

Policy 602.2

NOTE: For purposes of all Appalachian State University policies, references to SPA (subject to the State Personnel Act [former terminology]) shall be interchangeable with SHRA (subject to the State Human Resources Act [current terminology]); and references to EPA (exempt from the State Personnel Act [former terminology]) shall be interchangeable with EHRA (exempt from the State Human Resources Act [current terminology]).

1 Introduction

1.1 Appalachian State University is committed to providing an atmosphere in which employees are free from all forms of impermissible discrimination.

2 Scope

2.1 This policy applies to all employees, visitors and contractors of Appalachian State University.

3 Definitions

3.1 Complaint

is a complaint or report by an employee alleging the occurrence of unlawful harassment or other forms of unlawful discrimination, impermissible harassment, impermissible discrimination, or retaliation, prohibited by this policy. All complaints must be reduced to writing, either initially or as part of an investigation.

3.2 Complainant

is a person who complains of discrimination, harassment or retaliation prohibited by this policy.

3.3 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, career 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.

3.4 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.

3.5 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.

3.6 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.

3.7 Responsible Employee

is any employee of the University who has supervisory responsibilities, any employee of the Office of Human Resources, any coach of an intercollegiate athletic team, and any employee of the University's Residence Life staff.

3.8 Title IX Responsible Employee

is any Responsible Employee as defined in this policy and any member of the Faculty, as defined in the University's Faculty Handbook.

3.9 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.

3.10 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.

3.11 Unlawful Workplace Harassment

is unwelcome and unsolicited speech or conduct based upon an employee's race, color, religion, sex, national origin, age, political affiliation, veteran status, disability, 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 unlawful discrimination and impermissible harassment and impermissible discrimination.

4 Policy and Procedure Statements

4.1 Prohibition of Harassment and Other Forms of Discrimination, and Retaliation

4.1.1 Harassment based upon race, color, religion, sex, national origin, age, political affiliation, veteran status, disability or genetic information is a form of discrimination in violation of federal and/or State law and Appalachian State University policy. 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 with respect to the employee, are forms of discrimination in violation of federal and/or State law and Appalachian State University policy. It is the internal policy of Appalachian State University to prohibit harassment and other forms of discrimination on the basis of sexual orientation as well as gender identity and expression. Neither harassment nor other forms of discrimination by employees, visitors or contractors will be tolerated. Retaliation against any person opposing, complaining of, or participating in an investigation of harassment or other forms of discrimination is a violation of federal and State law and/or Appalachian State University policy, and will not be tolerated.

4.1.2 Retaliation against a complainant's spouse, partner, or other close personal relation to the complainant is also impermissible.

4.1.3 Any interference, coercion, restraint or reprisal directed against any person opposing, complaining of, or participating in an investigation of workplace harassment and/or other forms of impermissible discrimination is prohibited.

4.1.4 Any employee who violates this policy will be subject to disciplinary action, up to and including dismissal.

4.2 Reporting Possible Violations of the Policy

4.2.1 Duty of a Responsible Employee to Report: Any Responsible Employee who receives a report of misconduct covered by this policy must report such information within one (1) business day to the Office of Equity, Diversity

and Compliance, as set forth in Section 4.3 of this policy.

4.2.2 Duty of a Title IX Responsible Employee to Report: Any Title IX Responsible Employee who receives a report of sexual discrimination or harassment covered by this policy, including but not limited to a report of sexual assault, must report such information within one (1) business day to the Office of Equity, Diversity and Compliance, as set forth in Section 4.4 of this policy.

4.2.3 All employees of the University, including all faculty members, are strongly encouraged to report promptly to the Office of Equity, Diversity and Compliance any report of misconduct covered by this policy. The primary purpose of making such a report is to ensure that the person affected by the misconduct receives information about resources available to the person and processes to address the misconduct.

4.3 Confidentiality

4.3.1 All actions taken to investigate and resolve complaints will be conducted with as much discretion and confidentiality as possible without compromising the thoroughness and fairness of the investigation. All persons involved in the investigation are expected to cooperate fully and respect the confidential nature of the process. In order to conduct a thorough investigation, the investigator(s) may discuss the complaint with witnesses and those persons involved in or affected by the complaint, as well as University officials who have a need to know.

4.4 Procedures and Appeals

4.4.1 Complaints Against Students

4.4.1.1 Any employee who believes that he or she has been subjected to harassment, discrimination, or retaliation by a student should contact the Office of Student Conduct for information on filing a complaint against a student. The Office of Student Conduct is located in Room 320 of the Plemmons Student Union and can be reached at (828) 262-2704.

4.4.2 Procedures Applicable to All Employees

4.4.2.1 The following procedures govern complaints involving all employees (SHRA, EHRA Faculty and EHRANon-Faculty), regardless of location or assigned work station:

1. Any former employee, or full-time or part-time employee with either a permanent, probationary, trainee, time-limited permanent or temporary appointment, who believes that he or she has been subjected to harassment, discrimination or retaliation in the workplace should immediately, but in no event later than thirty (30) days following the incident(s), report the incident(s) to the Office of Equity, Diversity and Compliance (EDC) (<http://edc.appstate.edu/>). EDC is located at 123 I.G. Greer Hall and can be reached at (828) 262-2144. If unwilling or unable to contact EDC, the employee or former employee should report the incident(s) within the same time limits to the Office of Human Resources (?HR?). HR is located at University Hall, 330 University Hall Drive and can be reached at (828) 262-3186.
2. If an employee makes a complaint of workplace harassment and/or other forms of discrimination, or retaliation, to a Responsible Employee or a Title IX Responsible Employee, that Responsible Employee or Title IX Responsible Employee shall bring the complaint to the attention of EDC within one (1) working day of receiving notice of the alleged conduct. If an employee makes such a complaint initially to EDC, EDC will provide the employee notice of applicable grievance rights, and 2) refer an SHRA or EHRA Non-Faculty employee to HR for completion of a grievance form. If a grievance is filed, an allegation of

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discrimination, harassment or retaliation will be referred to EDC for an investigation. The investigation will be concluded in no more than forty-five (45) calendar days. The period of investigation is part of the overall grievance timeframe as outlined in the SHRA Grievance and Appeal Policy. EDC will notify the complainant, the respondent and HR when its investigation is concluded.

