

EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION

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A9.900 POLICY AND COMPLAINT PROCEDURE FOR MEMBERS OF THE PUBLIC WHO
HAVE DISCRIMINATION COMPLAINTS REGARDING PUBLIC ACCOMMODATIONS
OR ADA COMPLAINTS REGARDING DISABILITY ACCESS TO UNIVERSITY
SERVICES, PROGRAMS, AND ACTIVITIES

1. Purpose

To prohibit unfair discriminatory practices with regard to the access and use of public accommodations at the University of Hawai'i, under Chapter 489, Hawai'i Revised Statutes, and to implement the complaint procedure requirement of Title II of the Americans with Disabilities Act (ADA) of 1990.

Chapter 489, HRS makes it unlawful to deny or attempt to deny a person the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation on the basis of race, sex, gender identity and expression, sexual orientation, color, religion, ancestry, or disability. It is also unlawful to deny access to public accommodations to a woman because she is breastfeeding a child (Chapter 489-21, HRS).

The ADA requires public entities to have complaint procedures for members of the public so that "No qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity."

2. Objectives

To provide prompt and equitable resolution of complaints alleging discrimination on the basis of race, sex, gender identity and expression, sexual orientation, breastfeeding, color, religion, ancestry, or disability.

3. Applicability

Complaints may be filed under this procedure by any member of the public who is not covered by other University procedures and who believes that she or he or a specific class of individuals has been subjected to discrimination with regard to places of public accommodation, services, programs, and activities provided or made available by the University. Members of the University community should refer to UH Systemwide Administrative Procedure A9.920 (Discrimination Complaint Procedure for Employees, Students, and Applicants for Employment or Admission) which covers discrimination and is the appropriate procedure for University students, employees, and applicants for employment or applicants for admission to academic programs.

4. Definitions

For the purposes of this policy, the following definitions apply:

- a. "Place of public accommodation" means a business, accommodation, refreshment, entertainment, recreation, or transportation facility/program whose goods, services, facilities, privileges, advantages, or accommodations are extended, offered, sold, or otherwise made available to the general public as customers, clients, or visitors. The University is an educational institution that serves students; only certain programs are offered to the general public. Thus, the definition is based on the function or program and not the physical structure or facility. A facility like a campus theater may serve as a classroom for students (excluding the general public), and at other times as a venue for entertainment events open to the general public.
- b. "Disability" means the state of having a physical or mental impairment which substantially limits one or more major life activities, having a record of such an impairment, or being regarded as having such an impairment. The term does not include current alcohol or drug use that impairs a person's activities or threatens the property or safety of others (Chapter 489-2, HRS).
- c. "Gender identity and expression" means an individual's actual or perceived gender, as well as a person's gender identity, self-image, appearance, expression, or behavior, whether or not that self-image, appearance, expression, or

behavior is different from that traditionally associated with the individual's sex at birth as being either female or male.

- d. "Sexual orientation" means the direction of an individual's physical and/or emotional attraction to the same and/or opposite gender (heterosexuality, homosexuality, or bisexuality); having a history of any one or more of these sexual orientations; or being regarded as having any one or more of these sexual orientations.
- e. "Retaliation" is defined as adverse action or hostile treatment against an individual because he or she has engaged in any of the following activities:
 - 1. opposed discriminatory conduct, based on a reasonable, good faith belief that this policy has been violated; or
 - 2. filed or threatened to file a complaint about discriminatory conduct; or
 - 3. testified, assisted, or participated in an investigation or other proceeding related to a discrimination complaint.

5. Complaint Procedures

Members of the public are encouraged to resolve their concerns informally by contacting the department or relevant campus administrator who can assist them. If this is not reasonable under the circumstances, the complaining party may contact the campus EEO/AA Coordinator, as follows:

- a. Complaints should be in writing. (See attached form on pages 6-8.) Alternative means of filing complaints, such as telephone, email, or personal interview, will be made available for persons with disabilities. Verbal complaints should be documented by the EEO/AA Coordinator.

Complaint statements must contain:

- i. the name and address of the complainant, and
- ii. a description of the alleged discrimination in sufficient detail to permit follow up or investigation.

The complaint may also include any evidence which supports the allegation.

- b. Complaints should be filed as soon as possible but no later than 180 calendar days from the date of the alleged discrimination.
- c. Complaints should be addressed to the campus EEO/AA Coordinator.
- d. The EEO/AA Coordinator or designee(s) will seek to resolve the complaint informally or investigate, as appropriate. Investigations will be completed within 90 calendar days of the date the complaint was filed. Time may be extended as appropriate, on a case-by-case basis, provided the complainant and respondent are notified in writing.
- e. If an investigation is conducted, the EEO/AA Coordinator or designee(s) will determine whether the nondiscrimination policy A9.900 has been violated. The EEO/AA Coordinator or designee will send the complainant and respondent a written decision or resolution via return-receipt mail within 30 calendar days of completion of the investigation.

