

**ARTICLE 15  
NONDISCRIMINATION**

**A. GENERAL PROVISIONS**

1. Within the limits imposed by law or University regulation, the University shall not discriminate against or harass any Postdoctoral Scholar on the basis of race, color, religion, marital status, national origin, ancestry, sex (including gender, pregnancy, childbirth, medical conditions related to pregnancy and childbirth, breastfeeding, and medical conditions related to breastfeeding), sexual orientation, gender identity, gender expression, physical or mental disability, medical condition (cancer-related or genetic characteristics), genetic information (including family medical history), HIV status, service in the uniformed services, age, citizenship, political affiliation, and/or union activity. Likewise, the University shall not discriminate or retaliate against a Postdoctoral Scholar for requesting or taking Family and Medical Leave. For the purposes of this Article only,
  - a. Service in the uniformed services includes service in the uniformed services as defined in the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), as well as state military and naval service.
  - b. "Pregnancy" includes pregnancy, childbirth, and medical conditions related to pregnancy, and childbirth.
  - c. "Gender expression" means a person's gender-related appearance or behavior, whether or not stereotypically associated with the person's sex at birth. "Gender identity" means a person's identification as male, female, a gender different from the person's sex at birth, or transgender.
  - d. "Medical condition" means either any health impairment related to or associated with a diagnosis of cancer or health impairments related to genetic characteristics.
2. Complaint procedures are covered by the University's Sexual Violence Sexual Harassment (SVSH) Policy and/or Nondiscrimination and Affirmative Action regarding Academic and Staff Employment Policy. If there is a conflict between these, or any, University Policies and this Agreement, the Agreement shall govern.

**B. SEXUAL HARASSMENT**

1. The University of California is committed to creating and maintaining a community dedicated to the advancement, application and transmission of knowledge and creative endeavors through academic excellence, where all individuals who participate in University programs and activities can work and learn together in an atmosphere free of harassment, exploitation, or intimidation. The University prohibits sexual harassment and retaliation that violates law, this Article, and/or University policy (herein referred to as prohibited behavior). The University shall respond promptly and effectively to reports of prohibited behavior

and shall take appropriate action to prevent, to correct, and when necessary, to discipline behavior that violates the law, this Article, and SVSH Policy.

2. Sexual Harassment is defined as unwelcome sexual advances, unwelcome requests for sexual favors, and other unwelcome verbal, nonverbal or physical contact of a sexual nature when:
  - a. Quid Pro Quo: A person's submission to or rejection of such conduct is implicitly or explicitly made the basis for employment decisions, academic evaluation, or advancement, or other decisions affecting participation in a University program; or
  - b. Hostile Environment: such conduct is sufficiently severe or pervasive that it unreasonably denies, adversely limits, or interferes with a person's participation in or benefit from the education, employment or other programs and services of the University and creates an environment that a reasonable person would find to be intimidating or offensive.
3. Sexual harassment may include incidents between any members of the University community, including: administrators, faculty and other academic appointees (including postdoctoral scholars), staff, student employees, students, coaches, residents, interns, and non-student or non-employee participants in University programs (e.g., vendors, contractors, visitors, and patients); in hierarchical relationships and between peers, and; between individuals of any gender or gender identity.
4. The University prohibits retaliation against or by Postdoctoral Scholars based on their report of prohibited behavior or participation in the investigation, report, remedial, or disciplinary processes provided for in the SVSH Policy. Retaliation includes threats, intimidation, reprisals, and/or adverse employment and/or academic actions against a person based on their report of prohibited behavior or participation in the investigation, report, remedial, or disciplinary processes provided for in the SVSH Policy or this Article.
5. The Title IX Offices responsible for investigations are listed at: <http://sexualviolence.universityofcalifornia.edu/filing-report/index.html>.

### **C. RESOLUTION PROCEDURES**

Reports of alleged violations of Section A. or B.1.-4. above and/or University Policy may be addressed through the complaint procedure and/or the grievance procedure. Additionally, Alternative Resolution may be used at any time to address the issues. Formal Investigations may be initiated as part of the complaint resolution or grievance procedure.

#### **1. Alternative Resolution**

Postdoctoral Scholar(s) and/or the Union and/or the University may seek Alternative Resolution at any time.

