What Every Faculty Member Should Know About A Workplace Free Of Harassment & Retaliation

Advisory

- Training is Not Legal Advice
- Potentially offensive material is for learning purposes only
- Humor does not mean that we take issues lightly

Who Am I?

- A qualified subject matter expert
- Caution – no giving legal advice
- Formal education, training & substantial experience in harassment, discrimination and retaliation
- A member of a workforce

Who Are You?

- An employee
- A supervisor/ faculty member
- The “eyes and ears” of the employer:
  - What you see, say and do is attributed to the employer
  - What you see, say and do helps the employer

What Is An Equal Employment Opportunity Workplace?

It is a workplace & learning environment free of:

- Harassment
- Discrimination
- Retaliation

Agenda

- Introduction
- The Basics Of An Equal Opportunity Workplace
- Identifying Workplace and Student Harassment
- Liability Issues
- Tools & Techniques for a Harmonious Workplace & Learning Environment
Why Are We Here? – Objectives

- Learn practical information necessary to prevent and understand unlawful discrimination, workplace harassment and student harassment under Title IX and state laws
- Examine practical examples of workplace harassment and student, discrimination & retaliation
- Apply organizational values and strengthen policy awareness
- Respond to and report inappropriate conduct correctly
- Never retaliate against coworkers or students for expressing their concerns

Personal Liability

Managers & Supervisors and Faculty Members Face Personal Liability

- Harassment
- Sexual favoritism
- Defamation
- Intentional infliction of emotional distress
- Retaliation

The Basics Of An Equal Opportunity Workplace

Defining Discrimination Starts With Being An Equal Employment Opportunity Employer

Complies with all federal, state & local laws prohibiting discrimination and ensures that applicants and employees are treated without regard to any protected category when engaged in employment practices.

Under Title VII, two types of discrimination:
- Disparate treatment – protected groups are intentionally treated differently
- Adverse impact – employment practice appears neutral but has a discriminatory effect on a protected group

Under Title IX, Discrimination and Harassment Are Also Prohibited

Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex in education programs. Sexual harassment and bullying also protected.

A student may be sexually harassed:

- by a school employee
- another student,
- or a non-employee third party (e.g., a visiting speaker or visiting athlete).

Both male and female students are protected from sexual harassment engaged in by a school's employees, other students, or third parties.

Title IX prohibits sexual harassment regardless of the sex of the harasser, i.e., even if the harasser and the person being harassed are members of the same sex.

For example, if there would be a campaign of sexually explicit graffiti directed at a particular girl by other girls.
Are gay students protected?

Although Title IX does not prohibit discrimination on the basis of sexual orientation, sexual harassment directed at gay or lesbian students that is sufficiently serious to limit or deny a student’s ability to participate in or benefit from the school’s program constitutes sexual harassment prohibited by Title IX under the many circumstances.

For example, if a male student or a group of male students target a gay student for physical sexual advances, serious enough to deny or limit the victim’s ability to participate in or benefit from the school’s program, the school would need to respond promptly and effectively, just as it would if the victim were heterosexual.

The laws protect gender based harassment.

Unlawful Discrimination

State and Federal law prohibits employment discrimination and harassment on the basis of any protected category.

What Is A Protected Category?

Gender/Sex/Pregnancy
Race
Ancestry
Color
Religion
National Origin
Disability
Age
Veteran Status
Citizenship Status
Genetic Predisposition

Sexual Orientation
Medical Condition
Gender Identity
Marital Status
Domestic Partner

What is “Proof” of Discrimination?

Intentional Discrimination:
- Plaintiff qualified
- Member of protected class
- Denied equal opportunity
- Non-protected individual received the opportunity

What is “Proof” of Discrimination?

Plaintiff has to show that a protected category is “A” motivating factor in the decision

For example

“I am terminating Sally due to her pregnant condition”.

“She is too old and lazy to still be a professor”.

“We don’t want too many of those people here”.

For example
Grey Hair

Unlawful Harassment

State and Federal Law Prohibit Employment Discrimination and Harassment on the Basis of any Protected Category

What Is A Protected Category? Federal And State

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Ancestry
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Religion
National Origin
Disability
Age
Veteran Status
Citizenship Status
Genetic Predisposition

Breaking Unlawful Harassment Down: Economic And Environmental Harassment

Under Title IX, Discrimination and Harassment Are Also Prohibited

Sexual harassment in education includes any unwanted and unwelcome sexual behavior that significantly interferes with a student’s access to educational opportunities. The Supreme Court has confirmed that schools have an obligation under Title IX to prevent and address harassment against students, whether perpetrated by peers or by employees of the school system.

