

UNIVERSITY OF SOUTH CAROLINA EDUCATIONAL FOUNDATION SEXUAL HARASSMENT POLICY

I. POLICY

Employment discrimination on the basis of race, color, religion, national origin, gender, age, and disabling conditions violates federal law, state law, University and Foundation policy. "Sexual harassment" is a particular form of gender discrimination, distinctive in both characteristic and quality. The University of South Carolina Educational Foundation will not tolerate the sexual harassment of any member of its organization.

Sexual harassment subverts the mission of the Foundation by threatening the careers and well-being of all members of this organization. It undermines the Foundation's deep commitment to the primacy of a reward system based purely on merit and job performance.

The purpose of this Policy is to define "sexual harassment" in Foundation employment, to provide procedures for the investigation of sexual harassment claims, and to insure that violations are fully remedied, while also protecting the constitutional rights of every member of this organization.

The standards mandated by this Policy represent the bare minimum of acceptable behavior. The Foundation's commitment to civility, mutual respect, and tolerance should cause the members of this organization to adhere to an even higher standard of behavior in these matters not because we are required to do so, but because conscience dictates it. In addition to those relationships expressly forbidden, consensual relationships among members of the Foundation community in which one party exercises administrative control over the other are deemed unwise and are strongly discouraged. If a charge of sexual harassment is lodged regarding a once-consenting relationship, the burden may be on the alleged offender to prove that this Sexual Harassment Policy was not violated.

II. SEXUAL HARASSMENT

A. Coverage

This Policy covers sexual harassment by and among all members of the Foundation community. The prohibited harassment may arise between employment supervisors and subordinates, between peers, or between any of the foregoing persons and persons who do business with the Foundation.

B. Definitions

1. "Members of the Foundation community" includes all administrators, staff and student employees.
2. "The University of South Carolina EOP" is the Executive Assistant to the President for Equal Opportunity Programs (hereafter referred to as University EOP), or his or her designee, with special responsibilities to carry out the provisions of this Sexual Harassment Policy.
3. "Employment benefits" includes the job itself, the duties of the job, compensation, rank privileges and opportunities associated with the job, the tools and working environment necessary to do the job, and any other term or condition of employment.
4. Sexual harassment of employees at the Foundation is defined as unwelcome sexual advances, requests for sexual favors, verbal or other expressive behaviors or physical conduct commonly understood to be of a sexual nature. Sexual harassment includes but is not limited to the following:
 - a. Threats to make an adverse employment decision if another person refuses to engage in sexual activities.
 - b. Demands that another person engage in sexual activities in order to obtain or retain employment.
 - c. Promises, implied or direct, to give employment benefits if another person engages in sexual activities.
 - d. Unwelcome and unnecessary touching or other sexually suggestive physical contact, or threats to engage in such conduct.
 - e. Indecent exposure.
 - f. Invasion of sexual privacy.
 - g. Sexual advances, requests for sexual favors, sexual comments and questions, and other sexually-oriented conduct that is directed against a specific individual and persists despite its rejection.
 - h. Conduct, even that not specifically directed at the complainant, which is sufficiently pervasive, severe, or persistent to alter the conditions of the complainant's employment and create a hostile working environment, when viewed from the perspective of a reasonable person of the complainant's gender.

C. Education and Prevention

1. Education is an essential component in the prevention and elimination of sexual harassment. A claim of ignorance is not a defense.

2. To accomplish an adequate educational program the Executive Director shall:

Inform members of the Foundation community of the Sexual Harassment Policy and programs to assure their implementation.

D. Prohibited Conduct

1. A member of the Foundation community shall not engage in the sexual harassment of another member of the Foundation community.

2. A member of the Foundation community shall not encourage, condone, or fail to take reasonable steps within this person's power to stop the sexual harassment of another member of the Foundation community, regardless of whether the harassment is by another member of the Foundation community or by persons doing business with the Foundation.

a. A member of the Foundation community shall not retaliate, threaten to retaliate, or attempt to cause retaliation against any person (1) who reasonably protests against sexual harassment practices within the Foundation or (2) who becomes involved in any capacity in the procedures established in this Sexual Harassment Policy.

b. However, discipline may be imposed on a member of the Foundation community who abuses the procedures established in this Sexual Harassment Policy (1) by making claims of sexual harassment knowing them to be false or in reckless disregard of their truth or falsity, or (2) by making claims involving conduct that this person knows or has reason to know are not prohibited by this Policy.

