SEXUAL HARASSMENT

www.oed.wisc.edu/sexualharassment

Defining and Addressing a Community Concern
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We cannot tolerate harassment of any member of our community. When sexual harassment occurs, it degrades the quality of work and education at the University of Wisconsin–Madison. It erodes the dignity and productivity of the individuals involved and diminishes the quality, effectiveness and stature of the institution. Sexual harassment not only violates the law and university policy but also can damage personal and professional relationships; cause career or academic disadvantage; and expose the university to legal liabilities, a loss of federal research funds and other financial consequences. For all these reasons, it is in our best interest to educate all community members and take other steps necessary to prevent sexual harassment. We have a collective responsibility to do so, thereby promoting a climate that supports excellence in teaching, research and service.

This brochure addresses sexual harassment. The Office for Equity & Diversity can assist with concerns about any type of prohibited harassment or discrimination, including harassment based on gender, race, religion, ethnicity, age, disability and sexual orientation.

Any one of us may experience harassment, be accused of harassment, or be consulted by someone who thinks he or she has been harassed. Sexual harassment can occur in any university setting: in the workplace, the learning environment or university programs. Each of us has a duty not to harass others and to act responsibly when confronted with the issue of sexual harassment. Principal investigators, supervisors, managers, department chairs, directors and deans have additional responsibilities: individuals in positions of authority must take reasonable measures to prevent sexual harassment and take immediate and appropriate action when they learn of allegations of sexual harassment (see page 7).

WHAT IS SEXUAL HARASSMENT?

Unwelcome sexual advances, requests for sexual favors, and verbal or physical conduct of a sexual nature constitute sexual harassment when:

- submission to such conduct is a condition of employment, academic progress or participation in a university program; or
- submission to or rejection of such conduct influences employment, academic or university program decisions; or
- the conduct interferes with an employee’s work or a student’s academic career, or creates an intimidating, hostile or offensive work, learning or program environment.

Tangible Action or Quid Pro Quo (This for That) Sexual Harassment occurs when employment or academic decisions resulting in a significant change in status are based on an employee or student’s submission to or rejection of unwelcome verbal or physical sexual conduct. Examples include:

- requiring sexual favors in exchange for hiring, a promotion, a raise, or a grade
- disciplining, demoting or firing an employee because he or she ends a consensual relationship
- refusing to write recommendations for a graduate student because the student refuses sexual advances
- changing work or academic assignments because an employee or student refuses invitations for a date or other private, social meetings

Hostile Environment Sexual Harassment occurs when verbal, non-verbal and/or physical conduct is:

- sexual and/or based on gender,
- unwelcome, and
- sufficiently severe and pervasive to interfere with a person’s work/learning/program performance or to create a hostile, intimidating or offensive environment

The determination is made on a case-by-case basis looking at the whole record, including the circumstances (such as the nature of the sexual advances) and the context in which the alleged incidents occurred. Some behaviors acceptable in certain contexts are inappropriate in the workplace or classroom, particularly if an objection is expressed.
KEY POINTS ABOUT SEXUAL HARASSMENT

Differences in power or status can be a significant component in sexual harassment. A person who seems to acquiesce to sexual conduct may still experience tangible action harassment or hostile environment harassment if the conduct is unwelcome.

Harassment can occur between men and women or between members of the same gender.

Sexual harassment may or may not involve a tangible injury (e.g., economic loss, lowered grades). A sexually harasssing environment, in and of itself, may constitute a harm.

Sexual harassment must be addressed and corrected regardless of the position or status of!he harasser or the person being harassed.

Conduct is not always offensive or unwelcome to the same degree when perceived by different people. Courts use a “reasonable person” standard to determine whether the contested behavior constitutes sexual harassment.

Individuals in positions of authority are responsible for ensuring that employees, students, or others do not harass. In the workplace, offenders can be supervisors, co-workers or non-employees such as vendors, customers and suppliers. In an academic or program setting, offenders can be faculty, instructors, lecturers, teaching assistants, coaches, tutors, or fellow students or program participants.

The person filing a sexual harassment charge does not have to be the person harassed but could be anyone significantly harmed by the harassing conduct.

Harassment does not have to be reported immediately, but a significant delay may be a factor in the evaluation of a complaint. A delayed report may result in a dismissal of the complaint (e.g., 300 days, Wisconsin Personnel Commission).

Allegations involving classroom and teaching expression will be assessed using the university’s Prohibited Harassment Policy as it applies to academic speech (Faculty Document 1402c, as amended on 1 March 1999).

