



**THE UNIVERSITY of
NEW ORLEANS**

**ADMINISTERED BY: Office of Vice
President for Business Affairs**

Policy No: AP-BA-32.4
**TITLE: Discrimination, Harassment,
and Retaliation**
EFFECTIVE DATE: April 4, 2014*
(*Policy Revised, see below)
CANCELLATION:
REVIEW DATE: Spring 2020

PURPOSE

To provide a uniform policy which ensures adequate reporting methods available to any employee, student, or applicant of the University of New Orleans (UNO) who believes that he or she has been the subject of unlawful discrimination, harassment (including sexual harassment) or retaliation by another employee, student, or other person associated with UNO.

AUTHORITY

Part Two, Chapter III, Section XIX of the Bylaws and Rules of the University of Louisiana System. University of Louisiana System Policy and Procedure Memorandum M-11a, M-12 and M-18; All applicable State and Federal non-discrimination laws.

OBJECTIVE

To ensure compliance and in accordance with the provisions of the Equal Pay Act of 1963, Title VII of the Civil Rights Act of 1964, Executive Order 11246 of 1965, the Age Discrimination in Employment Act of 1967 (ADEA), Section 504 of the Rehabilitation Act of 1973; the Civil Rights Act of 1991, Title II of the Genetic Information Nondiscrimination Act of 2008, Title IX, Title VI, the Age Discrimination Act of 1975, the Americans with Disabilities Act (ADA), the Pregnancy Discrimination Act of 1978, Immigration Reform and Control Act of 1986, Vietnam Era Veteran's Readjustment Assistance Act of 1974, and applicable state law and UL System policies.

APPLICABILITY

This policy prohibits discrimination and harassment involving current employees, enrolled students and applicants of UNO. This policy also prohibits retaliation against any employee, student, or applicant for reporting or assisting in the investigation of prohibited conduct. This policy applies to (1) all aspects of the employment relationship; (2) admission and treatment of students in the University's educational programs and activities; and (3) participation in or access to University sponsored programs, activities or facilities.

GENERAL POLICY

It is the policy of UNO to maintain an environment free from discriminatory practices, harassment (including sexual harassment), and retaliation which is illegal and which will not be tolerated. It is a violation of UNO policy to discriminate against any employee, student, or applicant on the basis of race, color, gender, age, religion, national origin, citizenship, disability, sexual orientation, genetic information, retirement or veteran status. The policy requires that all employees, students, and applicants be treated fairly with regard to all aspects of the employment and educational relationship.

DEFINITIONS

Complaint: Allegations of discrimination, harassment and/or retaliation, filed in good faith and in accordance with established procedures.

Discrimination: Inequitable treatment of an individual based on his or her protected characteristics or status rather than individual merit.

Harassment: Unwelcome conduct directed against a person based the person's protected characteristics or statuses which is so severe or pervasive that it creates an intimidating, hostile or offensive environment.

Protected Characteristics/Status: Race, color, gender, religion, sexual orientation, national origin, disability, genetic information, age if 40 or above, protected veteran status, or retirement status.

Protected Conduct or Activity: Conduct or activity that is permitted or protected by law or University policy.

Retaliation: Any adverse action taken against an individual as a result of a complaint of discrimination or harassment, or who may have participated in an investigation of discrimination or harassment, or engaged in other protected conduct or activity.

PROHIBITED CONDUCT

A. Discrimination

Discrimination in the workplace or learning environment involves taking adverse action against, or preferential treatment of, an individual because of his or her protected status.

Examples include:

- Denying or granting promotions or other advancement opportunities based on an individual's protected status;
- Granting preference in education or employment based on an individual's protected status;
- Assigning grades based on an individual's protected status;
- Making work assignments based on an individual's protected status;
- Denial of leave based on an individual's protected status.

B. Harassment

Harassment in the working or learning environment consists of unwelcome and objectively offensive both from the victim's perspective as well as from the perspective of a "reasonable person" physical, verbal, or nonverbal conduct that is severe and pervasive and unreasonably interferes with an individual's work or educational activities and/or which creates an intimidating, or hostile working or learning environment.

