
Policy Number: 305

Date Issued: Nov. 3, 2017

Section: Human Resources

Revised Date: as needed

Title: Nondiscrimination, Harassment and Retaliation Policy

Review Date: annually

Effective Date: November 3, 2017

Attachments: none

Responsible University Officer: Vice President for Business and Finance

Responsible Office: Human Resources

Applies to: Faculty, Staff, Administrators, Students, Vendors, Volunteers, and Visitors

I. Policy

Capital University is an equal opportunity institution committed to a diverse and inclusive university community. Capital is committed to providing a working and learning environment that is free from discrimination, harassment, retaliation and other unlawful conduct and that assures the fair and equitable treatment of all individuals. The University abides by all applicable federal, state and local laws that prohibit discrimination based on any legally protected statuses, and that prohibit retaliation.

Capital University does not discriminate on the basis of age, ancestry, color, disability, gender, gender identity or expression, genetic information, military status, national origin or ethnicity, race, religion, sex, sexual orientation, protected veteran status, or any other characteristic protected by law (hereafter "protected status") in its admissions, educational programs or activities, and employment.

Capital University will not tolerate discrimination, harassment and retaliation (hereafter "prohibited conduct") by or against its employees, faculty, students, vendors, volunteers or visitors through words or actions based upon an individual's or group's protected status. Prohibited Conduct includes sexual harassment and sexual violence; however, all sex and gender-based discrimination is handled under the University's Sexual Misconduct Policy.

Also prohibited is retaliation against any individual who seeks relief or participates in a proceeding under this policy or through other legal means. Retaliation is an offense separate from the complaint of discrimination or harassment and will be considered independently from the merits of the underlying matter. Retaliation is a serious violation of this policy and, like other Prohibited Conduct, will, upon a finding that retaliation has occurred, subject the individual to disciplinary action up to and including separation from the University.

The University will take prompt and effective measures to assure that Prohibited Conduct does not occur. All charges of Prohibited Conduct in violation of this policy will be taken seriously. Any person found to have engaged in Prohibited Conduct will be subject to corrective action up to and including dismissal. The University strongly urges employees, faculty students, vendors, volunteers or visitors to report all possible violations of this policy.

This policy against discrimination, harassment and retaliation applies to all University students and to all faculty, administrators, and staff members (collectively "University employees"), as well as vendors and guests. This policy is not intended to impair or limit the right of anyone to seek a remedy available under state or federal law.

II. Definitions

- A. Applicant (Employment):** An individual who has applied for a specific position at Capital, meets the basic qualifications for the position, is considered by the university for the position, and does not voluntarily remove themselves from consideration for the position.
- B. Applicant (Student Admissions):** An individual who has applied for admission to an academic program of the university, meets the basic qualifications for admission, is considered by the university for admission, and does not voluntarily remove themselves from consideration for admission.
- C. Complainant:** An individual who invokes the University's investigation and resolution process to determine if a violation of this policy has occurred.
- D. Discrimination:** Adverse action or other conduct directed at an individual or group because of the individual's or group's protected status that unreasonably interferes with the individual's or group's participation in the University's educational or work environment, including hiring, admissions, corrective action or discharge, promotions, job or educational opportunities, evaluation, employee compensation, or other terms and conditions of an individual's or group's education and/or employment.
- E. Equal Employment Opportunity:** All persons regardless of protected status shall have equal opportunity for employment.
- F. Harassment:** Unwelcome conduct based upon an individual's or group's protected status that creates a hostile environment or otherwise results in the unreasonable denial of equal opportunity in the terms and conditions of employment or education.
- Sexual harassment and sexual violence is a form of discrimination under the law and the university will investigate and adjudicate such allegations pursuant to its Sex or Gender-Based Harassment, Discrimination and Sexual Misconduct Policy.
- G. Prohibited Conduct:** conduct that qualifies as discrimination, harassment, or retaliation and which is prohibited under this policy.
- H. Protected Status:** Protected status is defined by federal law/executive order, state law, local law, and Capital University policy. It includes age, ancestry, color, disability, gender, gender identity and expression, genetic information, military status, national origin or ethnicity, race, religion, sex, sexual orientation, protected veteran status, and any other characteristic protected by law.
- I. Respondent:** An individual alleged to have violated this policy.

III. Policy Details

A. Guiding Principles:

1. Student recruitment and admission processes should not exclude any qualified individuals from consideration for admission and should encourage a diverse applicant pool.
2. The policies of the university's educational programs and activities should be designed to allow participation by all qualified and admitted individuals.
3. Employment recruitment processes should be designed and conducted so as to result in the most diverse and qualified applicant pool possible, and selection practices should emphasize hiring the best-qualified individuals.
4. Management practices should facilitate inclusive work environments that value and seek out human diversity and reward effective human relations skills.
5. Employee training and development opportunities should be made available to employees and should provide equal opportunities for individuals from underrepresented groups.
6. Employment review/evaluation and promotion practices, including tenure, should be inclusive and provide equal opportunity for individuals from underrepresented groups.
7. University practices should emphasize prevention of discrimination and harassment.