Economic Harassment

- Taking any tangible employment action based on an agreement or refusal to engage in sex, dating, etc.
- Typically involves a threat or promise of a benefit linked to sex
- “Quid Pro Quo”
Economic Harassment

- Always Involves a Supervisor/faculty member
- Why?
- “It’s an abuse of power”

Warning Signs – Faculty and Students

- “Sleep with me, and I’ll make sure you get an A+!”
- “If you were more friendly to me, you could be an A student.”
- “Have a drink with me to discuss your grade on the final exam.”
- Giving a bad grade to a student who rejects an advance.

Environmental Harassment

Unwelcome conduct based on someone’s membership in a protected category that unreasonably:
- Interferes with an employee’s job performance, or
- Creates an intimidating, hostile, or offensive work environment

A Simple Test: ASK – Is The Conduct “PURE”

Protected Category
- Sexual conduct or dealing with a protected category

Unwelcome
- Reasonably Offensive
- Extreme – Severe or Pervasive

Examples of student harassment?

A female student “hooked up” with a male student and now a group of girls are repeatedly texting her and tweeting about her at school calling her a ‘slut’ and a “whore”.

Examples of student harassment?

A female student sends her boyfriend naked “sexts” of herself. They break up. The boyfriend shares these texts and photos with his friends at school and spreads rumors about her.

Is this harassment?
Examples of student harassment?

A male student has mostly female friends. He sings Lady Gaga songs in the hallway and is on the dance team. Fellow students call him a “fairy”, “queen”, “gay boy” and “queer”. They tell him he should be homecoming queen. Is this harassment?

The Classics

Physical

Non-verbal/Visual

Verbal

Which Category? Verbal & Non-verbal

EEOC Overview

• Petty slights, annoyances, and isolated incidents (unless extremely serious) will not rise to the level of illegality. To be unlawful, the conduct must create a work environment that would be intimidating, hostile, or offensive to reasonable people.

• Offensive conduct may include, but is not limited to, offensive jokes, slurs, epithets or name calling, physical assaults or threats, intimidation, ridicule or mockery, insults or put-downs, offensive objects or pictures, and interference with work performance.

• Harassment can occur in a variety of circumstances, including, but not limited to, the following:
  • The harasser can be the victim’s supervisor, a supervisor in another area, an agent of the employer, a co-worker, or a non-employee.
  • The victim does not have to be the person harassed, but can be anyone affected by the offensive conduct.

Harassment?

Joan, an African American student, brings her professor a coffee, telling him she left out the cream & sugar. “That’s okay,” he smirks, “I like it hot and black.” He winks at her and she winks back and laughs.

Is this appropriate?

Harassment? Appropriate Conduct?

At a campus bench a professor comments to a student, “Hmmm ... very nice! You’ve been working out, haven’t you?”
Harassment?

An student complains that his teacher occasionally views racially inflammatory web sites and it “totally disturbs” him.

Trouble?

Clark, psychology professor who is considered something of a “ladies’ man,” often flirts with new female students (who rarely object). He also brags about his sexual exploits (but only when he’s around other male students).

• Is this harassment?

How Do you Respond?

A student decides to tell you to stop making sexual jokes & unwelcome comments.

• How should you respond?

Must the Conduct be Targeted at the Victim to be “Severe or Pervasive?”

Actual University Case:

• Executive secretary frequently sees a classics professor watching hardcore porn in his office.
• Several reports made to the University’s EEO office, without action being taken

• Held: Conduct could be severe or pervasive.

Your Policy Rules!

Remember: Prohibited harassment under school policy covers conduct that is potentially much broader than what a court would find to be unlawful.

Policy

It is the policy of Central Washington University to maintain a work and academic community which is free from sexual harassment. Sexual harassment is a practice which violates state and federal law and will not be tolerated by this institution. An individual found in violation of this policy will be subject to informal or formal disciplinary action up to and including termination/dismissal from employment.
Unwelcomeness

Unwelcomeness of the receiver is a key factor in determining if harassment occurred

Every manager & employee needs to pay attention to the responses of all others because:

- “No” means no
- “Maybe” means no
- Verbal response (or lack of one)
- Expression changes
- Body language

Cyber Chat Pals...

One way it could play out...

The Next Morning
Consent Today, Complainant Tomorrow?

