

Subject: **Policy against Discrimination and Harassment**

Applies to: This Policy applies to faculty, staff, residents, fellows, postdoctoral appointees, student employees, students¹, volunteers, and to all visitors (including patients, contractors, and vendors) to any University campus, facility and/or property and to University sponsored activities and events, whether on University premises or not.

I. Policy and Policy Statements.

This Policy is the basis for the University's commitment to maintaining a workplace and academic environment free from unlawful discrimination and harassment. In support of its efforts and commitment to equality of opportunity (as set forth in Policy 100), the University of Rochester sets forth the following Policy Statements:

- A. Anti-Discrimination and Anti-Harassment Statement.** The University prohibits and will not engage in discrimination and harassment on the basis of age, color, disability, domestic violence status, ethnicity, gender identity or expression, genetic information, marital status, military/veteran status, national origin, race, religion/creed, sex, sexual orientation, or any other status protected by law.² Discrimination or harassment (including hostile work environment harassment) based on protected status is illegal, will not be tolerated, and is considered misconduct that will be subject to discipline.
- B. Anti-Retaliation Statement.** The University prohibits retaliation against any person who complains of or opposes perceived unlawful discrimination or harassment, including those who participate in any investigation under this policy or other proceeding involving a claim based on a protected class. Retaliation is illegal, will not be tolerated, and is considered misconduct that will be subject to discipline.
- C. Title IX Statement.** The University complies with Title IX of the Education Amendments of 1972, which prohibits sex discrimination (including sexual harassment and violence based on sex) in the University's educational programs and activities, as well as retaliation for asserting claims of sex discrimination. Discrimination based on sex is illegal, will not be tolerated, and is considered misconduct that will be subject to discipline. Inquiries concerning the application of Title IX and sex based complaints should be referred to the University's Title IX Coordinator, Morgan Levy, 20 Taylor Hall, 585-275-7814, Morgan.Levy@rochester.edu.

¹ This policy is not intended to be used for complaints against students. For complaints against students, the Standards of Student Conduct apply or the Student Sexual Misconduct Policy and related process applies. See <http://www.rochester.edu/college/cscm/conduct.html>.

² Applicable laws and regulations include: Age Discrimination in Employment Act & Older Workers Benefits Protection Act; Americans with Disabilities Act Amendment Act; Equal Pay Act of 1963; Executive Order 11246 (as amended by Executive Order 11375); Genetic Information Nondiscrimination Act; Pregnancy Discrimination Act; Rehabilitation Act of 1973 (§§503-504); Section 1981 of the Civil Rights Act of 1866; Section 1983 of the Civil Rights Act of 1871; Title VI of the Civil Rights Act of 1964; Title VII of the Civil Rights Act of 1964, as amended (1991); Public Health Service Act; Title IX of the Education Amendments of 1972; Uniformed Services Employment and Re-employment Rights Act; Vietnam Era Veterans Readjustment Assistance Act; New York State Human Rights Law; Rochester City Code; and discrimination laws of other states or nations, as applicable.

II. Definitions of Terms Referenced in Policy.

The following definitions are intended to provide a better understanding of the meaning of certain terms as used within this Policy:

A. Discrimination. Discrimination involves an adverse action or decision or harassing treatment of a person or class of persons *because of* a legally protected status (e.g., age, gender, race, etc.) or because of perceived or actual affiliation/association with other individuals in a protected class. Discrimination under this Policy does not include unfair or inappropriate behavior not based on a protected class; for instance, complaints involving profanity or name calling not related to a protected class or issues of nepotism must be addressed through other avenues (e.g., Human Resources, your supervisor, the Intercessor).

B. Harassment. Harassment is a form of discrimination which involves (1) unwelcome verbal, written, physical or electronic conduct, (2) that is intended to cause or which could reasonably be expected to cause an individual or group to feel intimidated, demeaned, abused, or fearful, or to have concern for their personal safety, (3) because of a protected class when the conduct is:

(a) sufficiently severe or pervasive (meaning that the conduct is either of an extraordinarily severe or egregious nature *or* has been repeated with sufficient frequency and/or continuity); in other words, typically a single offense or occasional, episodic instances of offensive behavior will not qualify as sufficiently severe or pervasive, but a single instance of severe egregiousness (e.g., sexual assault) would, *and*

(b) objectively *and* subjectively has the effect of (1) unreasonably interfering with an individual's work or equal access to education or (2) creating an intimidating, hostile, or offensive work or academic environment.

