

THE UNIVERSITY OF TEXAS AT EL PASO

EQUAL OPPORTUNITY

It's Our Policy, It's the Law and It's YOUR Right!



EQUAL OPPORTUNITY OFFICE

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EQUAL OPPORTUNITY

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UTEP Policy

The University of Texas at El Paso (UTEP) is an Equal Opportunity/Affirmative Action employer. UTEP is committed to providing equal opportunity to all employees and individuals seeking employment or access to its programs, facilities or services, and will not discriminate against these persons because of race, color, national origin, genetic information, sex, religion, age, veteran's status, sexual orientation or disability. In addition to this commitment, the University will take affirmative steps to insure that applicants are employed, and employees are treated, during all aspects of employment, in a non-discriminatory manner.

What Is Equal Opportunity?

Equal Opportunity is the availability of the same chance, rights, access or consideration for all persons regardless of race, sex, national origin, disability, etc. This term generally applies to employment, but also to other areas, including education.

Everyone Has Rights

Whatever your role at UTEP, it is important to know that everyone on campus has rights.

- **Staff and faculty**
- **Student employees**
- **Students**
- **Applicants for employment and admission**
- **Participants in UTEP programs, activities or events**

Relevant Legislation

Members of the UTEP community are guaranteed equal opportunity and protected from discrimination and harassment, not only by UTEP policy, but also by state and federal law. Some of these laws include:

- **Texas Commission on Human Rights (TCHR) Act**
- **Title VII of the Civil Rights Act of 1964, as amended**
- **Americans with Disabilities Act Amendments Act (ADAAA) of 2008**

- Age Discrimination in Employment Act (ADEA) of 1967
- Equal Pay Act of 1963
- Title IX of the Education Amendments of 1972
- Title VI of the Civil Rights Act of 1964
- Section 504 of the Rehabilitation Act of 1973
- Age Discrimination Act of 1975

The Protected Classes

- Race
- Color
- National Origin
- Genetic Information
- Sex
- Age
- Disability
- Veteran Status
- Sexual Orientation*
- Religion

*Included in UTEP policy, although not recognized under federal/state law

What is Discrimination?

Discrimination is any different or unequal treatment. It is illegal when the difference in treatment is based on protected class. There are two types of discrimination:

- **Disparate Treatment** occurs when an employee or student or group of employees or students is/are treated differently than another based on protected class—race, color, national origin, genetic information, sex, religion, age, veteran status, sexual orientation or disability.

EXAMPLE: A supervisor monitors the attendance of male employees but not female employees.

- **Disparate Impact** occurs when a policy or practice, no matter what the intent, has an unequal impact on members of a protected class.

EXAMPLE: A position requires a high school diploma. This qualification unintentionally screens out members of certain minority groups who hold high school diplomas at a lower rate than non-minorities. There is no business necessity for requiring the high school diploma.

What Is Harassment?

Harassment is the result of persistently being tormented, troubled or badgered by repeated annoyances, threats, demands or other behavior or conduct. Harassment based on any of the **protected classes** is considered a form of discrimination and is prohibited by UTEP policy, and state and federal law.

SEXUAL HARASSMENT

UTEP Policy

UTEP condemns sexual harassment of or by its students, staff, and faculty. UTEP is committed to the principle that the learning and working environment of its students, employees and guests should be free from sexual harassment and inappropriate conduct of a sexual nature. Sexual misconduct and sexual harassment are unprofessional behaviors. Such conduct is prohibited as a matter of institutional policy and is subject to disciplinary action.

What is Sexual Harassment?

Sexual harassment is a form of sex discrimination and is illegal in employment under Title VII of the Civil Rights Act of 1964, as amended, and in education under Title IX of the Education Amendments of 1972.

Sexual harassment is defined as **unwelcome** sexual advances, requests for sexual favors, and other verbal or physical conduct of sexual nature when:

- The submission by an employee or student to such conduct is made either explicitly or implicitly a term or condition of employment or scholastic achievement;
- The submission to or rejection of such conduct by an employee or students used as the basis for employment or scholastic decision affecting that individual;

- Such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance or creating an intimidating, hostile, or offensive working or scholastic environment.

What is Sexual Misconduct?

Sexual misconduct includes unwelcome sexual advances, requests for sexual favors, or verbal or physical conduct of a sexual nature directed towards another individual that does not rise to the level of sexual harassment but is unprofessional and inappropriate for the workplace or classroom.

Unwelcomeness

Behavior or conduct must be unwelcome to be considered sexual harassment or misconduct, but unwelcome does not mean involuntary.

- A person may consent or agree to conduct and actively participate in it even though it is offensive or objectionable to him/her.
- Past submission to behavior does not negate a person's right to file a complaint.

IT'S ABOUT POWER

Sexual harassment often involves a power imbalance, where people use the power they have over others for their own personal gain or pleasure, and where the victim feels unable to reject the harassing behavior because it is coming from a person in authority.

What are the Types of Sexual Harassment?