C. Sexual Harassment

Sexual harassment is a form of discrimination that involves unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature when:

- Submission to that conduct is made a term or condition of employment,
- Submission to, or rejection of, that conduct is used as a basis for employment decisions affecting the employee, or;
- That conduct is so severe and pervasive and objectionably offensive (both from the victim's perspective as well as from the perspective of a "reasonable person") that it has the effect of unreasonably interfering with an individual's work performance or of creating a hostile or offensive, or intimidating work or learning environment.

D. Retaliation

Retaliation includes overt or covert acts of reprisal, interference, restraint, penalty, discrimination, intimidation, or harassment against an individual or group exercising rights under this policy. No applicant, employee, student or other individual who complains about a violation of policy or who participates in an investigation of a complaint made pursuant to UNO and UL System policies shall be subject to retaliation in any form. Retaliation may exist even when the underlying complaint is without merit.

The University will take prompt and appropriate action to prevent, correct, and if necessary, discipline behavior that violates this policy.

COMPLAINT PROCEDURE

1. Filing a Complaint. Any member of the University community who believes that he or she has been subjected to conduct prohibited under this policy has a right to file a complaint. No student, employee or applicant is required to make a complaint of discrimination to the person who is engaging in or has engaged in the conduct that is the basis for the complaint. To file a complaint:

- **Students** should contact [Student Accountability and Advocacy](#) if the complaint involves another student. The Equal Employment Opportunity (EEO) Officer or Coordinator should be contacted if the complaint involves faculty or staff.
- **Employees** should contact any supervisor (including Department Chairs, Deans, Directors, and Vice Presidents), or the Equal Employment Opportunity Coordinator in the Office of Human Resource Management (HRM).

2. Receiving a Complaint. Any manager, supervisor or faculty member who receives a complaint or becomes aware of a possible violation of this policy is required to immediately notify the Equal Employment Opportunity Officer or Coordinator in the Office of Human Resource Management to obtain advice and assistance in responding to the complaint. Every member of the University community is encouraged to report possible violations of this policy to the EEO Officer or Coordinator in HRM. Students may also report such violations to Student Affairs.

3. Establishing and Investigating Complaints. The Equal Employment Opportunity Officer or Coordinator will investigate complaints of unlawful discrimination. Complaints will be addressed promptly and effectively. It is important that the complaining party provide sufficient information to allow for a thorough investigation of the facts, including the name(s) of the alleged discriminator(s), the date, time and place of any alleged incidents and the names of witnesses to any such alleged incidents. Information obtained regarding the complaint will be kept confidential to the extent possible and will be disclosed only on a need-to-know basis for purposes of investigation or subsequent disciplinary action. The guidelines below will apply to investigating complaints:

A. Evidence

1. Direct Evidence: In order to establish direct evidence of retaliation, there must be proof that the adverse action was taken as a result of a protected activity. Such evidence may include a written or verbal statement by an official that he/she took actions against an individual for engaging in protected activity.
2. Circumstantial Evidence: A violation can also be established if there is circumstantial evidence of retaliation. Typically this link may be demonstrated if the adverse action took place shortly after the protected activity or if the person undertaking the adverse action was aware of the individual's activity before taking the action.
3. Non-Retaliatory Reason: Retaliation may be established if the entity fails to provide evidence of a legitimate and non-retaliatory reason for the action. Common non-retaliatory reasons for adverse employment actions include poor job performance, inadequate qualifications for the position sought, and violation of work rules or insubordination.
4. Pretext to Motive: Even if an entity produces evidence of a legitimate reason for the adverse action, a violation may still be found if the reason is a pretext to hide actual motive. This may be proved through evidence that an individual was treated differently from similarly situated employees or subjected to heightened scrutiny after engaging in a protected activity.

B. Reporting and Investigation Process

The University's EEO Officer and Coordinator are assigned the Office of Human Resource Management. It is the responsibility of the EEO Officer and Coordinator to receive and investigate complaints of retaliation at the University. The EEO Officer and Coordinator can serve in other capacities or roles within the University, but will report directly to the respective University President regarding all complaints of unlawful retaliation.

