

GUIDE TO THE UNIVERSITY OF PENNSYLVANIA SEXUAL HARASSMENT POLICY

The University of Pennsylvania is committed to providing a working and learning environment free from sexual harassment. It therefore is the policy of the University that sexual harassment is unacceptable and will not be tolerated. This prohibition applies to all faculty, staff, students, other persons on University premises subject to University control, and to those engaged to further the interests of the University.

Management and supervisory personnel, at all levels, are responsible for taking reasonable and necessary action to prevent sexual harassment. The University will take seriously all sexual harassment complaints and respond in accordance with its Sexual Harassment Policy; take appropriate action to provide remedies when sexual harassment is discovered; impose appropriate sanctions upon individuals who have been found to be in violation of the University's policy; and, to the greatest extent possible, protect the privacy of those involved in sexual harassment complaints.

The University of Pennsylvania is also committed to the principles of free inquiry and free expression and to creating an environment that encourages the active exploration and exchange of ideas. The University's discrimination and harassment policies are not intended to impair this freedom, nor will they be permitted to do so. Prohibited discrimination and harassment, however, are neither legally protected expression nor the proper exercise of academic freedom.

SEXUAL HARASSMENT DEFINED

Sexual harassment involves unwelcome sexual advances, requests for sexual favors or verbal or physical conduct of a sexual nature. It is often imposed upon a person in an unequal power relationship through the abuse of authority. Central to this concept is the use of implied reward or threat of deprivation that interferes with the academic or work effectiveness of the victim.

Unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature constitutes harassment when:

- Submission to, or rejection of, such conduct by an individual is made explicitly or implicitly a term or condition of an individual's employment or participation in academic activities;
- Submission to, or rejection of, such conduct by an individual is used as the basis for employment or academic decisions affecting such individual; or
- Such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance, or of creating an intimidating, hostile, or offensive working or study environment.

Sexual harassment can take different forms; accordingly, the determination of what constitutes sexual harassment will vary according to the particular context and circumstances. Examples of sexual harassment include, but are not limited to:

- Seeking sexual favors or relationships in return for the promise of a favorable grade or other academic opportunity;
- Conditioning an employment related action (such as hiring, promotion, favorable work assignment, salary increase, or performance appraisal) on a sexual favor or relationship;
- Intentional and undesired physical contact, sexually offensive conduct by individuals in positions of authority, or by co-workers, students, clients, contractors, or visitors that unreasonably interferes with the ability of a person to perform her/his academic or employment-related responsibilities.

Federal law generally has recognized two different grounds for claiming sexual harassment. **Quid pro quo** harassment occurs when a person in authority, usually a supervisor or instructor, demands sexual favors in exchange for a job, promotion, grade, or other favorable treatment. In quid pro quo cases, the offense is directly linked to the individual's terms of employment or academic success, or forms the basis for employment or academic decisions affecting the individual.

A **hostile work environment** can exist when another person engages in unwelcome and inappropriate sexually based behavior severe or pervasive enough to render the workplace or academic atmosphere intimidating, hostile, or offensive. Usually a pattern of this sort of behavior is required, but one incident can be enough, if sufficiently severe or outrageous.

Sexual harassment can be exhibited using three types of behaviors - **verbal, non-verbal behaviors and gestures**, and **physical contact**. Some types of verbal behavior that might constitute sexual harassment, especially when occurring in combination with offensive touching are:

- Continuous and persistent sexual slurs or sexual innuendoes
- Offensive and persistent risqué jokes or kidding about sex or gender-specific traits
- Repeated unsolicited propositions for dates and/or sexual relations

Gestures or non-verbal behaviors might also be considered sexual harassment where they are persistent, severe, and offensive. Examples may include:

- Sexual looks and lewd gestures, such as leering or ogling with suggestive overtones
- Touching oneself sexually or persistent and unwelcome flirting
- Displaying sexually suggestive pictures, calendars, or posters
- Stalking

There is a range of unwanted physical contact, ranging from offensive behavior to criminal acts, that may also constitute sexual harassment. Some examples of unwanted physical contact include:

- Unwelcome touching, rubbing oneself sexually against another person, pinching or stroking
- Attempted or actual kissing or fondling, cornering or mauling
- Physical assault
- Coerced sexual activity
- Attempted rape or rape

SEXUAL HARASSMENT IN CONTEXT

There is no typical harasser. A harasser can be male or female, young or old, and from any background. Harassers often have or seek to gain power over an individual or individuals and use that power in a negative way to help themselves feel "in control." Harassers may look for "victims" who appear to be weaker and less likely to fight back. This might be because they fear retaliation in the form of loss of employment, economic loss, loss of benefits, loss of status, loss of promotional opportunities, impairment of academic success, or, in some cases, fear of physical or emotional harm. Such harassment can take place not only in supervisor/subordinate relationships, but also within work groups, classrooms, or student groups as well.

