



Susan Carlson
Vice Provost, Academic Personnel and Programs

OFFICE OF THE PRESIDENT
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Dwaine B. Duckett
Vice President for Human Resources

November 1, 2016

CHANCELLORS
ACADEMIC COUNCIL CHAIR CHALFANT
DIRECTOR WITHERELL
VICE PRESIDENT HUMISTON

**RE: Systemwide Review of Draft Revised Presidential Policy
Nondiscrimination and Affirmative Action Policy Regarding Academic and Staff Employment**

Dear Colleagues:

We are writing to request review of the enclosed proposed draft of the revised Presidential Policy on Nondiscrimination and Affirmative Action Regarding Academic and Staff Employment. Proposed revisions are intended to address the Office of Federal Contract Compliance Programs' (OFCCP) Pay Transparency Rule as well as amendments to the California Fair Employment and Housing Act (FEHA). A working group at the UC Office of the President, composed of representatives from Human Resources, Academic Personnel and Programs, and the Office of General Counsel, in consultation with Affirmative Action staff, have drafted the required revisions to the Policy, which are enclosed for review and comment. The proposed changes to the policy that are prompted by the new state and federal requirements are described below.

Fair Employment and Housing Act (FEHA). New requirements under FEHA include:

- *Employer's Duty to Prevent and Correct Discriminatory and Harassing Conduct (2 CCR § 11023)*: California employers must develop and distribute anti-harassment and discrimination policies with certain required elements and create formal complaint processes to address employee concerns.
- *Protections for Unpaid Interns and Volunteers (2 CCR § 11009, 11019)*: California state law (AB 1443, which amended Government Code §12940) prohibits employers from engaging in discrimination and harassment against individuals applying for or engaged in positions as "volunteers, unpaid interns, and trainees" on account of specified characteristics. Proposed policy revisions are included in Section I, Policy Summary; Section II, Definitions; and Section III, Policy Text.

OFCCP, 41 CFR 60-1.35(c). The new Pay Transparency Rule prohibits contractors and subcontractors from discharging or otherwise discriminating against their employees and job applicants for discussing, disclosing, or inquiring about compensation. However, employees who have access to the compensation information of other employees or applicants as part of their essential job functions cannot disclose the pay of other employees or applicants to individuals who do not have access to compensation information, unless the disclosure is in response to a formal complaint or charge, in furtherance of an investigation, or consistent with the contractor's legal duty to furnish information. Proposed policy revisions are included in Section III, Policy Text.

Proposed policy revisions are included in Section II, Definitions; Section III, Policy Text; and Section V, Required Procedures. The Presidential Policy directs each location to develop local procedures to implement the new FEHA requirements (see Section V, Required Procedures).

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In addition to the new legal requirements, the Policy has been revised to include language describing free speech and academic freedom protections (see Section III, Policy Text). This language has already been approved for the Presidential Policy on Sexual Violence and Sexual Harassment (see Section III.E at <http://policy.ucop.edu/doc/4000385/SVSH>).

Each of us has enclosed a second letter addressed to colleagues in our specific community in Human Resources or Academic Personnel. Please send comments on the proposed revisions to Policy as directed in that letter.

Sincerely,



Susan Carlson
Vice Provost, Academic Personnel and Programs



Dwaine B. Duckett
Vice President for Human Resources

cc: President Napolitano
Provost and Executive Vice President Dorr
Executive Vice Chancellors/Provosts
Executive Vice President and Chief Financial Officer Brostrom
Executive Vice President and Chief Operating Officer Nava
Senior Vice President Vacca
Vice President Ellis
Vice President Humiston
Vice Provost Gullatt
General Counsel and Vice President Robinson
Deputy General Counsel Woodall
Vice Chancellors/Vice Provosts of Academic Affairs/Academic Personnel
Vice Chancellors of Administration
Academic Personnel Directors
Chief Human Resources Officers
Affirmative Action Officers
Chief of Staff Grossman
Deputy Compliance Officer Lane
Senior Counsel Chin
Senior Counsel Reed
Executive Director Baptista
Executive Director Larsen
Interim Executive Director Lee
Executive Director Salvo
Executive Director Schlimgen
Director Chester
Director Hairston
Director Henderson
Director Lockwood
Director Simon
Manager Donnelly
Manager Smith
Academic HR Manager Jordan
Human Resources Analyst Bello
Policy Specialist Norris

University of California ~~Policy~~ – Nondiscrimination, Harassment, and Affirmative Action in the Workplace~~Policy~~



Nondiscrimination, Harassment, and Affirmative Action in the Workplace~~Policy Regarding Academic and Staff Employment~~