3. A member of the Foundation community shall not refuse to cooperate in the investigation of a sexual harassment complaint, but may assert whatever testimonial and evidentiary privileges available to that person by law.

E. Sanctions

1. Persons who violate the Sexual Harassment Policy are subject to appropriate discipline by the Foundation. If an investigation results in a finding that this Policy has

been violated, the mandatory minimum discipline is a written reprimand. The discipline for the most serious violations may be termination from employment.

2. Persons who violate this Policy may also be subject to civil damages or criminal penalties.

F. Enforcement Procedures

1. Sexual Harassment Resources within the Foundation

- a. A source of advice and assistance with the Procedures of the Sexual Harassment Policy is available to all members of the Foundation community from the University EOP.
- b. The Division of Human Resources and Office of Equal Opportunity Programs within the University of South Carolina shall provide the above named with training in prevention, education, and the law of sexual harassment.

2. Informal Resolution Procedures (Optional)

A person who believes that he or she has been the victim of sexual harassment should initially attempt to discuss the matter with the person(s) thought to have engaged in the harassment. This procedure may be the **most effective** and least burdensome manner of resolving the problem.

3. Complaints

- a. To initiate an investigation of an alleged violation of this Policy, a person must file a sexual harassment complaint.
- b. The complaint must be filed with the Office of the University of South Carolina EOP.
- c. The complaint must be sworn to and filed within 180 calendar days of the last occurrence of the alleged event.
- d. The complaint must be submitted in writing on a form provided by the Foundation (from the University EOP) and signed by the complainant.
- e. The University EOP shall assist the complainant in completing the Sexual Harassment Complaint form. In order to insure the prompt and thorough investigation of a sexual harassment complaint, the complainant should be prepared to provide as much of the following information as is possible:

- (i) The name and position of the complainant;
 - (ii) The name, and position of the person or persons allegedly causing the harassment;
 - (iii) The specific acts complained of, including dates and location;
 - (iv) The effect this has had on the complainant's employment;
 - (v) The names of any witnesses to the harassment;
 - (vi) The names of other members of the Foundation community who might have been subjected to the same or similar harassment;
 - (vii) What steps the complainant has already taken to stop the harassment;
 - (viii) Any other information the complainant believes relative to the harassment complained of.
- f. The Sexual Harassment Complaint form shall contain a provision informing the complainant that the information contained in the complaint will be kept as confidential as possible, but that the identity of the complainant will be revealed to the alleged harasser, potential witnesses, and other persons within the Foundation with a need to know.
- g. The University EOP shall provide the complainant a written acknowledgement of the complaint.

4. Investigation

- a. The University EOP shall appoint an investigator and schedule an investigation of the complaint within ten working days after receipt of a complaint.
- b. The University EOP shall contact the charged party, give that party a copy of the complaint, solicit that party's response to the complaint, inform that party that a recommendation and report will be completed within the time limits provided for in this Policy (regardless of whether the charged party chooses to respond), and advise that party of the right to be represented by counsel.
- c. If both parties are agreeable, the University EOP shall attempt to mediate the complaint. If the parties agree to a resolution of the matter, a settlement agreement shall be prepared.
 - (1) The settlement agreement must:
 - (i) be voluntary and be in writing;
 - (ii) be signed by both parties;

- (iii) contain a provision in which the party against whom the complaint was made gives assurances that the offensive behavior will stop and not be repeated, and that no retaliation will be taken against the complainant;
 - (iv) contain a provision in which the party who makes the complaint gives assurances that no further complaints will be made, providing the offensive behavior is stopped and does not reoccur;
 - (iv) contain any other provision the University EOP deems necessary to insure full compliance with this Policy.
- (2) The University EOP shall provide a copy of the settlement agreement to both parties, and shall file the original in the University Equal Opportunity Programs Office **and a copy shall be maintained by the Office of Human Resource** of the University of South Carolina.
- (3) The University EOP shall recommend to the appropriate Foundation administrator restoration of any employment benefits lost by the complainant as a result of the alleged sexual harassment.
- d. In the event the parties do not reach a **voluntary** settlement agreement, the University EOP shall conduct a full investigation which may include obtaining oral and/or written statements from any person either the complainant or the charged party has listed as a witness, as well as from any other person who might have knowledge about the alleged offense.
- e. If during the investigation the University EOP believes that harassment or retaliation is occurring, the University EOP may recommend to the appropriate University officer that immediate steps be taken to stop any further harassment or retaliation.
- f. The University EOP shall attempt to complete the investigation within **thirty** working days. Except in the most unusual circumstances, all investigation shall be completed within **sixty** working days. **The sexual harassment investigative process is a non-adversarial procedure and there shall be no cross-examination of witnesses by either the Charged Party or the Complainant.**
- g. The University EOP shall treat all information received during the investigation as confidential and shall make it available only to appropriate Foundation officials **who have a need to know.**

