

**SALEM STATE UNIVERSITY**

**POLICY AGAINST DISCRIMINATION,  
DISCRIMINATORY HARASSMENT, AND  
RETALIATION**

**EFFECTIVE JULY 1, 2007**

**IDENTIFICATION OF INSTITUTIONAL OFFICERS**

**FOR PURPOSES OF THESE PROCEDURES, CURRENT INSTITUTIONAL OFFICERS ARE AS FOLLOWS:**

**MR. KEVIN S. DOUGWILLO, DIRECTOR, HUMAN RESOURCES & EQUAL OPPORTUNITY**

**SALEM STATE UNIVERSITY**

# POLICY AGAINST DISCRIMINATION, DISCRIMINATORY HARASSMENT AND RETALIATION

## INTRODUCTION

A significant part of the mission of Salem State University is to educate, train and prepare our students to live and work in our increasingly global and diverse workforce. It is our commitment to take all possible steps to provide an inclusive and diverse learning, living, and work environment that values diversity and cultural tolerance and looks with disfavor on intolerance and bigotry. Any condition or force that impedes the fullest utilization of the human and intellectual resources available represents a force of destructive consequences for the development of our Commonwealth and ultimately, our nation.

## DEFINITIONS

For the purposes of this Policy, the following terms are defined as follows:

1. Protected Classes. Characteristics or groups of persons protected from discrimination by law, including:
  - a. Race. Discrimination laws do not contain a definition of “race,” but are interpreted to prohibit discrimination on the basis of ancestry or physical or cultural characteristics associated with a certain race, such as skin color, hair texture or styles, or certain facial features, and on the basis of stereotypes and assumptions about abilities, traits, or the performance of individuals of certain racial groups. All individuals, including persons of more than one race and the following racial classifications, are protected from discrimination:

Black: All persons having origins in any of the Black racial groups of Africa.

White (not of Hispanic origin): Persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.

Hispanic/Latino: All persons of Mexican, Puerto Rican, Cuban, Central, Latin or South American or other Spanish culture or origin, regardless of race.

Cape Verdean: All persons having origins in the Cape Verde Islands.

Asian or Pacific Islander: All persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent or the Pacific Islands, including, for example, the areas of China, India, Japan, Korea, the Philippine Islands and Samoa.

American Indian or Alaskan Native: All persons having origins in any of the original peoples of North America, and who maintain cultural identification through tribal affiliation or community recognition.

- b. Color. Variations in skin tone among persons of the same race.
- c. Religion. “Religion” and “creed” have the same or equivalent meaning: all religious and spiritual observances, practices, and sincerely held beliefs.
- d. National Origin. A “national origin group” or “ethnic group” is a group sharing a common language, culture, ancestry, and/or other similar social characteristics.
- e. Ethnicity. See National Origin.
- f. Persons of Color. Members of the following racial classifications: Black, American Indian/Native Alaskan, Asian/Pacific Islander, and Hispanic/Latino.
- g. Age. Persons 40 years of age or older.
- h. Disability. A person with a disability is one who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such impairment.
- i. Gender. A person’s sex, either male or female.
- j. Gender Identity. Gender identity is a term that covers a multitude of sexual identities including, but not limited to, transgender individuals, who are persons whose gender identity or gender presentation falls outside of stereotypical gender norms.
- k. Genetic Information. Any written, recorded individually identifiable result of a genetic test or explanation of such a result or family history pertaining to the presence, absence, variation, alteration, or modification of a human gene or genes.
- l. Sexual Orientation. Actual or perceived heterosexuality, homosexuality or bisexuality, either by orientation or by practice.
- m. Marital/Parental Status. A person’s status as single, married, parent or non-parent, where discrimination on these bases has disparately impacted those of different protected classes, including gender and sexual orientation.
- n. Vietnam Era Veteran Status. A person who served on active duty for a period of more than 180 days between Feb. 28, 1961, and May 7, 1975 in the republic of Vietnam or between Aug. 5, 1964, and May 7, 1975 in other regions, and who was not dishonorably discharged.

