

IOWA STATE UNIVERSITY

Office of Equal Opportunity

Discrimination and Harassment Prevention

What You Should Know

Office of Equal Opportunity
3350 Beardshear Hall
515-294-7612
eooffice@iastate.edu

Today's Agenda

- ❑ **Brief Overview of the Office of Equal Opportunity**
- ❑ **Discrimination and Harassment Overview**
- ❑ **Disability Discrimination and Harassment, ADA reasonable accommodation**
- ❑ **Religious Discrimination and Harassment, religious accommodation**
- ❑ **ISU Policies**
- ❑ **Complaint Resolution Process**
- ❑ **Review of Responsibilities**

Office of Equal Opportunity Overview

Compliance with Affirmative Action laws, non-discrimination laws, executive orders, regulations, and policies.

- Handling claims of discrimination and harassment
- Training and education
- Promotion and support of the University efforts toward achieving diversity and inclusion
- Diversity recruitment
- ADA Reasonable Accommodation and Religious Accommodation Compliance

Compliance

Office of Equal Opportunity provides technical assistance, investigation, and recommendations regarding the following policies:

- Discrimination and Harassment
- Affirmative Action
- Inclusive Language
- Open Searches

Title IX is Not Limited to Athletics

- Title IX prohibits all forms of discrimination on the basis of sex.
- Sexual harassment is considered to be a form of sex discrimination.
- Failure to effectively respond to harassment is considered “deliberate indifference,” and a violation of Title IX.

Title IX Compliance

The University has designated **Robinette Kelley**, Director of the Office of Equal Opportunity, as the Title IX Coordinator to ensure Title IX compliance for the entire campus.

Because sexual assault is considered to be a severe form of sexual harassment, an alleged victim may wish to file a sexual harassment complaint with the Title IX Coordinator.

The Title IX Coordinator is responsible for ensuring a non-discriminatory campus environment that is free from harassment.

Discrimination and Harassment: Applicable Laws

State and federal law prohibit **discrimination** and **harassment** based on a “**protected class**” in the workplace and in the educational environment.

Federal law defines protected classes as **sex (including pregnancy and related medical conditions)**, **race**, **color**, **religion**, **age (40 and over)**, **national origin**, **genetic information**, **disability**, and **veteran status** in the workplace and in education.

Iowa state law in addition to the federal protected classes includes **gender identity** and **sexual orientation**.

Discrimination

Discrimination is conduct that can include a broad spectrum of **disparate treatment** directed toward an individual or group of individuals **based on a protected class** that **adversely affects their employment or education.**

Harassment

Harassment is **unwelcome** conduct that is based on race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information. Harassment becomes unlawful where **1)** enduring the offensive conduct becomes a condition of continued employment, or **2)** the conduct is severe or pervasive enough to create a work or educational environment that a reasonable person would consider intimidating, hostile, or abusive.

Anti-discrimination laws also prohibit harassment against individuals in **retaliation** for filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or lawsuit; or opposing employment practices that they reasonably believe discriminate against individuals.

Examples of Discriminatory Conduct

- Negative personnel action (e.g., hiring, firing, promotions, discipline, evaluations) or academic action (e.g., grades, awards, recommendations, evaluations) against someone **because of their protected class**
- Treating someone different because of a serious medical condition
- Advertising a position as particularly wanting to hire a female (or male)
- Denying grant funding due to a protected class
- Grading harder because of a test accommodation
- Failing to provide an otherwise reasonable accommodation for disability or religious beliefs

Examples of Harassing Conduct

If unwelcome, the following acts may constitute harassment if based on a protected class:

- Taunts, threats, or intimidation due to protected status
- Written or electronic communications that are derogatory or threatening (i.e. via social media, email, or text messaging)
- Graffiti directed towards a protected group
- “Slang” or language that has taken on a derogatory or negative meaning against a protected group

Sexual Harassment Is

Any unwelcome sexual advance;

Request for sexual favors

OR

Verbal or physical conduct of a sexual nature that is severe or pervasive enough to create a hostile or intimidating work or educational environment.

Forms of Sexual Harassment

- Quid Pro Quo – actions by a supervisor, instructor or manager that condition the receipt of a benefit upon sex, or punish a person for not accepting sexual advances.
- Hostile Environment – actions by others that create an abusive work/academic environment. This can be verbal or non-verbal.

Examples of Quid Pro Quo Harassment

- Better work or educational conditions in exchange for a sexual relationship.
- Reduced or diminished work or educational conditions when a sexual relationship is refused.
- Using physical or psychological coercion to force a sexual relationship, or as retaliation for refusal.

