

Unlawful Workplace Harassment Prevention Resource Guide

It is important to know the facts about unlawful harassment and discrimination and what to do should you be confronted with something of this nature.

Western Carolina University prohibits harassment or discrimination of any kind. It is the policy of Western Carolina University that no state employee may be engaged in speech or conduct that is defined as unlawful workplace harassment that creates a hostile work environment or circumstances involving quid pro quo. This policy was developed by the Office of State Personnel and covers all state employees across North Carolina. There are federal policies that prohibit this harassment as well.

Included in these pages, you will find important definitions related to unlawful workplace harassment, including the two types of harassment and eight protected classes covered by this policy. It is relevant to note that the Unlawful Workplace Harassment Policy, developed by the Office of State Personnel, applies to all employees that are subject to the state personnel act (SPA). Employees who are exempt from the state personnel act (EPA) and students at Western Carolina University are protected from the same forms of illegal harassment and discrimination by other federal and state laws. For more information, see the EEO Laws link included in these pages. This on-line information resource was adapted from materials developed by the Office of State Personnel and East Carolina University. The Office of Legal Counsel and the Office of Human Resources at Western Carolina University has been delegated the responsibility by the Chancellor for implementation of the harassment policy, including prevention and resolution efforts.

In-service training is also available for staff, faculty and students. Any individual who would like to schedule training for employees in their area should contact the Office of Human Resources, 220 HFR Administration Building, Cullowhee, NC 28723.

Everyone is a member of a protected class. This means the Equal Employment Opportunity (EEO), i.e. laws prohibiting discrimination in employment, protect *you* and *everyone* else. All of us have the right of equal access to employment and all of its benefits regardless of our race, color, religion, sex, national origin or physical or mental disabilities. Many struggles have been waged and won in order to secure these rights. However, the struggle continues.

Progress in attaining equality has been slow because laws cannot control attitudes and prejudices; they can only attempt to govern behavior, and then only if enforced. Prejudices were put into action and affected minorities, women and other disadvantaged groups over the years through such acts as:

- Limiting the rights of African-Americans to vote through the "understanding clause"
- Segregating schools, libraries, and public facilities
- Limiting the right of minorities to buy property through restrictive covenants
- Denying citizenship rights to Mexican-Americans
- Withholding the right to vote from women
- Driving the Native Americans from their land
- Taking mining claims from the Chinese
- Relocating Japanese people to internment camps
- Denying disabled individuals access to many widely used establishments

As a result, laws have been passed to guarantee rights to all groups of Americans previously denied those rights. Thus while religious beliefs were first protected, they were later joined by all the other protected classes -- race, color, national origin, sex, age, and disability.

Standing at the crux of this change has been the issue of **Respect** - a respect which is being developed through understanding. There was a time when the majority of people in the country held fixed and often incorrect views about the minority. These views were not based on sound, scientific data. They were often based on the views of the majority culture, one time encounters with individuals, or a view of the reactions of peoples living in deplorable sub-human conditions or lack of any interaction at all. However, once men and women of this country began to listen and educate themselves of the histories and conditions of other peoples, a newfound respect for peoples of various backgrounds and cultures began to develop. While not every individual American has been successful at making this transformation towards respect, many people in critical decision-making positions have begun to see the value and worthiness of all human beings. The plight and history of a people, a country, a gender or people with physical and mental limitations can only be understood if one harbors a certain amount of respect for his/her fellow human being and takes the time to dialogue with someone from that particular group. The history and plight of a group of people can also be understood by reading articles, attending lectures and visiting museums and exhibits that give you information about a particular group. Until we begin to look at every person as an individual, capable of making a contribution to humanity, despite or because of their past as a group, this country will be forced to develop laws that force people to conform to certain standards of behavior. Due to the lack of respect some groups experience in the workplace and in many other facets of everyday life, the state of North Carolina has found it necessary to develop a number of laws to combat mistreatment and discriminatory practices. The **Unlawful Workplace Harassment** policy, created from a State ratified law, is one such policy. Furthermore, the state has vowed to enforce this policy with the utmost intensity until all forms of workplace discrimination have been eradicated. In the meantime, let us continue working for the day when all men and women will be judged by the content of their character and treated as equal human beings in the workplace, at home, at school and in all of our social and business institutions and let the issue remain **RESPECT!**