It should be stressed that while some behaviors may be offensive or unprofessional, they may not necessarily be considered sexual harassment. For example, general use of profanity and vulgar language may not be sexual harassment unless it is sexually oriented or overused to the point

that a hostile work environment is created. In addition, isolated incidents may not be sufficient to create a hostile work environment. Frequent occurrences of minor offensive and unwelcome behavior, however, may be enough. Further, a single and egregious incident may rise to the level of sexual harassment depending upon the severity of the event.

CONSENSUAL RELATIONSHIPS

The relationship between teacher and student is central to the academic mission of the University. No non-academic or personal ties should be allowed to interfere with the integrity of the teacher-student relationship. Consensual sexual relations between teacher and student can adversely affect the academic enterprise, distorting judgments or appearing to do so in the minds of others, and provide incentives or disincentives for student-faculty contact that are equally inappropriate.

For these reasons, the University's policy prohibits sexual relations between a teacher and a student during the period of the teacher/student relationship. The prohibition extends to sexual relations between a graduate or professional student and an undergraduate, when the graduate or professional student has some supervisory academic responsibility for the undergraduate, to sexual relations between Department Chairs and students in that department, and to sexual relations between graduate group chairs and students in that graduate group. In addition, it includes sexual relations between academic advisors, program directors, and all others that have supervisory academic responsibility for a student, and that student. Teachers and academic supervisors in a sexual or romantic relationship with a student may not evaluate or supervise the student. Nor should a teacher or academic supervisor involved in a sexual or romantic relationship with a student evaluate comparable students where such evaluation could give rise to an apparent or actual conflict of interest.

The Provost, Deans, Department Chairs, and other administrators must respond to reports of prohibited sexual relations that are brought to them by inquiring further, and if such reports appear to be accurate, initiating appropriate disciplinary action or remedial measures against the teacher or supervisor involved.

University policy also strongly discourages any sexual relations between faculty or staff and undergraduates.

The foregoing principles also apply to sexual or romantic relationships between a supervisor and supervisee on the staff of the University. Even when both parties have consented to the relationship, serious concerns may be raised about the validity of the consent, a conflict of interest, and/or unfair treatment of others. In addition, [the University of Pennsylvania's Policy on Employment of Members of the Same Family](#) specifically states that faculty and staff members are not permitted to participate or influence in any way hiring, promotion, termination, salary, performance evaluations, or vital decisions concerning the employment of a member of his/her family. The same issues may pertain to romantic or sexual relationships between supervisors and subordinates. Such relationships therefore must be disclosed to an appropriate manager so that arrangements can be made for objective evaluations and decision making.

SEXUAL HARASSMENT – PERCEPTION VS. INTENT

An individual's perception of what is, or is not, sexual harassment, adds greatly to the complexity of the sexual harassment issue. Well intentioned gestures such as a pat on the shoulder, touching, lewd remarks, jesting comments of a sexual nature, or physical contact may be interpreted as acts of sexual harassment by one recipient, while another may dismiss them as merely annoying. Likewise, some individuals may perceive leering or ogling as sexual

harassment, while others may perceive the same behavior as looking or staring and may attribute no meaning to it.

Often people accused of sexual harassment may not realize that they have committed acts of harassment. Accused harassers may have intended only to be funny or even complimentary, and may believe that their conduct is not only appropriate and acceptable, but also appreciated. They are often truly shocked when they are told that someone considered their behavior to be sexual harassment.

In determining whether behavior is to be considered sexual harassment, the courts generally use the "reasonable woman or man" standard. Using this standard, a court should ask whether a reasonable victim of the same sex as the plaintiff would consider the comments or actions sufficiently severe or pervasive enough to create an abusive working environment. Another way to look at the issue – and your own behavior – is to ask whether you would want your spouse or partner, child, or parent to be subjected to the same type of behavior. At the same time, however, courts also look to determine whether the conduct was actually perceived to be abusive by the person who is the subject of the harassment.

GENERAL QUESTIONS AND ANSWERS ABOUT SEXUAL HARASSMENT

Can I compliment one of my students or coworkers?

Yes, as long as your compliments are free from sexual undertones. Compliments such as "Nice legs" or "You look really sexy in that outfit" can make your co-worker or student feel uncomfortable or threatened. Even if the person you're complimenting isn't bothered by the comments, others might be.

How about asking for a date? Do I have to take "no" for an answer?