<u>Responsible Academic Affairs Officer:</u>	Vice Provost – Academic Personnel <u>and Programs</u>
<u>Responsible Academic Affairs Office:</u>	APP – Academic Personnel <u>and Programs</u>
<u>Responsible Human Resources Staff Officer:</u>	VP – Human Resources
<u>Responsible Staff Human Resources Office:</u>	HR – Human Resources
Issuance Date:	TBD
Effective Date:	TBD
<u>Last Review Date:</u>	TBD
Scope:	This policy applies to all University applicants and employees, <u>and where stated in policy, to unpaid interns, volunteers, participants in a training program leading to employment and independent contractors.</u>
Contact:	<u>Academic</u> Janet Lockwood (APP)
Title:	<u>Staff</u> Charles Barragan/Abigail Norris
Email:	Director, Academic Policy and Compensation (HR)
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	(510) 987-9499

I. POLICY SUMMARY

The University of California is committed to providing a workplace free of discrimination and harassment. It is the policy of the University prohibits not to engage in discrimination against or harassment of any person employed; or seeking employment; providing services pursuant to a contract; or applying for or engaged in

an unpaid internship, volunteer capacity, or training program leading to employment with the University of California. In addition, ~~it is the policy of the University to~~ undertakes affirmative action, consistent with its obligations as a ~~f~~Federal contractor.

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II. DEFINITIONS

~~**Covered Veterans:** Includes veterans with disabilities, recently separated veterans, Vietnam era veterans, veterans who served on active duty in the U.S. Military, Ground, Naval or Air Service during a war or in a campaign or expedition for which a campaign badge has been authorized, or Armed Forces service medal veterans.~~

~~**Discrimination:** An adverse employment action, based on the categories identified in Section III.A of this policy.~~

Exception to Policy: An action that exceeds what is allowable under current policy or that is not expressly provided for under policy. Any such action must be treated as an exception.

~~**Executive Officer:** The University President, Chancellor, ~~or~~ Laboratory Director, ~~or~~ Vice President–Agriculture and Natural Resources.~~

Gender: The sex of a person, including a person’s gender identity, and gender expression.

Gender Expression: A person’s gender-related appearance and behavior whether or not stereotypically associated with the person’s assigned sex at birth.

Gender Identity: An individual’s personal sense of himself/herself as being male and masculine or female and feminine, or ambivalent.

~~**Harassment:** Unwelcome conduct on any of the bases identified in Section III.A of this policy, including verbal, nonverbal, or physical conduct, that explicitly or implicitly affects a person’s employment, interferes with a person’s work performance, or creates an environment such that a reasonable person would find the conduct intimidating, hostile, or offensive.~~

Pregnancy: Includes pregnancy, childbirth, and medical conditions related to pregnancy and childbirth.

~~**Protected Veteran:** A veteran who is protected under the non-discrimination and affirmative action provisions of the Vietnam Era Veterans’ Readjustment Assistance Act of 1974, as amended; specifically, a veteran who may be classified as a “disabled veteran,” recently separated veteran,” “active duty wartime or campaign badge veteran,” or an “Armed Forces service medal veteran,” as defined by 41 CFR 60-300.2.~~

Service in the Uniformed Services: Includes service in the uniformed services as defined by the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), as well as state military and naval service.

~~**Top Business Officer:** Executive Vice President–Chief Operating Officer for the Office of the President, Vice Chancellor Administration, or the position responsible for the location’s financial reporting and payroll as designated by the Executive Officer.~~

~~**Unpaid Intern:** An individual who is engaged in unpaid activities that are an extension of the individual’s educational experience.~~

~~**Volunteer:** An individual who performs hours of service for a public agency for civic, charitable, or humanitarian reasons, without promise, expectation or receipt of compensation for services rendered.~~

III. POLICY TEXT

A. General

~~It is the policy of the University prohibits not to engage in discrimination against or harassment of any person employed; ~~or seeking employment; providing services pursuant to a contract; or applying for or engaged in an unpaid internship, volunteer capacity, or training program leading to employment~~ with the University of California on the basis of race, color, national origin, religion, sex, gender identity, gender expression, pregnancy, physical or mental disability, medical condition (cancer-related or genetic characteristics), ~~genetic information (including family medical history), ancestry, marital status, age, sexual orientation, citizenship, or service in the uniformed services.~~ This policy applies to all employment practices, including recruitment, selection, promotion, transfer, merit increase, salary, training and development, demotion, and separation.~~

This policy applies to incidents of workplace discrimination or harassment involving members of the University community, including faculty and other academic appointees, staff, student employees, residents, interns, and non-student or non-employee participants in University programs (e.g. vendors, contractors, visitors, and patients). If the harassment is sexual in nature, please see the University’s Sexual Violence and Sexual Harassment (SVSH) policy. If help is needed, local SVSH resource information can be found at <http://sexualviolence.universityofcalifornia.edu/get-help/index.html>.

This policy is intended to be consistent with the provisions of applicable state and federal laws and University policies.

B. Complaints

Individuals who believe they have been subjected to discrimination, harassment, or retaliation are encouraged to submit complaints through their local Human Resources office, Affirmative Action/Equal Employment Opportunity officers, or the University Whistleblower Hotline (800-403-4744).

