

## 08.01.01 Civil Rights Compliance

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### Regulation Statement

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The Texas A&M University System (system) will provide equal opportunity to all employees, students, applicants for employment and the public regardless of race, color, religion, sex, national origin, disability, age, genetic information or veteran status.

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### Reason for Regulation

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This regulation provides guidance in complying with local, state and federal civil rights laws and regulations.

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### Procedures and Responsibilities

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#### 1. RESPONSIBILITIES OF SYSTEM MEMBERS

- 1.1 The chief executive officer (CEO) of each ~~system~~ member has the primary responsibility for ensuring compliance with civil rights laws and regulations, including but not limited to the prohibition of discrimination, sexual harassment and related retaliation based on race, color, religion, sex, national origin, disability, age, genetic information or veteran status.
- 1.2 The CEO shall designate a contact person(s) responsible for overseeing its civil rights protections program. This person(s) will ensure that all allegations of discrimination, sexual harassment and related retaliation are promptly and thoroughly investigated. The designee will periodically follow up on situations in which illegal discrimination, sexual harassment or related retaliation is found to ensure that the situation does not reoccur.

#### 2. RESPONSIBILITIES OF ALL EMPLOYEES

- 2.1 All employees are responsible for ensuring their work and educational environments are free from illegal discrimination, sexual harassment and related retaliation. When alleged or suspected discrimination, sexual harassment or retaliation is experienced or observed by or made known to an employee, the employee is responsible for reporting that information as outlined in Sections 4.1, 4.2 and 4.3.

- 2.2 All employees and students are to cooperate fully with those performing an investigation pursuant to this regulation. Retaliatory action of any kind is prohibited when taken against a complainant, witness or other person participating in a discrimination, sexual harassment or related retaliation investigation, complaint, hearing or suit.
- 2.3 Reports of suspected discrimination, sexual harassment or retaliation must be based on reasonable, factual information rather than speculative information or rumor, and contain as much specific information as possible to allow for proper assessment of the nature, extent and urgency of preliminary investigative procedures. Employees or students found to have intentionally made false or materially misleading allegations of suspected discrimination, sexual harassment or related retaliation under this regulation may be disciplined, up to and including dismissal.
- 2.4 All employees are responsible for complying with state law requiring system training on equal opportunity and nondiscrimination within ~~thirty~~(30) days of hire and every two ~~(2)~~years thereafter.

### 3. RESPONSIBILITIES OF THE DIRECTOR OF EQUAL OPPORTUNITY AND DIVERSITY

- 3.1 The system director of equal opportunity and diversity (EOD) will serve as the liaison between the ~~system~~members and any local, state or federal agency investigating a charge or complaint of discrimination, sexual harassment or related retaliation or conducting a civil rights audit or review.
- 3.2 In coordination with the Office of General Counsel, the director of EOD will provide general guidance on the implementation of civil rights protections and compliance with civil rights laws and regulations.
- 3.3 The director of EOD is responsible for the coordination and/or all reporting requirements related to equal opportunity and affirmative action for the system and its members.

### 4. PROCEDURES

- 4.1 Any ~~system~~employee or student who believes that he or she has been subjected to discrimination, sexual harassment and/or related retaliation should promptly report the incident(s) to his or her supervisor or a ~~system~~member official, administrator or other designee identified in the member's applicable procedure. A third party (including, but not limited to, anyone receiving services from the member, vendors and private business associates) should promptly report the incident(s) involving an ~~system~~employee to the member's human resources office or other office designated to receive such complaints. An ~~system~~employee's or student's complaint alleging discrimination, sexual harassment and/or related retaliation in connection with discipline and/or dismissal must be filed within seven ~~(7)~~business days of the action that caused the complaint or it may be deemed untimely filed and dismissed. An ~~system~~employee's or student's complaint alleging discrimination, sexual harassment and/or related retaliation unrelated to discipline and/or dismissal must be filed within ~~sixty~~(60) calendar days of the most recent incident, or it may be deemed untimely filed and dismissed.