You may want to get together socially with someone, from work or from your class, whom you find attractive. This is perfectly acceptable as long as you make sure the desire and attraction are mutual. If you are turned down for a date, you might want to ask the person if a request would be welcome at another time. Be aware, though, that some people don't feel comfortable saying no to that type of question, for fear of offending you, or provoking some type of retaliation. Use your judgment. If the person says no more than once, or is uncomfortable or evasive when you ask, don't use pressure. Accept the answer and move on.

What's wrong with hanging sexy pictures in my own office or work area?

Sexually oriented objects and visuals, such as pinups, centerfolds from sex magazines and calendars portray people as sexual objects in demeaning circumstances. They can contribute to an offensive, intimidating and hostile work or academic environment and create the potential for a sexual harassment complaint.

Can I be accused of harassing someone if we are both the same gender?

Yes. Harassment is not limited to conduct directed towards a different gender. In addition, harassment of someone because of actual or perceived sexual orientation or gender identity is prohibited.

HANDLING SEXUAL HARASSMENT COMPLAINTS

The University has established guidelines for addressing and resolving complaints of unlawful discrimination and harassment and rape/sexual assault, which apply to sexual harassment complaints. These guidelines address only the available University procedures, and do not include other processes that may be available under federal, state, or local law. The University guidelines are set forth below.

I. Introduction

The purpose of this section is to clarify the University's policy and procedures for responding to sexual harassment and community members' options in the event an incident occurs. As explained below, the University provides community members with two types of resources: confidential counseling and reporting offices. Each type is offered at several different locations within the University.

A community member may seek confidential counseling; opt to make a report and seek informal resolution; file a complaint and seek formal resolution; or pursue any combination of the three foregoing options. Counseling is considered to be confidential and will not, by itself, trigger further University action. Reports, on the other hand, will be kept confidential only to the extent consistent with the University's obligation to investigate and address complaints. These points are explained in greater detail below. In addition, this guidance lists the counseling and reporting offices of the University available to community members.

Community members also are advised to refer to the University's Sexual Harassment Policy, most recently republished in the March 15, 2005 Almanac (vol. 51, no. 24), also available at www.upenn.edu/affirm-action/shhandbook.html. The University's Acquaintance Rape and Sexual Violence Policy is available online at <http://www.vpul.upenn.edu/osl/acqrage.html>.

II. University Resources

All members of the University community should be aware of the many University resources available to victims of unlawful discrimination or harassment or sexual assault. These are internal to the University, and they fall into two categories: confidential counselors and reporting offices. They are described below.

Community members also should be aware that similar resources are available to all victims of unlawful discrimination or harassment, not just sexual harassment. Discrimination or harassment on the basis of race, national origin, religion, sexual orientation, gender identity, or any other characteristic protected by applicable law is against University policy.

A. Confidential Counselors

Faculty, staff, and students who believe that they, or someone they know, have been a victim of discrimination, harassment, or rape/sexual assault may seek advice, counseling, or support from any of the resources listed below. Conversations with these offices are considered confidential, to the extent permitted by law. These offices may provide support, information, options, and counseling. To protect the confidential nature of these discussions, all parties should be aware that discussing a matter with any of these offices is *not* considered a report to the University or a request that any action be taken by the University in response to any allegation.

Penn Women's Center
African American Resource Center
Special Services Unit, Department of Public Safety
Counseling and Psychological Services
Lesbian Gay Bisexual Transgender Center

Student Health Services
Employee Assistance Program
Chaplain

Representatives of these offices, moreover, should advise any person initiating the discussion that in order to trigger University action or a response, the person must report the incident to one of the reporting offices listed below. A confidential counselor may also support the community member throughout any aspect of the reporting processes described below.

In any case involving an allegation of rape/sexual assault, the Special Services Unit, Department of Public Safety, should always be involved. The Unit's role includes explaining options available through the criminal process.

B. Reporting Offices

Any community member may seek advice from one of the confidential counselors listed above. To seek redress, however, either the community member or his or her confidential counselor (with the individual's consent or upon the individual's request) must report the incident to a person or office which has the responsibility to take further action. These persons and offices are listed below.

Office of Affirmative Action and Equal Opportunity Programs
Designated School Official or Affirmative Action Officer
Office of Staff and Labor Relations, Division of Human Resources
Office of the Ombudsman
Office of the Vice Provost for University Life
Office of Residential Living
Office of Student Conduct
Deans and University Officers
Department Chairs
Center Directors
Supervisors

These reporting offices will keep reports confidential, but only to the extent consistent with the University's need to investigate the allegations and to take remedial action, if appropriate.