- a. After a preliminary assessment of the facts, the Title IX / EEO Officer may initiate an Alternative Resolution process, which may include: mediation (except in cases of sexual violence); separating the parties; providing for safety; referring the parties to counseling; referral for disciplinary action; a settlement agreement; conducting targeted preventive educational and training programs; and conducting a follow-up review to ensure that the resolution has been implemented effectively.
  - b. If Alternative Resolution is unsuccessful, the Title IX / EEO Officer may initiate a formal investigation.
  - c. Attempts at Alternative Resolution at the informal level do not extend the thirty (30) calendar day time limit to file a grievance. However, should a grievance be filed, the parties may agree in writing that the grievance be held in abeyance while alternative resolution is being considered or ongoing.
2. Interim Measures for Complainant(s)
- a. When the appropriate administrative officer has determined that a Complainant has established a prima facie case of harassment and/or discrimination based on a protected category, the University shall implement interim measures when necessary. Such measures shall allow the Postdoctoral Scholar to continue training in an environment free from harassment and/or discrimination based on a protected category.
  - b. Interim measures available to Postdoctoral Scholars may include, but are not limited to: change to a different workstation, schedule, work location, unit, department, or position for which the Postdoctoral Scholar is qualified provided that, in the case of a Complainant, the change is voluntary and equitable; training and education of the Respondent; no contact remedies.
3. Grievance Procedure
- a. If a grievance is filed in accordance with Article 6 that includes an alleged violation of this Article, the University shall forward the allegation(s) to the Title IX / EEO Officer for review. If the Title IX / EEO Officer determines an investigation is warranted, the Union and the University may agree in writing that the grievance, or a portion thereof, be held in abeyance while the investigation is ongoing.
  - b. If the Union and the University agree in writing to put the grievance in abeyance, the University shall issue the Step 2 decision within fifteen (15) days from the end of abeyance and the grievance procedure shall continue per Article 6.
  - c. When the University issues the report, the abeyance shall automatically terminate, and a Step 2 written response to the grievance shall be issued

within fifteen (15) calendar days of the date on which the report of findings was issued.

- d. If the Union and the University do not agree in writing to put the grievance in abeyance, the grievance shall continue pursuant to Article 6.
- e. For sexual harassment cases only:
  - 1) The Title IX Officer, in coordination with the campus Case Management Team, shall make an immediate assessment concerning the health and safety of the individual and the campus community, may implement interim measures, in accordance with section C.2. above, and provide to the Complainant a written explanation of rights and reporting options (including the right to make reports to the police), and available campus and community resources. The local Labor Relations Office shall forward a copy of the written explanation and rights document to the Union.
  - 2) As soon as practicable after the local Labor Relations Office receives the grievance, the Title IX Officer will make an initial assessment to determine whether (i) the allegation(s) constitute a prima facie case of an act of prohibited behavior; and (ii) such conduct has a sufficient nexus to the University for it to intervene. It is the intent of the University to make this initial assessment no later than five (5) business days after the Title IX Officer receives the grievance.
  - 3) In the event that a formal investigation is conducted, the investigation shall be completed promptly, within 60 business days of its initiation, unless extended by the Title IX Officer for good cause followed by written notice to the Complainant and Respondent of the reason for the extension and the projected new timeline for issuance of the report of findings. The local Labor Relations Office shall forward a copy of the extension for good cause document to the Union.

#### 4. Remedies

- a. Remedies available to Postdoctoral Scholars may include, but are not limited to: change to a different workstation, schedule, work location, unit, department, or position for which the Postdoctoral Scholar is qualified provided that, in the case of the Complainant/Grievant, the change is voluntary and equitable; training and education of the Respondent; no contact remedies.
- b. The University shall implement appropriate remedies if a complaint and/or grievance is sustained, or as an alternative measure. Such remedies, shall ensure that the Postdoctoral Scholar continue training in an

environment free from harassment and/or discrimination based on a protected category.

5. Representation

The Postdoctoral Scholar (as a Complainant, Grievant, Respondent, or Witness) shall have the right to be represented by an advocate of their choice, including a Union representative, in the grievance, arbitration, and/or complaint process.

6. Training

Beginning in 2017, the Union and the University shall partner in developing a training module specifically tailored for Postdoctoral Scholars on the prevention of sexual harassment and other forms of discrimination.

**D.** The processes in Section C above are codified in a flow chart in Appendix H.

**E. LACTATION SUPPORT**

1. Where spaces exist for faculty or staff for the primary purpose of expressing breast milk, Postdoctoral Scholars shall have access to those spaces for the purpose of expressing and storing breast milk.
2. If no such space exists in reasonable proximity to a Postdoctoral Scholar's work location, the department will designate an appropriate temporary space, which is not open to the general public, for the purpose of expressing and storing breast milk.
3. The University will allow adequate time for a Postdoctoral Scholar to express breast milk.

**F. ALL-GENDER RESTROOMS**

1. The University and the Union recognize the importance of having safe and accessible campus restroom facilities.
2. The University will provide the Postdoctoral Scholar with the location of the nearest all-gender restroom.