Discrimination, Harassment, and Affirmative Action in the Workplace

Discriminación, acoso y acción afirmativa en el lugar de trabajo

工作場所歧視、騷擾及平權行動

Diskriminasyon, Panliligalig, at Positibong Aksyon sa Lugar ng Trabaho

Academic Officer:	Vice Provost – Academic Personnel and Programs
Academic Office:	APP – Academic Personnel and Programs
Staff Officer:	VP – Human Resources
Staff Office:	HR – Human Resources
Issuance Date:	February 14, 2018
Effective Date:	February 14, 2018
Last Review Date:	January 17, 2018
Scope:	This policy applies to all University employees and applicants for employment, and where stated in policy, to paid and unpaid interns, volunteers, participants in a training program leading to employment, and independent contractors.

	Academic	Staff
Contact:	Kimberly Grant (APP)	Abby Norris
Title:	Policy Director	Policy Specialist
Email:	Kimberly.Grant@ucop.edu	Abigail.Norris@ucop.edu
Phone #:	(510) 987-9499	(510) 987-0612

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I. POLICY SUMMARY

The University of California is committed to providing a workplace free of discrimination and harassment. The University prohibits discrimination against any person employed; seeking employment; or applying for or engaged in a paid or unpaid internship or training program leading to employment with the University of California. In addition, the University prohibits harassment of an employee, applicant, paid or unpaid intern, volunteer, person participating in a program leading to employment, or person providing services pursuant to a contract. The University undertakes affirmative action, consistent with its obligations as a federal contractor.

II. DEFINITIONS

Exception to Policy: An action that exceeds what is allowable under current policy or that is not expressly provided for under policy. Any such action must be treated as an exception.

Executive Officer: The University President, Chancellor, Laboratory Director, or Vice President–Agriculture and Natural Resources.

Gender: The sex of a person, including a person's gender identity, and gender expression.

Gender Expression: A person's gender-related appearance or behavior, or the perception of such appearance or behavior, whether or not stereotypically associated with the person's sex assigned at birth.

Gender Identity: Each person's internal understanding of their gender, or the perception of a person's gender identity, which may include male, female, a combination of male and female, neither male nor female, a gender different from the person's sex assigned at birth, or transgender.

Gender Transition: The process some transgender people go through to begin living as the gender with which they identify, rather than the sex assigned to them at birth. This process may include, but is not limited to, changes in name and pronoun usage, facility usage, participation in employer-sponsored activities (e.g. sports teams, team-building projects, or volunteering), or undergoing hormone therapy, surgeries, or other medical procedures.

Pregnancy: Includes pregnancy, childbirth, and medical conditions related to pregnancy and childbirth.

Protected Veteran: A veteran who is protected under the non-discrimination and affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; specifically, a veteran who may be classified as a "disabled veteran," recently separated veteran," "active duty wartime or campaign badge veteran," or an "Armed Forces service medal veteran," as defined by 41 CFR 60-300.2.

Service in the Uniformed Services: Includes service in the uniformed services as defined by the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), as well as state military and naval service.

Sex: Includes, but is not limited to, pregnancy; childbirth; medical conditions related to pregnancy, childbirth, or breast feeding; gender; gender identity; and gender expression, or perception by a third party of any of the aforementioned.

Transgender: A general term that refers to a person whose gender identity differs from the person's sex assigned at birth. A transgender person may or may not have a gender expression that is different from the social expectations of the sex assigned at birth. A transgender person may or may not identify as "transsexual."

III. POLICY TEXT

A. General

The University prohibits discrimination against any person employed; seeking employment; or applying for or engaged in a paid or unpaid internship or training program leading to employment with the University of California on the basis of race, color, national origin, religion, sex, gender, gender expression, gender identity, gender transition status, pregnancy, 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, including protected veterans. This policy applies to all employment practices, including recruitment, selection, promotion, transfer, merit increase, salary, training and development, demotion, and separation.

In addition, the University prohibits harassment based on the above protected characteristics of an employee, applicant, paid or unpaid intern, volunteer, person participating in a program leading to employment, or person providing services pursuant to a contract.

If the harassment is sexual in nature, the University's Sexual Violence and Sexual Harassment (SVSH) policy will apply. Local SVSH resource information can be found at http://sexualviolence.universityofcalifornia.edu/get-help/index.html.

