

WASHINGTON STATE UNIVERSITY



Washington State University
Office for Equal Opportunity

Issues Related to:
Discrimination, Sexual Harassment, Sexual Misconduct, and Affirmative Action.

February 2016

Applicable WSU Policies

WSU's Policy Prohibiting Discrimination, Sexual Harassment, and Sexual Misconduct (Executive Policy 15)

Applies to all WSU Employees, Students, and others having an association with WSU.

Discrimination in all its forms destroys mutual respect and a trusting environment, can bring substantial personal harm to individuals, and violates individual rights.

Other Applicable WSU Policies

- [EP 28](#) Policy on Faculty-Student and Supervisor-Subordinate Relationships
- [EP 7](#) - University Web Accessibility Policy
- [EP 12](#) - EEO/AA Policy
- [EP 26](#) - Internal Investigations, Training, and Policy
- Reasonable Accommodation (BPPM 60.21.1)
- Bullying Prevention and Reporting (BPPM 50.31.1)
- Workplace Violence (BPPM 50.30.1)
- WSU's Standards of Conduct for Students ([Washington Administrative Code \(WAC\) Chapter 504-526](#))

Discrimination Prohibited

WSU policy prohibits discrimination on the basis of:

- Race
- Sex/Gender
- Sexual orientation
- Gender identity/expression
- Religion
- Age
- Color
- Creed
- National or ethnic origin
- Physical, mental or sensory disability
- Marital status
- Genetic information
- Status as an honorably discharged veteran or member of the military

WSU policy prohibits behavior on the basis of a protected class that is sufficiently severe, persistent, or pervasive that it has the purpose or effect of creating an intimidating, hostile, or offensive environment; or unreasonably interfering with work, or academic performance.

Discrimination = Behavior (Prejudice = Attitude)

Selective, unjustified negative behavior toward a group or member of a group. Demonstrated by...

Disparate Treatment:

- Employer treats individual/group differently because of its protected category.
 - Can be shown by direct evidence or inferred through statistics, anecdotes or comparative evidence.
 - Intent is a necessary element

Disparate/Adverse Impact

- Practice/policy which results in selection of members of a protected group at a rate lower than that of other groups.
 - Can be facially neutral practice – but still discriminatory in its application
 - Intent is not a necessary element

Harassment

- A form of discrimination that unreasonably interferes with an individual's performance or adversely affects an individual's employment opportunity.
 - (Verbal – Written – Physical)
- Behavior that is sufficiently severe, persistent, or pervasive

Examples of Discrimination

- Supervisor invites all employees to a staff retreat at a location without ADA approved access. The supervisor knows that one of the employees, who she finds particularly difficult to work with, will be unable to attend because of the lack of access.
- Search committee chair recommends hiring a female for a position because the office is currently made up of predominately male employees.
- Joke of the day that frequently references a protected classes in the punch line – may create a hostile environment.

Supervisor Liability

Brown vs. Scott Paper Worldwide Co.

April 5, 2001 WA State Supreme Court

Individual supervisors can be held individually liable for their discriminatory acts under the Washington Law Against Discrimination, RCW 49.60

Supervisor – s/he is the actual wrongdoer

Departmental Assessment

- Are policies enforced consistently in your department?
- Do you evaluate people on a regular and fair basis?
- Have you ever criticized an employee on matters that are not strictly work related?
- Are your comments and questions strictly work-related when you evaluate job candidates?
- Do you take accurate, objective notes?
- Are those notes about strictly factual information?
- Do you do your best to leave any stereotypes you may have outside the office door?
- Do you strive to make your department a supportive, bias-free environment?
- Do you set an example your employees can follow?

Discrimination

Discrimination: Improper, different treatment on the basis of a protected class.

Discriminatory Harassment: *A form of Discrimination encompassing unwelcomed conduct on the basis of a protected class.*

Sexual Harassment: *A form of Discrimination encompassing unwelcomed conduct on the basis of sex and/or gender, or of a sexual nature.*

Sexual Misconduct: *A form of Sexual Harassment, which includes: Sexual Assault, Voyeurism, Sexual Exploitation, etc.*

Standard: Severe, persistent, or pervasive.