If a complaint of unlawful retaliation is against the EEO Officer or Coordinator, the complainant shall complain directly to the University President. Complaints of unlawful retaliation by the University President shall be made directly to the UL System EEO Coordinator at the following address:

EEO Coordinator
UL System
Claiborne Building
1201 N. Third, Suite 7-300
Baton Rouge, LA 70802
225-342-6950

Complaint Procedures - Complaints, whether informal or formal, should be reported as soon as possible after any alleged retaliation incident has occurred. There is no deadline for reporting unlawful retaliation; however, a large proximity of time in between the alleged retaliation and the reporting may affect the investigation.

Informal Complaint: Informal complaints are not required and a complaint of unlawful retaliation does not have to begin at the Informal Complaint stage. However, use of the Informal Complaint process may allow a matter to be resolved quickly if the complainant believes that the circumstances make the Informal Complaint process appropriate for a particular situation. Informal complaints should be made in writing within 10 business days of the date that the employee knew or had reason to know of the alleged harassment, discrimination, or retaliation. Although attempts will be made to address all complaints of harassment, discrimination, and retaliation, complaints that are made more than 30 calendar days after the complainant knew or should have known about the alleged conduct will be more difficult or impossible to investigate depending on the facts involved.

Informal complaints can be resolved through informal meetings (either separate or together) with the complainant and person engaging in the alleged conduct and informal information gathering. Supervisors and department heads, and other administrators may be involved in resolving an informal complaint. If the Complainant is not satisfied with the results of an informal complaint, a Level 1 Complaint can be filed to begin the Formal Complaint Process. The EEO Officer or Coordinator may document the resolution of an Informal Complaint.

Formal Complaint - Formal complaints of unlawful retaliation must either be submitted in writing or will be reduced to writing on the form by the EEO Officer or Coordinator or designee on behalf of the Complainant. The formal complaint should include the following information:

Details concerning the incident(s) or conduct giving rise to the complaint; and

1. Dates and locations of incident(s); and
2. Any witnesses to the alleged incident(s) or conduct; and

3. Any previous actions of retaliation reported. If so, to whom and when; and
4. Action requested to resolve the complaint and prevent future violation of the policy.

A complaint shall not be dismissed for failure to include any or all of the above information. However, complaints with little or no substance will be difficult to investigate. As much substance as possible within the complaint will assist the EEO Officer or Coordinator in conducting the investigation.

Level 1 - Written complaints of retaliation should be submitted to the University's EEO Officer or Coordinator within 10 business days of the alleged incident if the complainant does not wish to use the informal complaint process. This is not a deadline that will prevent a claim of unlawful retaliation from being heard by the EEO Officer or Coordinator. However, complaints that are made more than 30 calendar days after the complainant knew or should have known about the alleged conduct will be more difficult or impossible to investigate depending on the facts involved. The University EEO Officer/Coordinator will either conduct an investigation or authorize an investigation and will issue a written summary of the outcome of the investigation within a reasonable timeframe. A copy of the EEO Officer's or Coordinator's written summary of the investigation will be provided to both parties.

Level 2 - If either party to a complaint of unlawful retaliation wishes to appeal the Level 1 decision, an appeal of the written decision must be made in writing within 10 business days of the receipt of the Level 1 Complaint determination. The appeal should be sent to the Office of the President of the University who will forward the appeal to the University EEO Advisory Committee for a review and determination.

Equal Employment Opportunity (EEO) ADVISORY COMMITTEE

The University EEO Advisory Committee – Each University shall create an EEO Advisory Committee composed of faculty and staff from various departments. The EEO Committee should include individuals representing the interests of classified and unclassified staff and should reflect the diverse workforce on the campus. The EEO Committee for each University will communicate regularly regarding issues related to policy implementation including University climate and systemic concerns. In addition to its other responsibilities, a sub-group of between three to five of the EEO Advisory Committee Members shall serve as the Level 2 appeal review committee for this Retaliation Complaint process.