B. Forms and Examples

Hostile Environment based on protected status examples: The following are examples of the types of conduct that, if severe or pervasive enough, can create a hostile work or educational environment in violation of this policy:

- Abusive, threatening, intimidating, or offensive remarks about or actions toward individual persons or classes of persons on the basis of their protected status;
- Creating a work environment that is less favorable than others or otherwise designed to undermine, humiliate, embarrass, threaten, intimidate, or cause the individual to resign, based upon a person's protected status;

Religious Discrimination Examples:

- Offensive remarks about a person's religious belief or practices so severe or pervasive that they create a hostile or offensive work environment;
- Adverse employment decision such as an individual being fired or demoted based upon their religion;
- Refusing to allow reasonable accommodation to policies based upon religious beliefs or practices, for example refusing to allow employees to wear religious dress such as a Jewish yarmulke or Muslim headscarf.

C. Standards of Enforcement

The University reserves the right to enforce standards of conduct under this policy that may be stricter than those codified in applicable law. Therefore, a violation of this policy should not be deemed a violation of applicable law.

IV. Procedure

A. Making a Complaint of Prohibited Conduct:

1. Complaints can be made by individuals who are directly involved in, who observe, or who receive reliable information that discrimination/harassment may have occurred.
 - a. Complaints of sexual misconduct, which includes sexual harassment, are handled under the university's Sex or Gender-Based Harassment, Discrimination and Sexual Misconduct Policy.
2. Filing a complaint with the university does not preclude the individual from filing a complaint with an external agency nor does it extend time limits with those agencies.
3. Individuals who wish to make a complaint of discrimination/harassment should:
 - a. Talk with the responsible party, if desired and if comfortable doing so.
 - b. Seek to resolve the situation by consulting with the area supervisor or academic department chair/dean, if desired and if comfortable doing so.
 - c. If the issue is not resolved through "a" or "b" above, or Complainant is not comfortable following the process in "a" or "b", you may contact the following:

<u>By:</u>	<u>To:</u>
Faculty	Provost's Office
Staff/Administrator	Human Resources Director
Student	Dean of Students (Bexley Campus) Dean of Law School (Law School/Columbus campus)
Any individual	Bias Education and Response Team

Note: Reports of Sexual Assault or Violence should be reported to the University's Title IX Coordinator:

Title IX Coordinator
Dr. Jennifer Speakman
614-236-7127
jspeakman@capital.edu

4. When making a complaint, provide witnesses and/or documentation from individuals that have first-hand knowledge of the situation, and provide any additional information that develops.

B. Non-retaliation:

The University will not tolerate retaliation in any form against any person who in good faith reports an incident or circumstances he or she believes to be a violation of this policy, or who assists another in reporting or pursuing an allegation, or participates in an investigation under this policy. Such retaliation in itself is a violation of this policy and can subject the offender to appropriate sanctions or corrective action up to an including separation from the University.

C. False Allegations/Reports:

No member of the University community shall knowingly make a false report under this policy or knowingly offer false evidence in any proceedings under this policy.

D. Privacy:

All reports made under this policy will be acted upon and therefore cannot be kept confidential. However, the University will make every reasonable effort to protect the privacy of all parties to proceedings under this policy. Protecting privacy generally means that information regarding the report and proceedings will be shared on a “need-to-know” basis.

E. Investigation and Resolution:

During the investigation, the University will take steps to stop any conduct in violation of this policy and provide the Complainant with any available support and resources as needed.

Steps in the Investigation Process:

1. The Director of Human Resources and/or the investigator assigned by the Director will review the Complainant’s allegation and meet with them to discuss and, if needed, gather further information.
2. Before proceeding further, the Director of Human Resources or the assigned investigator will make a determination as to whether the conduct complained of would, if true, constitute a violation of this policy. If the conclusion is that the conduct complained of, even if true, would not constitute a violation of this policy, there will be no further investigation. The University will take any steps needed to remedy inappropriate conduct that does not constitute a violation of this policy. If the conclusion is that the conduct would, if true constitute a violation of this policy, the investigation will proceed as follows.
3. To the extent permitted by law, and with the agreement of the University and all parties, a complaint may be resolved informally prior to a formal investigation.
4. If informal efforts are not pursued or do not resolve the matter, the investigator will investigate the allegation by contacting the Respondent and any witnesses, gathering other pertinent information and following up with the Complainant, Respondent, and witnesses as needed. While the allegation is under investigation, the investigator will encourage all parties and witnesses to provide any additional information (including statements, emails, documents, or any other facts) that may assist the investigation. The investigator will continue to receive and review this information until the investigation is closed.

Conflicts: All parties shall identify any conflicts of interest as soon as possible in the process.

Privacy: The University encourages, but does not require, those involved in the process to maintain the privacy of the proceedings to the extent possible. Limiting information to those who have a need to know will help foster a successful investigation.