Sexual Harassment Prohibited

WSU policy prohibits sexual harassment, which is a form of discrimination on the basis of sex or gender.

Sexual harassment encompasses:

- unwelcome sexual advances,
- Quid pro quo harassment, and/or
- unwelcome **verbal or physical conduct** of a sexual nature, including sexual assault.

Behavior that is sufficiently **severe, persistent, or pervasive** to interfere with an individual's educational performance or environment.

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Sex and Gender Based Violence

WSU policy prohibits sexual misconduct and other forms of sex and gender based violence as forms of sexual harassment, including:

- Non-consensual sexual contact;
- Sexual exploitation;
- Intimate partner violence (dating violence); and
- Stalking

One instance of sexual misconduct will be considered **sufficiently severe, persistent, or pervasive** to rise to the level of sexual harassment.

WSU will address student allegations of sexual harassment **regardless of where the conduct occurred (on or off campus)** if it may interfere with the educational pursuits of the parties involved.

WSU's processes are separate from the criminal process and **can be pursued simultaneously**.

Why These Issues?

1 in 5 women and ~6.1% of college men report experiencing attempted or completed sexual assault since entering college	<ul style="list-style-type: none"> • Dramatically underreported: • 2% of incapacitated sexual assault survivors report • 13% of forcible rape survivors report
More than 1 in 3 women and 1 in 4 men have experienced rape, physical violence, and/or stalking by an intimate partner;	<ul style="list-style-type: none"> • 69% of female and 53% of male victims report having experienced this before the age of 25.
There are ~6 million stalking victims in the United States each year;	<ul style="list-style-type: none"> • more than 1/2 of the female survivors and more than 1/3 of the male survivors say they were stalked before the age of 25.

Employee Reporting Obligations

- **Currently, all WSU employees****, including student employees, who have information regarding incidents of **sexual harassment** or sexual misconduct must report that to OEO or the WSU Title IX Coordinator.

*** (With the exception of employees who are statutorily barred from reporting (for example, health and mental health care providers) as well as employees providing preventative education training (see EP 15))*

- Unless designated as a confidential resource, WSU employees **cannot guarantee confidentiality** to students or other employees.
- Employees should **not** attempt to investigate or assess allegations of discrimination, sexual harassment, or sexual misconduct prior to consulting with the Office for Equal Opportunity.

Assessing Allegations of Discrimination

An employee approaches a supervisor with a complaint about another employee.

What should the supervisor do next?

- The supervisor might want to ask preliminary questions to determine the basis of the Complaint.
- If it appears the basis may be related to Discrimination/Sexual Harassment, the Supervisor should contact OEO before addressing the issue.
- Supervisor can encourage the Employee to contact OEO, should refer the complaint directly to OEO, and, in some instances, may address the problem without OEO's direct involvement, **but in all instances, needs to contact OEO before addressing the issue.**

Student Resources

Confidential Resources:

- WSU Counseling and Testing Center
- WSU Health and Wellness (Pullman)
- Pullman Regional Hospital
- Alternatives to Violence of the Palouse (YWCA in Spokane, Vancouver, SARC in Tri-Cities)

Non Confidential Resource:

- **Dean of Students:** Can assist with academic and/or residential arrangements
- **Office of Student Standards and Accountability:** Works with OEO on student conduct cases involving discrimination, sexual harassment and sexual misconduct.

Visit o eo.wsu.edu/resources/ for information specific to your campus.

Employee Resources

These offices will protect employee privacy as far as possible, and will share information only on a need to know basis.

- WSU Employee Assistance Program (Confidential)
- Human Resource Services
- Office of the University Ombudsman

Visit oeo.wsu.edu/resources

Investigation


Once
WSU
learns of
a
concern:

- Resources
- Complainant Interview/Intake
- Determine appropriate next steps
- Notice of Investigation
- Impartial Investigation: (Review Documents, Interview Witnesses and Respondent)
 - Preponderance of the Evidence
- OEO will summarize the investigation (Findings of fact; Conclusion; and a recommendation to HRS)
- HRS and/or Supervisor [or OSC] will address any disciplinary action.

