

ELIZABETH CITY STATE UNIVERSITY
Unlawful Workplace Harassment Policy and Prevention Plan

Preamble

The State of North Carolina established a policy that prohibits unlawful workplace harassment or retaliation of State employees, and requires that every agency/university subject to the State Personnel Act establish policies and programs to ensure that work sites are free from unlawful workplace harassment. This plan is applicable to all employees regardless of the type of appointment. Applicants are not covered by the State statute Senate Bill 78 (SB78), but are covered under other State and Federal Civil Rights Acts including Title VII, the Americans with Disabilities Act (ADA), the Age Discrimination in Employment Act (ADEA), and the Genetic Information Nondiscrimination Act (GINA) of 2008. To the extent that any provision of this policy conflicts with the Office of State Personnel (OSP) policy on Unlawful Workplace Harassment, the OSP version shall control.

1. Policy Statement

It is the policy of Elizabeth City State University (ECSU) that no employee may engage in speech or conduct that is defined as unlawful workplace harassment as indicated below. Current and former employees are guaranteed the right to work in an environment free from unlawful workplace harassment and retaliation.

2. Definitions

Under this policy, the following terms are defined accordingly:

A. Unlawful Workplace Harassment

Unlawful workplace harassment is unwelcome or unsolicited speech or conduct based upon race, sex, creed, religion, national origin, age, genetic information, color or handicapping condition as defined by G.S. 168A-3 that creates a hostile work environment or circumstances involving quid pro quo.

B. Hostile Work Environment

Hostile Work Environment is one that both a reasonable person would find hostile or abusive and one that the particular person who is the object of the harassment perceives to be hostile or abusive. Hostile work environment is determined by looking at all of the circumstances, including the frequency of the allegedly harassing conduct, its severity,

whether it is physically threatening or humiliating, and whether it unreasonably interferes with an employee's work performance.

C. Quid Pro Quo

Quid Pro Quo harassment consists of unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, or (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual.

D. Retaliation

Retaliation is adverse treatment which occurs because of opposition to unlawful workplace harassment.

- E.** Sexual harassment does not include personal compliments welcomed by the recipient, or social interaction or relationships freely entered into by employees or prospective employees.
- F.** The U. S. Supreme Court recently held "that nothing in Title VII necessarily bars a claim of discrimination 'because of...sex' merely because the grievant and the alleged harasser "are of the same sex".
- G.** Hostile includes offensive, aggressive, antagonistic, belligerent, and/or contentious behavior involving unlawful workplace harassment based on age, sex, race, color, national origin, religion, creed, genetic information or handicapping condition as defined by G.S. 168A-3. A hostile work environment is determined by looking at the following:
 - 1. whether the environment is objectively offensive in the eyes of a reasonable person,
 - 2. whether the environment is subjectively offensive in the eyes of the person who is the object of the alleged harassment, and
 - 3. the nature of the alleged hostility.
- H.** Conduct towards an outside vendor or contractor that would constitute unlawful workplace harassment toward an employee could constitute unacceptable personal conduct.
- I.** Examples of quid pro quo unlawful workplace harassment include:
 - 1. A supervisor promises an employee a promotion if the employee acquiesces to sexual advances.

2. A supervisor begins each staff meeting with a prayer session conducted by a Christian minister. A Jewish employee refuses to participate in the prayer session and is terminated because of this refusal.

3. Covered Employees

Under this policy, the following covered employees are defined accordingly:

A. Full-Time or Part-Time (Half-Time or More)

Employees who are full-time or part-time in a permanent, probationary, trainee, or time-limited position are covered under this policy.

B. Temporary, Intermittent or Part-Time (Less than Half-Time)

Employees who are temporary, intermittent, or work less than half-time are covered under this policy.

C. EPA Employees

EPA employees are covered under this policy.

D. Former Employees

Any former employee of ECSU is covered under this policy.

4. Grievance Procedure and Appeals

Any former employee, full-time or part-time employee with either a permanent, probationary, trainee, time-limited permanent or temporary appointment who feels that he/she has been unlawfully harassed in the workplace shall follow the procedure below:

- A.** The grievant must submit a written complaint within thirty (30) calendar days of the alleged harassing action to the ECSU Equal Employment Opportunity (EEO) Officer.
- B.** ECSU shall respond with appropriate remedial action within sixty (60) calendar days from receipt of the written complaint unless the sixty (60) day period has been waived and the grievant has acknowledged such waiver. The waiver and acknowledgement shall be in writing.

A prompt and impartial investigation will be made of all cases alleging unlawful workplace harassment based on presented facts surrounding the misconduct. Any internal interference, coercion, restraint, retaliation, or reprisal of any person complaining of unlawful workplace is prohibited. The totality of the circumstances will be reviewed to determine whether the alleged conduct constitutes unlawful workplace harassment.