Prior to the EEO Advisory Committee's review, a trained investigator appointed by the President of the University will:

1. Review and investigate the Level 1 complaint decision;
2. Collect and clarify additional available facts about the alleged incident;
3. Meet with the complainant and the accused individual, separately, if appropriate.

The trained investigator will provide a report to the EEO Advisory Committee. The EEO Advisory Committee will review the Level 1 decision and the appeal as well as the investigator's report, and

will make a determination regarding the Level 1 decision and will provide detailed findings along with any recommendations for appropriate action to the President of the University for consideration. Recommendations may include: uphold the Level 1 decision in full or in part or render an alternative decision in full or in part. The President of the University will review the report submitted by the EEO Advisory Committee and depending upon the nature and severity of the charge(s), the President may approve the recommended action or recommend an alternate resolution.

The complainant and the accused individual will be notified of the decisions at each level. The complainant will also be notified of all elements of the decision that directly relate to the complainant, involve general campus wide changes, or are otherwise required by state or federal law. To the fullest extent practicable and consistent with a thorough investigation, all complaints will be kept confidential, considering the specific circumstances of the allegations, to protect the rights of both the complainant and the individual accused.

- 4. Notification of Outcome.** The complainant and the individual who is the subject of the complaint will be notified as to the outcome of the investigation.
- 5. Sanctions.** The merits of the complaint giving rise to the retaliation claim are irrelevant. As stated above, retaliation gives rise to a separate claim from the underlying complaint. Consequently, anyone violating the policy may be in violation of federal laws protecting retaliation for protected activity and this policy regarding retaliation even if the original complaint of discrimination or harassment is not proven, is dismissed or is withdrawn and held responsible for such conduct. The policy shall clarify that, following an investigation, if a faculty, student or staff member is found in violation of the policy, that individual may be subject to disciplinary actions, and the sanctions may include reprimand, probation, suspension, demotion, reassignment, termination, and expulsion.
- 6. Training.** The EEO Officer or Coordinator on each campus shall identify the Human Resources personnel as well as the managerial and supervisory personnel on each campus each year. These individuals shall be provided annual training by the EEO Officer or Coordinator or designee on the Anti-Retaliation Policy and shall have access to the EEO Officer or Coordinator to address any questions or concerns that arise with respect to this policy. The EEO Officers and Coordinators shall have access to and shall use the UL System EEO Coordinator/Officer as a resource as needed to ensure compliance with this policy.

The EEO Committee shall also receive training with respect to how to properly review and analyze complaints of retaliation as part of their annual EEO Training.
- 7. Reporting.** The EEO Officer or Coordinator for each campus will provide an annual report to the UL System EEO Officer/Coordinator. Such report will include information such as instances of informal and formal complaints regarding retaliation as well as resolutions of such complaints. The report will also include information regarding any identified systemic concerns regarding unlawful retaliation such as identified areas within the campus such as employment areas or colleges as well as recommended solutions to ensure that unlawful retaliation does not continue within the University.

NOTIFICATION TO NATIONAL INSTITUTES OF HEALTH (NIH)

If a principal investigator or other key personnel named on a National Institutes of Health (NIH) grant award is no longer able to fulfill their obligations to conduct research because they are under investigation or have been removed from the workplace because of sexual harassment concerns, NIH requires institutions to notify NIH of this change. When such an action occurs, the Office of Human Resource Management will notify the Office of Research so they can notify the NIH.

ADDITIONAL REFERENCES:

University of Louisiana System Policy and Procedures Memorandum

- [Prohibiting Workplace Harassment, and Discrimination \(M-11a\)](#)

University of Louisiana System Policy and Procedures Memorandum

- [Preventing and Addressing Retaliation \(M-12\)](#)

University of Louisiana System Policy and Procedure Memorandum

- [Hiring Without Regard to Retirement Status and Without Regard to Prior Complaints of Discrimination of Other Protected EEO Activity \(M18\)](#)

University of New Orleans Administrative Policy

- [AP-BA-35.2 - Equal Employment Opportunity](#)



John W. Nicklow
President
University of New Orleans

**Policy updates:*

*Revisions: 3/15/2017
10/10/2018
5/1/2019
10/3/2019*