



## **Title**

Nondiscrimination, Equal Opportunity, and Affirmative Action Policy

## **Header**

Executive Policy Chapter 1, General Provisions

Executive Policy EP 1.202 – Nondiscrimination, Equal Opportunity, and Affirmative Action Policy

Effective Date: February 1, 2023

Prior Dates Amended: July 1991; November 1982

Responsible Office: Office of the President

Governing Board of Regents Policy: RP 1.205

Review Date: August 2025

### **I. Purpose**

Executive Policy EP 1.202 provides the overarching framework to implement the University of Hawai'i Board of Regents Policy RP 1.205 on Nondiscrimination and Affirmative Action. This Executive Policy also provides the administrative framework to ensure compliance with applicable federal and state statutes, rules and regulations, and provisions in the collective bargaining agreements regarding nondiscrimination, equal opportunity, and affirmative action, as applicable. This includes compliance with federal contractor affirmative action mandates pursuant to Executive Order 11246 and implementing regulations for protected veterans and individuals with disabilities.

The University has a policy and procedure, to address Sex and Gender Based Misconduct, as required by federal and state laws, including but not limited to, Hawai'i Revised Statutes §304A-120, Title IX of the Education Amendments of 1972, and the Clery Act, as amended by the Violence Against Women Reauthorization Act of 2013. Please refer to EP 1.204 or contact a Title IX Coordinator.

This policy does not cover general harassment that is not based on a protected category. For allegations involving Workplace Violence, please refer to EP 9.210 or contact your respective campus designee. This Policy governs the conduct of all University students, employees, and third parties.

### **II. Definitions**

#### **A. Adverse Treatment**

*Adverse Treatment* means any significant change that negatively impacts one's status or access to employment, eligibility for employment, or educational benefits and opportunities. Negative changes could include, but are not limited to, suspension, evaluations, grades, assignments, denial of program opportunities, termination, failing to promote, reassignment with significantly different responsibilities, a decision causing a significant change in benefits,

direct or implied threats, coercion, harassment, intimidation, or encouragement of others to retaliate.

**B. Complainant**

*Complainant* means an individual who is alleged to be the victim of conduct that could constitute Prohibited Behavior as defined in this policy.

**C. Complaints**

*Complaints* are allegations of Prohibited Behavior that are submitted within 180 calendar days of the most recent incident of alleged Prohibited Behavior unless the Complainant can show good cause for a later filing. The Coordinator will determine if good cause exists for a later filing.

**D. Confidential Resource**

*Confidential Resource* is an individual(s) appointed by the University who is not a Responsible Employee of notice of prohibited behavior. Confidential Resources can provide assistance related to this policy in a confidential manner.

**E. Coordinator**

*Coordinator* is at least one official designated by the University to ensure compliance with the University's applicable nondiscrimination policies and procedures. References to the Coordinator throughout this policy may include the Equal Employment Opportunity (EEO) or Title IX Coordinator, the Senior Student Affairs Officer, or a designee of the Coordinator for specific tasks.

**F. Parties or Party**

*Parties* mean the Complainant(s) and Respondent(s), collectively.

*Party* refers to either the Complainant or Respondent, separately.

**G. Prohibited Behavior**

*Prohibited Behavior* means any behavior prohibited under Section III.C. below.

**H. Protected Class or Protected Category**

*Protected Class* or *Protected Category* means a group protected from discrimination as defined in this policy.

**I. Respondent**

*Respondent* means an individual who has been reported to be the alleged perpetrator of conduct that could constitute Prohibited Behavior under this policy.

**J. Responsible Employee**

*Responsible Employee* means an employee of the University who is obligated by state law or university policy to share knowledge, notice, and/or reports of sex-based harassment, discrimination, and/or retaliation with the Title IX Coordinator.