Source: Office of State Personnel

Key Definitions

Adverse Employment Action: A dismissal, removal, demotion, non-selection, suspension, furlough without pay, denial of training, denial of promotion, oral or written admonishments or a reduction-in-grade or pay. An adverse action may be taken against an employee for disciplinary or non-disciplinary reasons. However, if the employee is covered is a permanent full-time employee, the action must be in accordance with the State of North Carolina's Office of State Personnel documented Personnel Manual procedures.

Adverse Impact: Occurs when a decision, practice, or policy has a disproportionately negative effect on a protected *group*. Adverse Impact may be unintentional.

Disparate Treatment: Occurs when a *person* is treated differently from others. The different treatment is based on one or more of the protected factors and the different treatment is intentional.

Hostile Work Environment: One that both a reasonable person would find hostile or abusive and one that a particular person who is the object of the harassment perceives to be hostile or abusive. Hostile work environment is determined by looking at all of the circumstances, including the frequency of the allegedly harassing conduct, its severity, whether it is physically threatening or humiliating, and whether it unreasonably interferes with an employee's work performance.

Quid Pro Quo: Harassment consisting of unwelcome advances, requests for favors, other verbal or physical conduct when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, or (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual.

Reasonable Person Standard: A standard used by some courts to help determine if a harassment case at issue was an illegal action. In short, it states: one criteria for determining if the harassment was illegal is that the conduct must be offensive to any "reasonable *person*."

Reasonable Woman Standard: A standard used by some courts to help determine if a sexual harassment case (where a woman is the plaintiff) was illegal action. In short, it states: one criteria for determining if the harassment was illegal is that the conduct must be offensive to any reasonable *woman*.

Retaliation/Reprisal: Adverse action(s) taken because of opposition to unlawful workplace harassment. Retaliatory acts can be aimed at the complainant/grievant or any employee involved in the complaint in any way.

Sexual Harassment: Sexual harassment is any unwelcome sexual advances; requests for sexual favors; or any other physical or verbal conduct of a sexual nature when:

- submission to the conduct is made either a term or condition of employment or submission or rejection of such conduct is used as a basis for employment decision(s);
- such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment.

Sexual Harassment is Unlawful Workplace Harassment

Term, Condition, or Privilege of Employment: The circumstances (implicit or explicit) under which an employment relationship is established and carried out. It encompasses all employee benefits, including such benefits provided pursuant to a bona fide employee benefit plan.

Unlawful Workplace Harassment: Unwelcome or unsolicited speech or conduct based upon race, sex, creed, religion, national origin, age, color, or handicapping condition as defined by G.S. 168-A-3 that creates a hostile work environment or circumstances involving quid pro quo.

Unlawful Workplace Harassment is a form of discrimination

Workplace: The workplace includes but is not limited to the physical work site, restrooms, cafeterias, training sessions, business travel, conferences, work related social gatherings, etc.

Source: Office of State Personnel

In Basic Terms ...

In basic terms *Harassment* means to disturb, torment, or pester on a persistent basis. Some harassment can be legitimate or lawful. An employee may believe that a supervisor who frequently asks about the status of an important report is "harassing" him/her. But since the supervisor has a legitimate business reason for the question, it would not be considered unlawful harassment.

When we talk about unlawful harassment in the workplace, we are talking about people being treated inappropriately because of their membership in one or more protected groups (race, sex, religion, creed, color, age, national origin or disability). In most instances, our membership in a protected group is not optional. Whether your membership in a protected group is natural or voluntary, you most likely take your membership seriously. If someone uses your membership against you or makes fun of it, you will be hurt or offended. You will likely say that you have been harassed.

Quid Pro Quo

"Quid-pro-quo" is Latin for "this for that." It is a trade. When the trade is on the basis of race, sex, color, national origin, religion, creed, age, or handicapping condition, it is illegal.