When the University receives an allegation of discrimination or harassment, it will conduct a fair, timely, and thorough investigation that provides all parties appropriate due process and reaches reasonable conclusions based on the evidence collected. If the investigation finds discrimination or harassment, the Affirmative Action/Equal Employment Opportunity office, in consultation with the appropriate administrators, will take appropriate remedial measures.

C. Privacy

The University will protect the privacy of individuals involved in a report of discrimination or harassment to the extent permitted by law and by University policy and procedures. However, it should be recognized that an investigation may involve interviews with a number of persons to inquire if they have relevant evidence, and sensitive information may be gathered. While such information is considered confidential, University policy may also require the disclosure of certain information during or following an investigation.

D. Retaliation

University policy also prohibits retaliation against any person employed; or person seeking employment; providing services pursuant to a contract; or applying for or engaged in an unpaid internship, volunteer capacity, or training program leading to employment with the University of California; for bringing a complaint of discrimination or harassment pursuant to this policy. This policy also prohibits retaliation against a person who assists someone with a complaint of discrimination or harassment, or participates in any manner in an investigation or resolution of a complaint of discrimination or harassment.—Retaliation includes threats, intimidation, reprisals, and/or adverse actions related to employment.

E. Affirmative Action

In addition, it is the policy of the University to undertake affirmative action, consistent with its obligations as a fFederal contractor, for minorities and women, for persons with disabilities, and for protected covered-veterans. The University commits itself to apply every good faith effort to achieve prompt and full utilization of minorities and women in all segments of its workforce where deficiencies exist. These efforts conform to all current legal and regulatory requirements, and are consistent with University standards of quality and excellence.

In conformance with fFederal regulations, written affirmative action plans mustshall be prepared and maintained by each campus of the University, by the Lawrence Berkeley National Laboratory, by the Office of the President, and by the Division of Agriculture and Natural Resources.—Such plans mustshall be reviewed and approved by the Office of the President and the Office of the General Counsel before they are officially promulgated.

F. Free Speech and Academic Freedom

The faculty and other academic appointees, staff, and students of the University of California enjoy significant free speech protections guaranteed by the First Amendment

of the United States Constitution and Article I, Section I of the California Constitution. This policy is intended to protect members of the University community from discrimination, not to regulate protected speech. This policy shall be implemented in a manner that recognizes the importance of rights to freedom of speech and expression.

The University also has a compelling interest in free inquiry and the collective search for knowledge and thus recognizes principles of academic freedom as a special area of protected speech. Consistent with these principles, no provision of this policy shall be interpreted to prohibit conduct that is legitimately related to the course content, teaching methods, scholarship, or public commentary of an individual faculty member or the educational, political, artistic, or literary expression of students in classrooms and public forums (see APM - 010, Academic Freedom and APM - 015, The Faculty Code of Conduct.)

However, freedom of speech and academic freedom are not limitless and do not protect speech or expressive conduct that violates federal or state anti-discrimination laws.

G. Pay Transparency

The University of California will not discharge or in any other manner discriminate against employees or applicants because they have inquired about, discussed, or disclosed their own pay or the pay of another employee or applicant. However, employees who have access to the compensation information of other employees or applicants as a part of their essential job functions cannot disclose the pay of other employees or applicants to individuals who do not otherwise have access to compensation information, unless the disclosure is (a) in response to a formal complaint or charge, (b) in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or (c) consistent with the University's legal duty to furnish information.

IV. COMPLIANCE / RESPONSIBILITIES

A. Implementation of the Policy

The Vice Provost – Academic Personnel and the Vice President – Human Resources are the Responsible Officers for this policy and have the authority to implement the policy. A Responsible Officer may apply appropriate interpretations to clarify the policy provided that the interpretations do not result in substantive changes to the underlying policy. The Chancellor is authorized to establish and is responsible for local procedures necessary to implement the policy. In accordance with *Personnel Policies for Staff Members 1 (General Provisions)*, AUC Provost and Executive Vice President for Academic Affairs, Executive Officers (the University President, Chancellor, Lawrence Berkeley National Laboratory Director, or Vice President of Agriculture and Natural Resources) and their designees, have the authority to develop procedures and supplementary information to support the implementation of this policy. Responsible Officers (Vice Provost, Academic Personnel and Programs and Vice President of

University of California Policy – Nondiscrimination, Harassment and Affirmative Action in the Workplace
~~Policy~~
~~Nondiscrimination and Affirmative Action Policy Regarding Academic and Staff Employment~~

Human Resources) will apply appropriate and consistent interpretations of this policy that are consistent with the policy.

The Executive Officer, or their designee, at each location, must establish and implement local procedures consistent with this policy. Exceptions to local procedures required by the policy must be approved by the Executive Officer or designee.

B. Revisions to the Policy

The President is the Policy Approver and has the authority to approve policy revisions upon recommendation by the ~~Responsible Officers~~Vice President–Human Resources.

The Vice Provost, ~~—Academic Personnel and Programs~~ and the Vice President–Human Resources have the authority to initiate revisions to the policy, consistent with approval authorities and applicable Bylaws and Standing Orders of the Regents.