Retaliation and Interference Prohibited

Retaliation includes any act that would dissuade a reasonable person from making or supporting a complaint, or participating in an investigation, under this policy.

Interference: Actions that dissuade or attempt to dissuade complainants or witnesses from reporting or participating in an investigation, or actions that delay or disrupt, or attempt to delay or disrupt, an investigation



Process for Addressing Requests for Disability Accommodations

After an employee requests disability accommodation from supervisor, the supervisor should:

- Refer the employee to HRS.
- HRS will discuss with the employee, the process for documenting the disability.
- HRS will provide a recommendation to the supervisor regarding a reasonable accommodation.
- The supervisor's role is to ensure that the employee can perform the responsibilities of the job with the accommodation.
- Supervisors should consult HRS regarding any concerns about the accommodations prior to making any changes to Employee's duties.
- Supervisor's focus is on the job not the disability.
- Supervisors do not need to know what the disability is.

Accessibility

- Review your programs and practices
- Think critically – anticipate challenges
- Plan for visitors
- Encourage faculty, staff to provide supportive and flexible response to requests for accommodations
- Know your resources (HRS, Access Center, ADA Coordinator)
- What else?

Family Medical Leave Act

When an employee is injured or ill and requests extended time off from work to recover, supervisors should:

- Refer Employee to HRS to discuss different leave options, including unpaid FMLA Leave.
- Arrange for temporary management of the employee's duties during absence.
- When the employee returns to work, he/she will resume duties.
- Any changes to Employee duties after return should be carefully considered in consultation with HRS.
- FMLA leave is a federal right with a prohibition on retaliation.

Executive Policy #28
 Policy on Faculty-Student and Supervisor-Subordinate Relationships

- The Relationship itself is not prohibited
- Having supervisory authority over someone with whom you are in a relationship is prohibited.
- Report to HRS or to supervisors
- Reporting lines may be altered

Affirmative Action

- The processes most likely to contribute to the goal of diversifying the workforce are those conducted in the context of an ongoing, institution-wide commitment to diversity.
- Focus building a reputation for being diversity-friendly workplace.
- I-200: The state shall not discriminate against, or grant preferential treatment to any individual or group on the basis of race, sex, color, ethnicity, or national origin...

Not about quotas but about hiring the most qualified person for the job.

Achieving Diversity Through Recruitment

- Forming the Committee; Diverse perspectives; knowledgeable about needs of the position
- Educating the Committee; Laws etc.; Best practices – consult with HRS – new trainings available, and in progress
- Position Description; Thoughtful; Make sure job trying to fill is the job advertised; Include everything you want to consider as a qualification in the position description; minimum vs. preferred (too narrow vs. too broad)
 - Not about looking for underrepresented candidates, but about looking for people with experience that is diversity related

Achieving Diversity Through Recruitment

- Attracting a diverse candidate pool; Advertise widely and search aggressively, advertise in diverse publications
 - Informal contacts
- Examining Hiring Biases (i.e. predisposition of committees to look for and favor candidates who are like them in terms of educational background, social skills, values and behaviors and fit the “standard mold” for the field).

Opportunities to Contribute

- Compliance Related Committees – Call/Email OEO if interested in serving (ADA, CCRT, AA/EEO)
- Student Conduct Board – Encourage Participation - conduct.wsu.edu/conduct-boards/apply-for-boards/
- Require Regular Training
 - HRS: <http://hrs.wsu.edu/HRS%20Training%20Home%20Page>
 - OEO will provide trainings customized to your needs.
 - [Employee Reporting Requirements](#)
 - [Graduate Teaching Assistant Training](#)
- Schedule trainings for your area
 - Diversity Education (Cultural Competency)
 - Green Dot (Bystander Education – Sexual Violence Prevention)
 - GEISORC (Ally Training)
 - Access Center (Student Accommodations)



Questions?

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This has been a
WSU Training
Videoconference

If you attended this live training session
and wish to have your attendance
documented in your training history,
please notify Human Resource Services
within 24 hours of today's date:

hrstraining@wsu.edu