Hostile Environment

- Can result from physical contact, verbal comments, non-verbal actions or a combination of these.
- Must reach a certain level of severity or pervasiveness to be considered sexual harassment.
- “Lower-level” conduct should be addressed before the pervasive standard is reached.

Hostile Environment: Physical Conduct

- Touching any part of another person's body – especially in a suggestive manner
- Back rubs, neck or shoulder “massages”
- Sexually suggestive or lewd gestures
- Cornering, trapping or blocking another's path
- Stalking or following another person
- Attempted or actual sexual assault

Hostile Environment: Verbal Comments

- Remarks about physical characteristics, appearance or attractiveness
- Remarks about sexual activity
- Sexual jokes, comments or innuendos
- Repeated requests for dates
- Propositions of any type

Hostile Environment: Non-Verbal Actions

- Displays with sexually explicit or graphic content
- Sexual letters, notes, emails, facebook postings
- Unwanted personal gifts or attention
- Obscene gestures, ogling, leering
- Exposing oneself

When is it Harassment?

Conduct will be considered sexual harassment when:

- 1) It is unwelcome to the recipient or observer (subjective standard); **AND**
- 2) A reasonable person would find the same conduct to create a hostile environment (objective standard).

FLIRTING VS. SEXUAL HARASSMENT

Flirting

- Flirting is welcome attention.
- Flirting goes both ways.
- Flirting makes you feel attractive.
- Flirting makes you feel in control.
- Flirting makes you feel good about yourself.
- Flirting is legal.

Sexual Harassment

- Sexual harassment makes us feel uncomfortable.
- Sexual harassment is one-sided.
- Sexual harassment feels degrading.
- Sexual harassment makes you feel powerless.
- Sexual harassment makes you feel bad about yourself.
- Sexual harassment is a violation of ISU policies AND is illegal.

Sexual Violence

- Sexual Violence is a form of **sexual harassment**.
- Sexual harassment including sexual violence, if perpetrated by a ISU student or employee, can affect the work or educational environment.
- Office for Civil Rights April 4, 2011 Dear Colleague Letter
 - Must be addressed effectively by the school or employer even if the victim refuses to pursue criminal charges.

Sexual Assault

- Sexual intercourse (vaginal, anal, oral)
- Oral sex
- Penetration of an orifice (anal, vaginal, oral) with the penis, finger, or other object
- Unwanted touching of the genitals, buttocks, breast, or other body parts
- Inducing consent through drugs or alcohol
- Engaging in sexual activity with a person who is unable to provide consent due to the influence of drugs alcohol, or other condition

Source: ISU Sexual Misconduct, Sexual Assault, and Sexual Harassment Involving Students Policy

Disability Discrimination

- Employees and students with real or perceived mental or physical disabilities have the right to be free from discrimination or harassment
- Qualified individuals (i.e., persons otherwise able to perform work or studies) with disabilities may request accommodations to enable them to work or continue their studies
- An accommodation:
 - Must be reasonable
 - Cannot cause undue hardship or fundamentally alter an academic program
- The accommodation process is interactive and requires communication from all parties

When is it a Reasonable Accommodation request?

An employee tells his supervisor, "I'm having trouble getting to work at my scheduled starting time because of medical treatments I'm undergoing."

This is a request for a reasonable accommodation.

When is it a Reasonable Accommodation request?

An employee who is required to stand to complete the duties of his position regularly becomes fatigued because of serious medical condition. The employee requests a stool to reduce fatigue.

This is a request for a reasonable accommodation.

When is it a Reasonable Accommodation request?

A student, who uses a wheelchair, informs the professor that his wheelchair cannot fit under the desk in class.

This is a request for a reasonable accommodation.

Documentation of Disability

- Documentation of the disability may be required in order to receive accommodations.
 - Students must contact Disability Resources and provide appropriate documentation.
 - Employees must contact their supervisor or Human Resource Services and provide documentation to initiate the accommodation process.
- Medical documentation is confidential.
- Complaints regarding a disability accommodation can be filed with the Office of Equal Opportunity

Religious Discrimination and Harassment

– Title VII of the Civil Rights Act

- Prohibits institutions from discriminating against individuals because of their religion in hiring, firing, and other terms and conditions of employment (including harassment).
- Requires institutions to reasonably accommodate the religious practices of an employee or prospective employee, unless to do so would create an undue hardship.

