



# **EQUALITY AND NONDISCRIMINATION**

**THE OFFICE OF RISK AND COMPLIANCE**

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Assistant Vice Chancellor  
Chief Title IX Coordinator**

This training is a supplement to the university's annual Mandatory Compliance Training.

Please contact The Office of Risk and Compliance to schedule a live training.

# UNC SYSTEM EQUALITY POLICY

On May 23, 2024, the Board of Governors repealed and replaced Section 300.8.5 of the UNC Policy Manual to reaffirm the University's commitment to nondiscrimination, equality of opportunity, institutional neutrality, academic freedom, and student success (the "Policy").

## **Nondiscrimination in Employment Practices & Educational Programs and Activities.**

The University of North Carolina's employment practices and provision of educational programs and activities shall continue to comply with federal and state law prohibiting discrimination and harassment of members of protected classes, including, without limitation, Title VII of the Civil Rights Act of 1964, The Age Discrimination in Employment Act of 1967, Title IX of the Education Amendments of 1972, the Americans with Disabilities Act of 1990, and the Uniformed Services Employment and Reemployment Rights Act.

# NONDISCRIMINATION POLICIES

Fayetteville State University seeks to comply with all federal, state, and local laws, regulations, and ordinances prohibiting discrimination in public post-secondary education institutions, including Title IX.

The University ***does not discriminate*** against any employee, applicant for employment, student, or applicant for admission ***on the basis of any actual or perceived protected characteristic*** under applicable local, state, or federal law, including protections for those opposing discrimination or participating in any grievance process within the institution or other agency.

The Nondiscrimination Policies are located in Chapter 400 on the Policy webpage.

# **NONDISCRIMINATION TEAM**

## **Discrimination and harassment allegations**

***The Office of Risk and Compliance***

[compliance@uncfsu.edu](mailto:compliance@uncfsu.edu)

[Reporting Intake Form](#)

## **Sex-based discrimination and sex-based harassment allegations**

***Title IX Office***

Elizabeth Hunt, J.D.

Chief Title IX Coordinator

[titleix@uncfsu.edu](mailto:titleix@uncfsu.edu)

[Title IX \(uncfsu.edu\)](https://uncfsu.edu/titleix)

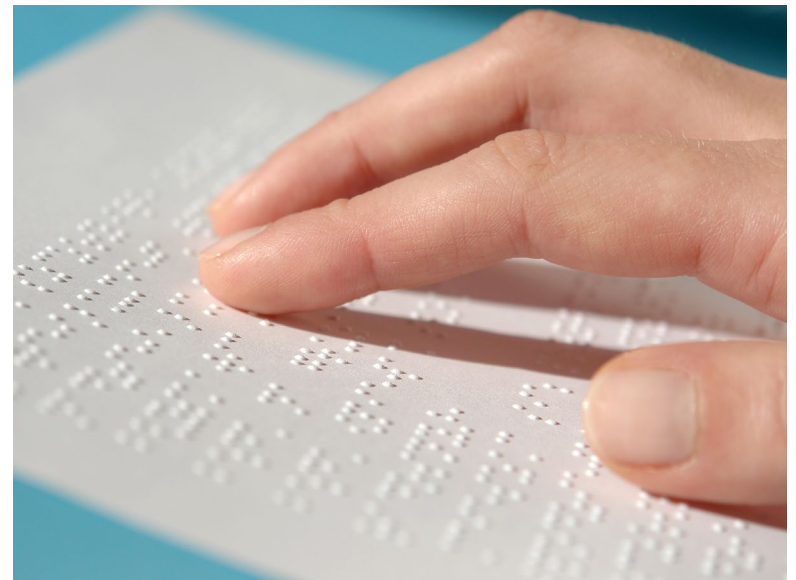
# DISABILITY ACCOMMODATIONS

The University will provide reasonable accommodation due to a qualifying disability to ensure individuals have access to the University's education and employment opportunities.

Students should contact [Student Disability Services](#) for disability-related accommodation.

Employees should contact Employee Relations for disability-related accommodation.

Supervisors should refer employees who raise medical, disability or mental health concerns to Employee Relations.