This policy is intended to be consistent with applicable state and federal laws and University policies.

B. Retaliation

University policy prohibits retaliation for bringing a complaint of discrimination or harassment pursuant to this policy against any person employed; seeking employment; providing services pursuant to a contract; or applying for or engaged in a paid or unpaid internship, volunteer capacity, or training program leading to employment with the University of California. This policy also prohibits retaliation against a person who assists someone with a complaint of discrimination or harassment, or participates in any manner in an investigation or resolution of a complaint of discrimination or harassment. Retaliation includes threats, intimidation, reprisals, and/or adverse actions related to employment.

C. Complaints

Individuals who believe they have been subjected to discrimination, harassment, or retaliation are encouraged to submit complaints through their local Human Resources office, Affirmative Action/Equal Employment Opportunity office, Academic Personnel office, Labor Relations office, or the University Whistleblower Hotline (800-403-4744). Complaints will be assigned to the appropriate office or officer for review and investigation.

When the University receives an allegation of discrimination, harassment, or retaliation, it will conduct a fair, timely, and thorough investigation that provides all parties appropriate due process and reaches reasonable conclusions based on the evidence collected. Confidentiality will by kept by the University to the extent possible, but the investigation may not be completely confidential. If the investigation finds discrimination, harassment, or retaliation, appropriate administrators, in consultation with the applicable Affirmative Action/Equal Employment Opportunity office, will take appropriate remedial measures.

D. Affirmative Action

It is the policy of the University to undertake affirmative action, consistent with its obligations as a federal contractor, for minorities and women, for persons with disabilities, and for protected veterans. The University commits itself to apply every good faith effort to achieve prompt and full utilization of minorities and women in all segments of its workforce where deficiencies exist. These efforts conform to all current legal and regulatory requirements, and are consistent with University standards of quality and excellence.

In conformance with federal regulations, written affirmative action plans will be prepared and maintained by each campus of the University, by the Lawrence Berkeley National Laboratory, by the Office of the President, and by the Division of Agriculture and Natural Resources. Such plans will be reviewed and approved by the Office of the President and the Office of the General Counsel before they are officially promulgated.

E. Pay Transparency

The University of California will not discharge or in any other manner discriminate against employees or applicants because they have inquired about, discussed, or

disclosed their own pay or the pay of another employee or applicant. However, employees who have access to the compensation information of other employees or applicants as a part of their essential job functions cannot disclose the pay of other employees or applicants to individuals who do not otherwise have access to compensation information, unless the disclosure is (a) in response to a formal complaint or charge, (b) in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the University, or (c) consistent with the University's legal duty to furnish information.

IV. COMPLIANCE/RESPONSIBILITIES

A. Implementation of the Policy

Executive Officers (the University President, Chancellor, Lawrence Berkeley National Laboratory Director, or Vice President of Agriculture and Natural Resources) and their designees have the authority to develop procedures and supplementary information to support the implementation of this policy. Responsible Officers (Vice Provost-Academic Personnel and Programs and Vice President-Human Resources) will apply appropriate and consistent interpretations of this policy that are consistent with the policy.

The Executive Officer, or their designee, at each location, will establish and implement local procedures consistent with this policy. Exceptions to local procedures required by the policy will be approved by the Executive Officer or designee.

B. Revisions to the Policy

The President is the Policy Approver and has the authority to approve policy revisions upon recommendation by the Responsible Officers.

The Vice Provost, Academic Personnel and Programs and the Vice President–Human Resources have the authority to initiate revisions to the policy, consistent with approval authorities and applicable Bylaws and Standing Orders of the Regents.

The UC Provost and Executive Vice President for Academic Affairs and the Executive Vice President–Chief Operating Officer have the authority to ensure that the policy is regularly reviewed, updated, and consistent with other governance policies.

C. Approval of Actions

Actions within this policy must be approved in accordance with local procedures.

D. Compliance with the Policy

The Executive Officer at each location will designate the local management office that is responsible for monitoring, enforcing, and reporting policy compliance. The Senior Vice President–Chief Compliance and Audit Officer will periodically audit and monitor compliance with the policy.

E. Additional Enforcement Information

The U.S. Equal Employment Opportunity Commission (EEOC), the Office of Federal Contract Compliance Programs (OFCCP), and the California Department of Fair Employment and Housing (DFEH) investigate reports of unlawful discrimination and harassment in employment. These agencies may serve as fact finders and attempt to facilitate the voluntary resolution of disputes. For more information, contact the nearest office of the EEOC, OFCCP, or DFEH.