- o. Specially Disabled Veteran Status. A person entitled to disability compensation under law administered by the Veteran's Administration for disability rated at 30 percent or more, or a person whose discharge or release from active duty was for a disability incurred or aggravated in the line of duty.
- 2. Discrimination. An intentional or unintentional act that adversely affects employment and/or educational opportunities because of a person's membership in a protected class or association with a member(s) of a protected class. Discrimination may be classified as either disparate impact (the result of an employment policy, practice, or procedure that, in practical application, but in the absence of a legitimate business function, has less favorable consequences for a protected class than for the dominant group), or disparate treatment (employment practices, such as tests or educational requirements, that are fair and neutral on their face, but which are applied or administered in an unequal manner).

A single act of discrimination or discriminatory harassment may be based on more than one protected class status. For example, discrimination based on anti-Semitism may relate to religion, national origin, or both; discrimination against a pregnant woman might be based on sex, marital status, or both; discrimination against a transgender or transsexual individual might be based on sex or sexual orientation.

- 3. Discriminatory harassment. A form of unlawful discrimination including verbal and/or physical conduct based on legally protected characteristics and/or membership in a protected class that:
  - a. has the purpose or effect of creating an objectively intimidating, hostile or offensive work or educational environment;
  - b. has the purpose or effect of unreasonably interfering with an individual's work or learning performance; or
  - c. otherwise unreasonably adversely affects an individual's employment or educational opportunities.

For purposes of this Plan, speech or other expression constitutes harassment by personal vilification if it:

- a. is intended to insult or stigmatize an individual or a small number of individuals on the basis of their gender, race, color, disability, religion, creed, age, sexual orientation, gender identity, genetic information, national origin, marital or veteran status; and
- b. is addressed directly to the individual or individuals whom it insults or stigmatizes; and

- c. makes use of insulting or “fighting” words or non-verbal symbols.

In the context of discriminatory harassment by personal vilification, insulting or “fighting” words or non-verbal symbols are those that, by their very utterance, tend to incite to an immediate breach of the peace, and that are commonly understood to convey direct and visceral hatred or contempt for human beings on the basis of their gender, race, national origin, color, disability, religion, creed, age, sexual orientation, gender identity, genetic information, marital or veteran status.

For purposes of this Plan, conduct constitutes hostile environment harassment when it:

- a. is targeted against an individual(s) on the basis of his or her membership in a protected class;
- b. is not welcomed by the individual(s); and
- c. is sufficiently severe or pervasive that it alters the conditions of education or employment and creates an environment that a reasonable person would find intimidating, hostile or offensive.

The determination of whether an environment is “hostile” is based on the totality of the circumstances. These circumstances could include the frequency of the conduct, its severity, and whether it is threatening or humiliating. Simple teasing, offhand comments and isolated incidents (unless extremely serious) will not amount to hostile environment harassment under this Plan.

- 4. Retaliation. Taking adverse employment or educational action against a person who files claims, complaints or charges under these procedures, or under applicable local, state or federal statute, who is suspected of having filed such claims, complaints or charges, who has assisted or participated in an investigation or resolution of such claims, complaints or charges, or who has protested practices alleged to be violative of the non-discrimination policy of the University, the BHE, or local, state or federal regulation or statute. Retaliation, even in the absence of provable discrimination in the original complaint or charge, constitutes as serious a violation of this Plan as proved discrimination under the original claim, complaint or charge.

#### PROHIBITED CONDUCT

The Policy prohibits all conditions and all actions or omissions, including all acts of discrimination, discriminatory harassment and retaliation, which deny or have the effect of denying to any person their rights to equity and security on the basis of their membership in or association with a member(s) of any protected class. This policy reaffirms the values of civility, appreciation for racial/ethnic/cultural/religious pluralism

and pre-eminence of individual human dignity as preconditions to the achievement of an academic community, which recognizes and utilizes the resources of all people.

