

Tentative Agreement

UC/AFT IX Successor Negotiations
Article 4 – Non-Discrimination in Employment
UC Proposal #4
January 15, 2021
Page 1 of 4

For the University



Nadine B. Fishel

5-25-2021

For UC-AFT



Mia L. McIver

6-11-21

ARTICLE 4 NON-DISCRIMINATION IN EMPLOYMENT

A. NON-DISCRIMINATION

Within the limits imposed by law or University regulations, the University shall not discriminate or harass any ~~NSF~~ **Unit 18 faculty** on the basis of race, **ethnicity**, color, **immigration status**, religion, marital status, national origin, ancestry, sex, (including gender, pregnancy, childbirth, medical conditions related to pregnancy and childbirth, breastfeeding, and medical conditions related to breastfeeding), sexual orientation, gender expression, gender identity, physical or mental disability, medical condition, cancer-related condition or genetic characteristics, genetic information (including family medical history), HIV status, status as a covered veteran (special disabled veteran, recently separated veteran, Vietnam era veteran, or any other veteran who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized), service in the uniformed services as defined by the Uniformed Services Employment and Reemployment Act of 1994, state military and naval service,) age, citizenship, political affiliation, or union activity.

B. SEXUAL HARASSMENT

Sexual Harassment is when:

1. **Quid Pro Quo: a person's submission to unwelcome sexual conduct is implicitly or explicitly made the basis for employment decisions, academic evaluation, grades or advancement, or other decisions affecting participation in a University program or activity; or**
2. **Hostile Environment: unwelcome sexual or other sex-based conduct is sufficiently severe, persistent or pervasive that it unreasonably denies, adversely limits, or interferes with a person's participation in or benefit from the education, employment or other programs or activities of the University, and creates an environment that a reasonable person would find to be intimidating or offensive.**

3. **Sexual conduct includes sexual or romantic advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature.**
4. **Other sex-based conduct includes acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on gender, gender identity, gender expression, sex- or gender-stereotyping, or sexual orientation.**
5. **Consideration is given to the totality of the circumstances in which the conduct occurred.**
1. ~~Unwelcome sexual advances, requests for sexual favors and other verbal, nonverbal or physical conduct of a sexual nature constitute sexual harassment when:~~
 - a. ~~submission to such conduct is made either explicitly or implicitly a term or condition of instruction, employment, or participation in other University activity;~~
 - b. ~~submission to or rejection of such conduct by an individual is used as a basis for evaluation in making academic or personnel decisions affecting an individual; or,~~
 - c. ~~such conduct interferes with an NSF's work performance or creates an intimidating, hostile, or offensive work environment.~~
6. ~~Nothing in this Article is intended to conflict with University Policy on Sexual Harassment/Sexual Violence.~~

C. **If the definitions in the Sexual Violence Sexual Harassment Policy (“SVSH”) or University’s Discrimination, Harassment, and Affirmative Action in the Workplace Policy change, the new definitions will apply to this Article.**

D. **RESOLUTION PROCEDURES**

1. If an ~~NSF~~ **Unit 18 faculty** files a timely grievance that includes an alleged violation of this article, the University shall forward such a complaint to the campus office responsible for formally investigating allegations of discrimination and/or sexual harassment. The grievance shall be held in abeyance during the time the investigation is ongoing, **in**

accordance with the University's SVSH Policy and/or the University's Discrimination, Harassment, and Affirmative Action in the Workplace Policy.

2. **Unit 18 faculty may file a Complaint directly with the Title IX or Equal Opportunity Office responsible for investigations at each campus location.**
3. **Nothing in this Article precludes Unit 18 faculty from filing a claim with an outside agency.**
4. ~~Unless the deadline for completion of the investigation is extended for good cause, the report of findings will be issued within 60 working days from the initiation of the investigation.~~
5. ~~The NSF~~ **Unit 18 faculty** shall have the right to be represented by the Union **or another advisor** in the complaint procedure.
6. The University's Step 1 response will be issued within 10 calendar days after ~~the designated campus official receives the report of findings.~~ **the Title IX Office or the Office of Equal Employment Opportunity process has concluded.**
7. This procedure shall be in place for grievances alleging sexual harassment and/or discrimination in accordance with Section A and B above.
8. Nothing in this ~~section~~ **article** shall preclude an ~~NSF~~ **Unit 18 faculty member** from filing a sexual harassment complaint and/or other complaint alleging discrimination directly with the campus office responsible for formally investigating allegations of discrimination and/or sexual harassment in accordance with established timelines.
9. The Title IX Offices and the Offices of Equal Employment Opportunity responsible for investigations are listed in Appendix D.

10. No provision of this Article is intended to waive any rights of the ~~NSF~~ **Unit 18 faculty** under state and federal statutes.

~~E. If the UC AFT appeals a grievance to arbitration which contains allegations of a violation of this article which are not made in conjunction with the provision of another article that is arbitrable, the UC AFT's notice must include an Acknowledgement and Waiver Form signed by the affected NSF. The Acknowledgement and Waiver Form will reflect that the NSF has elected to pursue arbitration as the exclusive dispute resolution mechanism for such claim and that the NSF understands the procedural and substantive differences between arbitration and other remedial forums in which the dispute might have been resolved, including the differences in the scope of remedies available in arbitration as compared to other forums. The timeline to appeal to Arbitration as set forth in Article 33, Arbitration, will be extended by 30 days for said grievances to enable the NSF to make an informed decision. [Move to Arbitration Article.]~~