The decision letter will summarize the basis for the decision. The letter will also notify the complainant and respondent of their right to file an appeal and the office or campus administrator designated to hear the appeal.

The decision will be sent to the complainant's and respondent's last known addresses; the parties are responsible for notifying the EEO/AA Coordinator of any change of address. The deadline for rendering a decision may be extended for 30 additional calendar days, provided the complainant and respondent are notified in writing.

- f. The complainant or respondent may appeal the EEO/AA Coordinator or designee's decision. The appeal must explain why the decision or resolution should be overturned. The appeal should be made to the designated appeal officer within 30 calendar days of receipt of the decision. This deadline for filing an appeal may be extended for 30 additional calendar days, provided the complainant or respondent notifies the appeal officer in writing.
- g. The designated appeal officer will reconsider the case and send the complainant and respondent a final written

decision or resolution within 30 calendar days of receipt of the appeal. The deadline for rendering a decision may be extended for 30 additional calendar days, provided the complainant and respondent are notified in writing.

The standard for review for an appeal is whether the findings of the EEO/AA Coordinator or designee were against the clear weight of the evidence.

6. Non-exclusivity

Use of this complaint procedure is not a prerequisite to the pursuit of other remedies, e.g., state or federal agency complaint options.

7. Notice

Chancellors are responsible for issuing this complaint procedure to their campuses and for publicizing the name, title, address, and phone number of the EEO/AA Coordinator or designee responsible for handling Chapter 489, HRS, and ADA/Section 504 complaints.

8. Non-retaliation

The University prohibits retaliation against any individual because that individual has opposed any act or practice made unlawful by Chapter 489, HRS, the ADA, or Section 504 of the Rehabilitation Act, or because that individual has made a complaint, served as a witness, or participated in an investigation under this procedure. Complaints of retaliation will be handled as separate charges using the procedure outlined in part 5 above. Any member of the University community who engages in retaliation will be subject to discipline.

9. Recordkeeping

A record of each complaint filed under this procedure will be maintained by the campus EEO/AA Coordinator for a period of two years. The record will indicate the nature of the complaint and the disposition or resolution.

SAMPLE COMPLAINT FORM

UNIVERSITY OF HAWAI'I
Discrimination Complaint Form for Members of the Public
Regarding Public Accommodations and ADA Complaints
Regarding Disability Access to University Programs

Complainant's Name: _____ Case No: _____

Mailing Address: _____ Phone: _____

_____ Email: _____

Basis of the Complaint (*Please Specify):

- Race* _____ Sex* _____ Gender Identity
 Ancestry* _____ Color* _____ Sexual Orientation
 Religion* _____ Disability* _____ Breastfeeding

Name of the Alleged Respondent: _____

Respondent's Department or Address: _____

Phone: _____ Email: _____

Date, time, and place of the first incident: _____

Date, time, and place of the last incident: _____

Statement

1. Please describe the incident(s) as clearly and concisely as possible. Provide as much detail as you can recall, including when and where the events occurred and who said what to whom. Explain why you believe the conduct or treatment was discriminatory. Use additional pages, if necessary.

Documentation

2. List and/or attach copies of any documents or material relevant to the complaint. For each item, briefly explain why it is relevant. Attach additional pages if necessary.

Witnesses

3. Did anyone witness the incidents of discrimination? If so, list their names and include phone numbers, email and addresses, if known. Briefly state what information each witness will be able to provide.

Previous Assistance

4. Have you have sought assistance in resolving your complaint from another source? If yes, please describe who helped you, when you sought the help, and what kind of help you received:

Complainant's Authorization

5. I understand that complete confidentiality cannot be maintained in the process of handling formal complaints. I agree that this statement of allegations may be used during the investigation of the case. I further agree that this statement and certain information in the complaint file may be disclosed to the Respondent and appropriate administrators, among others, in order to informally resolve my complaint, conduct fact finding, or implement remedial action. Information may also be disclosed if required by policy, law, rule, regulation, or court order.

I affirm that this complaint statement is true, accurate, and complete to the best of my knowledge.

Signature of Complainant: _____ **Date:** _____

Return to:

[add campus address for receiving complaint]

Nonretaliation Policy

University policy as well as state and federal law prohibit retaliation against any person because s/he has filed a discrimination complaint or served as a witness in the complaint investigation. The nonretaliation policy is contained in the relevant complaint procedure, for example, UH Administrative Procedure A9.900. Complaints of retaliation constitute separate charges and will be handled in the same manner as discrimination complaints.

If you believe you have experienced retaliation, notify the appropriate investigating office as soon as possible.

Received by: _____ Date: _____