

Policy 602.23

## 1 Introduction

1.1 The University is committed to fair and equitable treatment for all employees. This policy provides a means of grievance and/or appeal for those EHRA Non-faculty employees (including, but not limited to, Senior Academic and Administrative Officers (SAAO), who are not subject to the faculty grievance procedures), to secure a good faith review and attempted resolution of decisions concerning dismissal, or other serious sanctions (disciplinary action that affects compensation), and/or other matters specifically enumerated below.

## 2 Scope

2.1 This policy applies to all EHRA Non-faculty employees.

2.2 A grievance may be filed, subject to all requirements and limitations provided in The UNC Policy Manual, Chapter 100.1, The Code, section 611 and The UNC Policy Manual, policies 300.1.1 and 300.2.1, to seek review and resolution of the following matters:

- unlawful or impermissible harassment or other discrimination (e.g. race, religion, sex, age, disability, national origin and veteran status) when an adverse employment action is taken. The specific protected classes are covered in the University's policy on Harassment, Discrimination and Retaliation [hyperlink to 602.2].
- violations of the First Amendment of the U.S. Constitution in matters resulting in serious sanctions, except to the extent of limitations on political activity established by Article 5 of North Carolina General Statutes, Chapter 126, Article 5 ("<http://policy.appstate.edu>Political Activities of Employees"<http://policy.appstate.edu>) and by the Board of Governors' policies regarding political activities as they may be revised from time to time.
- decisions concerning discharge for cause (includes incompetence, unsatisfactory performance, neglect of duty or misconduct that interferes with the capacity of the employee to perform effectively the requirements of the job).
- interpretation and application of EHRA Non-faculty employment policies.
- denial of a request for removal of alleged inaccurate or misleading material contained in the employee's personnel file.
- violations of North Carolina General Statutes, Chapter 126, Article 14 ("<http://policy.appstate.edu>Protection for Reporting Improper Government Activities"<http://policy.appstate.edu>).
- discontinuations, expiration of term appointments or terminations of employment with notice.

## 3 Definitions

### 3.1 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 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 the conduct unreasonably interferes with an

individual's work performance, academic advancement, or access to University services. Examples of conduct that could create or could contribute to hostile environment harassment may include:

1. Unwelcome jokes about disability, race, sex, sexual orientation, etc.
2. Offensive or degrading physical contact or coercive behavior, including stroking, patting or similar physical contact.
3. Pictures, posters, graffiti or written materials displayed in a workplace or classroom which are offensive or obscene.
4. Excluding individuals from meetings or University activities due to their religious beliefs or other protected class status.

### **3.2 Impermissible Discrimination**

is failure or refusal to hire an applicant, discharge of an employee, or discrimination against an employee with respect to compensation or other terms, conditions or privileges of employment because of the applicant's or employee's sexual orientation or gender identity and expression.

### **3.3 Impermissible Workplace Harassment**

is unwelcome and unsolicited speech or conduct based upon a person's sexual orientation or gender identity or expression that creates a hostile work environment or involves quid pro quo.

### **3.4 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, academic advancement, or access to University services, or (2) submission to or rejection of such conduct by an individual is used as the basis for decisions affecting that individual related to employment, academic advancement, or access to University services.

Examples of quid pro quo harassment may include:

1. Promising a promotion or higher grade if an individual acquiesces to sexual advances.
2. Denying an employee a pay raise after the employee has declined a request for sexual favors from a supervisor.

### **3.5 Retaliation**

is failure or refusal to hire an applicant, discharge or demotion of an employee, or other discrimination against an employee with respect to compensation or other terms, conditions or privileges of employment because that person filed a complaint about or otherwise opposed harassment or other forms of discrimination, or provided information relative to a complaint, or was involved in the complaint in any way.

### **3.6 Unlawful Discrimination**

is failure or refusal to hire an applicant, discharge of an employee, or discrimination against an employee with respect to compensation or other terms, conditions or privileges of employment because of the

applicant's or employee's race, color, religion, sex, national origin, age, political affiliation, veteran status, disability, or genetic information.

### **3.7 Unlawful Workplace Harassment**

is unwelcome and unsolicited speech or conduct based upon an employee's race, sex, religion, national origin, age, color, disability, veteran's status, political affiliation, or genetic information that creates a hostile work environment or involves quid pro quo.

Unless the specific terms or context of this policy indicate otherwise, all references to "harassment" and "discrimination" include both unlawful harassment and discrimination and impermissible harassment and discrimination.

## **4 Policy and Procedure Statements**

### **4.1 Alternative Dispute Resolution**

4.1.1 The University encourages informal means of resolution prior to the use of these procedures. Employees and supervisors, as well as individuals in the administrative line such as department chairs, deans, etc., are encouraged to discuss matters fully and freely and attempt resolution of employment disputes subject to these policies and procedures. Such discussions are considered confidential. Further, the University encourages formal mediation, if desired by both parties to a dispute. Requests for mediation should be made in accordance with the University's Mediation Policy.

### **4.2 Procedures for Filing Grievances**

4.2.1 An employee shall file a grievance on grounds other than unlawful discrimination within fifteen (15) calendar days of the employee's receipt of notice of the decision or other action that forms the basis of the grievance. An employee alleging unlawful discrimination must file a grievance within thirty (30) calendar days of the decision or other action that is alleged to constitute unlawful discrimination. Except as provided in the University's Mediation Policy, the use of an informal appeal as noted above or any other form of resolution does not automatically suspend this time limit. Within the fifteen (15) calendar days, the grievant may seek an informal resolution of the grievance. Notwithstanding the foregoing, the failure to file a timely grievance or request for mediation shall constitute a waiver of the employee's right to use these procedures. For purposes of this policy, where a deadline for taking some action falls on a weekend or a University holiday, the deadline shall be the next business day following the weekend or holiday. The time limit for filing may be extended by mutual agreement. In the event that a grievance is not accepted for processing based on the grievant's failure to file within the prescribed time limit, the matter may nevertheless be considered as a general complaint and may be addressed through informal investigation and/or resolution procedures.

