



# Discrimination Policy and Review Procedure

## POLICIES AND GUIDELINES

Discrimination on the basis of race, color, sex, gender identity, sexual orientation, religion, creed, national origin, age, ancestry, veteran status, disability unrelated to job requirements, genetic information, military service, pregnancy, or any other legally protected basis is unlawful and intolerable to the University. There is a separate University-wide Sexual and Gender-Based Harassment Policy and Procedures to address incidents related to sex, including sexual harassment and sexual violence, which is a form of sexual harassment; and gender-based harassment, including harassment based on sex (but not of a sexual nature), sex-stereotyping, sexual orientation, and/or gender identity. Visit <http://titleix.harvard.edu/> for additional information.

Any employee who feels that they are a victim of discrimination is encouraged to seek assistance through the internal Informal Problem-Solving or the Formal Complaint processes described below. It should be noted that these processes may not be appropriate in every circumstance. Therefore, the processes should be considered flexible and modified as appropriate to the situation.

### 1. Scope of Policy

This policy applies to all terms and conditions of employment.

### 2. Timeframes

The designated University officers may impose reasonable timeframes on all parties to allow the timely completion of the Informal Problem-Solving and/or Formal Complaint Process. Timeframes for all phases of each process apply to all parties equally.

### 3. Informal Problem-Solving

Any employee who feels that they are a victim of discrimination is encouraged to discuss the matter with their supervisor or local human resources officer. Through such discussions, a satisfactory resolution to the problem may be developed. The supervisor or local human resources officer will seek to complete the Informal Problem-Solving process ordinarily within two to three weeks after receipt of the request. The resolution, if reached, will be documented in writing and will include both the underlying allegation(s) and the terms of the agreed upon resolution.

At any point prior to such resolution, the employee who initiated the request for Informal Problem-Solving may withdraw the request and initiate a formal complaint under Section 4 of these procedures, Formal Complaint Process.

### 4. Formal Complaint Process

#### A. How to File a Complaint

In cases when an Informal Problem-Solving does not yield a satisfactory resolution or in cases where the employee does not wish to make use of an Informal Problem-Solving process, the employee should first make use of any discrimination complaint process at their School or

### Non-Retaliation

This policy and the law prohibit retaliation against individuals who raise issues of potential discrimination or who participate in an investigation of any claim of discrimination. See full [Non-Retaliation Policy](#).

administrative unit. In the absence of such a mechanism, the employee may submit a complaint of discrimination in writing to the local human resource officer. In certain circumstances, the local human resource officer may name a designee who or that has appropriate expertise to conduct fact-finding.<sup>1</sup>

The designated University officer(s) will seek to complete the Formal Complaint Process within 90 calendar days after receipt of the complaint, absent special circumstances, such as a request for additional fact-finding or an appeal, as described in further detail below.

## **B. Fact-Finding**

The human resource officer or designee will gather information from the employee bringing the complaint (“complainant”), the person against whom the complaint has been made (“the respondent”), and others, if appropriate. Both parties will have an equal opportunity: to submit the names of witnesses and any relevant information for review; and to review the information upon which the human resource officer or designee may rely in making their findings and recommendations. In situations where the respondent is a member of a collective bargaining unit and requests a union representative, in accordance with a union member’s right to request representation during investigatory interviews that may reasonably lead to discipline, the complainant may bring a union representative to any interviews with the human resource officer or designee.

At the conclusion of investigation, the human resource officer or designee will make preliminary findings of fact, applying a preponderance of the evidence standard, and determine based on those findings whether there was a violation of this policy. Generally within 45 calendar days of receipt of the complaint, the human resource officer or designee will provide the complainant and respondent with a written draft of the preliminary findings of fact and analysis and will give both parties one week to submit a written response to the draft. The human resource officer or designee will consider any written responses before finalizing these sections of the report and will send the preliminary report to: the appropriate dean or vice president, or their designee; the complainant; and the respondent. (In administrative units that do not report to a dean or vice president, the local human resource officer, in conjunction with the unit director, may select a designee from within the University community.) The human resource officer or designee generally will issue the preliminary report within 60 calendar days of the complaint.