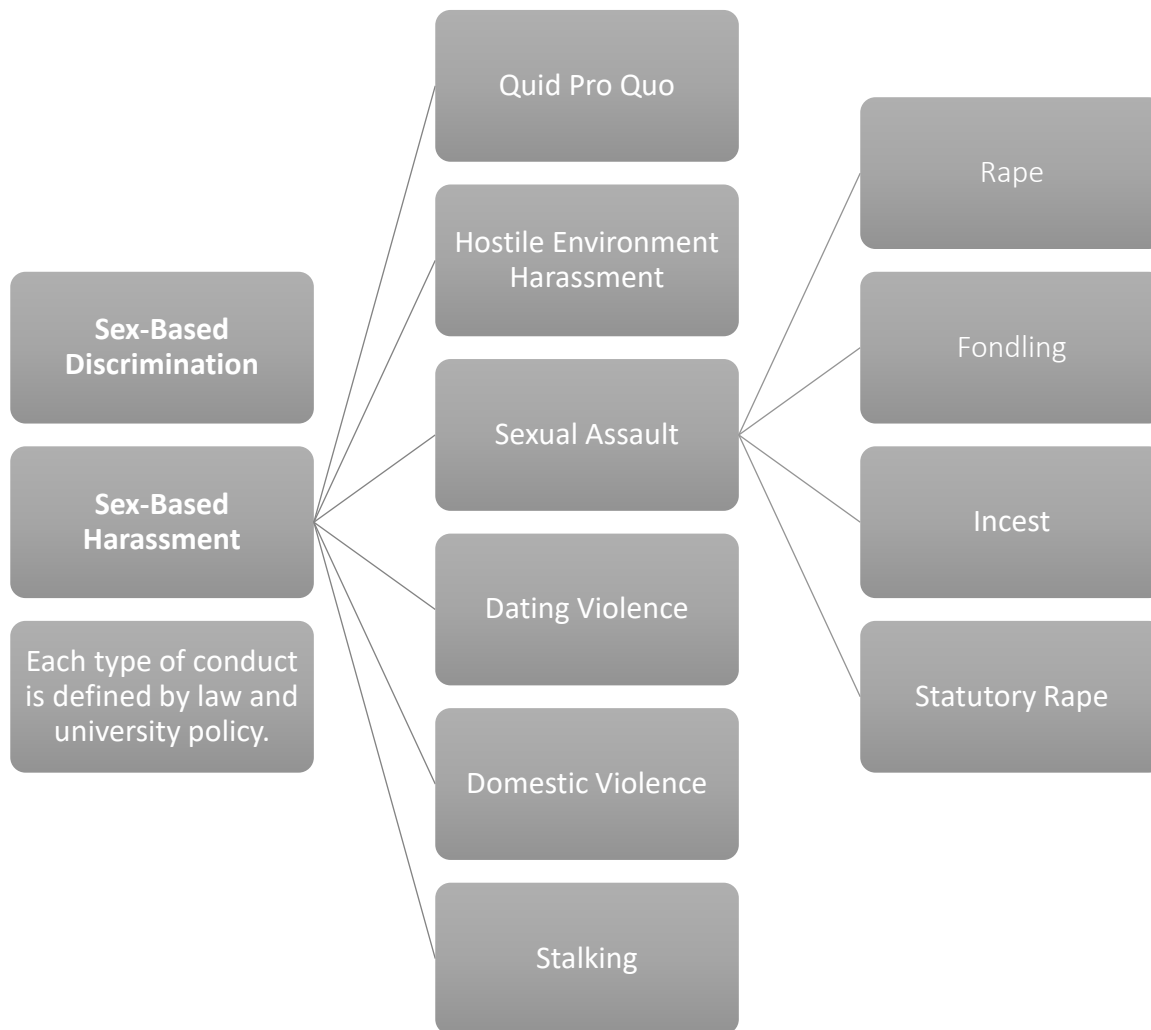
# TITLE IX 2024 FINAL RULE

In May of 2024, the Department of Education issued a new **Final Rule** that drives the enforcement of Title IX.

As of August 1, 2024, these regulations are effective at Fayetteville State University.