This is when the employer makes conformity to a specific act a prerequisite to getting something in the workplace. For example: "Hire only Christians for this job and I will see that you are promoted." Or "have an affair with me and your promotion is guaranteed." Under harassment law, both of these actions are illegal.

Quid-pro-quo can also include negatives. For example: "Stop associating with the Mexican employees or you will be fired."

Hostile Work Environment

Hostile work environment harassment is a situation in which the employer (or a supervisor or coworker) does or says things that unreasonably interferes with an individual's work performance or creates an intimidating, hostile or offensive work environment because of his or her race, color, sex, religion, creed, national origin, age or handicapping condition. Hostile environment harassment does not need to include a demand for an exchange of favors for a job benefit. It is the creation of an offensive or intimidating work environment.

First, the conduct must be offensive. If two employees have a good time exchanging racist jokes, it would not be harassment. If one employee kept telling another employee racist jokes that the second employee found offensive, it would be harassment. Or, if another employee overheard the two employees exchanging racist jokes, this could also be harassment. [Special note: This is only an example. In no way is this example (two employees have a good time exchanging racist jokes) meant to endorse racial jokes or any other form of harassment or discrimination based on any of the protected classes as acceptable. This is simply an example to clarify that the behavior must be unwanted to be unlawful workplace harassment. It is expected that all members of the university community have the opportunity to work and learn in an environment free of any inappropriate language or behavior related to protected class issues.]

Jokes, pictures, touching, leering, unwanted solicitations for a date, derogatory epithets, etc. have all been found by courts to be harassing.

Source: Office of State Personnel

PROTECTED CLASSES/FACTORS:

A group of people who share common characteristics and are protected from employment harassment/discrimination by Equal Employment Opportunity laws. These categories may not be used to make employment decisions unless a bona fide occupational qualification exists. Protected classes identified by state and/or federal law include:

- **Age** - A person 40 years of age or older.
- **Color** - Regarding the complexion of a person's skin.
- **Creed** - Any statement or system of belief, principles or opinions.
- **Disability** - Any person who has a physical or mental impairment which substantially limits one or more major life activities; one who has a record of such impairment; or one who is regarded as having such an impairment.
- **National Origin** - Characteristic of or peculiar to the people of a nation; of or relating to ancestral beginnings.
- **Race** - A local geographic or global human population distinguished as more or less distinct group by genetically transmitted physical characteristics; any group of people united or classified together on the basis of common history, nationality, or geographical distribution; mankind as a whole. **All people are allowed for the purposes of Title VII of 1964 Civil Rights Act to claim genealogy to one or more race and are, therefore, readily covered under this category.**
- **Religion** - The expression of one's belief in and/or reverence for a superhuman power recognized as the creator and/or governor of the universe; or lack thereof.
- **Sex/Gender** - The condition or character of being male or female. Sexual preference is not protected under this or any other protected class identified by Title VII of the 1964 Civil Rights Act. **All people possess this attribute and are, therefore, readily covered under this category.**

Source: Office of State Personnel

EEO Laws

Title VII of the Civil Rights Act of 1964 as amended by the Equal Employment Opportunity Act (1972), The Pregnancy Discrimination Act (1978) and the Civil Rights Act of 1991

- Covered: Employers with 15 or more employees in Federal, State and Local governments and private employment
- Requirements: Neither the employer or its representatives; i.e. managers, supervisors, etc., shall discriminate in selection, promotion, compensation, fringe benefits, training, or other conditions of employment based on race, sex (including pregnancy), color, religion, or national origin

Executive Order 11246

- Covered: Employees holding contracts or subcontracts of \$50,000 or more. Some branches of State and Local government
- Requirements: Neither the employer or its representatives; i.e. managers, supervisors, etc. shall discriminate in selection, promotion, compensation, fringe benefits, training, or other conditions of employment based on race, sex (including pregnancy), color, religion, national origin. Harassment (sexual, etc.) is a kind of prohibited discrimination. A written affirmative action plan for minorities and women is required of employers with federal contracts of \$50,000 or more.

Equal Pay Act of 1963

- Covered: Most employers, including federal, state and local governments
- Requirements: Discrimination on the basis of sex in the provision of salary or fringe benefits is illegal where work is equal or in work that requires equal skill, effort and responsibility and is performed under the same working conditions.

