

## **ARTICLE 16**

### **NON-DISCRIMINATION IN EMPLOYMENT**

#### **A. NON-DISCRIMINATION**

Within the limits imposed by law or University regulations, the University shall not discriminate against or harass any Academic Researcher on the basis of race, color, 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 or genetic characteristics), genetic information (including family medical history), HIV status, service in the uniformed services, age, citizenship, political affiliation, and/or union activity.

For the purposes of this Article only,

1. Service in the uniformed services includes service in the uniformed services as defined in the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), as well as state military and naval service.
2. "Pregnancy" includes pregnancy, childbirth, and medical conditions related to pregnancy, and childbirth.
3. "Gender expression" means a person's gender-related appearance or behavior, or the perception of such appearance or behavior, whether or not stereotypically associated with the person's sex assigned at birth.
4. "Gender identity" means each person's internal understanding of their gender, or the perception of a person's gender identity, which may include male, female, a combination of male and female, neither male nor female, a gender different from the person's sex assigned at birth, or transgender.
5. "Medical condition" means either any health impairment related to or associated with a diagnosis of cancer or health impairments related to genetic characteristics.

#### **B. SEXUAL HARASSMENT**

1. The University of California is committed to creating and maintaining a community dedicated to the advancement, application and transmission of knowledge and creative endeavors through academic excellence, where all individuals who participate in University programs and activities can work and learn together in an atmosphere free of harassment, exploitation, or intimidation. The University prohibits sexual harassment, sexual violence, and retaliation that violates law, this Article, and/or University policy (herein referred to as Prohibited Conduct). The University shall respond promptly and effectively to reports of Prohibited

Conduct and shall take appropriate action to prevent, to correct, and when necessary, to discipline behavior that violates the law, this Article, and the SVSH Policy.

2. Sexual Harassment is when:
  - a. Quid Pro Quo: a person's submission to or rejection of 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
  - b. 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. Sexual harassment may include incidents between any members of the University community, including: administrators, faculty and other academic appointees (including Academic Researchers), staff, student employees, students, coaches, residents, interns, and non-student or non-employee participants in University programs (e.g., vendors, contractors, visitors, and patients); in hierarchical relationships and between peers, and; between individuals of any gender or gender identity.

### **C. RETALIATION PROHIBITION**

1. Retaliation is an adverse action against a person based on their report or other disclosure of alleged Prohibited Conduct to a University employee, or their participation in, refusal to participate in, or assistance with the investigation, reporting, remedial, or disciplinary processes provided for in University Policy and/or in this Article.
2. An adverse action is conduct that would discourage a reasonable person from reporting Prohibited Conduct or participating in a process provided for in University Policy and/or this Article, such as threats, intimidation, harassment, discrimination and coercion. Retaliation does not include good faith actions lawfully pursued in response to a report of Prohibited Conduct (such as gathering evidence).

3. The University prohibits retaliation against or by Academic Researchers based on their report of Prohibited Conduct or participation in, refusal to participate in, or assistance with the investigation, report, remedial, or disciplinary processes provided for in the SVSH Policy.
- D. Complaint procedures are covered by the University's Sexual Violence Sexual Harassment Policy ("SVSH") (<https://policy.ucop.edu/doc/4000385/SVSH>) and the Discrimination, Harassment, and Affirmative Action in the Workplace Policy ("Nondiscrimination") (<https://policy.ucop.edu/doc/4000376/DiscHarassAffirmAction>).
- E. Where there is no conflict with this Agreement, the University's SVSH Policy and the Nondiscrimination Policy shall continue to apply to Academic Researchers.