F. Noncompliance with the Policy

Noncompliance with this policy is handled in accordance with University policies, including but not limited to, the Faculty Code of Conduct (APM – 015) and University Policy on Faculty Conduct and the Administration of Discipline (APM – 016), Non-Senate Academic Appointees/Corrective Action and Dismissal (APM – 150), *Personnel Policies for Staff Members 61*, *62*, *63*, *and 64* or, as applicable, collective bargaining agreements.

V. PROCEDURES

Local procedures will include the following elements:

A. Supervisor Responsibilities

Supervisors must report complaints of discrimination or harassment to a designated representative at the relevant location so that the claim may be resolved internally if possible.

B. Complaint Process

Complaints will be confidential to the extent possible and will receive a timely response and closure. In addition, the University will conduct impartial and timely investigations by qualified personnel; provide documentation and tracking for reasonable progress; and provide appropriate options for remedial actions and resolutions.

Dissemination of this policy and local procedures is required.

VI. RELATED INFORMATION

- The Uniformed Services Employment and Reemployment Rights Act (USERRA) (referenced in Section II of this policy)
- Sexual Violence and Sexual Harassment policy (referenced in Section III.A of this policy)

Academic Personnel Manual

- Academic Personnel Manual (APM) Section 015, The Faculty Code of Conduct (referenced in Section IV.F of this policy)

- Academic Personnel Manual (APM) Section 016, University Policy on Faculty Conduct and the Administration of Discipline (referenced in Section IV.F of this policy)
- Academic Personnel Manual (APM) Section 035, Affirmative Action and Nondiscrimination in Employment
- Academic Personnel Manual (APM) Section 140, Non-Senate Academic Appointees/Grievances
- Academic Personnel Manual (APM) Section 150, Non-Senate Appointees/Corrective Action and Dismissal (referenced in Section IV.F of this policy)
- Academic Personnel Manual (APM) Section 160, Academic Personnel Records/Maintenance of, Access to, and Opportunity to Request Amendment of

Personnel Policies for Staff Members

- Personnel Policies for Staff Members 12, Nondiscrimination in Employment
- Personnel Policies for Staff Members 61, 62, 63, and 64 (referenced in Section IV.F of this policy)
- Personnel Policies for Staff Members 81, Reasonable Accommodation

VII. FREQUENTLY ASKED QUESTIONS

N/A

VIII. REVISION HISTORY

Changes effective as of **February 14, 2018**:

- Deleted definition of “Covered Veteran” and added definition of “Protected Veteran” to comply with the Vietnam Era Veterans Readjustment Assistance Act, as amended (VEVRAA) (41 CFR 60-300.2)
- Modified definitions of “Gender Expression” and “Gender Identity,” and added definitions of “Gender Transition,” “Sex,” and “Transgender” to comply with definitions in 2 CCR § 11030
- Updated for compliance with California Fair Employment and Housing Act regulations regarding Harassment and Discrimination Prevention and Correction (2 CCR § 11023)
- Updated for compliance with California Assembly Bill 1443, which extends discrimination and harassment protections to volunteers, unpaid interns, and trainees, and harassment protections to contractors (2 CCR § 11009, 11019)
- Added pay transparency Nondiscrimination Provision required by the Office of Federal Contract Compliance Programs (41 CFR 60-1.35(c))

- Reformatted Policy Statement with subsections
- Added reference to the University's Sexual Violence and Sexual Harassment policy in Section III.A

This Policy was also remediated to meet Web Content Accessibility Guidelines (WCAG) 2.0.

This policy was reformatted into the standard University of California policy template effective **July 3, 2013**.

As a result of the issuance of this policy, the following policy is rescinded as of the effective date of this policy and is no longer applicable:

- University of California Nondiscrimination and Affirmative Action Policy Regarding Academic and Staff Employment, dated July 3, 2013

The following policies have been rescinded and are no longer applicable:

- University of California Nondiscrimination and Affirmative Action Policy Regarding Academic and Staff Employment, dated June 24, 2010
- University of California Nondiscrimination and Affirmative Action Policy Regarding Academic and Staff Employment, dated January 1, 2004