All faculty members, except those who are designated as confidential advocates, are Responsible Employees under Hawai'i Revised Statutes §304A-120.<sup>1</sup>

### **III. Executive Policy**

It is the policy of the University of Hawai'i to provide equity of opportunity in higher education, both in the educational mission and as an employer. The University is committed to complying with all state and federal statutes, rules, and regulations which prohibit discrimination. The Office of the President, University of Hawai'i, affirms its commitment to the University's equal education and employment opportunity policy. The University is committed to a policy of nondiscrimination on the bases of race, sex, gender identity and expression, age, religion, color, national origin, ancestry, citizenship, disability, genetic information, marital status, pregnancy (including childbirth, pregnancy related medical conditions, and lactation/breastfeeding), arrest and court record (except as permissible under State law), sexual orientation, national guard participation, status as a protected veteran or other military status, status as a domestic or sexual violence victim, or any other protected category under federal or state laws, regulations, and/or executive orders. This policy covers admission and access to and participation, treatment, and employment in the University's programs and activities. The University shall promote a full realization of equal opportunity through a positive, continuing program of nondiscrimination and affirmative action (41 CFR Chapter 60) on each campus.

The University of Hawai'i is committed to maintaining a community that fosters understanding and mutual respect. The University believes that diversity among its many members strengthens the institution, stimulates creativity, promotes the exchange of ideas, and enriches campus life. To protect the diversity of people and ideas, we must provide an environment in which the civil rights and dignity of every individual are fully respected. Discrimination and harassment undermine the trust and mutual respect which must prevail if the students and employees of the University of Hawai'i are to reach their fullest potential. The University prohibits and does not tolerate discrimination or discriminatory harassment based on the protected categories as referenced in this policy. This policy also prohibits retaliation against any person for bringing a complaint of discrimination or harassment or for assisting or testifying in an investigation or complaint resolution pursuant to this policy, as discussed in further detail in Section III.C.3 below. The University will take prompt and appropriate action to prevent, correct, and, if applicable, discipline behavior that violates this policy (up to and including dismissal from the University).

The University's equal opportunity policy includes a commitment to implementing reasonable accommodations, as required by law, for individuals with disabilities or for an individual's sincerely held religious beliefs or practices. The University's policy further includes a commitment to providing support for individuals who are pregnant (including

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<sup>1</sup> Not to be confused with those mandated by state law to report child abuse, elder abuse, and/or abuse of individuals with disabilities to appropriate officials, though these responsibilities may overlap with those who have mandated reporting responsibility in this Policy.

those with pregnancy-related medical limitations), individuals who are breastfeeding, or victims of domestic or sexual violence, and any other matter as described and required by law.

**A. Executive Statement on Affirmative Action in Employment Practices<sup>2</sup>**

The University strives to prevent discrimination and promote a full realization of equal employment opportunity through a positive, continuing affirmative action program in compliance with applicable federal laws and Executive Orders to ensure that qualified, historically underrepresented racial and ethnic minorities, females, protected veterans, and individuals with disabilities are considered for hiring and advancing in employment. The program includes placing and publicizing equal opportunity officers on each campus, publishing nondiscrimination and anti-harassment policies, reviewing employment practices, analyzing applicant and workforce data, monitoring progress toward achieving hiring goals, and conducting prevention education. The University also commits to taking measures, beyond simple termination of a discriminatory practice, adopted to correct or compensate for past or present discrimination or to prevent discrimination from recurring in the future. Such measures may include but are not limited to training programs, outreach efforts, and other positive action steps.

**B. Scope**

This policy governs the conduct of all University students, employees, and third parties that occur:

1. On University property; or
2. Outside of University property if the conduct was in connection with a University-sponsored program or activity.

In circumstances involving third parties or conduct that occurred outside of a University-sponsored program or activity, the University will decide whether this Policy applies to a reported incident or complaint on a case-by-case basis. The Coordinator will document the rationale for applying or declining to apply this Policy.

If the Respondent is unknown or is not a member of the University community, the Coordinator will assist the Complainant in identifying appropriate campus and local resources and support options and/or, when criminal conduct is alleged, in contacting local or campus law enforcement if the individual would like to file a police report.

Further, even when the Respondent is not a member of the University's community, Supportive Measures, remedies, and resources may be accessible to the Complainant by contacting the Coordinator or confidential resource.

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<sup>2</sup> Federal Contract Compliance and Executive Order 11246, Vietnam Era Veterans' Readjustment Assistance Act, Section 503 of the Rehabilitation Act of 1973.