All of these requirements must be met for certain behavior to qualify as harassment and a finding of hostile environment must be based on a totality of the facts and circumstances. Types of behaviors based on a protected class which can lead to claims of harassment include, degrading and derogatory words, graffiti, pictures, jokes, epithets, statements or stereotyping activities as well as other forms of verbal, visual or written messages of intimidation, as well as unwanted physical contact or comments or threats about physical contact and stalking.

Sexual Harassment. Sexual harassment is a form of prohibited harassment as defined above in II.B. (a) and (b) and the requirements listed therein apply. Sexual harassment involves unwelcome sexual advances or requests for sexual favors, or other verbal or physical acts/conduct of a sexual or sex-based nature when:

1. submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or academic success;
2. submission to or rejection of such conduct by an individual is used as the basis for an employment or academic decision affecting such individual; or
3. such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance or creates an intimidating, hostile, or offensive working or academic environment.

Sexual Assault. Sexual assault is sexual harassment which includes any physical sexual act perpetrated against a person's will, where that person does not give clear and voluntary consent or where that person is incapable of giving consent due to drug or alcohol use or due to intellectual or other disability. Sexual assault includes but is not limited to rape, sexual battery, sexual coercion (the act of using pressure or force to have sexual contact with someone who has already refused), and any other act of sexual violence.

Depending upon the severity or pervasiveness of the conduct, the following behaviors may lead to complaints of sexual harassment or constitute sexual harassment (some of which constitute criminal acts)³ and should be avoided:

- unwanted comments about an individual's body, clothing or lifestyle that have sexual implications or demean the individual's sexuality or gender
- unwanted sexual flirtations (including leering or ogling)
- unwanted sexual advances and propositions
- unwanted display of sexual or sexually demeaning objects, pictures or cartoons in areas visible to other members of the University community (including but not limited to computer screens and bulletin boards)
- threats or insinuations that an individual's refusal or willingness to submit to sexual advances will affect the individual's status, evaluation, grades, wages, advancement, duties or career development
- unwanted and intentional sexual touching, patting, pinching of or brushing against another's body or clothing
- Stalking, whether in-person, telephonic or electronic in nature, domestic violence, dating violence, sexual assault or rape

C. Retaliation. Retaliation is adverse action taken against an individual by the University *because* the individual has (1) personally complained of or opposed perceived discrimination or harassment because of a protected class; (2) testified, assisted, or participated in an investigation, proceeding, hearing, or legal action involving a claim of discrimination or harassment based on a protected class; (3) exercised rights under a relevant statute which involves a protected class, and/or action taken by the University which would dissuade a reasonable person from engaging in these types of protected activities.

D. Other Terms: "Gender expression" refers to external characteristics and behaviors that are socially defined as masculine or feminine (manner of dress, grooming, mannerisms, etc.); "Gender identity" refers to a person's innate, deeply felt psychological identification as male or female; "Protected status" or "protected class" refers to any of the categories listed in the Equal Opportunity and the Anti-Discrimination and Anti-Harassment Policy Statements.

III. Complaint Procedure

The University can only act to prevent unlawful discrimination, harassment and retaliation from reoccurring in the future if it is made aware of such conduct. All members of the University community are encouraged to report discrimination, harassment or retaliation in accordance with

³ Investigations occurring under this policy are solely for purposes of determining whether a violation of this policy has occurred, and the standards for assessing a violation of policy are not the same as the distinct legal standards required for a finding of criminal liability.

these procedures. However, supervisors and other responsible employees who observe or receive or learn of reports or concerns of perceived discrimination, harassment or retaliation which falls within this Policy **must** report those concerns or reports, in accordance with this procedure, upon making such observation or being informed of such a concern or report. Supervisors and managerial personnel who fail to report and knowingly allow the continuation of behavior that constitutes discrimination, harassment, or retaliation under this policy will be subject to discipline.