## **C. Consideration of Findings and Determination**

The dean, vice president, or designee, will determine whether to adopt the preliminary findings and analysis made by the human resource officer or designee or to request additional fact-finding. If the dean, vice president, or designee determines additional fact-finding is required, they will make that request to the human resource officer or designee generally within 14 calendar days of receiving the preliminary report. If such additional fact-finding is requested, both parties may submit to the human resource officer or designee any pertinent additional information not available at the time of the initial fact-finding. The human resource officer or designee will submit a revised report incorporating these additional findings of fact to the dean, vice president, or designee generally within 21 calendar days of the request for additional fact-finding.

The dean, vice president, or designee will issue a decision determining the resolution of the matter within 30 calendar days of the receipt of the final report.

If a policy violation is found, the decision will include recommended corrective measures (e.g., training, coaching, or other measures, as appropriate) to be taken by the unit(s) to eliminate any discrimination, prevent its recurrence, and address its effects.

The imposition of any disciplinary measures is addressed separately from the written decision, in consultation with Human Resources and the individual’s supervisor, as appropriate, and consistent with the “Performance Correction Process” in the University Staff Personnel Manual

(for non-bargaining unit staff), the applicable collective bargaining agreement (for bargaining unit staff), or other locally established disciplinary policy or practices. The determination of whether to impose disciplinary measures, and if so, the type and scope of the measures, is informed by the findings that resulted from the Formal Complaint Process.

#### **D. Special Circumstances: Request for Informal Problem-Solving After a Formal Complaint has Been Filed**

Once a formal complaint has been filed and before the findings and determination have been provided to the parties, a party may request Informal Problem-Solving as an alternative to formal resolution of the complaint, but that disposition requires agreement of the parties and the approval of the dean, vice president, or designee.

If such a request is approved, the timeframes will be stayed, and the dean, vice president, or designee will take such steps as they deem appropriate to assist in reaching a resolution. If the parties cannot reach an informal resolution within two weeks from receipt of the request, then the Formal Complaint Process will resume.

#### **E. Appeal**

If the resolution resulting from this Formal Complaint Process is not satisfactory to the complainant or the other party, each may submit to the Vice President for Human Resources (Vice President) or designee a written request for appeal of the decision at the University level within 7 calendar days of receiving the decision. This request must detail the reason(s) the employee disputes the decision and may include the following grounds for appeal:

- i) A procedural error occurred, which may change the outcome of the decision; or
- ii) The appellant has substantive and relevant new information that was not available at the time of investigation and that may change the outcome of the decision.

Disagreement with the findings or determination is not, by itself, a ground for appeal.

The Vice President will send copies of the request for appeal to the local human resource officer, to the appropriate dean or vice president or their designee, and to the other party.

The Vice President or designee will review the request for appeal for timeliness and compliance with the procedures set forth in this policy.

The Vice President or designee will consider the issues raised in the request for appeal and make a determination, which may include adopting or reversing the decision below, directing that the investigation be re-opened, or any other appropriate action. At the conclusion of this review, the Vice President or designee will prepare a statement of outcome regarding the appeal request, to be shared with the parties and the appropriate officer in the parties' respective unit(s), seeking to complete any appeal generally within 30 calendar days after receipt of the request for appeal.

### **5. Conflict of Interest**

In situations where the employee raises a matter which names the University official(s) who are designated as facilitating or overseeing any stage in the Informal Problem-Solving or Formal Complaint Processes, an appropriate designee will assume those responsibilities in place of the named University official(s).

<sup>1</sup> If, after conducting the initial review of a formal complaint, the human resource officer or designee finds that the allegations, if true, would not constitute a violation of this policy, then the human resource officer or designee may administratively close the complaint and notify the person bringing the complaint, who may request reconsideration within one week, if there is substantive and relevant new evidence that was not previously available and further that may change the outcome of the decision. The human resource officer or designee ordinarily would make a determination on a request for reconsideration within one week from the request. In cases where the human resource officer or designee concludes that the alleged conduct, while not a violation of this policy, might implicate other School or University conduct policies, the human resource officer or designee may refer the complaint to the appropriate School or University official.

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