



UNIVERSITY
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SYSTEM

Equal Employment Opportunity and
Affirmative Action Office

August 10, 2011

TO: Vice Presidents and Chancellors
Undergraduate Student Government Associations
Graduate Student Organization
Faculty Senate Chairs
Chair, Commission on Disability Access
Chair, Commission on the Status of Women
Chair, Commission on LGBTI Equality

FROM: Kelly Oaks, Associate Vice Chancellor & Dean of Students, UH Hilo
Mary Perreira, EEO/AA Director, UH Community Colleges
Adrienne Valdez, Assistant Specialist, CLEAR, UH West Oahu
Mie Watanabe, EEO/AA Director, UH Mānoa & UH System

SUBJECT: Updated Executive Policy E1.202

Attached for your review and comment is an updated Executive Policy E1.202 on Nondiscrimination, Anti-Harassment, and Affirmative Action. The draft revisions were prepared by the Equal Opportunity/Affirmative Action officers for UH System Offices, UH Mānoa, UH West Oahu, UH Hilo, and UH Community Colleges systemwide. We would appreciate receiving your comments by **August 31, 2011**.

The revisions to E1.202 address the following State and Federal policy requirements: inclusion of new protected categories established by State and Federal laws; prohibition against discriminatory harassment; prohibition against retaliation; encouraging students and employees to report incidents through informal or formal procedures; informing complainants of their right to file complaints with State and Federal civil rights agencies; and affirming the University's commitment to Executive Order 11246 (federal contract compliance).

Please send your comments by August 31, 2011 to the E1.202 Committee: eeo@hawaii.edu
You are also welcome to call Mie Watanabe at 956-6423, if you have questions or comments.

Thank you for your attention to this matter.

Enclosure

c: David Lonborg, Executive Assistant to the President
James Nishimoto, Assistant to the Senior Executive
EEO/AA Coordinators systemwide

NOTE: Bracketed [] words are to be deleted; underlined words are to be added.

DRAFT 7/5/11

Prepared by the Office of [the President] Equal Employment Opportunity and Affirmative Action (EEO/AA). This replaces E1.202 dated July 1991 [November 1982]

UNIVERSITY OF HAWAI'I

EXECUTIVE POLICY - ADMINISTRATION

September 2011
[July 1991]

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E1.202 [University Statement of] Nondiscrimination, Anti-Harassment, and Affirmative Action Policy

I. INTRODUCTION

The University of Hawai'i is committed to maintaining a community that fosters understanding and mutual respect. The University believes that diversity among its many members strengthens the institution, stimulates creativity, promotes the exchange of ideas, and enriches campus life. To protect the diversity of people and ideas, we must also provide an environment in which the civil rights and dignity of every individual are fully respected. Discrimination and harassment undermine the trust and mutual respect which must prevail if the students, faculty and staff of the University of Hawai'i are to reach their fullest potential. The University prohibits and does not tolerate discrimination or harassment against students and employees based on the protected categories in this policy. This policy also prohibits retaliation against a person for bringing a complaint of discrimination or harassment or for assisting or testifying in an investigation or complaint resolution pursuant to this policy. The University will take prompt and appropriate action to prevent, to correct, and if necessary, to discipline behavior that violates this policy (up to and including dismissal from the University).

Executive Policy E1.202 provides a framework to implement the University of Hawai'i Board of Regents Policy on Nondiscrimination and Affirmative Action, [is provided in] Section 1-5 of the Board of Regents Bylaws and Policies. This Executive Policy also provides [establishes] the administrative framework to ensure compliance with applicable federal and state statutes, rules, and regulations[, city and county ordinances, and provisions in the collective bargaining agreements] governing nondiscrimination and affirmative action and prohibiting discriminatory harassment.

II. OBJECTIVES

- A. To provide positive systemwide executive support to implement the Board of Regents' nondiscrimination and affirmative action policy.
- B. To charge Vice Presidents and Chancellors with the responsibility and authority to implement the Board of Regents' policy.

III. Scope

- A. This policy prohibits discrimination and harassment against students, employees, and applicants for admission or employment.

(Members of the public who have discrimination concerns, including disability accommodation issues, should refer to UH Administrative Procedure A9.900 - Policy and Complaint Procedure for Members of the Public.)
- B. This policy covers academic considerations such as admission and access to, and participation and treatment in, the University's programs, activities, and services.
- C. With regard to employment, this policy applies to all personnel actions such as recruitment, hiring, training, promotion, retention, compensation, benefits, transfers, and layoffs.
- D. This policy does not intend to address behaviors that do not constitute discrimination or discriminatory harassment as defined in part III below. Offensive workplace behaviors that do not violate this policy should be addressed to the appropriate supervisor or office.