## **C. Prohibited Behavior**

The University prohibits the following:

### **1. Discrimination**

Discrimination is any distinction, preference, or adverse treatment of an individual when based on a person's protected category that is sufficiently serious to unreasonably interfere with or limit:

- a. A student's or admission applicant's ability to participate in, access, or benefit from educational programs, services, or activities (e.g. admission, academic standing, grades, assignment, campus housing);
- b. An employee's or applicant's access to employment, consideration of, or conditions and benefits of employment (e.g., hiring, advancement, assignment);
- c. An authorized volunteer's ability to participate in a volunteer activity; or,
- d. A guest's or visitor's ability to participate in, access, or benefit from the University's programs.

Examples of Discrimination based on a Protected Category<sup>3</sup>:

- Refusal to consider an accommodation request or to implement a reasonable accommodation for individuals with disabilities or a person's sincerely held religious beliefs or practices
- Disparate or unequal treatment, including preferential treatment on the basis of a protected category
- Denial of a person's equal opportunity to participate in a University program, activity, or service on the basis of a protected category

### **2. Discriminatory Harassment**

Discriminatory Harassment is unwelcome conduct based on a protected category when:

- a. Submission to or rejection of the conduct is either an explicit or implicit term or condition of an individual's employment, education, or participation in a University program, activity, or service;

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<sup>3</sup> This list is meant to be illustrative and not exhaustive, and the conduct must be sufficiently serious to unreasonably interfere with or limit a person's ability to participate in an education activity to meet the definition of Discrimination.

- b. Submission to or rejection of the conduct by an individual is used as a basis in decisions affecting that individual's employment, education, or participation in a University program, activity, or service; and/or,
- c. When such conduct is unwelcome to the person to whom it is directed or to others directly aware of it and when such conduct is:
  - (1) Severe, persistent, or pervasive; and
  - (2) Has the purpose or effect of either:
    - (a) Unreasonably interfering with the student's academic performance or the employee's work performance, or
    - (b) Creating an intimidating, hostile, or offensive work or educational environment.

The conduct must be both objectively and subjectively offensive. That is, the Complainant must view the conduct as offensive, and a reasonable person must also view the conduct as offensive. "Reasonable person" means a reasonable person under similar circumstances and with similar identities to the Complainant (e.g., age, race, religion).

Petty slights, annoyances, and isolated incidents (unless extremely serious) will not rise to the level of discriminatory harassment.

Examples of Discriminatory Harassment Based on a Protected Category if unwelcome and persistent, pervasive, or severe<sup>4</sup>:

- Racial slurs, racial epithets, or name-calling
- Insults, put-downs, or mockery of a person's disability
- Unwelcome or inappropriate physical contact
- Offensive remarks about a person's, race, color, age, disability, pregnancy, breastfeeding, national origin, religion or other protected category
- Intimidation, threats of harm, or actual assaults against a person based on their race, national origin, or other protected category
- Displays of offensive objects or pictures, including electronic transmission of derogatory, demeaning, or hostile materials based on race, age, or other protected category

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<sup>4</sup> This list is meant to be illustrative, and not exhaustive, and the conduct must rise to the level of unwelcome and persistent, pervasive, or severe to meet the definition of Discriminatory Harassment.

### **3. Retaliation**

The University prohibits and will not tolerate retaliation. Retaliation includes intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured by law or this policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation or proceeding under this policy and its accompanying procedure, AP 1.202. Acts of alleged retaliation should be reported immediately for appropriate action.

A retaliation complaint, allegation, or report may be reviewed as a separate offense; that is, a person can be found responsible for retaliation even if not found to be responsible for the underlying reported harassment or discrimination.

Charging an individual with a conduct violation for making a materially false statement in bad faith in the course of a complaint process under this policy and its accompanying procedure does not constitute retaliation. However, a determination regarding responsibility, alone, is not sufficient to conclude that any party has made a materially false statement in bad faith.

Allegations of retaliation will generally be processed in accordance with the procedures in AP 1.202; however, depending upon the circumstances, including the timing of the allegations, the University may combine allegations of retaliation with a formal complaint of harassment or discrimination and process the combined allegations.

### **4. Failure to Comply with Sanctions, Remedies, and/or Corrective Actions**

All Respondents are expected to comply with the assigned sanctions, remedies, and/or corrective actions within the timeframe specified by the final Decision Maker(s), (including the Appeal Officer).

Failure to abide by the corrective action(s) or sanction(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may be reviewed as a separate offense and/or result in additional sanction(s), including suspension, expulsion, and/or termination from the University, and may be noted on a student's official transcript.

