

ARTICLE 2
**PROHIBITIONS ON WORKPLACE DISCRIMINATION,
HARASSMENT, ABUSIVE CONDUCT, AND RETALIATION**

A. NONDISCRIMINATION IN EMPLOYMENT

1. It is the policy of the University not to engage in discrimination against or harassment of any person employed or seeking employment with the University of California on the basis of a person's actual or perceived race, religion, color, citizenship, national or ethnic origin, ancestry, sex (including pregnancy, childbirth, lactation or related medical conditions), gender, gender identity, gender expression, gender transition, sexual orientation, physical or mental disability (including having a history of a disability or being regarded as being disabled), medical condition (including cancer-related or genetic characteristics), predisposing genetic information (including family medical history), HIV status, marital status, age (at least 40 years of age), immigration status, political affiliation, union activity, military status, or off-duty cannabis use (as prohibited by California Government Code section 12954)¹.
2. Librarians are covered by the University of California Anti-Discrimination Policy, which is a Presidential Policy covering all faculty and other academic appointees, students, and staff. The Anti-Discrimination Policy (<https://policy.ucop.edu/doc/1001004/Anti-Discrimination>) states, among other provisions, that it will be implemented in a manner that recognizes rights to freedom of speech and expression. However, freedom of speech and academic freedom are not limitless and, for example, do not protect speech or expressive conduct that violates federal and state anti-discrimination laws. This policy is intended to be consistent with the provisions of applicable State and Federal laws and University policies.

B. PROHIBITION AGAINST SEXUAL HARASSMENT

1. The University of California is committed to creating and maintaining a community in which all persons who participate in University programs and activities can work together in an atmosphere free of all forms of harassment, exploitation, or intimidation, including sexual. Specifically, every member of the University community should be aware that the University is strongly opposed to sexual harassment and that such behavior is prohibited by law and by University policy. It is the intention of the University to take whatever action may be needed to prevent, correct, and, if necessary,

¹ Employees are not permitted to possess or use cannabis or be impaired on the job; however, employer-required drug screening may not rely on tests that measure nonpsychoactive cannabis metabolites. Cal. Gov't Code § 12954. Employees in the building and construction trades and applicants or employees hired for positions that require a federal government background investigation or security clearance in accordance with regulations issued by the U.S. Department of Defense pursuant to Part 117 of Title 32 of the Code of Federal Regulations or equivalent regulations applicable to other agencies are exempt from protections regarding off-duty cannabis use and testing limitations.

discipline behavior which violates this policy.

2. Definitions

a. 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, 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.
- b. Sexual conduct includes sexual or romantic advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature.
- c. 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.
- d. Consideration is given to the totality of the circumstances in which the conduct occurred.
- e. Librarians are covered by the University of California Sexual Violence and Sexual Harassment Policy, which is a Presidential Policy covering all faculty and other academic appointees, students, and staff. This Policy states, among other provisions, that it will be implemented in a manner that recognizes the importance of the rights to freedom of speech and expression and will not be interpreted to prohibit expressive conduct that is protected by free speech and academic freedom principles.
3. If the definition of Sexual Harassment changes in the Sexual Violence Sexual Harassment Policy (SVSH) (an interim policy currently available at <https://policy.ucop.edu/doc/4000385/SVSH>), the new definition will replace the current language.

C. PROHIBITION AGAINST ABUSIVE CONDUCT

1. The University and UC-AFT are jointly committed to promoting and maintaining a

work environment that is healthy and free of Abusive Conduct, in which every employee and member of the University community is treated with respect. The parties mutually acknowledge that Abusive Conduct creates an intimidating environment and may interfere with an employee's work. These behaviors may occur in, but are not limited to, situations in which one person has authority over another and situations involving peer-to-peer interactions. The University and UC-AFT shall strive to foster an environment in which employees feel comfortable making reports of Abusive Conduct in good faith.

2. Abusive Conduct is harassing or threatening behavior that is sufficiently severe, persistent, or pervasive conduct in the workplace that 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. The conduct creates an environment, whether intended or not, that a reasonable person would find to be intimidating or offensive and unrelated to the University's legitimate educational, employment, and business interests. The conduct shall be evaluated taking into account the circumstances of the parties, relationship between the parties (including power imbalance); the frequency, nature and severity of the alleged conduct; whether the conduct was physically threatening; and whether the conduct may be protected as academic freedom or free speech. A single act may constitute Abusive Conduct, if especially severe or egregious. When the alleged conduct involves issues related to academic freedom, the applicable University Office will consult with the appropriate academic officer for relevant academic judgment. In determining whether the conduct at issue rises to the level of Abusive Conduct, the standard of "reasonable person" should be used. This standard is whether a reasonable person in the same or similar circumstances would find the conduct hostile or offensive in the workplace given the totality of the circumstances. Although the intention of the person responsible for the conduct may be considered, it is not determinative. When evaluating the conduct at issue, the parties' perspectives and circumstances should be considered.
3. If the definition of Abusive Conduct changes in the Abusive Conduct in the Workplace Policy (a policy currently available at <https://policy.ucop.edu/doc/4000701/AbusiveConduct>), the new definition will replace the current language.

D. PROHIBITION AGAINST RETALIATION

University policy prohibits retaliation against any employee or person seeking employment for bringing a complaint of discrimination, harassment, or abusive conduct pursuant to these policies. University policy also prohibits retaliation against a person who assists someone with a complaint of discrimination, harassment, or abusive conduct, or participates in any manner in an investigation or resolution of a complaint of discrimination, harassment, or abusive conduct. Retaliation includes threats, intimidation, reprisals, and/or adverse actions related to employment.

E. RESOLUTION PROCEDURES

Grievances shall be processed in accordance with the University's SVSH Policy and/or the University's Anti-Discrimination Policy and/or the Abusive Conduct in the Workplace Policy.

1. If a grievance is filed that includes an alleged violation of this Article, the University shall forward such a complaint to the campus office responsible for reviewing allegations of abusive conduct, discrimination, and/or sexual harassment and process the grievance in accordance with Article 24.
2. In cases involving claimed violation of the Nondiscrimination (Article 2.A) provisions of this Article, the grievance will be held in abeyance pending one of the following events:
 - a. the responsible campus office, after conducting an initial assessment of the report of a claimed violation of the Anti-Discrimination Policy (per paragraph V.A.4 of the Policy), concludes that the report should be closed without a Resolution Process; or
 - b. conclusion of the University's formal investigation (including completion and notice to the parties of the formal investigation report pursuant to the University's anti-discrimination policy per paragraph V.A.6).
3. In grievances alleging violations of Article 2 and other articles, upon mutual agreement of the Union and the University, the University ~~it~~ will sever the grievance to allow allegations other than Article 2 to proceed through the grievance process. If the parties are unable to reach mutual agreement, the grievance will remain held in abeyance per E.2. If the grievance is severed, at the point of appeal to arbitration, UC-AFT and the grievant will have the option to reconstitute the original grievance for the purpose of arbitration.

F. APPEALS

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 provisions of another article that is arbitrable, the UC-AFT's notice must include an Acknowledgement and Waiver Form signed by the affected Librarian. The Acknowledgement and Waiver Form will reflect that the Librarian has elected to pursue arbitration as the exclusive dispute resolution mechanism for such claim and that the Librarian 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 25 — Arbitration will be extended by thirty (30) calendar days for said grievances to enable the

Librarian to make an informed decision.