IV. [III.] POLICY

A. Equal Opportunity and Nondiscrimination

The Office of the President, University of Hawai'i, [hereby declares and re]affirms its commitment to the University's equal education and employment opportunity policy. The University is committed to a policy of nondiscrimination on the basis of race, color, sex, sexual orientation, gender identity and expression, age, religion, national origin,

ancestry, citizenship status, [handicap] physical and mental disability, genetic information, marital status, arrest and court record (except as permissible under State Law), domestic or sexual violence victim status, [and veteran] status as a covered veteran, National Guard absence, uniformed service, income assignment for child support, or breastfeeding.

It is a violation of University policy for any individual to subject a member of the University community to adverse treatment based on a protected category as set forth above.

The University's equal opportunity policy includes a commitment to implementing reasonable accommodations for qualified individuals with disabilities and for individuals with sincerely held religious practices.

[This policy covers admission and access to and participation, treatment, and employment in the University's programs and activities. It covers employment practices such as recruitment, hiring, training, promotion, retention, compensation, benefits, transfers, and layoffs.]

B. Anti-Harassment Policy

Harassment (including sexual harassment) that is based on any of the protected categories in part A above is a form of discrimination and is strictly prohibited under University policy. Prohibited harassment is conduct based on a protected category when:

1. submission to or rejection of the conduct is either an explicit or implicit term or condition of employment, a factor in performance evaluation, basis for participation or advancement in an academic program, or basis for participation in a University activity or benefit; or
2. when such conduct is unwelcome to the person to whom it is directed or to others directly aware of it, and when such conduct is:
 - a. severe or pervasive; and
 - b. has the purpose or effect of either:
 - i. unreasonably interfering with the employee's work performance or student's academic performance, or

- ii. creating an intimidating, hostile, or offensive work or educational environment.

The conduct must be both objectively and subjectively perceived as offensive. That is, the reporting party must view the conduct as offensive, and a reasonable person with the same fundamental characteristics as the reporting party (e.g., age, race, gender) must also view the conduct as offensive.

The following are examples of behavior that could constitute discriminatory harassment if persistent, pervasive, or severe and if the behavior is based upon a protected status:

- offensive jokes, slurs, epithets, or name calling
- insults, put-downs, mockery, or ridicule
- unwelcome or inappropriate physical contact
- unwelcome remarks about a person's clothing, body, age, sexual activity, sexual orientation, gender, race, color, or national origin
- intimidation, threats, stalking, physical assaults, or sexual violence
- displays of offensive objects or pictures, including electronic transmission of derogatory, demeaning, or hostile materials

C. Affirmative Action in Employment Practices (Federal Contract Compliance and Executive Order 11246)

The University [shall] strives to prevent discrimination and promote a full realization of equal employment opportunity through a positive, continuing affirmative action program [of equal opportunity and affirmative action on each campus.] in compliance with federal Executive Order 11246, covering federal contractors. The program includes publicizing equal opportunity officers on each campus, publishing nondiscrimination and anti-harassment policies, reviewing employment practices, analyzing applicant and workforce data, monitoring progress toward achieving hiring goals, and conducting prevention education. As a federal contractor, the University is also committed to an affirmative action policy of hiring and advancing in employment qualified persons with disabilities and covered veterans.

D. Retaliation Prohibited

The University prohibits and will not tolerate retaliation. Retaliation is defined as adverse action or hostile treatment against an individual because he or she has engaged in any of the following protected activities:

1. sought advice or assistance about discrimination or discriminatory harassment;
2. opposed or filed an informal or formal complaint against conduct reasonably believed to constitute discrimination/harassment; or
3. testified, assisted, or participated in an investigation or other proceeding related to a discrimination complaint.

Adverse actions that are reasonably likely to deter a reporting party or others from engaging in protected activity are prohibited. Adverse action or hostile treatment may include, for example, unfair evaluation, unfair assignment, direct or implied threats, coercion, harassment, intimidation, or encouragement of others to retaliate.

Retaliation is a separate complaint and will be investigated accordingly.

V. REPORTING RESPONSIBILITIES

A. Individuals Who Believe They Have Experienced or Witnessed Discrimination/Harassment

Any individual who believes that he or she has been subject to or observed incidents of discrimination/harassment should seek assistance immediately from their supervisor, personnel officer, campus EEO/AA officer, ADA coordinator, Title IX coordinator, student affairs vice chancellor, or other designated points of contact. These administrators can provide information and referrals to appropriate offices for resolving concerns, including policies, procedures, and informal and formal complaint options.

