

System Regulation 08.01.01, Civil Rights Compliance

Definitions

Confidential – a form of privileged communication which need not be disclosed in court as evidence, answered by a witness either in depositions or trial, or provided to the parties to a lawsuit or their attorneys. This is based on the inherent private relationship between the person communicating and the confidante’s occupation or relationship to that person.

Consensual – involving or based on mutual consent.

Consent – clear and voluntary agreement to engage in a specific sexual activity. A person who was asleep or mentally or physically incapacitated, either through the effect of drugs or alcohol or for any other reason, or whose agreement was made under duress or by threat, coercion, or force, cannot give consent.

Dating violence – an act, other than a defensive measure to protect oneself, by an individual against a victim with whom there is or was a romantic or intimate relationship or marriage, and that is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably results in a fear of such harm. (Texas Family Code 71.0021)

Designated administrator – the decision-making entity specified in member rules. This may be an administrator or a hearing panel, but may not be the direct supervisor of the respondent.

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.

Domestic or family violence – an act, other than a defensive measure to protect oneself against another member of the family or household that is intended to result in physical harm, bodily injury, assault, or sexual assault, or the threat of which reasonably causes fear of such harm. (Texas Family Code Section 71.004)

Hostile environment – a situation in which there is harassing conduct based on a legally protected status that is severe, persistent or pervasive enough to create a work or educational environment that a reasonable person would consider intimidating or abusive. The determination of whether an environment is “hostile” must be based on all of the circumstances, which may include the frequency of the conduct, the nature and severity of the conduct, whether the conduct was physically threatening or humiliating, and the mental or emotional effect of the conduct on the individual subjected to the alleged illegal discrimination, sexual harassment and/or related retaliation. Petty slights, annoyances, and isolated incidents (unless extremely serious) will not rise to the level of illegality or policy violation.

Investigative authority – one or more individuals appointed to conduct a formal inquiry to discover and examine the facts of an allegation.

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.

Private – that which affects, characterizes, or belongs to an individual person, as opposed to the general public. With respect to this regulation, private means restricting information to those with a reasonable need to know.

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

Quid pro quo sexual harassment – “this” for “that”; i.e., unwelcome sexual advances, requests for sexual favors or other verbal, physical, or non-physical conduct of a sexual nature, the submission to or rejection of which may result in an adverse educational or employment action.

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 months or less.

Reporter – the individual who provides an oral or written account of an alleged violation of this regulation. This may be the individual who was subjected to the alleged violation, or a third party who observed or was made aware of the alleged violation.

Sexual assault – any intentional or knowing penetration of the sex organs, anus, or mouth without the other person’s consent.

Sexual exploitation – a situation in which an individual(s) 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, invasion of sexual privacy, and knowingly transmitting a sexually transmitted infection to another person.

Sexual harassment – 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 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 work or educational environment. Unwelcome means that an individual did not request or invite it and considers the conduct to be undesirable or offensive. Submission to the conduct or failure to complain does not always mean that the conduct was welcome. Sexual harassment may be quid pro quo (“this for that”) or may constitute a hostile environment. Sexual harassment includes non-consensual sexual contact, sexual assault, sexual exploitation, and stalking, dating violence, and domestic violence when based on sex.

Stalking – knowingly engaging in conduct, including following a person, that one reasonably believes is threatening the bodily injury or death of themselves, a member of their family or household, or their property. (Texas Penal Code 42.072)

Undue hardship –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.