- 4.2 An employee or student is not required to report discrimination, sexual harassment, or related retaliation to a direct supervisor or to the alleged offender. The alleged offense may instead be reported to another member official, administrator, supervisor or other designee identified in the member's applicable procedure.
- 4.3 Each ~~system~~-member must develop and publicly display a procedure for the receipt, investigation and resolution of discrimination, sexual harassment or related retaliation complaints. Prior to adoption, this procedure shall be submitted to the Office of General Counsel for legal sufficiency review. The individual or office designated by the member to receive complaints will forward each one to an investigative authority, if applicable, within five ~~(5)~~-business days of receipt. The investigative authority will review each complaint, interview witnesses, if applicable, and provide a report on the merits of the complaint to the designated administrator within ~~fifteen (15)~~ business days of receipt of the complaint, unless unusual circumstances require more time. Extensions should not be for more than ~~fifteen (15)~~ additional business days. Any further extensions require the approval of the CEO or designee. The designated administrator will render a decision in writing and provide that decision to the complainant, respondent(s), the investigative authority, and the complainant's and respondents' supervisor and department head(s) within five ~~(5)~~-business days after receiving the investigative authority's report, unless unusual circumstances ~~require~~ ~~request~~ additional time. This will be the final decision regarding the merits of the complaint.
- 4.4 The filing of a discrimination, sexual harassment or related retaliation complaint will not stop, delay or affect pending personnel actions. This includes, but is not limited to, performance evaluations or disciplinary actions related to a complainant who is not performing at acceptable levels or standards or who has violated system policies, regulations or ~~system~~-member procedures.
- 4.5 Any employee disciplined pursuant to this regulation may appeal that action in accordance with System Policy 32.01, *Employee Complaint and Appeal Procedures*, System Policy 12.01, *Academic Freedom, Responsibility and Tenure*, System Regulation 32.01.02, *Complaint and Appeal Process for Non-Faculty Employees* ~~Members~~, and/or other procedures as appropriate. Any student disciplined pursuant to this regulation may appeal the action in accordance with the ~~system~~ member procedure for student grievances.
- 4.6 ~~System~~-~~m~~Members will post all advertising-required job openings with the Texas Workforce Commission. All employment vacancy announcements will affirm equal employment opportunity. Purchase orders, bid requests and other such documents sent to suppliers, contractors and subcontractors should contain an appropriate statement to conform to affirmative action requirements and the system's historically underutilized businesses program.

## 5. IMPROPER CONSENSUAL RELATIONSHIPS

- 5.1 "Improper consensual relationship" means a mutually agreeable amorous, romantic, and/or sexual relationship between two employees, between an employee and a student at a member institution, or between an employee and a third party; AND in which one of the individuals has one or more of the following: authority over any term or condition of the other individual's employment or academic status; or job duties

making that individual directly or indirectly responsible for hiring, supervising, evaluating, teaching, coaching, grading or advising the other individual, or providing benefits to or obtaining benefits from the third party, including employment. Relationships not meeting this definition are not covered by this section.

5.2 These relationships may be problematic, even though both parties are willing participants. Improper consensual relationships are characterized by a difference in actual or perceived power that creates potential for any of the following:

(a) A conflict of interest;

(b) Actual or perceived abuse of power;

(c) Allegations that the relationship resulted from coercion, exploitation and/or harassment; or

(d) Allegations of favoritism and/or unfair treatment.

5.3 If an improper consensual relationship exists, the individual with the hiring, supervisory, evaluative, teaching, coaching, grading or advisory responsibilities, or the employee providing benefits to or obtaining benefits from the third party, must promptly notify his or her immediate supervisor of the relationship and cooperate in making alternative arrangements for hiring, supervising, evaluating, teaching, coaching, grading, advising or providing benefits to or obtaining benefits from the other individual. The individual's immediate supervisor must ensure that the issue is promptly reported in writing to the member CEO. The member retains the right to determine if alternative arrangements are possible and, if so, which one(s) are selected.

5.4 An employee's failure to promptly self-report the improper consensual relationship as required by Section 5.3, or an improper consensual relationship that is not remedied through alternative arrangements, may result in disciplinary action up to and including dismissal.

5.5 The employment or supervision of spouses or close relatives is addressed in System Policy 33.03, *Nepotism*.

## 6.5- DISABILITIES

56.1 The system will not discriminate against a qualified individual on the basis of disability in such matters as job application procedures; hiring, advancement or discharge practices; compensation; job training; or other terms, conditions and privileges of employment. Further, no individual will be excluded from participation in, or be denied the benefit of, or be subjected to discrimination based on disability under any system program or activity.

56.2 ~~System m~~Members may not ask any disability-related question or require any medical examination before an offer of employment has been made. Members may state the physical requirements of a job and ask if an applicant can satisfy those requirements with or without a reasonable accommodation. Members may also ask applicants to

describe or demonstrate how they would perform job tasks, as long as all applicants in the job category are asked to do this. However, when a member can reasonably believe that an applicant may not be able to perform a job function because of an obvious or a voluntarily disclosed disability, that applicant can be asked to describe or demonstrate how he or she would perform job tasks, without the member having to ask all applicants to do so.