3. When a complaint is received from the complaining employee or the employee's supervisor, or via notice of a contested case before the Office of Administrative Hearings, EDC will conduct a prompt, thorough, and impartial investigation in consultation with the appropriate supervisor. All persons interviewed or otherwise contacted in an investigation will be informed that retaliation against anyone who opposes, complains of, or participates in an investigation of harassment or discrimination is prohibited. All employees have a duty to cooperate fully in an investigation conducted pursuant to this policy, to provide investigators complete and accurate information requested or otherwise relevant to the inquiry, and to maintain confidentiality of the investigation. Any breach of this policy shall be treated as misconduct subject to disciplinary action, up to and including dismissal.
4. The totality of the circumstances and facts will be reviewed to determine whether the alleged conduct constitutes workplace harassment and/or other forms of discrimination. Within sixty (60) calendar days of EDC's receipt of the written complaint, the University will provide a written response to the complainant and the respondent based on the findings of the investigation. The written response will include the determination of what action, if any, will be taken as a result of the written complaint. This response will, however, be consistent with the confidentiality provisions of the State Human Resources Act and, if applicable, the Family Educational Rights and Privacy Act of 1974 (FERPA). If the employee is not satisfied with the University's response following completion of an investigation, the employee may request a hearing in accordance with applicable University grievance policies and procedures.
5. Disciplinary and/or remedial action in accordance with University policies shall be taken and documented by the appropriate supervisor in consultation with HR and the appropriate Vice Chancellor when warranted. Employees who are disciplined may pursue their grievance rights in accordance with applicable policies.
6. Nothing herein shall constitute a waiver, or require a waiver, of the right of a complainant alleging discrimination or harassment on the basis of membership in a class protected by Title VII of the Civil Rights Act to file a simultaneous complaint under Title VII with the Equal Employment Opportunity Commission (EEOC).

4.4.3 Additional Procedures Applicable to SHRA Employees

4.4.3.1 SHRA employees have grievance rights as provided in the SHRA Grievance and Appeal Policy. If a grievance is filed, the grievance process will be held in abeyance until EDC completes its investigation. EDC will notify the complainant, the respondent and HR when its investigation is concluded.

4.4.4 Additional Policies and Procedures Applicable to EHRA-Faculty Employees

4.4.4.1 Faculty members have grievance rights as provided in the Faculty Handbook. If a grievance is filed, the grievance process will be held in abeyance until EDC completes its investigation. EDC will notify the complainant, the respondent and HR when its investigation is concluded.

4.4.5 Additional Policies and Procedures Applicable to EHRA Non-Faculty Employees

4.4.5.1 EHRA Non-Faculty employees have grievance rights as provided in the EHRA Non-Faculty Grievances Policy. If a grievance is filed, the grievance process will be held in abeyance until EDC completes its investigation. EDC will notify the complainant, the respondent and HR when its investigation is concluded.

4.5 Education and Training

4.5.1 EDC provides harassment and discrimination training to employees. The training includes in-person educational workshops and on-line training. Additionally, HR provides on-line workplace harassment training to SHRA employees and supervisors.

4.5.2 EDC disseminates information about this policy to all employees in the form of brochures, posters, electronic media and newsletters.

5 Additional References

Appalachian State University Faculty Handbook
EPA [EHRA] Non-Faculty Grievances Policy
SPA [SHRA] Grievance and Appeal Policy

6 Authority

Americans with Disabilities Act of 1990, as amended (42 U.S.C. 12101, et seq.)
Title II, Civil Rights Act of 1964, as amended (42 U.S.C. 2000a, et seq.)
Title VI, Civil Rights Act of 1964, as amended (42 U.S.C. 2000d, et seq.)
Title VII, Civil Rights Act of 1964, as amended (42 U.S.C. 2000e, et seq.)
Rehabilitation Act of 1973, as amended (29 U.S.C. 701 et seq.)
Uniformed Services Employment and Reemployment Rights Act (38 U.S.C. 4301, et seq.)
Title II, Genetic Information Nondiscrimination Act of 2008 (PL 110-233)
Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 U.S.C. 4212 et seq.)
N.C.G.S. §§ 95-241, 126-1.1, 126-5,126-7.1, 126-14, 126-14.1, 126-14.2, 126-16, 126-17, 126-34, 126-34.1, 126-36, 126-37, 126-38, 126-82, 126-85, 168A-3, 168A-5, and 168A-10; 25 NCAC 01J .0600; 25 NCAC 01J .1100-.1300.

7 Contact Information

Office of Equity, Diversity and Compliance: 828.262.2144
Office of Human Resources: 828.262.3186

8 Original Effective Date

March 6, 2012

9 Revision Dates

June 23, 2012
April 24, 2014
December 8, 2015