### **5. False Allegations and Evidence**

Deliberately false and/or malicious accusations, providing false evidence, tampering with or destroying evidence, or deliberately misleading an official conducting an investigation may subject a person to discipline.

## **D. Confidentiality**

The University has a responsibility to investigate complaints of harassment and discrimination and will strive to protect, to the extent possible, the confidentiality of Complainants and Respondents. However, the University cannot guarantee complete confidentiality where it would conflict with the University's obligation to investigate or to prevent harassment and discrimination. Certain information may need to be disclosed to appropriate administrators, the Complainant, the Respondent, and witnesses in order to conduct the investigation. Information may also be disclosed if required by law, rule, or regulation or by order of the court or arbitrator pursuant to the appropriate collective bargaining agreement.

Students or employees who are concerned about confidentiality and privacy are encouraged to discuss their concerns with a Confidential Resource. If a student or employee desires to keep the details of an incident confidential, they should speak with individuals who have professional legal obligations to maintain confidentiality, such as a licensed counseling psychologist (e.g., student counseling services), physician or health care provider, trained victim counselor working in a qualified setting (e.g., domestic violence center), member of the clergy, or a personal attorney.

Individuals may visit the University's EEO website or request information on policies and procedures from a campus Coordinator without disclosing their name or specific situation.

## **E. Reporting, Filing Complaints, and Corrective Actions**

### **1. Assistance with discrimination concerns (including harassment and retaliation)**

Members of the University community are strongly encouraged to report conduct of concern as soon as possible<sup>5</sup>. Coordinators and designated counselors and advocates are available to provide prompt assistance.

If there are any uncertainties around who to report to, individuals are directed to report as follows:<sup>6</sup>

- a. For UH Mānoa and System Offices, individuals should report to the UH Office of Equity Assurance.

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<sup>5</sup> Although complaints filed after 180 calendar days of the most recent incident of the alleged discrimination may not be accepted, supportive measures may still be implemented where appropriate, at the Coordinator's discretion.

Consistent with Hawai'i Revised Statutes §304A-120, all faculty are designated as responsible employees for purposes of Title IX reporting, thus faculty must promptly share with the Title IX Coordinator all details of any such report made to them. Failure of a Responsible Employee to report an incident of harassment or discrimination of which they become aware is a violation of University policy and can be subject to disciplinary action.

<sup>6</sup> Website link with contact information: <https://www.hawaii.edu/titleix/discrimination-help/>



- b. For UH Hilo, individuals should report to the UH Hilo Office of Equal Opportunity/Title IX.
- c. For UH West O'ahu, individuals should report to the UH West O'ahu Office of Compliance.
- d. For the Community College System and campuses, individuals should report to the Title IX Coordinator/Office.

The above primary points of contact will receive all discrimination concerns and ensure that concerns are routed to the appropriate office.

Contact information for EEO, Title IX, and ADA/504 Coordinators is listed on the University's website: [www.hawaii.edu/eeo](http://www.hawaii.edu/eeo).

Executives, managers, and supervisors are expected to report incidents to the campus Coordinator, or other designee when they are notified or otherwise become aware of conduct that may constitute discrimination, harassment, or retaliation as defined in this policy. The executive, manager, or supervisor does not need to determine whether the alleged discriminatory conduct actually occurred before reporting the incident.<sup>7</sup>

It is recommended that executives, managers, and supervisors inform the person who may wish to confide in them that they will treat the information in as confidential a manner as possible but that executives, managers, and supervisors are expected to report incidents to the campus Coordinator. There may be situations where the University has a duty to investigate to the fullest extent possible to provide a safe and nondiscriminatory environment for all students and employees.

## **2. Confidential Resources for Students**

If a Complainant would like the details of an incident to be kept confidential, the Complainant may speak with on-campus or off-campus licensed professional counselors and their staff, on-campus health service providers and their staff, and on-campus advocates. These individuals will maintain confidentiality when acting under the scope of their licensure, professional ethics, and/or professional credentials, except in extreme cases of immediate threat or danger or abuse of a minor, or when required to disclose by law or court order. Going to a Confidential Resource will not put the University on notice of a specific allegation under this Policy. Campus mental health counselors and campus advocates are available to help free of charge and may be consulted during normal business hours.