The UC Provost and Executive Vice President for Academic Affairs and the Executive Vice President–Chief Operating Officer–Business Operations ~~has~~has the authority to ensure that ~~the policies are~~ is regularly reviewed, updated, and consistent with other governance policies.

C. Approval of Actions

Actions within this policy must be approved in accordance with local procedures. ~~Chancellors and the Vice President–Human Resources are authorized to determine responsibilities and authorities at secondary administrative levels in order to establish local procedures necessary to implement this policy.~~

D. Compliance with the Policy

~~The following roles are designated at each location to implement compliance monitoring responsibility for this policy:~~

~~The Top Business Officer and/or the Executive Officer at each location will designate the local management office to be responsible for the ongoing reporting of policy compliance.~~

~~The Executive Officer is accountable for monitoring and enforcing compliance mechanisms and ensuring that monitoring procedures and reporting capabilities are established.~~

~~The Vice President–Human Resources is accountable for reviewing the administration of this policy. The Senior Vice President–Chief Compliance and Audit Officer will periodically audit and monitor compliance to this policy.~~

The Executive Officer at each location will designate the local management office that is responsible for monitoring, enforcing, and reporting policy compliance. The Senior Vice President – Chief Compliance and Audit Officer will periodically audit and monitor compliance with the policy.

E. Additional Enforcement Information

The U.S. Equal Employment Opportunity Commission (EEOC), the Office of Federal Contract Compliance Programs (OFCCP), and the California Department of Fair Employment and Housing (DFEH) investigate reports of unlawful discrimination and harassment in employment. These agencies may serve as fact finders and attempt to facilitate the voluntary resolution of disputes. For more information, contact the nearest office of the EEOC, OFCCP, or DFEH.

F. Noncompliance with the Policy

~~Noncompliance with this policy is handled in accordance with *Personnel Policies for Staff Members 61, 62, 63, 64, 65, and 67* pertaining to disciplinary and separation matters, and~~ in accordance with University policies, including but not limited to, the Faculty Code of Conduct (APM – 015) and University Policy on Faculty Conduct and the Administration of Discipline (APM – 016), Non-Senate Academic Appointees/Corrective Action and Dismissal (APM – 150), *Personnel Policies for Staff Members 61, 62, 63, and 64* or, as applicable, collective bargaining agreements.

V. REQUIRED PROCEDURES

~~N/A~~ Local procedures must include the following elements:

A. Supervisor Responsibilities

Supervisors must report complaints of discrimination or harassment to a designated representative at each location so that the claim may be resolved internally if possible.

B. Complaint Process

Complaints will receive:

1. a timely response and closure;
2. impartial and timely investigations by qualified personnel;
3. documentation and tracking for reasonable progress; and
4. appropriate options for remedial actions and resolutions.

VI. RELATED INFORMATION

- *The Uniformed Services Employment and Reemployment Rights Act (USERRA)* (referenced in Section II of this policy)
- *Sexual Violence and Sexual Harassment* (referenced in Section III.A of this policy)
- *Academic Personnel Policy Section 010, Academic Freedom (APM - 010)*~~*Academic Personnel Manual Section 010, Academic Freedom*~~ (referenced in Section III.F of this policy)

- [Academic Personnel Policy Manual Section 015 \(APM - 015\), The Faculty Code of Conduct](#) (referenced in Sections III.F and IV.F of this policy)
- [Academic Personnel Policy Manual Section 016 \(APM - 016\), University Policy on Faculty Conduct and the Administration of Discipline](#) (referenced in Section IV.F of this policy)
- [Academic Personnel Policy Manual Section 035 \(APM - 035\), Affirmative Action and Nondiscrimination in Employment](#)
- [Personnel Policies for Staff Members 61, 62, 63, and 64](#) (referenced in Section IV.F of this policy)
- [Academic Personnel Manual Section 150 \(APM - 150\), Non-Senate Academic Appointees/Corrective Action and Dismissal](#) (referenced in Section IV.F of this policy)

VII. FREQUENTLY ASKED QUESTIONS

[N/A](#)

VIII. REVISION HISTORY

[Changes effective as of TBD:](#)

- [Deleted definition of “Covered Veteran” and added definition of “Protected Veteran” to comply with the Vietnam Era Veterans Readjustment Assistance Act, as amended \(VEVRAA\) \(41 CFR 60-300\)](#)
- [Updated for compliance with California Fair Employment and Housing Act regulations regarding Harassment and Discrimination Prevention and Correction \(2 CCR § 11023\)](#)
- [Updated for compliance with California Assembly Bill 1443, which extends nondiscrimination and non-harassment protections to volunteers, unpaid interns, and trainees \(2 CCR § 11009, 11019\)](#)
- [Added pay transparency language required by the Office of Federal Contract Compliance Programs \(41 CFR 60-1.35\(c\)\)](#)
- [Reformatted Policy Statement with subsections](#)
- [Added reference to the University’s Sexual Violence and Sexual Harassment policy in Section III.A](#)
- [Added information on Privacy in Section III.C and Free Speech and Academic Freedom in Section III.F](#)

University of California [Policy – Nondiscrimination, Harassment and Affirmative Action in the Workplace](#)
~~Nondiscrimination and Affirmative Action Policy Regarding Academic and Staff Employment~~

This policy was reformatted into the standard University of California policy template effective July 31, 2013.