Faculty, students, and staff are strongly encouraged to report incidents of harassment at an early stage to prevent escalation and to give campus administrators an opportunity to intervene. Reporting parties are also encouraged but not

required to inform the offending party directly that the conduct is unwelcome and must stop.

Information on campus resources, policies, and procedures is available on the University web site: www.hawaii.edu/eo

B. Executives and Supervisors

Executives, supervisors, and faculty members who serve as department chairs, program/center directors, principal investigators (i.e., those who supervise employees, postdoctoral fellows, graduate assistants, interns, student assistants) have an obligation to:

1. assist the campus administration with notifying and educating persons under their supervision regarding the University's nondiscrimination and anti-harassment policy, and
2. to report to the campus EEO/AA officer, human resources officer, or appropriate Vice Chancellor when they are notified of or otherwise become aware of conduct that may constitute discrimination, harassment, or retaliation as defined in this policy.

VI. INFORMAL AND FORMAL COMPLAINT PROCEDURES

Any individual who may have experienced discrimination is strongly encouraged to use the informal and formal complaint resolution options provided under UH Administrative Procedure A9.920 - Discrimination Complaint Procedure for Students, Employees, and Applicants for Admission or Employment.

Other policies and procedures may be applicable, e.g., Executive Policies E1.203 - Policy on Sexual Harassment and Related Conduct (which also addresses Consensual Relationships), E1.204 - Sexual Assault Policy and Procedural Guidelines, and E9.210 - Workplace Non-violence, or campus procedures such as the UH Mānoa Sexual Harassment Complaint Procedure.

VII. UNIVERSITY INITIATED INVESTIGATION

When a Vice President, Chancellor, Vice Chancellor or designee has reason to believe that a violation of E1.202 has occurred, this executive has the authority to initiate an informal inquiry or formal investigation regardless of whether the reporting party pursues a complaint.

VIII. CONFIDENTIALITY

The University has a responsibility to investigate complaints of discrimination/harassment and will strive to protect, to the extent possible, the confidentiality of persons reporting or accused of harassment. However, the University cannot guarantee complete confidentiality where it would conflict with the University's obligation to investigate.

Individuals may visit the University's EEO website or request information on policies and procedures from a campus EEO/AA officer without disclosing their name or specific situation.

IX. ACADEMIC AND ARTISTIC FREEDOM

Executive Policy E1.202 shall not limit the scholarly, educational, and/or artistic content of any written, oral, or other kind of presentation or inquiry that falls within justifiable academic standards covering course content and pedagogy. The University of Hawai'i is committed to academic freedom for all members of the academic community. Accordingly, academic freedom will be liberally construed but will not be used as a pretext for violation of this policy. When appropriate, faculty are advised to inform students that content and teaching strategies properly employed in higher education may be controversial and/or discomfoting to some individuals.

X. GOOD FAITH REPORTING

Reporting parties, respondents, and witnesses have a responsibility to cooperate in the University's efforts to address complaints under Executive Policy E1.202. It is a violation of this policy to give knowingly false statements during an investigation or enforcement procedure.

However, failure to prove a claim of discrimination, harassment, or retaliation does not constitute proof of a false and/or malicious accusation. Lack of corroborating evidence should not discourage individuals from seeking relief under this policy. No adverse action will be taken against an individual who makes a good faith allegation of discrimination, harassment, or retaliation under this policy, even if an investigation fails to substantiate the allegation.

XI. FILING A DISCRIMINATION OR HARASSMENT COMPLAINT EXTERNALLY

Use of University of Hawai'i discrimination complaint procedures is not a prerequisite to the pursuit of other remedies or complaint options. Reporting parties have the right to pursue complaints with state and federal agencies at any time. Examples of state and federal agencies include the U.S. Equal Employment Opportunity Commission (EEOC), the Hawai'i Civil Rights Commission (HCRC), and the U.S. Department of Education, Office for Civil Rights (OCR).

XII. SOURCE REFERENCES

It is the policy of the University of Hawai'i to comply with the applicable federal and state statutes, rules, regulations, city and county ordinances, and provisions in the collective bargaining agreements which prohibit discrimination in University programs, activities, and employment practices.

These equal opportunity laws include but are not necessarily limited to the following: Titles VI and VII of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Age Discrimination in Employment Act of 1964, Sections 503 and 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, Title IX of the Education Amendments of 1972, the Equal Pay Act of 1963, [Section 402 of] the Vietnam Era Veteran's Readjustment Act of 1974, Chapter 378 of the Hawai'i Revised Statutes, the Genetic Information Nondiscrimination Act of 2008, and Executive Order 11246, and applicable provisions of collective bargaining agreements.

In order to carry out this commitment, Vice Presidents and Chancellors are hereby charged with the responsibility and authority to implement this nondiscrimination and affirmative action policy.