All complaints or reports involving harassment or discrimination based on a protected class or related retaliation will be handled under the processes set forth in this Policy.⁴

Complaints arising under this Policy may be made to an individual's department chair, dean, director, immediate supervisor, the Office of Human Resources, the Office of Staff Diversity and Inclusion (formerly the Equal Opportunity Compliance Office), the Office of the Intercessor, or the Office of Counsel. Complaints arising may be made informally through a verbal complaint or more formally through a written report. A Report form may be obtained from any contact listed in Appendix A or on-line at:

http://www.rochester.edu/working/hr/policies/pdfpolicies/106_request_formal_resolution.pdf

Regardless of the manner of reporting, the University will look into and respond to all good faith concerns and complaints raised under this Policy as expeditiously as possible and take remedial measures as needed. Informal resolution of complaints is expressly encouraged whenever possible (through any of the contacts listed in Appendix A). All informal complaints and efforts to resolve complaints arising under this Policy must be reported, for compliance purposes, to the University's Office of Counsel.

If a matter cannot be resolved through informal measures, a formal written complaint should be forwarded to Human Resources or the Office of Counsel for assessment and prompt investigation. The content of the complaint should include, at a minimum, the complainant's name, a description of the offending behavior including time and place of events, the name of the alleged offender, the names of any witnesses to the offending behavior, and identification of the protected class (or classes) involved.

The University will attempt to complete any investigation within 30 to 45 days of receipt of the complaint. Temporary protective measures may be implemented, as deemed appropriate.⁵ The investigation will include an interview with the Complainant (the individual who has made the complaint), the Respondent (the person about whom the complaint is made), and interviews of other witnesses with knowledge relevant to the complaint, and, at the investigator's discretion, the gathering of witness statements. While every effort will be made to protect the privacy of all parties, confidentiality cannot be guaranteed. Further, investigations conducted under this Policy

⁴ Staff and faculty may not use the Human Resources Grievance Procedure (Policy 160) and faculty may not use other grievance procedures described in the Faculty Handbook to complain about discrimination/harassment based on a protected class or related retaliation.

⁵ The University reserves the right to take temporary protective measures to protect individuals where the working, learning, patient care, or living environment appears to require such protective measures. Temporary protective measures include such actions as placing persons on temporary leaves of absences, exclusion from programs and facilities, altering working, learning, patient care or living arrangements, or imposing other conditions in the University environment as warranted.

are strictly internal and third parties, including attorneys, may not participate unless the complaint involves allegations of sexual assault, stalking or dating/domestic violence, in which case the Complainant and the Respondent may have a support person present.

At the conclusion of the investigation, the investigator will provide a written report to the appropriate decision maker (see Appendix B). Within 15 business days of receipt of the investigative report, the decision maker will send a written determination of the outcome of the investigation to the Complainant, the Respondent, and appropriate administrative personnel. The determination will include a summary of the findings of the investigation and describe any corrective action to be taken as well as other recommendations based upon the findings.⁶

IV. Appeals

Any party to a formal investigation may appeal the decision within 15 business days of the date of letter notifying the individual of the decision. Appeals are not for the purpose of having a second investigation or review of all facts but are limited to considering (1) evidence not previously available to the Investigator or the Official (or designee); (2) material defects in the process leading to the decision; or (3) severity or appropriateness of the imposed corrective action. Appeals must be submitted in writing to the appropriate senior officer or administrator, i.e., the Deputy to the President where the accused is a staff member, visitor or patient, the Provost where the accused is a faculty member, and the President where the accused is an officer. The senior officer has 15 business days to respond to the appeal. Decisions of the senior officer or administrator are final.

V. Recordkeeping

The complete investigative file, including a copy of any determination or appeal decision relating to a complaint under Policy 106, along with any record of remedial action or discipline taken in response to any complaint, shall be maintained in the Office of Counsel. No documentation relating to an investigation, including the determination itself, should be placed in any individual's personnel file *unless* an individual has been counseled or disciplined as a consequence of the complaint and investigation. Records of informal complaints and any remedial action taken must be provided to the Office of Counsel.

VI. Relationship to Principles of Academic Freedom and Freedom of Speech

The success of the University of Rochester depends on an environment that fosters vigorous thought and intellectual creativity. It requires an atmosphere in which diverse ideas can be expressed and discussed. The University seeks to provide a setting that respects the contributions of all the individuals composing its community, that encourages intellectual and personal development, and that promotes the free exchange of ideas. This Policy is not intended to regulate the content of speech, discussion and debate in the classroom, on campus or in any University forum reasonably related to academic activity or political, artistic and visual arts expression. The University will protect academic freedom and artistic expression in administering this Policy. However, using speech or expression to discriminate against those protected by this Policy or using

⁶ In determining corrective action related to faculty, no faculty member's tenure can be revoked or contract abrogated without following the tenure revocation process outlined in the *Faculty Handbook*.

speech that creates a hostile learning, working or campus living environment for those protected by this policy is prohibited.