**The mission of Title IX** remains the same: To reduce or eliminate barriers to education and employment opportunity caused by sex discrimination in institutions that receive federal funding.

# TITLE IX (2024) PROHIBITED CONDUCT



# UNIVERSITY STANDARDS



Title IX applies to **all programs and activities** of the University. This includes housing, athletics, employment, etc.



The University has developed **policies and procedures** that provide for the prompt, fair and impartial resolution of reports sex-based discrimination and harassment.



Fayetteville State University strives to **balance** the rights of the Parties in the resolution process.

# TITLE IX MANDATED REPORTERS



## MANDATED REPORTING FOR EMPLOYEES

Employees who are responsible for **administrative leadership, teaching or advising** are considered mandated reporters. Please contact the Title IX Office if you have questions about the requirement to immediately report potential Title IX violations.

# HOW TO REPORT

**Reports of discrimination, harassment, and/or retaliation may be made using any of the following options:**


**Give written Notice** directly to any member of the Nondiscrimination Team. Such Notice may be made at any time (including during non-business hours) to the Chief Title IX Coordinator, [TitleIX@uncfsu.edu](mailto:TitleIX@uncfsu.edu).

**Submit Online Notice** using the [Intake Form](#).

- Mandated Reporters must give written notice to ensure proper documentation of compliance.
- The University will accept verbal Notice from other employees, students and individuals.
- Anonymous Notice is accepted but may limit the University's ability to respond.

# AFTER A REPORT

When the office receives a report of potential discrimination, we will contact the complainant, if known, or another individual reporting the prohibited conduct to conduct an initial assessment of the report.



The individual will also be advised of the applicable policies and procedures, any other available resources.

# COMPLAINT RESOLUTION



The University enforces a Complaint Resolution Process for allegations of sex-based harassment i.e. Prohibited Sexual Conduct

Allegations of other forms of discrimination are resolved using the University's Nondiscrimination Procedures.

Complaints that do not allege a potential violation of the nondiscrimination policies should be addressed to the appropriate process.

# RESPONDENT RIGHTS

- The University's procedures must balance the rights of all parties.
- The investigative process ensures that complainants can present their claims and respondents also get a fair chance to explain their actions. Both parties can provide evidence, allowing for a comprehensive examination of the allegations.
- The University presumes that the Respondent is not responsible for the alleged discrimination, harassment or retaliation until a determination of responsibility is made at the conclusion of the applicable complaint resolution procedures.
- The University must not impose disciplinary sanctions on any person under the nondiscrimination policies unless it determines at the conclusion of resolution procedures that a policy violation for which the person was responsible has occurred.

# ROLE OF INVESTIGATOR

- The investigator is a neutral fact-finder.
- The investigator has an obligation to identify and obtain relevant evidence from all available sources to resolve the issues under investigation.
- The investigator is not an advocate for any party, including but not limited to the reporter, complainant, or the respondent.
- The investigator does not determine sanctions or disciplinary action.

# EVIDENCE

- The University uses the **preponderance of evidence** standard in determining responsibility for allegations of discrimination, harassment and/or retaliation.
- The decision maker will consider whether given the available credible evidence, it is **more likely than not** that a policy violation occurred.
- The preponderance is sometimes described as **51%** more likely that a violation *did* occur.
- A "conclusory statement" refers to a conclusion presented without any factual allegations in support.
- Complaints must allege any facts or events that describe specific instances of discrimination, harassment or retaliation, or that create an inference of such.

# BAD FAITH REPORTS

- A "bad faith report" refers to filing a complaint alleging discrimination, where the complainant is believed to be knowingly making false claims with no legitimate basis for their complaint, essentially attempting to misuse the process for personal gain or malicious intent.
- If the investigation finds a complaint to be filed in bad faith, it may be dismissed without further investigation.
- A bad faith determination requires evidence that the complainant's allegations are demonstrably false and that they were made with malicious intent.
- Filing false complaints can undermine the process and discourage others from coming forward with genuine concerns.

