

**ARTICLE 21  
NON-DISCRIMINATION IN EMPLOYMENT**

**A. GENERAL PROVISIONS**

Within the limits imposed by law or University regulation, the University shall not discriminate against or harass any ASE on the basis of race, color, religion, marital status, national origin, ancestry, ethnicity, sex, gender (including pregnancy, childbirth, medical condition), sexual orientation, gender identity, gender expression, gender transition status, physical or mental disability, medical condition (cancer-related or genetic characteristics), genetic information (including family medical history), HIV status, ancestry, service in the uniformed services (including protected veterans), age, citizenship, political affiliation, and/or union activity. Likewise, the University shall not discriminate or retaliate against an ASE for requesting or taking Family and Medical Leave.

1. For the purposes of this Article only,
  - a. 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.
  - b. "Pregnancy" includes pregnancy, childbirth, and medical conditions related to pregnancy, and childbirth.
  - c. "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.
  - d. "Gender identity" is 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.
  - e. "Medical condition" means either any health impairment related to or associated with a diagnosis of cancer or health impairments related to genetic characteristics.
2. If the UAW 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 UAW's notice must include an Acknowledgement and Waiver Form signed by the affected ASE. The Acknowledgement and Waiver Form will reflect that the ASE has elected to pursue arbitration as the exclusive dispute mechanism for such claim and that the ASE understands the procedural and substantive differences between arbitration and the other remedial forum or 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 set forth in Article 12, Grievance and Arbitration, will be extended by 30 days for said grievances to enable the ASE to make an informed choice.

## **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 and retaliation that violates law, this Article, and/or University policy (herein referred to as prohibited behavior). The University shall respond promptly and effectively to reports of prohibited behavior and shall take appropriate action to prevent, to correct, and when necessary, to discipline behavior that violates the law, this Article, and 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, 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 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 and services 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. Sexual harassment may include incidents between any members of the

University community, including: administrators, faculty and other academic appointees (including ASEs), 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.

5. Where there is no conflict with this Agreement, the University's SVSH Policy and the Nondiscrimination Policy shall continue to apply to Academic Student Employees.

### **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 in 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) and are not, without more, retaliation.
3. The University prohibits retaliation against or by ASEs based on their report of prohibited behavior or participation in, refusal to participate in, or assistance with the investigation, report, remedial, or disciplinary processes provided for in the SVSH Policy.
4. The Title IX Offices responsible for investigations are listed at: <http://sexualviolence.universityofcalifornia.edu/filing-report/index.html>.

### **D. RESOLUTION PROCEDURES**

Reports of alleged violations of Section A. or B.1-4. above and/or University Policy may be addressed through the complaint procedure and/or the grievance procedure. Additionally, Alternative Resolution may be used at any time to address the issues. Formal Investigations may be initiated as part of the complaint resolution or grievance procedure.

1. Alternative Resolution: ASE(s) and/or the Union and/or the University may seek Alternative Resolution at any time.
  - a. After a preliminary assessment of the facts, the Title IX / EEO Officer may

initiate an Alternative Resolution process, which may include: mediation (except in cases of sexual violence); separating the parties; providing for safety; referring the parties to counseling; referral for disciplinary action; a settlement agreement; conducting targeted preventive educational and training programs; and conducting a follow-up review to ensure that the resolution has been implemented effectively.

- b. Only the Title IX/EEO Officer has the authority to initiate Alternative Resolution.
- c. If Alternative Resolution is unsuccessful, the Title IX/EEO Officer may initiate a formal investigation.
- d. Attempts at Alternative Resolution at the informal level do not extend the thirty (30) calendar day time limit to file a grievance. However, should a grievance be filed, the parties may agree in writing that the grievance be held in abeyance while alternative resolution is being considered or ongoing.

## 2. Interim Measures for Complainant(s)

- a. When the appropriate administrative officer has determined that a Complainant has established a prima facie case of harassment and/or discrimination based on a protected category, the University shall implement interim measures when necessary. Such measures shall allow the ASE to continue training in an environment free from harassment and/or discrimination based on a protected category.
- b. Interim measures available to ASEs may include, but are not limited to: change to a different workstation, schedule, work location, unit, department, or position for which the ASE is qualified provided that, in the case of a Complainant, the change is voluntary and equitable; training and education of the Respondent; no contact remedies.