VII. Additional Notice to Employees Required by New York State

New York State requires that employers provide employees, applicants, contractors, and other persons conducting business with the employer with information regarding legal protections and external remedies regarding claims of sexual harassment. This information is set forth in Appendix C.

While a complainant does not need a private attorney to file a complaint with a governmental agency or with a court, complainants may seek the legal advice of an attorney. The Office of Human Resources, the Office of the University Intercessor, the Office of Counsel, and the Title IX Coordinator can answer questions about Policy 106, but no University employee or representative can provide legal advice to any complainant, respondent, or witness.

See also: #100 General Personnel Policy Statements
#102 Affirmative Action Policy
#133 Recruitment and Selection
#154 Corrective Discipline
#160 Grievance Procedure for Staff

See also: Pertinent Handbooks (Faculty, Nursing, Student, Graduate Student, Medical Student, Residents/Fellow Manual, SMD Regulations of the Faculty)

PLEASE CONTACT ANY OF THE FOLLOWING FOR ADDITIONAL INFORMATION ON HOW TO PROCEED UNDER THIS POLICY OR TO SUBMIT A COMPLAINT.

Office of Human Resources, River Campus	33A Wallis Hall, 585-275-3874
Office of Human Resources, Medical Center	600 Elmwood Ave. (URMC), Rm. 1-6039 585-276-6817
Office of Staff Diversity and Inclusion	910 Genesee St., Ste 100, 585-275-2200
Office of Intercessor	36 Wallis Hall, 585-275-9125
Any Department Chair's Office	
Any Dean's Office	
Office of Counsel	263 Wallis Hall, 585-273-2167
Office of Public Safety	Emergency – 13; Non-emergency 275-3333
Deputy to the President (for appeals)	240 Wallis Hall, 585-273-2284

TITLE IX COORDINATORS

University Wide	Morgan Levy, Title IX Coordinator 20 Taylor Hall, 585-275-7814 titleIX@rochester.edu
Arts, Sciences and Engineering	Dawn Bruner, Deputy Coordinator 510 Wilson Commons, 585-275-4085 Dawn.Bruner@rochester.edu
Eastman School of Music	John Hain, Deputy Coordinator ESM Gibbs Street – Rm. 111, 585-274-1020 jhain@esm.rochester.edu
School of Medicine and Dentistry	Dr. Linda Chaudron, Deputy Coordinator, 600 Elmwood Ave, Rm. 1-4444 585-276-3782 Linda_Chaudron@URMC.Rochester.edu
School of Nursing	Lydia Rotondo, Deputy Coordinator, 255 Crittenden Blvd., 585-275-5639 lydia_rotondo@urmc.rochester.edu
Simon School of Business	Karen Platt, Deputy Coordinator 202E Schlegel Hall, 585-275-8041 laura.gavigan@rochester.edu
Warner School	Brian Brent, Deputy Coordinator 222 LeChase Hall, 585-275-3930 BBrent@Warner.Rochester.edu
Athletics	Kristine Shanley, Deputy Coordinator 1115 Goergen Athletic Center, 585-275-6277 kristine_shanley@rochester.edu

Complaint Against:	Decision maker will be:
A faculty member or discrimination concerns involving a faculty process	Dean of School where faculty member complained about holds primary appointment or where the challenged process resides
Staff employee in a School or College	Dean of the School or College
Staff employee – Library	Director of the Library
Staff employee -- LLE	Director of the LLE
Staff employee – MAG	Director of the MAG
Staff employee – SMH	Chief Executive Officer of SMH (or designee)
Staff employee -- Administrative Unit	Vice President of the relevant division/ unit (or designee)
Postdoctoral Fellow or Associate, River Campus	Dean of Graduate Studies, River Campus
Postdoctoral Fellow or Associate, URMC	Dean of Graduate Education, SMD
Dean of School or College	Provost
Provost, Senior Vice President for Health Sciences, and URMC CEO	President
President	Chair, Board of Trustees
Visitor or Vendor (non-hospital)	Senior Vice President for Finance & Administration (or designee)
Patient or Visitor in SMH	Chief Executive Officer of SMH (or designee)

** In cases where the complaint is against the relevant decision maker or in cases where the decision maker was involved in the decision or matter which is the subject of the complaint, there may be a conflict of interest and an alternative administrator without a conflict may be appointed. The Complainant will be made aware of who the decision maker will be at the time of filing the complaint and may request an alternate decision maker where such conflict exists.

