of the accused, recognize that many behaviors may be perceived as retaliatory. When in doubt about whether a certain action, communication, or behavior might be viewed as retaliatory, please consult with your supervisor and/or Human Resources.

21. **Privacy, Confidentiality, & Anonymity** - Willamette University is committed to respecting to the greatest extent possible an individual's privacy, confidentiality, and anonymity, and to providing options for reporting, investigation, and support that honor this commitment. For purposes of these procedural guidelines, definitions of privacy, confidentiality, and anonymity are provided below.

#### **Definitions related to this Policy:**

**“Private” Information** – Information related to a report of alleged misconduct brought to the university's attention that will only be shared with a limited number of trained university professionals who “need to know” in order to provide support for the individual and to ensure safety for individuals and the community as well as legal compliance therein. The circle of people with knowledge of the situation will be limited as much as possible to preserve privacy and ensure safety.

**“Confidential” Information** – Information shared by an individual with designated campus or community professionals that cannot be revealed to any other entity without the express permission of the individual, unless required by law. These campus and community professionals include mental health and health care providers, ordained clergy, and attorneys (within established professional-client privilege), all of whom must keep information confidential by virtue of their professions and licenses.

**“Anonymous” Reporting** – Reports of discriminatory misconduct may be submitted in a variety of ways: through anonymous letters sent to Human Resources, or, in the case of student-related sexual misconduct, via the Sexual Misconduct Report Form (see link above). Anonymous reports can include information about an incident without including the reporting party's identity. Although anonymous reports are accepted, it is important to understand that the University's ability to investigate and respond meaningfully to an anonymous complaint may be limited. University-required reporters may not make anonymous reports unless they are reporting for themselves as recipients of unwanted behavior covered by this policy.

**Status:** Under Review

**Scope:** All employees

**Effective Date:** April 1, 2015

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**Last Revision Date:** April 2015

**Last Review Date:** April 2015

**Next Anticipated Review:** April 2018

**Responsible University Administrator(s):** Director of Human Resources; Title IX Coordinator

**Responsible University Office:** Office of Human Resources

**Primary Policy Contact(s):**

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Approved by\*:

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Signature

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Date

*\*Authority determined by scope of policy.*