- If horseplay becomes too pervasive at work, the line between “banter” and “harassment” can easily be crossed.
- Electronic activity is...forever
- Social networking and I-Ms – Loaded with landmines

Beware – Social Outings

Harassment Can Occur At An Activity That Is Work Related But Not At The Workplace —
- Remember to still exercise professionalism when it comes to offsite activities
- Beware special events such as the holiday party, concert or other special purpose events associated with the workplace or learning environment

Analyze This:
How Does It Register On the Zone Of Risk?

It Works Both Ways

Your policy covers interactions between you and employees, vendors, customers, students and others you come in contact with because of work.
Harassment?

A student, whose family came from India, often “jokes” with other students who were born in India by mimicking their accents.

• What do you do?

When You Observe Potential Harassment

<table>
<thead>
<tr>
<th>Recognize</th>
<th>Remove</th>
<th>Redirect</th>
<th>Reeducate</th>
<th>Respond</th>
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<tbody>
<tr>
<td>Does this issue deserve a response?</td>
<td>Yourself from participation or assent.</td>
<td>Conversation to express your disapproval.</td>
<td>As to the offense, risk and policy.</td>
<td>What if any “formal” response is needed?</td>
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“You need more than policies ... you need a culture that on a daily basis feels welcoming, and the only way you change corporate culture is through education.”

−Consultant Brian McNulty

Liability

Manager’s Conduct:
• Strict liability, regardless of whether employer had a policy or did not know of the harassment
• For environmental harassment by managers, there may be defenses to liability or damages

Employee/3rd Party Conduct:
• Employer liable if knew/should have known of harassment and failed to take immediate & appropriate corrective action
• There may be defenses to liability or damages if the employer took proactive steps to prevent and correct
Speak “up”!

- Stand up for yourself and others
- Don’t engage in combat – reassert professional practices.

Be Direct

- “I was offended by what you just said.”
- “What you said is inappropriate here.”
- Remind the employee/student about your organization’s policies.
- Describe the specific conduct.

And if a student speaks up

- Listen
- Apologize if needed
- Make sure your students know they have a right to speak up and you are there to listen

Why Don’t People ‘Speak Up’?

- Fear of retaliation
- Fear of not being taken seriously
- Hope that the conduct will go away
- Fear of alienating co-workers
- Fear of being wrong

Raise a Concern!

You are Encouraged to Complain About Any Violation of Policy

How Do You Do This?

Reporting Procedure

Persons who believe they are experiencing sexual harassment are encouraged to act promptly and report such concerns to their immediate supervisor, administrator or department chair, the director of the office for equal opportunity (Barge 211, 963-2205), or vice president for student affairs (Bouillon 204, 963-1515). (Concerns which involve student to student sexual harassment may be brought to the attention of the vice president for student affairs.) The university encourages resolution of sexual harassment complaints at the lowest possible level.
What are the University’s Responsibilities?

In assessing sexually harassing conduct, it is important for schools to recognize that two distinct issues are considered.

1. Whether, considering the types of harassment discussed in the following section, the conduct denies or limits a student’s ability to participate in or benefit from the program based on sex.

2. The second issue is the nature of the school’s responsibility to address that conduct.

As discussed in a following section, this issue depends in part on the identity of the harasser and the context in which the harassment occurred.

Remedial Action

1. The school must take remedial action to overcome the effects of the discrimination.

2. The regulations establish procedural requirements that are important for the prevention or correction of sex discrimination, including sexual harassment.

   1. Issuance of a policy against sex discrimination
   2. Adoption and publication of grievance procedures providing for prompt and equitable resolution of complaints of sex discrimination.
   3. Recipients must designate at least one employee to coordinate compliance with the regulations, including coordination of investigations of complaints alleging noncompliance.

Respond Promptly and Effectively

All schools need to recognize and respond to sexual harassment of students by teachers and other employees, by other students, and by third parties.

Harassment by Teachers and Other Employees

Sexual harassment of a student by a teacher or other school employee can be discrimination in violation of Title IX. Schools are responsible for taking prompt and effective action to stop the harassment and prevent its recurrence.

A school also may be responsible for remedying the effects of the harassment on the student who was harassed. The extent of a recipient’s responsibilities if an employee sexually harasses a student is determined by whether or not the harassment occurred in the context of the employee’s provision of aid, benefits, or services to students.

Understanding And Preventing Unlawful Retaliation

One Way It Could Play Out
Our Policy Protects Against Retaliation

Filing complaint of discrimination or harassment
Opposing unlawful practices
Raising a concern about discrimination or harassment
Taking part in an investigation

– Organizations Must “Hold Down The FORT!”

The Bottom Line

Retaliation By You… The Alleged Harasser… Or Anyone Else
Is Forbidden
Against any person engaging in a “Protected Activity”

Thank You!

Question And Answer