Quid Pro Quo ("This for That") sexual harassment occurs when an employee or student is asked directly or indirectly to submit to a sexual advance in exchange for an employment or academic benefit. Submission or rejection of such advances is used as the basis for employment or academic decisions affecting the individual or is made a condition of employment or academic participation. This type of harassment generally requires a power imbalance, where the harasser is in a position to grant or deny benefits.

EXAMPLE: *Demanding sexual favors in exchange for a promotion, raise or grade or changing performance standards after an employee or student refuses requests for a date.*

Hostile Environment sexual harassment occurs when unwelcome sexual conduct unreasonably interferes with an individual's job or academic performance or creates a hostile, intimidating or offensive environment, regardless of whether the harassment results in economic or other tangible consequences. That is, the person may not lose pay, a promotion or grades.

EXAMPLE: *An employee or student is continually subjected at work or in a classroom to sexually suggestive jokes, comments, or innuendos about sex.*

Sexual Favoritism occurs when opportunities or benefits are granted to an individual based on his/her submission to sexual advances or requests for sexual favors, while other individuals are denied such benefits. Sexual favoritism in the workplace or classroom that negatively affects the opportunities of third parties may take the form of "quid pro quo" harassment and/or "hostile environment" harassment.

EXAMPLE: *An employee is involved in a relationship with a supervisor and is granted "perks" like a premium parking space and a modified work schedule. Other employees are denied similar opportunities.*

Examples of behavior that may be considered sexual harassment or misconduct include, but are not limited, to:

Verbal

- sexual innuendos, comments or sexual remarks about clothing, body, or sexual activities
- repeated sexually oriented kidding, teasing, joking, or flirting
- derogatory or demeaning comments about women or men in general
- suggestive or insulting sounds, including whistling
- offensive or crude language
- sexual propositions, invitations, repeated requests for dates or other pressures for sex

Non-Verbal

- Offensive or obscene looks, gestures or facial expressions
- Winking, blowing kisses, licking lips
- Looking a person up and down (“elevator eyes”), staring or leering
- Displaying sexually suggestive objects or pictures

Physical

- Patting, pinching, hugging, massaging, brushing up against the body, or any other unwelcome touching or feeling
- Attempted or actual kissing or fondling

Who Harasses/Gets Harassed?

- There are no boundaries - men and women can be victims of sexual harassment as well as harassers. Harassment can occur between people of the opposite sex or the same sex.
- The harasser can be the victim's supervisor or professor, a supervisor in another area, a co-worker or fellow student, or a non-employee or non-student.
- The victim does not have to be the person harassed but could be anyone affected by the offensive conduct. A third party may file a sexual harassment complaint.

IT'S ABOUT PERCEPTION

Remember that everyone has a different idea of what is uncomfortable or objectionable. You may think an employee or student is being too sensitive because he/she is offended by a joke or behavior that doesn't offend you. Everyone has a right to his/her feelings and you have a responsibility to immediately stop any offending behavior.

Consensual Relationships

Every consenting romantic and sexual relationship between a faculty member and a student or between supervisor and employee may potentially evolve into a sexual harassment case with serious implications, either from a subsequent change of attitude by the parties involved or a complaint from a disadvantaged third party.

It is UTEP's policy that the following romantic or sexual relationships are prohibited:

- between a faculty member and a student who is enrolled in the faculty member's course or who is otherwise under the supervision of the faculty member, or
- between a supervisor and a person under his or her supervision.

These relationships present the following problems:

- **Power imbalance**

Is the relationship really consensual when one of the parties has power over the other?

- **Conflict of interest**

Evaluations, grades, letters of recommendation, pay, promotions are at stake.

- **Favoritism**

Third parties may claim that they are not receiving the same advantages as the employee or student in the relationship.

- **Retaliation**

What happens if the relationship ends and both parties still have to continue the employment/academic relationship?



IT'S ABOUT THE IMPACT

If someone didn't intend to offend someone with a joke, comment or other behavior, then it isn't sexual harassment, right? **WRONG.** Sexual harassment is determined by the impact of the behavior and not by the intent.

REPORTING DISCRIMINATION AND HARASSMENT

UTEP encourages any person who believes that he or she has been subjected to discrimination or harassment to immediately report the incident to the Equal Opportunity (EO) Office, the appropriate supervisor of the accused employee, or when the accused individual is a student, to the Office of Student Life. In no case will a complainant be required to directly confront the person accused of misconduct, for example when the accused is the complainant's supervisor.

Any member of the University community who believes he or she has been subject to discrimination or harassment may utilize an informal resolution process or file a formal complaint.

- **Informal Resolution Process:** May include strategies for the individual to inform the offending party that his or her behavior is inappropriate and should stop; action by an appropriate University official to stop the inappropriate conduct, or mediation
- **Formal Complaint:** Includes complainant and respondent statements, interview of witnesses, a determination and recommendations for discipline (if applicable) or other action

The complete complaint procedure is published on the EO website www.utep.edu/eoaa and is also available in the EO Office.

(Please see the detachable complaint form located at the end of this booklet).