Policy changes effective as of July 31, 2013:

- New language, in compliance with California Assembly Bill 887.
- Addition of gender and gender expression to the policy text.
- Addition of a definition of gender, gender expression, and gender identity.

As a result of the issuance of this policy, the following policy is rescinded as of the effective date of this policy and is no longer applicable:

- ~~[University of California Nondiscrimination and Affirmative Action Policy Regarding Academic and Staff Employment, dated July 3, 2013](#)~~

The following policies have been rescinded and are no longer applicable:

- ~~[University of California Nondiscrimination and Affirmative Action Policy Regarding Academic and Staff Employment, dated June 24, 2010](#)~~
- ~~[University of California Nondiscrimination and Affirmative Action Policy Regarding Academic and Staff Employment, dated January 1, 2004](#)~~



Nondiscrimination, Harassment, and Affirmative Action in the Workplace

Responsible Academic Affairs Officer:	Vice Provost – Academic Personnel and Programs
Responsible Academic Affairs Office:	APP – Academic Personnel and Programs
Responsible Human Resources Officer:	VP – Human Resources
Responsible Human Resources Office:	HR – Human Resources
Issuance Date:	TBD
Effective Date:	TBD
Last Review Date:	TBD
Scope:	This policy applies to all University applicants and employees, and where stated in policy, to unpaid interns, volunteers, participants in a training program leading to employment and independent contractors.

	Academic	Staff
Contact:	Janet Lockwood (APP)	Abigail Norris (HR)
Title:	Director, Academic Policy and Compensation	Policy Specialist
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Phone #:	(510) 987-9499	(510) 987-0612

I. POLICY SUMMARY

The University of California is committed to providing a workplace free of discrimination and harassment. The University prohibits discrimination against or harassment of any person employed; seeking employment; providing services pursuant to a contract; or applying for or engaged in an unpaid internship, volunteer capacity, or training program leading to employment with the University of California.

In addition, the University undertakes affirmative action, consistent with its obligations as a federal contractor.

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II. DEFINITIONS

Discrimination: An adverse employment action, based on the categories identified in Section III.A of this policy.

Exception to Policy: An action that exceeds what is allowable under current policy or that is not expressly provided for under policy. Any such action must be treated as an exception.

Executive Officer: The University President, Chancellor, Laboratory Director, or Vice President–Agriculture and Natural Resources.

Gender: The sex of a person, including a person’s gender identity, and gender expression.

Gender Expression: A person’s gender-related appearance and behavior whether or not stereotypically associated with the person’s assigned sex at birth.

Gender Identity: An individual’s personal sense of himself/herself as being male and masculine or female and feminine, or ambivalent.

Harassment: Unwelcome conduct on any of the bases identified in Section III.A of this policy, including verbal, nonverbal, or physical conduct, that explicitly or implicitly affects a person’s employment, interferes with a person’s work performance, or creates an environment such that a reasonable person would find the conduct intimidating, hostile, or offensive.

Pregnancy: Includes pregnancy, childbirth, and medical conditions related to pregnancy and childbirth.

Protected Veteran: A veteran who is protected under the non-discrimination and affirmative action provisions of the Vietnam Era Veterans’ Readjustment Assistance Act of 1974, as amended; specifically, a veteran who may be classified as a “disabled veteran,” recently separated veteran,” “active duty wartime or campaign badge veteran,” or an “Armed Forces service medal veteran,” as defined by 41 CFR 60-300.2.

Service in the Uniformed Services: Includes service in the uniformed services as defined by the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), as well as state military and naval service.

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Volunteer: An individual who performs hours of service for a public agency for civic, charitable, or humanitarian reasons, without promise, expectation or receipt of compensation for services rendered.

III. POLICY TEXT

A. General

The University prohibits discrimination against or harassment of any person employed; seeking employment; providing services pursuant to a contract; or applying for or engaged in an unpaid internship, volunteer capacity, or training program leading to employment with the University of California on the basis of race, color, national origin, religion, sex, gender identity, gender expression, pregnancy, physical or mental disability, medical condition (cancer-related or genetic characteristics), genetic information (including family medical history), ancestry, marital status, age, sexual orientation, citizenship, or service in the uniformed services. This policy applies to all employment practices, including recruitment, selection, promotion, transfer, merit increase, salary, training and development, demotion, and separation.

This policy applies to incidents of workplace discrimination or harassment involving members of the University community, including faculty and other academic appointees, staff, student employees, residents, interns, and non-student or non-employee participants in University programs (e.g. vendors, contractors, visitors, and patients). If the harassment is sexual in nature, please see the University's [Sexual Violence and Sexual Harassment \(SVSH\) policy](#). If help is needed, local SVSH resource information can be found at <http://sexualviolence.universityofcalifornia.edu/get-help/index.html> .