In order to promote an atmosphere in which diversity is valued and the worth of individuals is recognized, the University will distribute policy statements and conduct educational programs to combat discrimination, discriminatory harassment and retaliation.

The prohibited conduct contained in this Policy shall apply to and be enforced against all members of the University Community, including, but not limited to, faculty, librarians, administrators, staff, students, vendors, contractors and all others having dealings with the institution.

1. Examples of discrimination, all of which are prohibited by this policy, include, but are not limited to:
  - a. Differences in salaries or other benefits that are paid to one or more men or women if the differences are not based on a bona fide occupational qualification.
  - b. Differences in terms, conditions and privileges of employment (including, but not limited to hiring, promotion, reassignment, termination, salary, salary increases, discipline, granting of tenure, selection for awards, etc.) on a prohibited basis.
  - c. Unlawful disparity of treatment in educational programs and related support services on the basis of membership in a legally protected class.
  - d. Developing position descriptions or qualifications, which, without lawful justification, are so specific as to have a disparate exclusionary impact on a group of individuals because of their membership in a protected class.
  - e. Singling out, treating or causing to treat persons of one protected class differently from others because of assumptions about or stereotypes of the intellectual ability, interest, or aptitudes of persons of those aforementioned groups.
  - f. Limiting access to housing, or participation in athletic, social, cultural or other activities to students because of membership in a protected class not based on a bona fide requirement or distinction.
  - g. Failing or refusing to hire or promote a person because of their age.
  - h. Classifying a position or positions as unsuitable for persons of certain religions.

- i. Forcing employees or students to participate or not participate in a religious activity as a condition of their employment or education, or their participation in any university sponsored activity..
  - j. Excluding members of a certain race or national origin from a category of positions or from a department or division.
  - k. Restricting the number of Vietnam era veterans or qualified persons with disabilities in a category of positions or in a department or division.
  - l. Using information on marital or parental status for employment decisions where the use of such information has a disparate impact on persons of one gender or sexual orientation.
  - m. Advising students of similar interests and backgrounds differently because of their gender or gender identity.
  - n. Diverting a discussion of a student's or employee's work toward a discussion of his or her physical attributes or appearances.
  - o. Forcing female students to sit in the back of the class on the stereotyped assumption that each of them has a lower aptitude for learning that particular subject than male students.
  - p. Placing unreasonable expectations upon students of particular races or national origins on the basis of stereotyped assumptions that members of those protected classes have a better aptitude for certain academic subjects than students not of those races or national origins.
2. Examples of discriminatory harassment, all of which are prohibited by this policy, include, but are not limited to:
- a. Physically harassing another individual (or group of individuals) because of that person's or persons' membership in a protected class by assaulting, touching, patting, pinching, grabbing, staring, leering at them, making lewd gestures, invading their personal space, blocking their normal movement, or other physical interference.
  - b. Encouraging others to physically or verbally abuse an individual (or group of individuals) because of that person's or persons' membership in a protected class.
  - c. Threatening to harm an individual (or group of individuals) because of that person's or persons' membership in a protected class.
  - d. Directing epithets, slurs, derogatory comments, unwelcome jokes or stories at an individual (or group of individuals) because of that person's or persons' membership in a protected class.

- e. Displaying hostile, derogatory and/or intimidating symbols/objects, such as offensive posters, cartoons, bulletins, drawings, photographs, magazines, written articles or stories, screen savers, or electronic communications, to an individual (or group of individuals) because of that person's or persons' membership in a protected class.
3. Examples of retaliation, all of which are prohibited by this policy, include, but are not limited to:
- a. Terminating an employee for expressing an intent to file or for filing a charge of discrimination.
  - b. Refusing to hire an employee for the employee's pursuit of a discrimination charge against a former employer.
  - c. Denying a promotion to an employee for complaining to anyone about alleged discrimination or harassment.
  - d. Refusing tenure to a faculty member for filing a complaint of discrimination or harassment pursuant to the Discrimination Complaint Procedures.
  - e. Issuing an unjustified negative evaluation to an employee for testifying in a legal proceeding concerning a complaint of discrimination or harassment.
  - f. Assigning a student an unearned poor grade for requesting a reasonable course accommodation based on religion or disability.
  - g. Assigning a student an unearned failing grade for cooperating with an internal investigation of alleged discriminatory practices or a complaint of discrimination or harassment.
  - h. Refusing to admit a student for requesting a reasonable accommodation based on disability in the admission process.
  - i. Refusing to hire a job applicant for requesting a reasonable accommodation based on disability in the application process.