Age Discrimination in Employment Act of 1967 as amended May 1, 1974

- Covered: Any employer with 20 or more employees who work 20 or more calendar weeks in a year. Covers federal, state and local governments
- Requirements: Neither employer nor employer's representatives may "fail, refuse to hire or discharge any individual or otherwise discriminate with respect to his compensation, terms, conditions or privileges of employment because of such individual's age." (Covers individuals 40 years of age and older.)

Rehabilitation Act of 1973

- Covered: Employees with federal contracts or subcontracts. Sections 501, 503 & 504 cover federal government
- Requirements: Government contractors and subcontractors must take affirmative action to employ and advance in employment qualified persons with disabilities. Neither government contractors, subcontractors, nor their representatives may discriminate against such persons because of their physical or mental disability in any employment practice (hiring, training, compensation, upgrading, etc.).

Vietnam Era Veterans Readjustment Assistance Act

- Covered: Employees with federal contracts or subcontracts of \$10,000 or more
- Requirements: Government contractors and subcontractors must take affirmative action to employ and advance in employment, qualified special disabled veterans of the Vietnam era.

Immigration Reform and Control Act of 1986, Section 102

- Covered: Private employees with four or more employees
- Requirements: Discrimination in employment (hiring, recruitment, referral for a fee, or discharging) on the basis of a person's national origin or citizenship status is unlawful against any person (other than illegal aliens).

EEO Laws (Continued)

Civil Rights Restoration Act of 1988

- Covered: Departments and agencies of state and local governments when any part of them receive federal funds; entire colleges, universities and public school systems, if any program or activity receives federal funds; federal fund recipients which are corporations and private organizations that provide education, health care, housing, social services, parks or recreation
- Requirements: Discrimination on the basis of race, sex, age or persons with disabilities is unlawful for all entities (or portions of that entity) that receives federal funds.

The Americans with Disabilities Act of 1990

- Covered: Public and private employers with 15 or more employees
- Requirements: Equal employment opportunity must be provided to qualified individuals with disabilities in all employment related activities. It expands the legal responsibilities of the Rehabilitation Act of 1973. Employers are required to provide reasonable accommodations for a disability when needed in order for a qualified employee to perform the essential functions of the job in question or to participate in any other employment related activity. Employers must also provide a reasonable accommodation for an applicant when the accommodation is needed in order for the applicant to have equal employment opportunity in the application process. Discrimination on the basis of disability against any qualified individual in any employment related activity is prohibited.

Civil Rights Act of 1991

- Covered: Public and private employers with 15 or more employees
- Requirements: It amends Title VII of the 1964 Civil Rights Act, places a heavier burden on employers attempting to defend themselves against discrimination charges. The act allows compensatory and punitive damage awards in cases of intentional discrimination, including cases brought under the Americans with Disabilities Act. Employers defending a Title VII disparate treatment impact challenge to an employment practice, including employment tests, however, must show that the practice is job-related for the particular position in question and consistent with a business necessity. Lawful affirmative action measures are not subjected to challenges alleging discrimination against classes other than those the measures are designed to benefit. It also allows for jury trials and punitive and compensatory damages.

North Carolina General Statute 126-16

- Covered: Applicants for state employment
- Requirements: State departments, agencies, universities, local political subdivisions may not discriminate based on race, sex, age (40+), color, national origin, religion, or disability as defined in G.S. 168A-3, except where specific age, sex, or physical requirements constitute a bona fide occupational qualification.

North Carolina General Statute 126-17

- Covered: State and local government employees subject to the State Personnel Act
- Requirements: State departments, agencies, universities, political subdivisions or their employees may not retaliate against employees protesting alleged violations of 126-16.

North Carolina General Statute 126-36-1

- Covered: Applicants for state employment
- Requirements: Persons who have reason to believe that employment was denied in violation of NCGS 126-16 have the right to appeal to the State Personnel Commission.

