

WASHINGTON STATE UNIVERSITY



Equal Opportunity Issues for Supervisors

Supervisor Responsibilities in Reporting and Addressing Issues Related to: Discrimination, Sexual Harassment, Sexual Misconduct, and Affirmative Action.

Revised January 2016

Applicable WSU Policies

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

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

Related WSU Policies

- **EP 7** – University Web Accessibility Policy
- **EP 12** – EEO/AA Policy
- **EP 28** - Policy on Faculty-Student and Supervisor-Subordinate Relationships
- **EP 26** - Internal Investigations, Training, and Policy
- **BPPM 50.30** - Workplace Violence
- **BPPM 50.31** - Bullying Prevention and Reporting
- **WAC 504-526** - Standards of Conduct for Students

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

Discrimination = Behavior

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.
- Intent is a necessary element
- Can be shown by direct evidence or inferred through statistics, anecdotes or comparative evidence.

Adverse Impact

- Practice/policy which results in selection of members of a protected group at a rate lower than that of other groups.

Discriminatory/Sexual Harassment

- A form of discrimination that unreasonably interferes with an individual's performance or adversely affects an individual's employment opportunity. (Verbal – Written – Physical)

Examples of Discrimination

Adverse Impact:

- Supervisor invites all employees to a staff retreat at a location without ADA approved access. One employee is unable to attend because of access issues.

Disparate Treatment

- Search committee chair recommends hiring a female for a position because the office is currently made up of predominately male employees.

Discriminatory Harassment

- An Employee tells a joke at the beginning of every shift that frequently references Hispanics in the punch line.

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.

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

Sex and Gender Based Violence

WSU policy prohibits sexual misconduct and other forms of sex and gender based violence as forms of sexual harassment. This includes, but is not limited to:

- Non-consensual sexual contact (including sexual assault);
- 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.

Sex and Gender Based Violence

- 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**.

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, can refer the complaint directly to OEO, or in some instances, may address the problem without OEO's direct involvement, **but in all instances, must contact OEO before addressing the issue.**

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 across the board 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 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?

Employee Reporting Obligations

- All WSU employees who have information regarding an incident or situation involving sexual harassment or sexual misconduct are required to promptly report the incident to the Office for Equal Opportunity (OEO) or to one of the designated Title IX Co- Coordinators. See [Reporting Requirements](#)
- There are limited exceptions to this requirement.
 - Employees statutorily barred from reporting (health care providers, etc.)
 - Employees, etc., who are not statutorily barred from reporting but who provide services to students in CAPS, HWS, or similar.
 - Employees in a preventative education program for SGBV, during which a student discloses having experienced sexual harassment or sexual misconduct; and
 - Employees who have no authority to take action to redress sexual harassment or sexual misconduct and could not be reasonably viewed by students as having such authority.

Student Resources

Confidential Resources:

- Counseling Services
- Healthcare Services
- Victim Advocacy Organizations

Non Confidential Resource:

- Dean of Students
- Office of Student Conduct
- Access Center
- Office for Equal Opportunity

see o eo.wsu.edu/resources/ for detailed information

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 o eo.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 will address any disciplinary action.

Retaliation 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.



ADA/504 Coordinator

The ADA Coordinator is responsible for:

- Providing referrals, resources, advice, services, and compliance information to university offices, students, and employees.
- Maintaining up-to-date resources and policy materials that are readily available relating to persons with disabilities.
- Assuring the university's compliance with the Americans with Disabilities Act, and other federal and state laws and regulations pertaining to persons with disabilities.
- Collaborating with other university offices, government agencies, and external advocacy groups to develop university policies and procedures to accommodate persons with disabilities and to prevent and respond to discrimination on the basis of disability.

Process for Addressing Requests for Disability Accommodations

After an employee discloses a disability that may be impacting work, the supervisor should:

- Refer the employee to HRS.
- HRS will address with the employee, the process for documenting the disability.
- HRS may 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.

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 during absence or 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

 **Executive Policy #26**
Internal Investigations, Training, and Policy

- WSU requires training of investigators and documentation of investigation procedures.
- Applies to departments whose duties include interviewing witnesses, obtaining documents, or otherwise gathering information that may be used in enforcement or disciplinary actions or proceedings...
- **Investigations are not to be conducted without approval from the University department having jurisdiction in the identified area of investigation. See [EP 26](#)**

 **Executive Policy #12**
Equal Employment Opportunity and Affirmative Action Policy

- WSU does not discriminate on the basis of protected classes in the administration of policies, programs, or employment.
- WSU recruits, hires, trains, promotes, and compensates persons in all job titles without regard to protected class.
- WSU is committed to take affirmative action consistent with state and federal law. The University will make good faith efforts for outreach to decrease underrepresentation.

 **Achieving Diversity Through Recruitment**

- Forming the Committee:
 - Diverse perspectives; knowledgeable about needs of the position
- Educating the Committee:
 - Laws etc.
 - Best practices
- 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)

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).

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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

Questions?