F. Findings, Conclusions, and Recommendations:

1. Upon completion of the investigation, the investigator will prepare a written report that will include factual findings as well as a conclusion of whether it is more likely than not (a preponderance of the evidence in legal terms) that there has been a violation of this policy. The report may also include recommendations for resolution or corrective action.
2. The Director of Human Resources shall forward the final report to the respective supervisor, who shall finalize any corrective action.
3. If the conclusion is that it is more likely than not that a violation of this policy has occurred, the Respondent will be advised in writing of the finding of a violation and the corrective action. The Complainant will be advised in writing that the investigation is complete, that a violation was found, and that there will be corrective action taken against the Respondent. If any sanctions directly relate to the Complainant, they will be informed of such sanctions.
4. If the investigation does not support a violation of this policy, both the Complainant and Respondent will be advised in writing of this outcome.

G. Appeals:

Either the Complainant or Respondent may submit an appeal. The basis for an appeal is limited to the four possible grounds for appeal defined below in the Appeal Procedures. An appeal must be submitted to the Director of Human Resources within seven (7) days of receipt of notification of the outcome. If no appeal is submitted within that time, the findings and sanction shall become final and be implemented.

Appeal Procedures:

1. The written request for appeal must identify the reasons and evidence supporting the appeal, state the result sought, and be submitted to the Director of Human Resources. The four possible grounds for appeal are as follows:
 - a. A procedural error occurred that significantly impacted the outcome of the investigation (e.g., material deviation from established procedures);
 - b. New evidence unavailable during the original investigation that could substantially impact the original finding or sanction. The appealing party must submit a summary of the new evidence and its potential impact must be included;
 - c. Specific bias of the investigator; or
 - d. The sanctions imposed are substantially disproportionate to the severity of the violation.
2. A copy of the written request for appeal will be provided to the non-appealing party within five (5) days, who may submit a written response within in five (5) days of receipt of the appeal request.
3. The Director of Human Resources will forward the report, the file, the request for appeal, and the response to the appropriate Vice President. Within fourteen (14) days,

after the five-day allowance for the non-appealing party's written response, the Vice President will issue a decision. Both the Complainant and Respondent will be advised in writing of the Vice President's decision. The Vice President's decision shall be final.

H. Specific issues related to corrective actions:

1. Respondent is a Faculty Member – If corrective action is termination, non-renewal, or denial or delay of promotion or sabbatical, said corrective action will be pursued in accordance with the Faculty Handbook unless the Respondent chooses to accept the corrective action and forego the Faculty Handbook process.
2. Respondent is a vendor, contractor, subcontractor, guest or other individual who does business with the University – If the investigation reveals that reasonable cause exists to believe that such individual has violated this policy, the matter shall be referred to the Vice President for Business and Finance for appropriate administrative action consistent with the goals of this policy.

I. Records:

All records pertaining to the complaint and its resolution shall be maintained in the Office of Human Resources.

V. Resources

Related Federal, State, and Local Laws:

- Title VII of the 1964 Civil Rights Act (Title VII), as amended: prohibits employment discrimination on the basis of race, color, religion, national origin or sex (including pregnancy);
- Title IX of the Education Amendments of 1972: prohibits discrimination on the basis of sex;
- Title VI of the 1964 Civil Rights Act (Title VI): provides monetary damages in cases of intentional employment discrimination;
- Title I and Title V of the Americans with Disabilities Act of 1990 (ADA), as Amended: prohibits employment discrimination against qualified individuals with disabilities in the private sector, and in state and local governments;
- Equal Pay Act of 1963 (EPA), as amended: protects men and women who perform substantially equal work in the same establishment from sex-based wage discrimination;
- Age Discrimination in Employment Act (ADEA) of 1967, as amended: protects individuals who are 40 years of age or older;
- Title II of the Genetic Information Nondiscrimination Act of 2008: protects applicants and employees from discrimination based on genetic information;
- Ohio Civil Rights Act, Ohio Revised Code Chapter 4112;
- Ohio Fair Employment Practices Act: Ohio Revised Code 4112.01, et seq.
- City of Bexley Code Chapter 637 – Discriminatory Practices; Civil Rights; Disclosure
- City of Columbus Code Chapter 2331 – Discriminatory Practices; Civil Rights; Disclosure

VI. Contacts

Director of Human Resources
Mark Pringle
614-236-6168
hr@capital.edu

Office of the Provost
Dr. Jody Fournier
614-236-6108
jfournier@capital.edu

Title IX Coordinator (sex or gender-based complaints) Dr. Jennifer Speakman
614-236-7127
jspeakman@capital.edu

Dean, Law School (Law School/Columbus Campus)
Rey Valencia
614-236-6383
rjanutis@law.capital.edu

888-238-1063 or
https://secure.ethicspoint.com/domain/en/report_custom.asp?clientid=17194

EthicsPoint (anonymous reporting)

VII. Related Policies

Bias Education and Response Team Protocol

Diversity Statement

Human Dignity Policy

Sex or Gender-Based Harassment, Discrimination and Sexual Misconduct Policy

VIII. History

Enacted: November 3, 2017 approved by the Board of Trustees