# UNLAWFUL WORKPLACE HARASSMENT

- The University's Unlawful Workplace Harassment policy complies with state and federal law.
- **Harassment must be based on an employee's legally protected characteristic.** Harassment (or harassing conduct) is only covered by federal EEO laws if it is based on one (or more) of the individual's characteristics that are protected by these laws.
- If an employee experiences harassment in the workplace but the evidence does not show that the harassment was based on a protected characteristic, the EEO statutes do not apply.

[Enforcement Guidance on Harassment in the Workplace | U.S. Equal Employment Opportunity Commission](#)

# **EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

The U.S. Equal Employment Opportunity Commission (EEOC) is responsible for enforcing federal laws that make it illegal to discriminate against a job applicant or an employee because of the person's race, color, religion, sex, national origin, age (40 or older), disability or genetic information.

The University's employment discrimination policies and procedures are designed to comply with federal law and EEOC regulations.

The Office of Risk and Compliance reviews all employment discrimination and harassment allegations in accordance with university policy, state and federal law and applicable regulations.

# **EEOC CASE STUDIES**

Enforcement Guidance on Harassment in the Workplace | U.S.  
Equal Employment Opportunity Commission

# INSUFFICIENT EVIDENCE

Isaiah, a customer service representative at a financial services firm, alleges he was subjected to harassment based on his national origin and color by his coworker, Zach. Isaiah asserts that last winter Zach became increasingly hostile and rude, throwing paper at Isaiah, shoving him in the hall, and threatening to physically harm him. Zach's misconduct started shortly after a disagreement during a league basketball game during which Isaiah, captain of the firm's basketball team, benched Zach.

No evidence was found during the investigation to link Zach's threats and harassment to Isaiah's national origin or color; therefore, Isaiah cannot establish that Zach's misconduct subjected him to harassment because of a protected characteristic.\*—

# RACE-BASED HARASSMENT

Mia, a personal trainer at a large fitness center chain, is multiracial (Asian, Black, and Pacific Islander). Some coworkers refer to Mia using epithets directed at her mixed-race status, including “mutt.” These coworkers also call Mia slurs based on her separate racial attributes. Other coworkers make comments that they don’t consider to be insulting, such as telling Mia how “exotic” she looks; calling her “cute nicknames,” such as “panda” and “Moana”; and commenting that Mia inherited the “best traits,” such as being strong because she is part Pacific Islander, athletic because she is part Black, and smart and articulate because she is part Asian. Based on these facts, the coworkers’ harassing conduct toward Mia is based on race.

# NATIONAL ORIGIN

Antonio is an immigrant from Mexico who works at a butcher shop. Over the course of several months, his Mexican-American and White managers subject him to slurs about his Mexican origin such as “wetback” and other vulgar and derogatory epithets in Spanish. They also mock and ridicule Antonio’s accent and limited English proficiency.

Based on these facts, the managers’ harassing conduct toward Antonio is based on his national origin.

# RELIGION-BASED

Thiago, a fraud investigator at a property and casualty insurer, is agnostic and rejects organized religion. After Thiago's sister died unexpectedly, Thiago is despondent. He is approached by a coworker, Laney, who says that she can communicate with the dead and has received the following messages from Thiago's sister: the sister is suffering in Hell, and Thiago will go to Hell as well if he does not "find God." Thiago becomes upset and asks Laney to never bring up the topic again. Nevertheless, Laney repeatedly encourages Thiago to find religion so Thiago will not "go to Hell like his sister," despite Thiago's ongoing requests for Laney to "drop it."

Based on these facts, Laney's harassing conduct toward Thiago is based on religion.

# **PREGNANCY-RELATED CONDITION**

Lisbet, a software engineer for a video game publisher, recently returned to work after giving birth. Lisbet uses a lactation room at work as needed in order to express breastmilk. Lisbet's coworker, Nathaniel, knocks loudly on the lactation room door while Lisbet is inside and pretends that he is going to enter. Nathaniel also refers to Lisbet's breasts as "milk jugs," makes suckling noises when Lisbet enters and exits the lactation room, and asks Lisbet if he can have a squirt of milk for his coffee.\* Nathaniel also refers to the lactation room as "Lisbet's getaway" and asks why he is not allowed to take breaks in private rooms.