4.2.2 To file a grievance under these procedures, an employee must provide a signed and dated written statement to the Director of Human Resources within the time limit stated above. This statement must include information concerning any informal attempts made to resolve the matter, the exact nature of the grievance, the identity of the party against whom the grievance is filed, and the desired outcome being sought by the employee.

4.2.3 Upon receipt of a timely grievance, the Director of Human Resources shall review the grievance statement to determine whether it alleges a grievable matter. If the grievance statement does not include a statement of permissible grounds as specified in section 2.2 above, the director shall inform the employee that the matter is not

eligible for hearing under this policy. If a grievance alleging harassment or other discrimination is filed, the complaint will be referred to the Office of Equity, Diversity and Compliance (EDC) for investigation. The grievance process will be held in abeyance until EDC completes its investigation. EDC will notify the complainant, the respondent and the Director of Human Resources when its investigation is concluded. The Director of Human Resources or the director's designee will meet with the grievant in order to determine whether the grievant wants to proceed with the grievance or to voluntarily withdraw the grievance in whole or in part.

4.2.4 If the matter is grievable and the grievant wishes to proceed with a hearing, the director shall appoint a three person hearing committee to hear and review the matter. The director shall appoint a member of the committee as chairperson. Committee members must pledge to consider the grievance with fairness and impartiality. The committee is authorized to interview all parties deemed necessary in the review of the grievance. All proceedings of the committee are confidential. A hearing committee has no power to reverse an administrative decision; it can only recommend a reassessment of that decision on the basis of its evaluation of evidence presented at the hearing.

4.2.5 All reasonable attempts should be made by the committee to hear the grievance within thirty (30) calendar days. The hearing shall be recorded by the Director of Human Resources or the director's designee. The parties will be allowed to give opening statements, to testify, to provide witness testimony, cross examine witnesses, present documentary evidence, and give closing statements. Strict rules of legal evidence do not apply. The committee may accept hearsay evidence. The committee chair has full control of the hearing and may state who is allowed to testify, and may avoid hearing redundant, irrelevant, and repetitive evidence. In all hearings other than those conducted to review decisions concerning discharge for cause, the grievant bears the burden of proving, by a preponderance of the evidence, the allegations stated in the petition for grievance. In a hearing conducted to review a decision to discharge the grievant for cause, the administrator(s) responsible for that decision shall bear the burden of proving, by a preponderance of the evidence, that good cause supported the decision to discharge.

4.2.6 The Director of Human Resources, or the director's designee, may be present to assist the hearing committee throughout the grievance process. No attorney is allowed to be present at the hearing. The grievant is allowed to have one third party observer present. If the grievant has an observer, the respondent may also have an observer present. The grievant must notify the Director of Human Resources within seven (7) business days prior to the hearing whether he or she intends to bring an observer. No observer may actively participate in the hearing.

4.2.7 Upon the conclusion of the grievance hearing, the committee shall deliberate and make findings based only on evidence (written and/or oral) presented at the hearing. A report of findings and any recommendations should be provided to the Director of Human Resources within thirty (30) calendar days from the conclusion of the hearing. In the event these target times cannot be met, the committee should report progress and the reason(s) for any delay to the director.

4.2.8 The Director of Human Resources is responsible for forwarding the hearing committee's report to the respective parties and the chancellor.

4.2.9 If the chancellor concurs in a recommendation of the committee that is favorable to the employee, the chancellor's decision shall be final. If the chancellor either declines to accept a committee recommendation that is favorable to the employee or concurs in a committee recommendation that is unfavorable to the employee, the employee may appeal within 14 calendar days after receiving the chancellor's written decision, by filing with the chancellor for transmission to the Board of Trustees a written notice of appeal, including a brief statement of the basis for the appeal, by certified mail, return receipt requested, or by another means that provides proof of delivery, and alleges as set out in The Code of the Board of Governors of The University of North Carolina, Section 611, sub-section (1)(b). The decision of the Board of Trustees is final, subject only to discretionary review by the Board of Governors.

4.2.10 At the conclusion of the grievance, all materials reviewed by the committee in preparing the report and any related documents shall be transferred to the Office of Human Resources for retention.

### **4.3 Retaliation Prohibited**

4.3.1 Any interference, coercion, restraint, reprisal or other form of retaliation directed against any person who files a grievance pursuant to this policy, or who participates as a witness, support person, committee member, or otherwise in a grievance proceeding under this policy, is prohibited. Any employee who violates this policy will be subject to disciplinary action, up to and including dismissal.

### **4.4 Authorization**

4.4.1 The Chancellor is authorized to approve future amendments of this policy.

## **5 Additional References**

The Code, sections 609 and 611

The University of North Carolina Policy Manual, Sections 300.1.1, 300.2.1

## **6 Authority**

N.C.G.S. § 126-25; Chapter 126, Article 5

## **7 Contact Information**

Office of Human Resources, 828.262.6769

## **8 Original Effective Date**

Approved by the Board of Trustees of Appalachian State University June 2, 2006

## **9 Revision Dates**

September 21, 2012