Not all reporting offices will actually conduct investigations, nor are all empowered to take remedial action. Once it is made aware of a complaint, however, it is a reporting office's responsibility to ensure that appropriate action is taken by the office best able to handle the particular matter. For example, Department Chairs, directors, and supervisors should contact their Dean's office or the Office of Staff and Labor Relations for advice on how to proceed.

After making a report, the community member may pursue informal or formal resolution, or both. What constitutes informal resolution and formal resolution is described below.

III. Resolution of Reports

A. Informal Resolution

If the community member wants to resolve the matter informally, the reporting office may arrange for mediation or negotiation or some other form of voluntary resolution. Certain reporting offices, to the extent consistent with University policy and practice, may also issue sanctions or discipline.

Any reporting office identified above may be involved in informal resolution. Where appropriate, the reporting office may ask another reporting office to investigate or resolve the matter. In the

usual case, the appropriate Dean or Deans of the school or schools involved should be advised of the matter.

B. Formal Mechanisms for Complaint Resolution

If a faculty member, student or staff member chooses not to pursue informal resolution, or if informal resolution fails, then the community member may pursue formal action. Formal action is initiated by filing a written complaint with a reporting office. The community member must sign the complaint and include in it what he or she believes to be the relevant facts. The University will investigate the complaint, which may include advising persons named in the complaint, and will take remedial action, if appropriate.

The University must ensure that investigations conform to University policy. The process must also be fair to both the person filing the complaint and any person(s) named in the complaint. The Office of General Counsel is available for consultation regarding the law and University policy.

While procedures may vary depending on the particular case, the usual practice will be as follows:

a. If the formal complaint is against a faculty member, it should be referred to and handled by the Dean or the Department Chair, in consultation with the Dean. The Dean or Department Chair may also involve other offices such as the Ombudsman, the Office of Affirmative Action, or the Office of Staff and Labor Relations. All actions taken must be consistent with "The Procedures Governing Sanctions Against the Members of the Faculty," which are set forth in the Faculty Handbook.

b. If the Formal Complaint is against an undergraduate student, the Office of Student Conduct will handle the Complaint in accordance with the procedures set forth in the PennBook.

c. If the Formal Complaint is against a graduate student, the procedures followed by the school of that student will govern. Those procedures are available from the Office of the Dean or the school's designated Affirmative Action Officer.

d. If the Formal Complaint is against a staff member, the Office of Staff and Labor Relations and/or the Office of Affirmative Action will handle the Complaint, in accordance with the University's non-discrimination, affirmative action, and Human Resources policies and procedures.

IV. Non-Retaliation

The University will not tolerate retaliation against an individual who in good faith reports, complains about, or participates in an investigation into an allegation of unlawful discrimination or harassment or sexual assault. Any member of the community who believes that he or she has been retaliated against should file a complaint with a reporting office.

V. Confidentiality

As the division of the University's resources into two groups – confidential counselors and reporting offices – makes clear, there are two levels of confidentiality that can apply to a discrimination, harassment, or sexual assault issue.

Conversations with confidential counselors, identified above, afford the community member the highest level of confidentiality under University policy. Members of the community who wish only to talk about their experience, gather information, learn about their options, or seek support may

use the resources of these confidential counselors. The University ordinarily will not investigate statements in such conversations without the community member's consent.

A complaint made to a reporting office, on the other hand, will be confidential, but only to the extent that such confidentiality does not affect the University's investigation into and/or response to the complaint. The reporting offices' responsibility is to make sure that the University responds promptly and fairly to complaints and takes appropriate remedial action. These offices can respond to questions; provide information, support, and guidance; discuss options; and, when appropriate, refer community members to other offices.

The University always reserves the right to take any appropriate action whenever it believes there to be a substantial risk to any community member's health or safety, or to disclose information required by law or legal process.

REFERENCES

- The University's Sexual Harassment Policy is available online at:
<http://www.upenn.edu/almanac/v50/n20/OR-harassment.html>.
- The University's Division of Human Resources Policy Manual, of which the Sexual Harassment Policy is a part, is available at
<http://www.hr.upenn.edu/policy/default.asp>.
- The University's Office of Affirmative Action is online at
<http://www.upenn.edu/affirm-action/>
This includes the Office's Mission Statement, the Trustees' Resolution Adopting a Diversity Statement, and the University of Pennsylvania Nondiscrimination Statement.
- The University's Acquaintance Rape and Sexual Violence Policy is available online at
<http://www.vpul.upenn.edu/osl/acgrape.html>.
- The University's Policy on Consensual Sexual Relations Between Faculty and Students is available online at
http://www.upenn.edu/assoc-provost/handbook/vi_e.html