Based on these facts, Nathaniel's harassing conduct toward Lisbet is based on a pregnancy-related medical condition (lactation).

# GENDER IDENTITY

Chloe, a purchase order coordinator at a retail store warehouse, is approached by her supervisor, Alton, who asks whether she was “born a man” because he had heard a rumor that “there was a transvestite in the department.” Chloe disclosed to Alton that she is transgender and asked him to keep this information confidential. After this conversation, Alton instructed Chloe to wear pants to work because a dress would be “inappropriate,” despite other purchase order coordinators being permitted to wear dresses and skirts. Alton also asks inappropriate questions about Chloe’s anatomy and sexual relationships. Further, whenever Alton is frustrated with Chloe, he misgenders her by using, with emphasis, “he/him” pronouns, sometimes in front of Chloe’s coworkers.

Based on these facts, Alton’s harassing conduct toward Chloe is based on her gender identity.

# AGE-BASED

Lulu, age sixty-eight, is a makeup artist and salesperson at a department store. Lulu's manager repeatedly asks Lulu about her retirement plans, despite Lulu expressing that she has no interest in retiring. Lulu's manager also tells her that the brand needs "fresh faces" and "high energy." When Lulu makes even a minor mistake, her manager disparages Lulu for having "senior moments." Further, on one occasion, the manager snapped at Lulu, "Nobody wants makeup advice from their granny."

Based on these facts, the manager's harassing conduct toward Lulu is based on her age.

# DISABILITY ACCOMMODATION

Charlie, a seasonal cashier at a garden supply store, has psoriatic arthritis, which affects his knees and ankles and makes standing for prolonged periods of time painful. Charlie's employer has a rule that prohibits cashiers from using fatigue standing mats or chairs while at the cash register, but grants Charlie a reasonable accommodation under the ADA to use a mat or chair as needed. Charlie's coworkers berate him for getting "special treatment." They also hide Charlie's mat and chair, which prevents Charlie from starting his work on time, because it's "unfair" that he gets to be "more comfortable" than them.

Based on these facts, the coworkers' harassing conduct toward Charlie is based on disability (receipt of a reasonable accommodation).

# NON-RETALIATION



The University prohibits retaliation against individuals for reporting alleged discrimination or engaging in protected activity.



*The exercise of rights protected under the First Amendment does not constitute retaliation.*

# **TAKING IT PERSONAL**

UNDERSTANDING THE NON-RETALIATION POLICY

# RETALIATION

- In accordance with federal and state law, the University prohibits retaliation against employees and applicants for employment because of their “**protected activity**.”
- According to the EEOC, an employer may not fire, demote, harass or otherwise "retaliate" against an individual for filing a complaint of discrimination, participating in a discrimination proceeding, or otherwise opposing discrimination.
- The EEO anti-retaliation provisions ensure that individuals are free to raise complaints of potential EEO violations or engage in other EEO activity without employers taking **materially adverse actions** in response.
- A request for reasonable accommodation of a disability constitutes protected activity under the ADA, and therefore retaliation for such requests is unlawful.

# WHY IT HAPPENS

- It is not uncommon for an original discrimination allegation (on a basis other than retaliation) to fail to establish a violation of the law, but a subsequent retaliation allegation results in a discrimination finding.
- Individuals may seek to avenge a perceived offense.
- The desire to retaliate is a common human reaction
- When management takes a materially adverse action because an employee engages in protected activity, such action violates university policy and creates legal liability for the university.

# PROVING IT

Cases litigated in court under [Title VII of the 1964 Civil Rights Act](#) require three things to demonstrate a valid claim for retaliation:

- The employee engaged in **protected activity**;
- The employer took a **materially adverse action** against the employee; and
- The employer took the materially adverse action against the employee **because of their protected activity**.

# MATERIALLY ADVERSE ACTION

The Equal Employment Opportunity Commission has clarified that “[adverse employment actions](#)” include, but are not limited to:

- Hiring
- Firing
- Failure to promote
- Pay reduction
- Demotion

Opposition to perceived discrimination also does not serve as license for the employee to neglect job duties. If an employee's protests render the employee ineffective in the job, the retaliation provisions do not immunize the employee from appropriate discipline or discharge.