- C. ECSU shall provide a written response to the grievant when the university has determined what action, if any, will result from the grievant's written complaint.
- D. After the sixty (60) calendar day (or less, if waived) response period has expired, the grievant may appeal directly to the Office of Administrative Hearings (OAH) within thirty (30) calendar days if not satisfied with ECSU's response to the complaint.
- E. A grievant has a right to file a simultaneous complaint under Title VII with the Equal Employment Opportunity Commission (EEOC).
- F. An individual with a grievance concerning a denial of employment, promotion, training, or transfer, or concerning a demotion, layoff, transfer or termination due to discrimination based on age, sex, race, color, national origin, retaliation, creed, genetic information, political affiliation or handicapping condition as defined by G.S. 168A-3, or a grievance based on retaliation for opposition to alleged discrimination may still appeal directly to the OAH. Grievances based on genetic information can only be appealed directly to the EEOC.
- G. An employee who alleges unlawful workplace harassment and elects to utilize the grievance procedure and appeals in this section shall have the right to bypass any step involving review or decision by the alleged harasser.

5. Reporting

- A. ECSU shall maintain and report unlawful workplace harassment complaints through established grievance reporting provided by OSP.
- B. If an unlawful workplace harassment complaint is settled between the grievant and ECSU, the university shall report to the State Personnel Commission (SPC) what disciplinary action and/or remedial action, if any, was taken. Disciplinary action, if appropriate, can be up to and including dismissal.
- C. The SPC may order OSP to conduct an investigation into the sufficiency of ECSU's actions in any unlawful workplace harassment complaint. OSP will report to SPC the conclusion(s) of the investigation and, if appropriate, may then report OSP's findings with regard to the disciplinary action and/or remedial action to the Chancellor.

6. Prevention

- A.** ECSU has a policy statement that is included in the EEO Plan establishing that unlawful workplace harassment or retaliation against employees is prohibited.

B. Dissemination

The EEO Officer, will ensure that the Unlawful Workplace Harassment Policy and Prevention Plan is disseminated to all employees through training and posting on the new employee orientation webpage, the ECSU Human Resources webpage and the ECSU Policy Manual.

C. Training

ECSU will offer a training program for supervisors and employees designed by OSP.

1. Training for supervisors will include the State's policy, ECSU's policy, grievance procedures, illegal discrimination, corrective steps, appropriate disciplinary actions, retaliation, and the state and federal laws which govern unlawful workplace harassment.
2. Training for employees will include the State's policy, ECSU's policy, employees' rights, grievance procedures, state and federal laws, disciplinary action, discrimination and retaliation.

D. Discipline

ECSU will exercise careful measures to ensure that appropriate disciplinary actions taken by supervisors are consistent and fairly applied. The Disciplinary Action Procedures for SPA Employees (200.2.3) will be followed for SPA employees. The 'Discharge for Cause' section in the Senior Academic and Administrative Officers Policy (200.3.8) or the Employees Exempt from the State Personnel Act Policy (200.3.4) will be followed for EPA employees.

E. Counseling

Counseling will be provided through the university's Employees' Assistance Program for victims of unlawful workplace harassment who experience work related problems such as absenteeism, low productivity, inefficiency, physiological problems, and stress.

7. Responsibilities

The Chancellor has the responsibility of ensuring that the Unlawful Workplace Harassment Policy and Prevention Plan is followed by supervisors. The ECSU EEO Officer will be assigned the responsibility of coordinating program activities.

A. Responsibilities of the EEO Officer

1. Review the policy and make revisions, if applicable;
2. disseminate and communicate the policy to new and existing employees;
3. schedule workshops;
4. develop methods to evaluate program activities;
5. coordinate related activities;
6. investigate and obtain any additional information of cases alleging unlawful workplace harassment needed to complete documentation of the file;
7. advise as appropriate and necessary all parties involved in cases alleging unlawful workplace harassment to include supervisor, grievant, and alleged harasser;
8. monitor procedures and disciplinary action of all alleged cases;
9. serve as a resource person to all employees and;
10. report unlawful workplace harassment complaints to OSP.

B. Responsibilities of the Supervisor

1. Administer the policy;
2. prevent and correct any identifiable discrimination and/or unlawful workplace harassment;
3. counsel employees, when appropriate, to prevent and correct unlawful workplace harassment;
4. create and maintain a work environment free of unlawful workplace harassment; and;
5. maintain a work environment free of unlawful workplace harassment and retaliation.

C. Responsibilities of the Employee

1. Adhere to the policy of ECSU;
2. report illegal discrimination and unlawful workplace harassment and;
3. maintain a work environment free of unlawful workplace harassment and retaliation.