5. Report and Recommendation

- a. The University EOP shall prepare a written Report and Recommendation immediately following the completion of the investigation. Except in the most unusual circumstances, the Report must be completed within fifteen working days after the completion of the investigation.
- b. The Report and Recommendation shall contain the following:
 - (1) A summary of the complaint;
 - (2) A summary of the response by the party against whom the complaint was made;
 - (3) A summary of the statements and evidence obtained during the investigation;
 - (4) A finding of whether a violation of this Policy, including the prohibition against reckless false accusation, has occurred. The findings shall include a statement about the severity of the violation, if any, and an explanation that supports the finding.
 - (5) A summary of prior settlements or substantiated complaints against the charged party;
 - (6) A recommendation of a sanction, if appropriate;
 - (7) A recommendation as to the restoration of any employment benefits lost as a result of the alleged sexual harassment; and
 - (8) An appendix containing the complaint, written statements, and other tangible evidence obtained during the investigation.
- c. The Report and Recommendation shall be sent to the Vice President for Human Resources, General Counsel, and to the appropriate Foundation officer for decision. The Deciding Officer is the appropriate Foundation officer. A copy of the Report and Recommendation shall then be provided to the complainant and the charged party.
- d. Either party may respond in writing to the Report and Recommendation. This response must be sent to the Deciding Officer within ten working days.

6. Decision and Imposition of Sanction

- a. On the basis of the Report and Recommendation and any responses that are filed to it, the Deciding Officer may:
 - (1) Dismiss the complaint, if it is found to be without merit. The Deciding Officer shall also determine if discipline against the complainant is warranted in the case of a frivolous or malicious complaint and, if so, shall impose appropriate discipline.

- (2) Order further investigation, for a period not to exceed ten working days, and require a Supplementary Report and Recommendation.
- (3) Sustain the complaint, order the harassment to stop, impose sanctions, recommend restoration of any employment benefits the complainant lost because of the harassment, and provide whatever other relief is necessary to remedy the situation. Determination of a sanction shall be made in consultation with the University Legal Department and the University Division of Human Resources.

- b. If the charged party has alleged that the conduct is constitutionally protected, the Deciding Officer must obtain the written opinion of University counsel concerning this issue. University counsel shall provide that opinion within **ten** working days after being requested to do so.
- c. The Deciding Officer shall render a final written decision within **twenty** working days from the expiration of the time the parties have for filing responses to the University EOP's original or Supplementary Report and Recommendation, as the case may be, and shall serve a copy of that decision on both the complainant and the charged party.
- d. The Deciding Officer shall send a copy of all decisions to the University EOP.
 - (1) The Deciding Officer shall include a copy of the decision in the employee's system personnel file.

7. Grievance Procedures

This Policy leaves intact all grievance procedures available to the charged party pursuant to Foundation policy and applicable law.

8. Monitoring Compliance

If the parties have reached an agreement or a complaint has been sustained by the Deciding Officer, the University EOP shall for a period of at least three months monitor compliance with the agreement or decision to insure that the harassment does not reoccur and that the complainant is not subjected to retaliation.

9. Other Available Procedures

The procedures available under this Policy do not preempt or supersede any legal procedures or remedies otherwise available to a victim of sexual harassment under the Foundation or University grievance process, the State

employee grievance process, the State Human Affairs Law, the state or federal law, the United States Constitution, or any other applicable law.

G. Dissemination of the Policy

1. A copy of this Policy shall be contained in the Foundation Policies and Procedures. The name, phone number, and location of the University EOP, shall be posted on appropriate Foundation media resource.

2. In addition, the Foundation shall adhere to the Policy through educational activities. The University EOP through the Executive Director shall from time to time distribute brochures and post notices summarizing the Foundation's Sexual Harassment Policy and procedures.

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