Why Don't People Report Discrimination and Harassment?

- Embarrassment
- Belief that the behavior will end if ignored
- Concern about being labeled a troublemaker
- Fear of being blamed for inviting the behavior or not being believed
- Fear of harmful rumors and loss of privacy
- Belief that nothing will be done if discrimination and harassment are reported
- Fear of retaliation

DON'T let these reasons stop you from reporting discrimination or harassment.

YOU Can Take Action

Don't accept discrimination and harassment as the "way things are." Ignoring discrimination and/or harassment will not make it go away. Indeed, it may make it worse because the offender may misinterpret no response as approval for the behavior.

- **Know Your Rights.** Discrimination and harassment based on a protected class is illegal. UTEP also has specific policies prohibiting such behavior.
- **Speak Up At The Time.** Say "NO," clearly and firmly. Tell the person that his/her advances or behavior are unwelcome/inappropriate and you want it stopped. Don't delay. If a person's behavior makes you uncomfortable, say so—set boundaries early. If you don't feel comfortable confronting the harasser yourself, get help.
- **Keep Records.** Note the dates, times, places, witnesses and the nature of the discriminatory or harassing behavior—what was said, the tone and how you responded.
- **Seek Advice.** To determine whether your situation is really discrimination or harassment, seek help—the earlier, the better. The campus office designated to assist with complaints is the Equal Opportunity (EO) Office located at Kelly Hall, 3rd floor, Room 302.

Retaliation

Retaliation is prohibited by UTEP policy and also is illegal. An employee or student who retaliates in any way against an individual who has brought a complaint pursuant to UTEP's Equal Opportunity or Sexual Harassment and Misconduct policies, or an individual, who has participated in an investigation of such a complaint, is subject to disciplinary action, including dismissal. A complainant or participant in an investigation is protected from retaliation, regardless of the outcome of the underlying complaint. Retaliation complaints should be reported immediately to the EO Office.

Confidentiality

Complaints and information obtained during an investigation will be kept confidential to the extent permitted by law. Information gathered will be used solely in the investigation of the complaint and such information will be maintained in the EO Office or Office of Student Life, as appropriate. Relevant information will be provided only to those persons who need to know in order to achieve a timely resolution of the complaint. Participants in a complaint investigation, including the complainant, respondent and witnesses are expected to maintain confidentiality during and after an investigation.

It's Everyone's Responsibility to Ensure a Harassment and Discrimination Free Environment

You have the right to:

- work and learn in an environment that is free from discrimination and harassment;
- Address or report conduct that you believe is inappropriate or in violation of policy, whether it is happening to you or to someone else.

Be Responsible

- Immediately stop any behavior if you're in doubt that it may be interpreted as discriminatory and/or harassing.
- Be proactive—speak up if behavior is offensive or inappropriate—set boundaries early.
- Report conduct that is in violation of UTEP policy.
- Act in a professional manner at all times.

Supervisors and University administrators have additional responsibilities.

They must:

- set the bar high for appropriate workplace/academic conduct
- make decisions in accordance with equal opportunity law and UTEP policy

- respond **immediately** if they know or suspect possible discrimination, harassment or any inappropriate behavior
- contact the EO Office for guidance in addressing situations



IT'S ABOUT RESPECT

Being sensitive to each other's differences and respectful of everyone's right to feel comfortable at work and school can help eliminate discrimination and harassment.

ACCOMMODATIONS FOR INDIVIDUALS WITH DISABILITIES

UTEP Policy

The University is committed to providing reasonable accommodation to students, employees, applicants for employment or admission, and other beneficiaries with documented disabilities, in order to provide them with equal opportunities to participate in UTEP programs, services, and activities. Employees may request a workplace accommodation by contacting the EO Office. Students may request an academic accommodation by contacting the Disabled Student Services Office.

EQUAL OPPORTUNITY (EO) OFFICE

The EO Office promotes equal access and opportunity on campus by insuring that UTEP, in the administration of its policies and practices, does not discriminate against employees, applicants for employment, students or beneficiaries of its programs, activities or services, in employment or in the provision of services.

We are your campus resource regarding issues related to equal opportunity, discrimination, sexual harassment, accommodation under the Americans with Disabilities Act Amendments Act (ADAAA) of 2008 and affirmative action. Contact us with your questions or to schedule a customized training.

- Copies of the complete University policies on Equal Opportunity/Non-discrimination, Sexual Misconduct and Harassment and Accommodations for Individuals with Disabilities are available from the Equal Opportunity Office, or on our website at www.utep.edu/eoaa.
 - Inquiries regarding Title IX should be referred to the Title IX Coordinator, Equal Opportunity Office.
 - Inquiries regarding the Americans with Disabilities Act Amendments Act of 2008 (ADAAA) and workplace accommodation should be referred to the ADA/Section 504 Coordinator, Equal Opportunity Office.
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Equal Opportunity Office

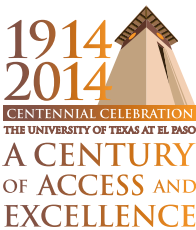
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