This policy is intended to be consistent with the provisions of applicable state and federal laws and University policies.

B. Complaints

Individuals who believe they have been subjected to discrimination, harassment, or retaliation are encouraged to submit complaints through their local Human Resources office, [Affirmative Action/Equal Employment Opportunity officers](#), or the University [Whistleblower Hotline](#) (800-403-4744).

When the University receives an allegation of discrimination or harassment, it will conduct a fair, timely, and thorough investigation that provides all parties appropriate due process and reaches reasonable conclusions based on the evidence collected. If the investigation finds discrimination or harassment, the Affirmative Action/Equal Employment Opportunity office, in consultation with the appropriate administrators, will take appropriate remedial measures.

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D. Retaliation

University policy also prohibits retaliation against any person employed; seeking employment; providing services pursuant to a contract; or applying for or engaged in an unpaid internship, volunteer capacity, or training program leading to employment with the University of California; for bringing a complaint of discrimination or harassment pursuant to this policy. This policy also prohibits retaliation against a person who assists someone with a complaint of discrimination or harassment, or participates in any manner in an investigation or resolution of a complaint of discrimination or harassment. Retaliation includes threats, intimidation, reprisals, and/or adverse actions related to employment.

E. Affirmative Action

In addition, it is the policy of the University to undertake affirmative action, consistent with its obligations as a federal contractor, for minorities and women, for persons with disabilities, and for protected veterans. The University commits itself to apply every good faith effort to achieve prompt and full utilization of minorities and women in all segments of its workforce where deficiencies exist. These efforts conform to all current legal and regulatory requirements, and are consistent with University standards of quality and excellence.

In conformance with federal regulations, written affirmative action plans must be prepared and maintained by each campus of the University, by the Lawrence Berkeley National Laboratory, by the Office of the President, and by the Division of Agriculture and Natural Resources. Such plans must be reviewed and approved by the Office of the President and the Office of the General Counsel before they are officially promulgated.

F. Free Speech and Academic Freedom

The faculty and other academic appointees, staff, and students of the University of California enjoy significant free speech protections guaranteed by the First Amendment of the United States Constitution and Article I, Section I of the California Constitution. This policy is intended to protect members of the University community from discrimination, not to regulate protected speech. This policy shall be implemented in a manner that recognizes the importance of rights to freedom of speech and expression.

The University also has a compelling interest in free inquiry and the collective search for knowledge and thus recognizes principles of academic freedom as a special area of protected speech. Consistent with these principles, no provision of this policy shall be interpreted to prohibit conduct that is legitimately related to the course content, teaching methods, scholarship, or public commentary of an individual faculty member or the educational, political, artistic, or literary expression of students in classrooms and public forums (see [APM - 010](#), Academic Freedom and [APM - 015](#), The Faculty Code of Conduct.)

However, freedom of speech and academic freedom are not limitless and do not protect speech or expressive conduct that violates federal or state anti-discrimination laws.

G. Pay Transparency

The University of California will not discharge or in any other manner discriminate against employees or applicants because they have inquired about, discussed, or disclosed their own pay or the pay of another employee or applicant. However, employees who have access to the compensation information of other employees or applicants as a part of their essential job functions cannot disclose the pay of other employees or applicants to individuals who do not otherwise have access to compensation information, unless the disclosure is (a) in response to a formal complaint or charge, (b) in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or (c) consistent with the University's legal duty to furnish information.

IV. COMPLIANCE / RESPONSIBILITIES

A. Implementation of the Policy

Executive Officers (the University President, Chancellor, Lawrence Berkeley National Laboratory Director, or Vice President of Agriculture and Natural Resources) and their designees, have the authority to develop procedures and supplementary information to support the implementation of this policy. Responsible Officers (Vice Provost, Academic Personnel and Programs and Vice President of Human Resources) will apply appropriate and consistent interpretations of this policy that are consistent with the policy.

The Executive Officer, or their designee, at each location, must establish and implement local procedures consistent with this policy. Exceptions to local procedures required by the policy must be approved by the Executive Officer or designee.

B. Revisions to the Policy

The President is the Policy Approver and has the authority to approve policy revisions upon recommendation by the Responsible Officers.

The Vice Provost, Academic Personnel and Programs and the Vice President–Human Resources have the authority to initiate revisions to the policy, consistent with approval authorities and applicable Bylaws and Standing Orders of the Regents.

The UC Provost and Executive Vice President for Academic Affairs and the Executive Vice President–Chief Operating Officer have the authority to ensure that the policy is regularly reviewed, updated, and consistent with other governance policies.

C. Approval of Actions

Actions within this policy must be approved in accordance with local procedures.

D. Compliance with the Policy

The Executive Officer at each location will designate the local management office that is responsible for monitoring, enforcing, and reporting policy compliance. The Senior

Vice President – Chief Compliance and Audit Officer will periodically audit and monitor compliance with the policy.