## 3. Remedies

- a. Remedies available to ASEs may include, but are not limited to: change to a different workstation, schedule, work location, unit, department, or position for which the ASE 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.
- b. 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 ASE continue training in an environment free from harassment and/or discrimination based on a protected category.

4. Representation

The ASE (as a Complainant, Grievant, Respondent, or Witness) shall have the right to be represented by an advocate of their choice, including a Union representative, in the grievance, arbitration, and/or complaint process.

5. Complaints/Claims

- a. Academic Student Employees may file a Complaint directly with the Title IX or Equal Opportunity Office responsible for investigations at each campus location.
- b. Nothing in this Article precludes Academic Student Employees from filing a claim with an outside agency.
- c. For sexual harassment cases, the University will follow the University of California SVSH Policy.

6. Grievance Procedure

- a. If a grievance is filed in accordance with Article 12 that includes an alleged violation of this Article, the University shall forward the allegation(s) to the Title IX / EEO Officer for review. If the Title IX/EEO Officer 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 while the investigation is ongoing.
- b. As soon as practicable, after the Title IX/EEO Officer receives the grievance, they will make an initial assessment to determine whether (i) the allegation(s) constitute a prima facie case of an act of prohibited behavior; and (ii) such conduct has a sufficient nexus to the University for it to intervene.
- c. The Title IX/EEO Officer may implement interim measures, in accordance with section D.2. above.
- d. In the event that a formal investigation is conducted, the investigation shall be conducted in accordance with the SVSH Policy.
- e. When the University issues the report or otherwise concludes its review/investigation, the abeyance shall automatically terminate, and the Step 1 process shall resume.

- f. In any event, the parties recognize that having a fair investigation and proceeding to an arbitration hearing on the merits with a completed investigation report (report of findings) is optimal. The parties may mutually agree to postpone the arbitration until the completed investigation report is available.

## **E. LACTATION SUPPORT**

1. ASEs shall have access to spaces for the purpose of expressing and storing breast milk, which will be a locked private space that is sanitary and equipped with a table, comfortable chair and electrical outlet.
2. If no such space exists in reasonable proximity to an ASE's work location, the department/hiring unit 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 ASE to express breast milk, with the understanding that the ASE will not disrupt classroom activities for this purpose.
4. Within thirty (30) calendar days from ratification, the University shall provide information regarding the availability of lactation support on a campus website.

## **F. ALL-GENDER RESTROOMS**

1. The University and the Union recognize the importance of having safe and accessible campus restroom facilities.
2. The University shall provide that all ASEs have reasonable access to all-gender restrooms within a reasonable distance to their work location, however, the University shall not be obligated to expend funds beyond minimal and incidental costs to provide reasonable access to all-gender restrooms.
3. If assistance with access to an all-gender restroom is needed, the ASE or the Union shall contact the department/hiring unit or campus Labor Relations office as soon as possible after receiving written notice of appointment in order to ensure reasonable access options are provided within a reasonable distance to the ASE's work location.
4. Reasonable access may include, but is not limited to, section/class reassignments and/or schedule modifications, re-designating an existing restroom as all-gender, or placing the ASE in an alternate appointment.
5. The parties recognize that any delay in notifying the department/hiring unit or campus Labor Relations of the need for access to an all-gender restroom

may limit the possible arrangements, particularly where class assignments have already been made and/or the term has already commenced.

6. The University shall ensure that all single-occupancy restrooms will be designated as all-gender restrooms. "Single-occupancy restroom" is defined as a toilet facility with no more than one water closet and one urinal with a locking mechanism controlled by the user. Each all-gender restroom must have at least a sign on the door with a triangle within a circle, without gender pictograms.
7. The University shall list the locations of all-gender restrooms on a campus website.

#### **H. ADDITIONAL SUPPORT**

ASEs may contact campus Labor Relations or the Union for additional support and/or assistance regarding provisions of this article.