# **RETALIATION EXAMPLES**

The following are examples of retaliation cases from the EEOC.

# **DISPROPORTIONATE WORKLOAD**

- Three weeks after a federal employee sought EEO counseling regarding her complaint of disability and gender discrimination, her supervisor posted the EEO complaint on the agency's intranet where coworkers accessed it.
- The supervisor also increased her workload to five or six times that of other employees.
- Both actions are materially adverse and actionable as alleged retaliation.

# RETALIATORY DISCHARGE

Jane, a saleswoman, has been employed at a retail store for more than a decade, and has always exceeded her sales quota and received excellent performance appraisals. Shortly after the company learned that Jane had provided a witness statement to the EEOC in support of a coworker's sexual harassment claim, it terminated Jane, citing her failure to provide 48-hours advance notice to her supervisor about a shift swap with a coworker. She alleges retaliatory termination, and evidence reveals that same-day notice of shift swap was a widespread company practice that had commonly been permitted.

This evidence, in combination with the proximity in time of her discharge to the company's learning of her protected activity, could support the conclusion that the discharge was retaliatory.

# FACTS THAT MAY DEFEAT A CLAIM OF RETALIATION

- Employer Unaware of Protected Activity
- Legitimate Non-Retaliatory Reason for Challenged Action

According to the EEOC, in order for the employee to prevail in demonstrating a violation, the evidence must show that it is more likely than not that retaliation has occurred. It is not the employer's burden to disprove the claim.

When investigating an allegation of retaliation, the University will request evidence supporting the proffered explanation for the challenged action.

# **RETALIATORY MOTIVE NOT SHOWN**

An employee alleges retaliatory termination. The evidence shows that management admitted to being "mad" at the employee for filing a prior religious discrimination charge, but this was not enough to show that her protected activity was a "but-for" cause of her termination, where she was fired for her repeated violations of workplace safety rules and for insubordination. The employee admitted to repeatedly violating the rules and to being uncooperative with her supervisor. Further, the evidence shows that the employee was warned prior to her filing the EEO claim that her continued violation of the safety rules could result in her termination.

# GUIDANCE FOR SUPERVISORS

- Discipline and performance evaluations of employees must be motivated by legitimate, non-retaliatory reasons.
- Maintain timely and accurate documentation of the employee discipline or evaluation.
- Those accused of nondiscrimination policy violations must not act on feelings of revenge or retribution, although those emotions may occur.

[Retaliation - Making it Personal | U.S. Equal Employment Opportunity Commission](#)

# PREVENTING RETALIATION

- Avoid publicly discussing allegations or employee complaints.
- Do not share information about the allegations or employee complaints with any other managers or subordinates.
- Be mindful not to isolate the employee.
- Avoid reactive behavior such as denying the employee information/equipment/benefits provided to others performing similar duties.
- Do not interfere with the nondiscrimination reporting or Investigation process.
- Provide clear and accurate information to the university staff involved with the resolution process, Investigator, or Decision Maker.
- Do not threaten the employee, witnesses or anyone else involved in the processing of a complaint.

# **CONFLICT RESOLUTION**

The University provides additional resources to address conflicts that do not fall within the nondiscrimination policies and procedures.

# OTHER RESOURCES

- Employee Assistance Program
- Disability Accommodation Process
- University Ombuds Program
- Professional Development Training
- Performance Management Procedures

# CONDUCT STANDARDS

- Lack of workplace civility can lead to operational catastrophes
- Disruptive or toxic conduct often leads to great personal and organizational harm.
- Workplace civility is mission-critical to creating productive work environments that help the University achieve its strategic goals.
- Current factors can amplify incivility, including remote work environments, personal and political topics, and social media usage.
- Civility standards are aligned with organizational values and apply equally to everyone.
- When departments treat civility as valuable as other operational standards, it demonstrates a commitment to ensuring all staff have access to a civil, fair and productive workplace.



*Thank you for doing your part to  
support the University's  
commitment to nondiscrimination  
and equality of opportunity.*