North Carolina General Statute 168A-5-11

- Covered: Employees with 15 or more full-time workers within the state, excludes employers whose only employees are domestic or farm workers at that person's home or farm
- Requirements: Employers, employment agencies, apprenticeship program controllers are prohibited from discriminating against qualified persons with disabilities on the basis of the

EEO Laws (Continued)

disabling condition and privileges of employment, and admission to, or employment programs established to provide apprenticeship or other training.

North Carolina General Statute 75B 1-7

- Covered: Persons doing business in the state of North Carolina
- Requirements: Persons doing business in the state may not enter into a contract which requires them to refuse to do business with a third person because of that person's race, color, creed, religion, sex, national origin or foreign trade relationship.

North Carolina General Statute 95-151

- Covered: Employers and employees
- Requirements: Employers and employees can not be discriminated against in employment/work procedure because of race, sex, national origin, religious or political affiliation.

North Carolina General Statute 127B-10-15

- Covered: Employees/Applicants who are members of the Armed Forces
- Requirements: Prohibits private persons and governmental agencies from discriminating against an individual because of such individual's membership in the United States Armed Forces. Applies to employment and access to public places of entertainment, amusement and accommodation.

North Carolina General Statute 130A-148(i)

- Covered: Employees with the AIDS virus or HIV infection
- Requirements: Employers may not deny continued employment to a person because he/she possesses the AIDS virus or HIV infection.

Source: Office of State Personnel

Reporting Procedures

Procedures for Reporting Unlawful Workplace Harassment

1. An employee who believes he or she has been the victim of unlawful workplace harassment is encouraged to attempt to resolve the matter initially with the administrative official most directly concerned, excluding the person accused of unlawful workplace harassment.

2. An employee alleging unlawful workplace harassment should report the alleged harassment directly to the Assistant to the Chancellor for Equity. An employee should file a report of unlawful workplace harassment within 30 calendar days of the alleged harassing action. Once a written complaint is received, the Assistant to the Chancellor for Equity will investigate the complaint. A determination based on the findings from the investigation of the allegations will be communicated in writing to the employee who filed the complaint and the Chancellor of Western Carolina University within sixty (60) calendar days from receipt of the written complaint. The university shall provide a written response to the grievant when it has been determined what action, if any, will result from the grievant's written complaint. If the university completes its investigation prior to the 60-day period allowed by the state, a waiver will be issued to acknowledge that the university waives its right to make another or different determination. Further, a waiver will be given to the grievant and the grievant will sign an Acknowledgement Waiver form to be returned to the university. (Notice of Final Agency Decision and Waiver and Acknowledgement of Waiver)

3. If an employee is not satisfied with the determination based on the findings from the Assistant to the Chancellor for Equity, the employee can file a formal grievance in accordance with this policy. The employee has thirty (30) calendar days from the date he or she receives written notification of the determination made by the Assistant to the Chancellor for Equity to submit a written letter of appeal.

If the immediate supervisor is the alleged harasser, the grievance will proceed directly to Step 3 of the SPA Grievance and Appeal Policy

A grievant has a right to bypass any step in the grievance process if the alleged harasser is in a review or authority capacity in relation to the grievant.

After the 60 calendar day response period has expired, the grievant may appeal directly to the Office of Administrative Hearings and the State Personnel Commission within 30 calendar days if not satisfied with the university's response to the complaint.

Additional Information on Reporting Procedures - Listed by WCU Population Although the Unlawful Workplace Harassment Policy applies to employees who are subject to the state personnel act, there are other policies that prohibit harassment and discrimination based on the eight protected factors. Reporting information that specifically addresses each population follows:

Complaints brought against WCU students are governed by the grievance procedures presented in the Student Handbook. Any student alleging unlawful harassment may speak with the Director of the Following that discussion, a student who wishes to file either a formal or informal grievance will be directed to the appropriate office. The steps for filing either a formal or informal grievance are listed in the Student Handbook.

Complaints brought against WCU SPA staff (employees who are Subject to the State Personnel Act) are governed by the Unlawful Workplace Harassment Policy and SPA grievance and appeal procedures.

Complaints brought against ECU faculty (employees who are exempt from the State Personnel Act) are governed by the grievance procedures stated in the WCU Faculty Handbook.