Definition of Religion

- The EEOC defines "religion" to include moral or ethical beliefs about right and wrong that are sincerely held with the strength of traditional religious views.
- Religious discrimination also includes discrimination against someone because s/he is an atheist.

Accommodating Religious Practices and Expression

Examples of religious accommodations employers may be required to provide:

- Leave for religious observances
- Providing time and/or place to pray
- Allowing the wearing of religious garb
- Permitting time-off during a mourning period for a deceased relative
- Accommodating certain hairstyles or grooming habits
- Honoring dietary requirements during meetings or training sessions where meals are served

Applicable ISU Policies

- Discrimination and Harassment Policy
 - Faculty Handbook (Faculty Conduct Policy)
 - Student Sexual Misconduct Policy
- Each policy identifies prohibited behavior, complaint resolution, and resources

**These policies can be found in the
ISU Policy Library**

<http://policy.iastate.edu/>

ISU Discrimination and Harassment Policy Objectives

ISU is committed to providing an education and work environment that is inclusive and free from all forms of discrimination, harassment, and retaliation.

ISU's Discrimination and Harassment Policy:

- Prohibits harassment, discrimination, and retaliation.
- Prevents harassment, discrimination, and retaliation.
- Promotes a University environment that is welcoming to all faculty, staff, students, and visitors.
- Stops inappropriate behavior before it progresses.

Who Must Follow University Policies

- University employees and students, must follow university policies
- Supervisors and/or University officials must follow and enforce University policies
 - University officials – supervisors, managers, administrators, and professors
 - Supervisors and University officials are accountable for harassment and discrimination which **they knew, or should have known about**

ISU Policy and Protected Classes

ISU Policy covers more protected classes than state or federal law:

- Race or color
- Ethnicity
- Sex
- Pregnancy
- Religion
- National origin
- Physical or mental disability
- Age
- Genetic information
- Marital status
- Sexual orientation
- Gender identity
- Status as a U.S. veteran

Who is Covered by the Policy?

- Everyone is covered under University Policy
- If the basis for the alleged discrimination and/or harassment is a protected class it is prohibited conduct, even if the people involved are among the same protected class
- Everyone is in a protected class

Harassment by Visitors, Contractors, or Hosts

There are often people on campus who are not employees or students . Similarly, our employees and students often visit other locations for their work and education.

Employees and students do not have to tolerate harassment under these circumstances simply because the person committing the behavior is not an employee or student.

ISU does not have the option of ignoring harassment or sexual harassment including sexual violence that impacts students and employees. The obligation is to the larger University community.

Complaint Resolution

ISU employees have two mechanisms for resolving complaints of harassment or discrimination: **Informal** (this is where a supervisor is likely to play a role) or **Formal** (typically handled by central administration).

Whichever process is used, it is important that University officials **do something** to respond to a concern of discrimination or harassment. When in doubt of what to do, contact the Office of Equal Opportunity.

Informal Complaint Resolution - Steps

Informal: a person may contact the supervisor with authority over the accused

- The supervisor should listen to the concern and explore resolution with the person who brought it forward and determine the desired outcome.
- The supervisor **must notify the Office of Equal Opportunity if he or she receives a complaint or concern**. This is not a breach of confidentiality – the Office of Equal Opportunity **must** be informed of the complaint.
- Supervisors **must consult** with the Office of Equal Opportunity on next steps and potential resolution.

Informal Complaint Resolution-Steps

- A supervisor shall not impose discipline against an accused person without first consulting with the appropriate office.
- Supervisors should attempt to resolve complaints within three weeks.
- The supervisor **must notify the Office of Equal Opportunity of the resolution to the complaint.**
- Reinforce/Reiterate the prohibition against **retaliation** to all parties.
- **Follow up** with the complainant.

Non - Specific Complaints

What if an employee tells a supervisor or the University of concerns about harassment and discrimination, but will not disclose names or specific facts.

Does the University have to proceed?

- Yes, to the extent possible. However, if necessary facts or circumstances are not shared there may be little that can be done to resolve the complaint.

Formal Complaint Resolution

Formal: a person may also file a formal complaint, which may result in an investigation and discipline.

The accused is notified of the complaint:

- In cases involving faculty, the **Faculty Conduct Policy** will guide the disciplinary process.
- In cases involving students, the **Student Code of Conduct** will guide the disciplinary process.
- In all other cases involving employees, Office of EO will follow procedures outlined in the **Discrimination and Harassment Policy**.