## **3. Informal and Formal Complaint Procedures**

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<sup>7</sup> By reporting the conduct, the executive or supervisor will give qualified personnel the opportunity to respond to the situation. The campus Coordinator or other designee has the in-depth knowledge needed to respond and to provide referrals to resources, including confidential on- or off-campus resources, and information on informal and formal complaint options.

Individuals who may have experienced discrimination are strongly encouraged to use the informal and formal complaint resolution options provided under UH Administrative Procedure AP 1.202 – Complaint Procedure for Students, Employees, and Applicants for Admission or Employment. Complaints must be filed with the Coordinator within 180 calendar days of the most recent incident of alleged discrimination, unless the Complainant can show good cause for a later filing. The Coordinator will determine if good cause exists for a later filing.

Third parties who are participating in a University-sponsored program or activity as well as visitors and members of the public who have discrimination concerns or complaints should contact the campus Coordinator for assistance. Members of the public may also refer to AP 9.900, which addresses discrimination complaints regarding public accommodations.

#### **F. Standard of Review – Preponderance of the Evidence**

In determining whether alleged behavior violates this Policy, the University will consider the totality of the facts and circumstances involved in the incident, including the nature of the alleged behavior and the context in which it occurred, and determine whether it is more likely than not that the alleged Prohibited Behavior occurred.

#### **IV. Resource Links**

A current overview of University and community resources organized by category:

- A. EEO Coordinators**  
<http://www.hawaii.edu/offices/eo/eo-coordinators/>
- B. University Title IX Coordinators**  
<http://www.hawaii.edu/titleix/coordinators>
- C. University Confidential Resources**  
<http://www.hawaii.edu/titleix/confidential>
- D. University Title IX Overview**  
<http://www.hawaii.edu/titleix/overview>
- E. Community Resources**  
<http://www.hawaii.edu/titleix/community>

#### **V. Delegation of Authority**

In order to carry out this commitment, Vice Presidents and the Provost/Chancellors are hereby charged with the responsibility and authority to implement this nondiscrimination and affirmative action policy.

#### **VI. Contact Information**

Campus EEO Coordinators

<http://www.hawaii.edu/offices/eeo/eeo-coordinators/>

Campus Title IX Coordinators

<https://www.hawaii.edu/titleix/help/coordinator/>

Campus ADA Coordinators

<http://www.hawaii.edu/offices/eeo/ada-504-coordinators/>

## **VII. References**

### **A. Relevant Federal and State Laws and Regulations**

It is the policy of the University of Hawai'i to comply with the applicable federal and state statutes, rules, regulations, and provisions in the collective bargaining agreements which prohibit discrimination in University programs, activities, and employment practices.

These equal opportunity laws include but are not limited to the following: Titles VI and VII of the Civil Rights Act of 1964, Age Discrimination Act of 1975, Age Discrimination in Employment Act of 1967, Sections 503 & 504 of the Rehabilitation Act of 1973, Americans with Disabilities Act of 1990 (as amended), Pregnancy Discrimination Act of 1978, Title IX of the Education Amendments of 1972, Clery Act of 1990 as amended by the Violence Against Women Act (reauthorized in 2013), Equal Pay Act of 1963, Vietnam Era Veterans' Readjustment Assistance Act of 1974, Chapter 378 of the Hawai'i Revised Statutes, Executive Order 11246, Uniformed Services Employment and Reemployment Rights Act (USERRA), and Genetic Information Nondiscrimination Act of 2008.

### **B. RP 1.205 – Policy on Nondiscrimination and Affirmative Action**

### **C. EP 1.204 – Sex and Gender Based Misconduct Policy**

### **D. EP 7.205 – Systemwide Student Disciplinary Sanctions**

### **E. EP 7.208 – Systemwide Student Conduct Code**

### **F. AP 1.202 – Discrimination Complaint Procedures for Employees, Students, and Applicants for Employment or Admission**

### **G. AP 1.204 – Interim Title IX Sexual Harassment Grievance Process**

### **H. AP 9.900 – Policy and Complaint Procedure for Members of the Public Who Have Discrimination Complaints Regarding Public Accommodations or ADA Complaints Regarding Disability Access to University Services, Programs, and Activities**