ADDITIONAL NOTICE TO EMPLOYEES REQUIRED BY NEW YORK STATE

New York State requires that employers provide employees, applicants, contractors, and other persons conducting business with the employer with information regarding legal protections and external remedies regarding claims of sexual harassment. Reprinted below is language from the New York State Model Sexual Harassment Policy for All Employers in New York State.

Legal Protections And External Remedies

Sexual harassment is not only prohibited by the employer but is also prohibited by state, federal, and, where applicable, local law.

Aside from the internal process at the employer, employees may also choose to pursue legal remedies with the following governmental entities. While a private attorney is not required to file a complaint with a governmental agency, you may seek the legal advice of an attorney.

In addition to those outlined below, employees in certain industries may have additional legal protections.

State Human Rights Law (HRL)

The Human Rights Law (HRL), codified as N.Y. Executive Law, art. 15, § 290 et seq., applies to all employers in New York State with regard to sexual harassment, and protects employees, paid or unpaid interns and non-employees, regardless of immigration status. A complaint alleging violation of the Human Rights Law may be filed either with the Division of Human Rights (DHR) or in New York State Supreme Court.

Complaints with DHR may be filed any time **within one year** of the harassment. If an individual did not file at DHR, they can sue directly in state court under the HRL, **within three years** of the alleged sexual harassment. An individual may not file with DHR if they have already filed a HRL complaint in state court.

Complaining internally to the employer does not extend your time to file with DHR or in court. The one year or three years is counted from date of the most recent incident of harassment.

You do not need an attorney to file a complaint with DHR, and there is no cost to file with DHR.

DHR will investigate your complaint and determine whether there is probable cause to believe that sexual harassment has occurred. Probable cause cases are forwarded to a public hearing before an administrative law judge. If sexual harassment is found after a hearing, DHR has the power to award relief, which varies but may include requiring your employer to take action to stop the harassment, or redress the damage caused, including paying of monetary damages, attorney's fees and civil fines.

DHR's main office contact information is: NYS Division of Human Rights, One Fordham Plaza, Fourth Floor, Bronx, New York 10458. You may call (718) 741-8400 or visit: www.dhr.ny.gov.

Contact DHR at (888) 392-3644 or visit dhr.ny.gov/complaint for more information about filing a complaint. The website has a complaint form that can be downloaded, filled out, notarized and mailed to DHR. The website also contains contact information for DHR's regional offices across New York State.

Civil Rights Act of 1964

The United States Equal Employment Opportunity Commission (EEOC) enforces federal anti-discrimination laws, including Title VII of the 1964 federal Civil Rights Act (codified as 42 U.S.C. § 2000e et seq.). An individual can file a complaint with the EEOC anytime within 300 days from the harassment. There is no cost to file a complaint with the EEOC. The EEOC will investigate the complaint, and determine whether there is reasonable cause to believe that discrimination has occurred, at which point the EEOC will issue a Right to Sue letter permitting the individual to file a complaint in federal court.

The EEOC does not hold hearings or award relief, but may take other action including pursuing cases in federal court on behalf of complaining parties. Federal courts may award remedies if discrimination is found to have occurred. In general, private employers must have at least 15 employees to come within the jurisdiction of the EEOC.

An employee alleging discrimination at work can file a "Charge of Discrimination." The EEOC has district, area, and field offices where complaints can be filed. Contact the EEOC by calling 1-800-669-4000 (TTY: 1-800-669-6820), visiting their website at www.eeoc.gov or via email at info@eeoc.gov.

If an individual filed an administrative complaint with DHR, DHR will file the complaint with the EEOC to preserve the right to proceed in federal court.

Local Protections

Many localities enforce laws protecting individuals from sexual harassment and discrimination. An individual should contact the county, city or town in which they live to find out if such a law exists. For example, employees who work in New York City may file complaints of sexual harassment with the New York City Commission on Human Rights. Contact their main office at Law Enforcement Bureau of the NYC Commission on Human Rights, 40 Rector Street, 10th Floor, New York, New York; call 311 or (212) 306-7450; or visit www.nyc.gov/html/cchr/html/home/home.shtml.

Contact the Local Police Department

If the harassment involves unwanted physical touching, coerced physical confinement or coerced sex acts, the conduct may constitute a crime. Contact the local police department.