Some behavior that is not in violation of university policy may, nonetheless, be unprofessional under the circumstances. Consequences of such unprofessional behavior may include poor performance evaluations or possible discipline.

RETALIATION

State and federal laws and university policy protect against retaliation. University policy prohibits retaliation against a person because he or she reported sexual harassment, filed a complaint, participated in the investigation of a complaint, or assisted others who raised a complaint.

Retaliation is a serious offense that can result in disciplinary action. This protection exists even if a complaint eventually is dismissed or found lacking in merit. It does not follow that false claims will be tolerated: a person will be held accountable for knowingly making a frivolous or malicious complaint of sexual harassment.

THE STATEMENT ON CONSENSUAL RELATIONSHIPS

The university presumes that the ability to make objective decisions is compromised if there is a romantic and/or sexual relationship between two individuals who have a reporting or evaluative relationship. There is almost always a power differential between such individuals that not only obscures objectivity but also influences perceptions of consensuality. The individual with the power or status advantage is required by university policy to report the relationship to his or her supervisor and will be accountable for failing to make this report. The supervisor who learns of the consensual relationship has the responsibility to make appropriate arrangements to eliminate or mitigate a conflict that might prove detrimental to the university or to either party in the relationship, particularly the person in the subordinate role. Supervisors can consult with any of the resources in this brochure for assistance in meeting this responsibility. The policy applies when:

• one member of a couple supervises the other or teaches in an academic program in which the other member is enrolled
• one member of a couple will vote on or substantially influence the other’s salary, job contract, promotion or other condition of employment
• one member of a couple is the other’s instructor or grader in a course or degree program, or is in a position to influence the other’s academic progress
WHAT TO DO ABOUT SEXUAL HARASSMENT?

We encourage early contact: consultation is not escalation. Timely discussion of people’s concerns may allow resolution before alternatives become limited. The university will protect confidentiality to the extent possible under the law.

**If You Feel You’ve Been Sexually Harassed**
Seek advice. Consult your supervisor, manager, HR representative, department chair, director, dean, or any campus resource to discuss options for resolution.
You may choose to seek informal resolution or file a sexual harassment complaint.
You may find it helpful to seek support from a trusted colleague. Be aware of your interest in keeping the matter as confidential as possible.
Keep notes of what happened, when, where and who was present. Retain copies of any correspondence.
Consider informing the individual(s) involved that the conduct is unwelcome and that you expect it to stop.

**If You Are Accused of Harassment**
Early consultation may help avoid claims of retaliation and facilitate resolution of the situation.
You will be informed of any complaint filed against you and provided with an opportunity to respond to the specific allegations.
You should contact the Office for Equity & Diversity or another campus resource.
You may choose to seek private legal advice.
Be honest when questioned about alleged conduct and explain its context.

**If Someone Confides in You**
Listen to the allegation of harassment sympathetically but objectively.
Encourage the individual to contact a campus resource who can explain alternatives available to resolve the situation.
If requested, and if you are comfortable doing so, assist the individual in reporting the behavior.

Keep allegations confidential, except as necessary to cooperate with appropriate university officials.

**If You Are in a Position of Authority**
(e.g., principal investigator, supervisor, manager, department chair, director, dean)
Sexual harassment can arise in a healthy environment but it often develops in negative climates. If you have concerns about the climate in your area, consult with a campus resource to learn about proactive measures to improve the climate for all individuals.
Distribute the Prohibited Harassment Policy to new faculty and staff and to all employees periodically and when there are modifications to the policy.
Periodically remind employees of your expectation that they maintain a harassment-free environment.
Provide resources (e.g., this brochure, a link from the department’s web site to the sexual harassment web site).
Schedule Sexual Harassment Information Sessions and promote attendance by all department members.
Encourage employees and students to come forward with questions, concerns and allegations. Avoid discouraging persons from “going outside the department with problems.” (A person may not be comfortable reporting within the department and may not seek help if the department’s culture discourages outside assistance.)
Take every complaint seriously and ensure that others do as well. Ensure that your department appropriately addresses all complaints. If you have questions about the scope of your responsibility, contact the Office for Equity & Diversity or another campus resource.
Keep allegations confidential except on a “need to know” basis.
Ensure that no retaliation occurs against the person making the allegations and that the person charged with harassment is not assumed guilty and/or disciplined on the basis of allegations.
For the protection of both parties, comply with all applicable university procedures and ensure that your department fully cooperates with any investigation.
If you are approached by someone who thinks she or he has been sexually harassed, you can help by referring the person to campus resources. Encourage the person to seek advice about reporting the behavior and learn about alternatives for resolution from one or more of these resources.