Members of the academic community should not assume that any of the forms of speech described above are protected by the principles of academic freedom or the First Amendment to the United States Constitution.

#### CONDUCT THAT IS NOT PROHIBITED

Salem State University is committed to protecting, maintaining and encouraging both freedom of expression and full academic freedom of inquiry, teaching, service, and research. Nothing in this policy shall be construed to penalize a member of the

University Community for expressing an opinion, theory, or idea in the process of responsible teaching and learning. Accordingly, any form of speech or conduct that is protected by the principles of academic freedom or the First Amendment to the United States Constitution is not subject to this policy.

#### INSTITUTIONAL COMPLAINT PROCEDURES

Salem State University has established specific internal complaint procedures to help resolve claims and complaints of discrimination, discriminatory harassment, and retaliation on its campuses. The University's Discrimination Complaint Procedures also serve as a system of review and resolution for both informal claims and formal complaints of discrimination, discriminatory harassment, and retaliation on any of the above-mentioned protected bases. Any applicant for employment or admission, any employee, and any other member of the University Community who believes that he or she has been a victim of discrimination in hiring, admission or employment may initiate an informal claim or formal complaint as outlined in the University's Discrimination Complaint Procedures. Likewise, any student who believes that he or she has been discriminated against may utilize the Discrimination Complaint Procedures.

Further advice or information may be obtained by contacting the Director of Human Resources & Equal Opportunity or the Associate Director & Equal Opportunity Coordinator.

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#### DUTY TO COOPERATE

Every faculty member, librarian, administrator, staff member and University employee has a duty to cooperate fully and unconditionally in an investigation conducted pursuant to the Discrimination Complaint Procedures, subject to the provisions of any relevant collective bargaining agreements. This duty includes, among other things, speaking with the Director of Human Resources & Equal Opportunity or the Associate Director & Equal Opportunity Coordinator or other investigator and voluntarily providing all documentation that relates to the claim being investigated. The failure and/or refusal of any employee to cooperate in an investigation may result in disciplinary action up to and including termination.

#### DUTY TO REPORT

No member of the University Community who receives a complaint of discrimination, discriminatory harassment or retaliation can ignore it; he or she should give to the person making the complaint as much assistance in bringing it to the attention of the Director or Director of Human Resources & Equal Opportunity or the Associate Director & Equal Opportunity Coordinator as is reasonably appropriate given his or her position at the University and relationship with the person making the complaint. Any trustee, administrator, department chair, program coordinator, manager or supervisor who receives a complaint of discrimination, discriminatory harassment or retaliation from a student or other member of the University Community is obligated to report the

complaint to the Director of Human Resources & Equal Opportunity or the Associate Director & Equal Opportunity Coordinator as soon as he or she becomes aware of it.

Similarly, all students, faculty, staff, administrators, and others having dealings with the institution are encouraged to report to the above persons any conduct of which they have direct knowledge and which they in good faith believe constitutes discrimination, discriminatory harassment or retaliation in violation of this Policy.

Any member of the University Community who has a question about his or her responsibilities under this policy should contact the Director of Human Resources & Equal Opportunity or the Associate Director & Equal Opportunity Coordinator.

#### FALSE CHARGES

Filing a false charge of unlawful discrimination, discriminatory harassment or retaliation is a serious offense. If an investigation reveals that a complainant knowingly filed false charges, the University may take appropriate actions and issue sanctions pursuant to other applicable University policies, including any applicable collective bargaining agreement. The imposition of such sanctions does not constitute retaliation under this Plan.