E. Additional Enforcement Information

The U.S. Equal Employment Opportunity Commission (EEOC), the Office of Federal Contract Compliance Programs (OFCCP), and the California Department of Fair Employment and Housing (DFEH) investigate reports of unlawful discrimination and harassment in employment. These agencies may serve as fact finders and attempt to facilitate the voluntary resolution of disputes. For more information, contact the nearest office of the EEOC, OFCCP, or DFEH.

F. Noncompliance with the Policy

Noncompliance with this policy is handled in accordance with University policies, including but not limited to, the [Faculty Code of Conduct \(APM – 015\)](#) and [University Policy on Faculty Conduct and the Administration of Discipline \(APM – 016\)](#), [Non-Senate Academic Appointees/Corrective Action and Dismissal \(APM – 150\)](#), [Personnel Policies for Staff Members 61, 62, 63, and 64](#) or, as applicable, [collective bargaining agreements](#).

V. REQUIRED PROCEDURES

Local procedures must include the following elements:

A. Supervisor Responsibilities

Supervisors must report complaints of discrimination or harassment to a designated representative at each location so that the claim may be resolved internally if possible.

B. Complaint Process

Complaints will receive:

1. a timely response and closure;
2. impartial and timely investigations by qualified personnel;
3. documentation and tracking for reasonable progress; and
4. appropriate options for remedial actions and resolutions.

VI. RELATED INFORMATION

- [The Uniformed Services Employment and Reemployment Rights Act \(USERRA\)](#) (referenced in Section II of this policy)
- [Sexual Violence and Sexual Harassment](#) (referenced in Section III.A of this policy)
- [Academic Personnel Policy Section 010, Academic Freedom \(APM - 010\)](#)(referenced in Section III.F of this policy)

- [Academic Personnel Policy Section 015 \(APM - 015\), The Faculty Code of Conduct](#) (referenced in Sections III.F and IV.F of this policy)
- [Academic Personnel Policy Section 016 \(APM - 016\), University Policy on Faculty Conduct and the Administration of Discipline](#) (referenced in Section IV.F of this policy)
- [Academic Personnel Policy Section 035 \(APM - 035\), Affirmative Action and Nondiscrimination in Employment](#)
- *Personnel Policies for Staff Members* [61](#), [62](#), [63](#), and [64](#) (referenced in Section IV.F of this policy)
- [Academic Personnel Section 150 \(APM - 150\), Non-Senate Academic Appointees/Corrective Action and Dismissal](#) (referenced in Section IV.F of this policy)

VII. FREQUENTLY ASKED QUESTIONS

N/A

VIII. REVISION HISTORY

Changes effective as of TBD:

- Deleted definition of “Covered Veteran” and added definition of “Protected Veteran” to comply with the Vietnam Era Veterans Readjustment Assistance Act, as amended (VEVRAA) (41 CFR 60-300)
- Updated for compliance with California Fair Employment and Housing Act regulations regarding Harassment and Discrimination Prevention and Correction (2 CCR § 11023)
- Updated for compliance with California Assembly Bill 1443, which extends nondiscrimination and non-harassment protections to volunteers, unpaid interns, and trainees (2 CCR § 11009, 11019)
- Added pay transparency language required by the Office of Federal Contract Compliance Programs (41 CFR 60-1.35(c))
- Reformatted Policy Statement with subsections
- Added reference to the University’s Sexual Violence and Sexual Harassment policy in Section III.A
- Added information on Privacy in Section III.C and Free Speech and Academic Freedom in Section III.F

This policy was reformatted into the standard University of California policy template effective July 3, 2013.

Policy changes effective as of July 3, 2013:

- New language, in compliance with California Assembly Bill 887
- Addition of gender and gender expression to the policy text
- Addition of a definition of gender, gender expression, and gender identity

As a result of the issuance of this policy, the following policy is rescinded as of the effective date of this policy and is no longer applicable:

- *University of California Nondiscrimination and Affirmative Action Policy Regarding Academic and Staff Employment*, dated July 3, 2013

The following policies have been rescinded and are no longer applicable:

- *University of California Nondiscrimination and Affirmative Action Policy Regarding Academic and Staff Employment*, dated June 24, 2010
- *University of California Nondiscrimination and Affirmative Action Policy Regarding Academic and Staff Employment*, dated January 1, 2004



OFFICE OF THE VICE PROVOST --
ACADEMIC PERSONNEL AND PROGRAMS

OFFICE OF THE PRESIDENT
1111 Franklin Street, 11th Floor
Oakland, California 94607-5200

November 1, 2016

CHANCELLORS
ACADEMIC COUNCIL CHAIR CHALFANT
DIRECTOR WITHERELL
VICE PRESIDENT HUMISTON

RE: Systemwide Review of:

- **Proposed Revised Presidential Policy on Nondiscrimination and Affirmative Action Regarding Academic and Staff Employment;**
- **Academic Personnel Policy Section 015, The Faculty Code of Conduct (APM - 015)**

Dear Colleagues:

Enclosed for Systemwide Review are proposed revisions to Presidential Policy on Nondiscrimination and Affirmative Action Regarding Academic and Staff Employment and Academic Personnel Policy Section 015, The Faculty Code of Conduct (APM - 015). Proposed changes to the Presidential Policy reflect recent amendments to the California Fair Employment and Housing Act (FEHA) and the Office of Federal Contract Compliance Programs' (OFCCP) pay transparency rule. Also enclosed is a letter from Vice President Duckett and me describing the rationale for the proposed revisions affecting faculty, other academic appointees, and staff.