56.3 A medical examination may be required after an offer of employment has been made, and prior to commencement of employment duties, if all persons offered the position are required to have the examination. An offer of employment may be conditioned on the results of such an examination.

65.4 ~~System-m~~Members will provide reasonable accommodations to qualified individuals with a disability under the provisions of this regulation. Applicants extended an offer of employment and employees who request an accommodation are responsible for obtaining a medical statement that contains a diagnosis, prognosis and the major life function that is substantially limited. This medical statement should include an evaluation as to the effect that the impairment has on the employee's or prospective employee's ability to perform the duties associated with the position. All medical information will be treated as confidential and will be kept in a separate file from other personnel records.

65.5 It may be a defense to a charge of discrimination that an alleged application of qualification standards, tests or selection criteria that screen out or tend to screen out or otherwise deny a job or benefit to an individual with a disability has been shown to be job-related and consistent with business necessity, and such performance cannot be accomplished by reasonable accommodation. The term "qualification standards" may include a requirement that an individual shall not pose a direct threat to the health or safety of other individuals in the workplace.

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## Related Statutes, Policies or Requirements

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[The Equal Pay Act of 1963](#)

[Title VII of The Civil Rights Act of 1964, as amended](#)

[The Age Discrimination in Employment Act of 1967](#)

[Title IX of The Education Amendments of 1972](#)

[The Rehabilitation Act Amendments of 1973, as amended](#)

[The Americans with Disabilities Act of 1990, as amended](#)

[The Genetic Information Nondiscrimination Act of 2008](#)

[Executive Order 11246, as amended, Office of Federal Contract Compliance Programs](#)

## [Texas Labor Code, Chapter 21, Employment Discrimination](#)

This regulation supersedes:

System Regulation 33.02.01, *EEO and Affirmative Action Programs*

System Regulation 33.02.02, *Compliance with Employment Provisions of the Americans with Disabilities Act*

System Regulation 34.01.01, *Sexual Harassment*

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## **Definitions**

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Disability – The term “disability” means, with respect to an individual,

- (a) a physical or mental impairment that substantially limits one or more major life activities of such individual;
- (b) a record of such impairment; or
- (c) being regarded as having such an impairment.

Major Life Activities – Major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, working and the operation of a major bodily function including, but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive functions.

Qualified Individual – A qualified individual means an individual who, with or without reasonable accommodations, can perform the essential functions of the employment position that such individual holds or desires.

Reasonable Accommodations – Reasonable accommodations may include making existing facilities used by employees, students and the public readily accessible to and usable by individuals with disabilities; job restructuring, part-time or modified work schedules; reassignment to a vacant position; acquisition or modification of equipment or devices; appropriate adjustment or modifications of examinations, training materials or policies; the provision of qualified readers or interpreters; and other similar accommodations for individuals with disabilities.

Regarded as Having a Disability – The individual establishes that he or she has been subjected to an action prohibited under this regulation because of an actual or perceived physical or mental impairment, whether or not the impairment limits or is perceived to limit a major life activity. However, this will not apply to impairments that are transitory and minor. A transitory impairment is an impairment with an actual or expected duration of six ~~(6)~~ months or less.

Sexual Harassment – Sexual harassment is a form of sex discrimination. Unwelcome sexual advances, requests for sexual favors and other verbal, nonverbal or physical conduct of a sexual nature constitute sexual harassment when this conduct is so ~~frequent or~~ severe, persistent or pervasive that it explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work or educational performance, or creates an intimidating, ~~or hostile~~ ~~or offensive~~ work or educational environment. Sexual harassment includes non-consensual sexual contact, non-consensual sexual intercourse and sexual exploitation. Sexual exploitation occurs when an individual takes non-consensual or abusive sexual advantage of another for his or her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited. For example, sexual exploitation could include such actions as secretly videotaping sexual activity, voyeurism, sexually-based stalking and invasion of sexual privacy.

Undue Hardship – Undue hardship means an action requiring significant difficulty or expense when considered in light of the following factors:

- (a) The nature and cost of the accommodation needed;
- (b) The overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation; the number of persons employed at such facility, the effect on expenses and resources; or the impact otherwise of such accommodation upon the operation of the facility;
- (c) The overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and
- (d) The type of operation or operations of the covered entity, including the composition, structure and functions of the workforce of such entity; the geographic separateness, administrative or fiscal relationship of the facility or facilities in question to the covered entity.

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## Contact Office

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Office of ~~the Chief of Staff~~Recruitment Equal Opportunity and Diversity  
(979) 458-6203