When listening to the person’s concern, you should refrain from labeling the described conduct as harassment or saying that it is not harassment. Listen to the concern and move on to identify resources who can help resolve the situation.

In addition to providing information about campus resources who will assist in dealing with sexual harassment, you may also discuss the situation and provide support. If you are asked to become involved and/or take action, you should first contact a campus resource for guidance. Each case is unique and needs individual attention; there is no standard advice you can provide.

If you choose to assist the person through the process of resolution, the principles guiding your approach should be to listen, be respectful, be objective, and consult campus resources.

**During your conversation:**

Determine quickly what the individual approaching you wants. Ask “What would you like me to do?” or “How would you like me to help you?” This will help avoid misunderstandings and clarify the person’s objective in approaching you. Respect his or her decisions and don’t impose what you think you would do in the same circumstances.

Be respectful. Do not dismiss the complaint as trivial; avoid telling the person to “grow a thicker skin” or saying that the alleged perpetrator “means well but sometimes slips.” Although they may be intended to help, these types of comments can make the person feel discounted. Try to keep in mind that what may seem unimportant to you may be offensive or threatening to someone who has different life experiences or less power.

Acknowledge the courage needed to approach you and the difficulty of the situation. If the person cries, remember that tears have various meanings and are often a sign of frustration and anger in professional settings. Acknowledge the person’s emotions, without labeling them, by saying something like: “This must be difficult for you.” Offer a box of tissues and allow time for the person to regain composure.

Remember that the fear of retaliation is common among those who have been sexually harassed and is often the reason they do not bring complaints forward. Reassure the person and explain that university policy operates in conjunction with federal and state laws to prohibit retaliation against complainants. Retaliation against someone who participates in an investigation or assists someone in making a complaint also is prohibited. The policy applies even if a complaint ultimately is not substantiated to a degree required by law.

Be neutral. Avoid comments such as “I’m sure he didn’t mean anything by it” or “Oh, she does that to everyone,” which may sound as if you are defending the accused. Also avoid comments such as “Well, you’re so young and pretty” or “You shouldn’t have been in the lab by yourself at night,” which may sound as if you are blaming the person confiding in you.

If you elect to support the person, you should not feel you must follow the matter through to its final conclusion. If you become uncomfortable with your involvement at any time, acknowledge your discomfort and let the person know that you are sorry but you cannot continue in the support role. Acknowledge how difficult it must be for him or her and encourage the person to consult a campus resource to receive appropriate assistance.

If the person asks you to contact a campus resource, be sure you understand whether you are free to mention his or her name, or other identifying information such as the department or the alleged harasser’s name, before you approach the campus resource for assistance.

It is generally best for all persons involved and for the effectiveness of any investigation into the matter if confidentiality is maintained. You should not discuss the situation with anyone unless the person has authority to assist in the investigation or resolution of the matter.

Remember that conversations between a faculty or staff member and another individual are not privileged communication and can be elicited in the course of legal or administrative proceedings that might ensue.
LIABILITY FOR HARASSMENT

While we have a collective responsibility to provide a work and learning environment free of sexual harassment, the university’s leaders must make proactive efforts to prevent sexual harassment and respond in a timely and effective manner to allegations of sexual harassment. Actions taken by individuals in positions of authority (e.g., principal investigators, supervisors, managers, department chairs, directors, deans) are pivotal to the determination of legal liability when lawsuits or complaints are filed with federal or state enforcement agencies. [Leaders’ responsibilities are outlined on p. 7.]

In cases where sexual harassment by a supervisor culminates in a tangible employment action, the university will be liable in spite of preventive and corrective actions and the absence of fault on the part of senior administrators.

In cases where a supervisor creates a hostile environment, the university will be liable unless:

- the university took reasonable care to prevent and correct the harassing behavior, and
- the employee unreasonably failed to take advantage of preventive or corrective steps provided by the university to avoid harm.

In cases of sexual harassment between co-workers, the university will be liable for harassment if the university (through its agents) knew or should have known of the conduct and failed to take immediate and appropriate corrective action to stop the harassment, prevent its recurrence, and remedy effects that reasonably could have been prevented.

In cases of sexual harassment by non-employees, such as customers, program participants or suppliers, the university will be liable for harassment if the university (through its agents) knew or should have known of the conduct and failed to take immediate and appropriate corrective action to stop the harassment, prevent its recurrence, and remedy effects that reasonably could have been prevented.