Proposed changes to APM - 015 add the California FEHA-related protections to existing language regarding non-discrimination and anti-harassment under Title VII of the Civil Rights Act. Please note that these technical revisions are proposed in addition to those already circulated for Systemwide Review on September 21, 2016. The September 21, 2016 proposed revisions are related to allegations of misconduct involving sexual violence or sexual harassment as recommended by the Joint Committee of the Administration and Academic Senate in its July 31, 2016 Report to President Napolitano. We are circulating two sets of revisions this fall so that we may submit a new draft APM - 015 to The Regents for the required Regents' approval only once this academic year, as early as the March 2017 Meeting. The September 21, 2016 proposed revisions can be found here: <http://ucop.edu/academic-personnel-programs/academic-personnel-policy/policies-under-review/apm-015-016.html>.

A proposed revision of Academic Personnel Policy Section 035, Affirmative Action and Nondiscrimination in Employment (APM - 035), which contains many of the same provisions included in the Presidential Policy, will be circulated for academic review after the Presidential Policy revision process is completed.

Comments on the Presidential Policy and APM - 015 from Academic Council Chair Chalfant and academic administrators should be submitted directly to ADV-VPCARLSON-SA@ucop.edu. Comments on the Presidential Policy from the Vice Chancellors of Administration, Chief Human Resource Officers, and Affirmative Action Officers should be submitted directly to Policy Specialist Abigail Norris at Abigail.Norris@ucop.edu, who is circulating the proposed revisions to these groups on behalf of Human Resources.

November 1, 2016

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Systemwide Review is a public review distributed to the Chancellors, the Director, Lawrence Berkeley National Laboratory, the Chair of the Academic Council, and the Vice President of Agriculture and Natural Resources requesting that they inform the general University community, affected employees, and union membership about policy proposals. Systemwide Review also includes a mandatory, three-month full Senate review.

Employees should be afforded the opportunity to review and comment on the draft policy, available online at <http://www.ucop.edu/academic-personnel-programs/academic-personnel-policy/policies-under-review/index.html>. Attached is a model communication which may be used to inform non-exclusively represented employees about these proposals. The Labor Relations Office at the Office of the President is responsible for informing the bargaining units representing union membership about these proposals.

We would appreciate receiving your comments no later than **February 1, 2017**. Please submit your comments to ADV-VPCARLSON-SA@ucop.edu. If you have other questions, please contact Janet Lockwood at Janet.Lockwood@ucop.edu or (510) 987-9499.

Sincerely,



Susan Carlson
Vice Provost
Academic Personnel and Programs

Enclosures: Proposed revised Presidential Policy on Non-discrimination and Affirmative Action Regarding Academic and Staff Employment (redline and clean copy)
Proposed revised APM - 015, The Faculty Code of Conduct (redline and clean copy)
Model Communication

cc: President Napolitano
Provost and Executive Vice President Dorr
Executive Vice Chancellors/Provosts
Executive Vice President and Chief Operating Officer Nava
Senior Vice President Vacca
Vice President Duckett
Vice President Ellis
Vice President Holmes-Sullivan
Vice Provost Gullatt
Chief of Staff Grossman
Vice Provosts/Vice Chancellors of Academic Personnel/Academic Affairs
Academic Personnel Directors
Deputy General Counsel Woodall
Deputy Compliance Officer Lane
Senior Counsel Chin
Senior Counsel Reed
Executive Director Baxter
Interim Executive Director Lee
Director Chester
Director Hairston
Director Henderson
Director Lockwood
Director Simon

November 1, 2016

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Manager Donnelly

Manager Smith

Human Resources Policy Analyst Bello

Policy Specialist Norris

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**Part II – Professional Responsibilities, Ethical Principles,
and Unacceptable Faculty Conduct**

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C. The University

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Types of Unacceptable Conduct

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5. Discrimination, including harassment, against University employees or individuals seeking employment; providing services pursuant to a contract; or applying for or engaged in an unpaid internship, volunteer capacity, or training program leading to employment on political grounds, or for reasons of race, color, religion, sex, sexual orientation, gender, gender expression, gender identity, ethnic origin, national origin, ancestry, marital status, pregnancy, physical or mental disability, medical condition (cancer-related or genetic characteristics), genetic information (including family medical history), or service in the uniformed services as defined by the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), as well as state military and naval service, or, within the limits imposed by law or University regulations, because of age or citizenship or for other arbitrary or personal reasons.

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