The Office of Equal Opportunity Complaint Process

- Confidential initial meeting (intake meeting)
- Determine whether investigation is warranted
- Interviews with third-party witnesses
- Interview with respondent
- Review of documentation/data analysis
- Resolution if appropriate
- Finding

Sexual Misconduct Policy (students)

- A policy that covers all forms of sexual misconduct involving students, including assault, sexual harassment, sexual exploitation, and sexual intimidation
- Policy provides for single point of contact to oversee victim's complaint
 - Dean of Students Office
 - Offers resources, information on filing complaints, confidentiality, advocates
- Supervisors cannot use informal resolution for complaints of sexual assault
- Policy prohibits retaliation (by accused or friends)

Sexual Misconduct Policy (students)

Employees' Responsibilities

- Make sure the student knows about the sexual assault resources available online and through the Dean of Students Office.
- Contact the Dean of Students Office to report the assault (even if you feel you cannot reveal the student's name).
- Read the sexual misconduct web resource for tips on how to handle a situation where you learn a student has been sexually assaulted.
- Know where to find the policy in the ISU Policy Library.

Confidential Resources

- Supervisors and university officials have a responsibility to address complaints of discrimination and harassment and to notify the Office of Equal Opportunity.
- The **Ombudsperson** can preserve confidentiality to the extent possible under the law – the ombudsperson is not an Office of Equal Opportunity employee or university official.
- The **Ombudsperson** is a neutral individual on campus who also helps interpret policies and discuss resolutions.

The Ombudsperson does not address or resolve complaints or concerns – the ombudsperson is a confidential resource only

Consensual Relationships

- Under ISU Policy, students and employees must avoid **conflicts of interest** that are created by engaging in an intimate relationship with someone if a reporting or evaluative relationship also exists.
- It is the responsibility of the supervisor (or coach, professor) to avoid or end the conflict of interest.
- Consensual relationships could be considered **sexual harassment** if the consent was coerced or pressured.
- Consensual relationships can also cause problems if others perceive favoritism, if the relationship causes a hostile environment for anyone else, or if the relationship ends but unwelcome conduct continues.

Retaliation

Retaliation is **prohibited** both by law and ISU policy.

Elements of Reprisal:

- Participation in the **complaint process** or opposition to a discriminatory employment practice
- Adverse action against complainant
- Causal connection between the protected activity and the adverse action

Harassment Prevention - Employees' Responsibilities

- Employees are expected to maintain an environment that is free from harassing activity.
- Keep your behavior professional.
- Follow ISU policy and know where to find the policy and resources.
- Don't mix personal and professional communications – cause for misinterpretations.
- Don't tolerate misbehavior by others – address it by letting someone know.
- Seek assistance promptly if you are the target of or observe behavior that you believe qualify as harassment.
- Do not invade another individual's personal space.
- Do not touch anyone without their permission.

If You Experience Harassment

Any employee who believes that he/she is victim of discrimination or unwelcome harassment can file a complaint about the situation as soon as possible.

➤ **Report conduct**

You may contact the Office of Equal Opportunity at 515-294-7612 or you may file a complaint at any point with the appropriate office or supervisor of the accused.

Additional Options for responding include (If you feel comfortable):

- Tell the harasser the conduct is unwelcome
- Keep a record of the conduct
- State that you will report the conduct if it continues

Supervisors' Responsibilities: Harassment-free environment

- Be proactive; monitor workplace behaviors
- Treat all complaints seriously and confidentially
- Respond immediately (consult with the Office of EO)
 - Take prompt, effective action when faced with concerns
 - Stop the current behavior, prevent future problems
- Advise against retaliation
- Report complaints to the Office of EO or applicable office
- Regularly distribute the Discrimination and Harassment Policy
- Do not engage in behavior that may be viewed as retaliatory or obstructive to the complaint process
- Document, document, document!

Supervisors' Responsibilities:

Harassment-free environment (cont.)

- Set example (supervisors and managers are role models) “walk the talk”
- Be accessible (have an “open door policy”)
- Communicate regularly with staff (reiterate policies in meetings)
- Enforce respect and civility in the workplace
- Be receptive and responsive to requests for accommodations
- Know where to find the policy and resources
- Expand recruitment efforts through outreach
- Maintain accurate Position Descriptions (use valid selection criteria)
- Use diverse interview panels in the hiring process

Thank You. We hope you find this resource helpful. For further information contact:

Office of Equal Opportunity

3350 Beardshear Hall

515-294-7612

eooffice@iastate.edu