The general principles expressed in the above employment examples also apply in academic environments and program settings.

CONSEQUENCES OF HARASSMENT

Sexual harassment injures both the individuals involved and the university. It also damages the campus climate for all of us. Possible consequences include:

For the Individuals

- emotional and psychological harm
- diminished ability to work and study, which may have a lasting career impact
- lost confidence in the university’s ability to provide a comfortable and safe environment for work and learning
- potential personal liability for damages if unlawful conduct is deemed outside the scope of employment

For the University

- general disruption and reduced productivity and morale
- diminished reputation that may impair efforts to attract, recruit and retain students, faculty and staff
- time spent responding to complaint investigators and lawyers
- increased absenteeism and turnover
- costs that may be substantial, including back pay, lost benefits, attorney fees and expert witness fees
- compensatory and punitive damages

POLICIES

Prohibited Harassment Policy (University of Wisconsin–Madison Faculty Document 458a, 2 November 1981; Faculty Document 786, 6 February 1989; and Faculty Document 1402c, as amended, 1 March 1999)

Policy Statement on Consensual Relationships (University of Wisconsin–Madison Faculty Document 940, 6 April 1992; Academic Staff Document 092, 13 April 1992)

Sexual Harassment Policy for Classified Employees
CAMPUS RESOURCES

The University of Wisconsin–Madison is committed to preventing sexual harassment and will take prompt and appropriate corrective action whenever it learns that sexual harassment has occurred. You are encouraged to report incidents or concerns to your supervisor, manager, department chair, director, or dean for appropriate action and resolution. Sexual harassment (and other prohibited harassment or discrimination) also may be reported to the Office for Equity & Diversity, or to any of the campus administrative offices identified here:

Office for Equity & Diversity
www.oed.wisc.edu
179A Bascom Hall
263-2378
Wisconsin Telecommunications Relay Service: 7-1-1
Luis Piñero, Assistant Vice Chancellor for Workforce Equity/Director
Stephen Appell, Assistant Director/Complaint Investigator

The Office for Equity and Diversity is available to receive complaints of sexual harassment and other forms of discrimination or prohibited harassment. While many people prefer to have their concerns addressed at the departmental level, the university also provides an option for complaint reporting, investigation, and/or resolution through the Office for Equity and Diversity.

The Office for Equity and Diversity will conduct prompt, thorough and impartial investigations when formal complaints are filed. If informal resolution is an appropriate alternative, the Office for Equity and Diversity will work with individuals to facilitate a resolution that assures that sexual harassment is corrected and recurrence is prevented. Additional information about the discrimination complaint process is posted at www.oed.wisc.edu/dishar.html

Administrative Legal Services
361 Bascom Hall
263-7400
Lisa Rutherford, Director
Office of the Provost
150 Bascom Hall
265-5228
Damon Williams, Vice Provost for Diversity & Climate
262-1304
Eden Inoway-Ronnie, Chief of Staff

Office of the Chancellor
161 Bascom Hall
262-8967
Becchi Menghini, Chief of Staff

Employee Assistance Office
226 Lowell Hall
263-2987
Steve Pearson, Director

Ombuds Office for Faculty & Staff
www.ombuds.wisc.edu
223-225 Lowell Hall
265-9992
John Mather, Ombuds
Linda Newman, Ombuds
Richard Ralston, Ombuds
Pat Wolleat, Ombuds

Ombuds Office for the
School of Medicine & Public Health
and the School of Pharmacy
2262 Health Sciences Learning Center
265-9666
Rosa Garner, Ombuds

Division of Student Life
Student Advocacy & Judicial Affairs (SAJA)
http://students.wisc.edu/saja/index.html
75 Bascom Hall
263-5700
Ervin H. (Kipp) Cox, Assistant Dean, SAJA Director
John Bechtol, Assistant Dean
Yolanda Garza, Assistant Dean
Suzanne Jones, Assistant Dean
Kathy Kruse, Assistant Dean
Tonya Schmidt, Assistant Dean

Counseling Services
(University Health Services program serving registered students)
333 East Campus Mall, 7th Floor
265-5600 (24 hours)
Greta Guenther, Nurse

LGBT Campus Center
2nd floor, Memorial Union
265-3344
Robin Matthies, Interim Director

Campus Women’s Center
(student organization offering support services)
4th floor, Memorial Union
262-8093

UW–Madison Police Department
1429 Monroe Street
262-2957 (24 hours); 262-0139
Cheryl Radzinski, Detective