**F. RESOLUTION PROCEDURES**

1. If an Academic Researcher 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 reviewing allegations of discrimination and/or sexual harassment. If the campus office determines an investigation is warranted, the Union and the University may agree in writing that the grievance, or a portion thereof, be held in abeyance during the time the allegations are under review in accordance with the University's SVSH Policy and/or the University's Nondiscrimination Policy. If the Union and the University do not agree in writing to put the grievance in abeyance, the grievance shall continue pursuant to Article 7 - Grievance and Arbitration Procedures.
2. If the Union and the University agree in writing to put the grievance in abeyance per Section D.,1., the abeyance shall automatically terminate at the conclusion of the review, and the grievance procedure shall resume within fifteen (15) calendar days from the date from the conclusion of the review.
3. If the grievance alleges violation(s) of the SVSH Policy, and the Title IX Office initiates a formal investigation, the local Labor Relations Office shall notify the UAW when the Title IX Office has extended the timeline for the SVSH investigation.
4. The parties recognize that proceeding to an arbitration hearing on the merits with a completed investigation report is optimal. If the completed investigation report is not issued ninety (90) calendar days prior to the scheduled hearing date, the parties shall meet as often as necessary to discuss the status of the investigation and make good faith efforts to reach potential permanent resolutions and settlements.
5. Interim Measures for Complainant(s)
  - a. The appropriate University Officer, in consultation with the Complainant when possible, will determine and oversee interim measures that are

immediately necessary.

- b. Interim measures are the services, accommodations, or other measures put in place temporarily after the appropriate University Officer receives a report of prohibited conduct to assist or protect the Complainant, the Respondent, or the University community. If such interim measures are implemented, they shall allow the Academic Researcher to continue research in an environment free from harassment and/or discrimination based on a protected category.
- c. Interim measures available to Academic Researchers may include, but are not limited to:
  - 1) training and education of the Respondent;
  - 2) change to a different workstation, schedule, work location, unit, department, or position for which the Academic Researcher is qualified provided that, in the case of a Complainant, the change is voluntary and equitable; and/or
  - 3) no-contact remedies.
- 6. For sexual harassment cases only: The specific procedures for reporting, investigating, and resolving Prohibited Conduct as defined by the Sexual Violence and Sexual Harassment Policy are in the Sexual Violence and Sexual Harassment Investigation and Adjudication Framework for Staff and Non-Faculty Academic Personnel:

<https://sexualviolence.universityofcalifornia.edu/files/documents/staff-nfap-svsh-investigation-and-adjudication-framework.pdf>

## **G. REMEDIES**

- 1. Remedies available to Academic Researchers may include, but are not limited to: change to a different workstation, schedule, work location, unit, department, or position for which the Academic Researcher is qualified provided that, in the case of the Complainant/Grievant, the change is voluntary and equitable; training and education of the Respondent; no contact remedies.
- 2. The University shall implement appropriate remedies if a complaint and/or grievance is sustained, or as an alternative measure. Such remedies, shall ensure that the Academic Researcher continue research in an environment free from harassment and/or discrimination based on a protected category.

## **H. REPRESENTATION**

The Academic Researcher (as a Complainant, Grievant, Respondent, or

Witness) shall have the right to be represented by a representative of their choice, including a union representative, in the grievance, arbitration, and/or complaint process.

- I. The Title IX Offices and the Offices of Equal Employment Opportunity responsible for investigations are listed in Appendix I.

**J. EDUCATIONAL AND TRAINING RESOURCES**

- 1. The link at: <https://sexualviolence.universityofcalifornia.edu/education-training/> provides educational and training resources at each campus.
- 2. Upon written request from the UAW, the University and the UAW agree to discuss effective training methodology for the prevention of sexual harassment and other forms of discrimination at a systemwide joint labor management committee.

**K. LACTATION SUPPORT**

- 1. Where spaces exist for faculty or staff for the primary purpose of expressing breast milk, Academic Researchers shall have access to those spaces for the purpose of expressing and storing breast milk.
- 2. If no such space exists in reasonable proximity to an Academic Researcher's work location, the department will designate an appropriate temporary space, which is not open to the general public, for the purpose of expressing and storing breast milk.
- 3. The University will allow adequate time for an Academic Researcher to express breast milk.

**L. ALL-GENDER RESTROOMS**

- 1. The University and the Union recognize the importance of having safe and accessible campus restroom facilities.  
  
Upon request, the University will provide the Academic Researcher with the location of the nearest all-gender restroom.