



Equal Opportunity Compliance and Title IX

# Harassment and Discrimination

## Harassment

Harassment is defined as **unwelcome conduct** that is based on a protected class, which includes race, religion, color, nation origin, age, sex, sexual orientation, gender identity, height, weight, genetic information, marital status, disabled veteran status, veteran status, or disability. Harassment does not include constitutionally protected activity or conduct that serves a legitimate purpose.

Harassment becomes against University policy where:

1. Enduring the offensive conduct becomes a condition of continued employment, or
2. The conduct is sufficiently severe, persistent or pervasive enough to create an environment that a reasonable person would consider intimidating, hostile, or offensive or that substantially interferes with an individual's ability to participate in or benefit from a University program, activity, and/or employment.

## Discrimination

Discrimination is the **unequal or unfair treatment** of a person on the basis of that person's race, religion, color, nation origin, age, sex, sexual orientation, gender identity, height, weight, genetic information, marital status, disabled veteran status, veteran status, or disability. Discrimination can occur when persons are excluded from participation in, or denied the benefits of, any University program or activity because of their protected status.

**Gender Discrimination** is discrimination and harassment on the basis of a person's sex or gender. Gender discrimination can occur when persons are excluded from participation in, or denied the benefits of, any university program or activity because of their sex or gender. The University's policy prohibiting gender discrimination also prohibits discrimination on the basis of pregnancy, childbirth, and parenting.

## Examples of Prohibited Practices

- Retaliation against an individual for filing a charge of discrimination, participating in an investigation, or opposing discriminatory practices
- Denying employment opportunities to a person because of marriage to, or association with, an individual of a particular race, religion, national origin, or an individual with a disability.
- Giving a higher grade to a student who submits to sexual advances.

## Hostile Environment

A hostile environment is defined as an on-campus, online, **or** remote environment, through harassing conduct (e.g. physical, verbal, graphic, or written) based on a person's protected status (e.g. sexual orientation, age, etc.), becomes sufficiently severe, persistent or pervasive, and subjectively and objectively offensive so as to interfere with or limit the ability of an individual to participate in or benefit from a University program or activity.

The University prohibits harassment, as defined above, on its campus and by any person while engaged in University business, whether on or off campus. When the University determines that a hostile environment exists, it takes action reasonably calculated to remedy the harassment and ensure it does not reoccur.

While a person engaging in prohibited harassing behavior often has some form of power or authority over the person being harassed, that is not always the case. The harasser can be a peer or a person who has power over them. The harasser can even be a person who is not a member of the University community, such as a person delivering supplies to a laboratory or refilling vending machines. Regardless of the source, the University does not tolerate prohibited harassment.

## Sexual Misconduct

Sexual Misconduct is prohibited under university policy. The specific prohibited conduct includes Sexual Harassment, Sexual Assault, Dating Violence, Domestic Violence, and Stalking. Alleged conduct will be evaluated by the Title IX Coordinator to determine whether it will be investigated under the [Title IX Sexual Harassment University Policy](#):

(</policy/policies/general/1-14/>) or [Board of Trustees Policy 5.3 Discrimination Based on Sex](#):

(</bot/governance/policies/chapter5/sections/5.01-5.05.html>). For Policy 5.3 to apply, the Title IX

Coordinator will determine prior to a Formal Title IX Complaint or after the dismissal of a

Formal Title IX Complaint, that the Respondent is an employee of Michigan Technological University and the alleged conduct meets one or more of the following:

1. The alleged conduct does not fall within the definition of sexual harassment, as defined in the Title IX Sexual Harassment Policy.
2. The alleged conduct, if proved, would constitute a violation of sexual harassment as defined in the Title IX Sexual Harassment Policy and did not occur in an education program or activity of Michigan Technological University, but would have a substantial impact on Michigan Technological University.
3. The alleged conduct, if proved, would violate the definition of sexual harassment as defined in the [Title IX Sexual Harassment Policy: \(/policy/policies/general/1-14/\)](/policy/policies/general/1-14/) and did not occur in the U.S.

## Prohibited Conduct

1. **Sexual Harassment:** (1) Unwelcome conduct based on sex where enduring the offensive conduct becomes a condition of continued employment; (2) Unwelcome conduct based on sex where the conduct is sufficiently severe, persistent, or pervasive, and subjectively and objectively offensive as to substantially or effectively disrupt or undermine a person's ability to participate in or benefit from a University program or activity, including, but not limited to, employment.
2. **Sexual Assault:** is classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation, including Rape, Fondling, Incest, and Statutory Rape as defined in this Policy.

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### Rape

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**Rape** means the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

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### Fondling

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**Fondling** means the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.

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### Incest

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**Incest** means sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

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## Statutory Rape

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**Statutory Rape** means sexual intercourse with a person who is under the statutory age of consent.

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3. **Dating Violence** means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors: (a) the length of the relationship, (b) the type of relationship, and (c) the frequency of interaction between the persons involved in the relationship. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
4. **Domestic Violence** includes felony or misdemeanor crimes of violence committed by: (1) a current or former spouse or intimate partner of the victim, (2) a person with whom the victim shares a child in common, (3) a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, (4) a person similarly situated to a spouse of the victim under the domestic or family violence laws of Michigan, or (5) any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of Michigan.
5. **Stalking** means engaging in a Course of Conduct directed at a specific person that would cause a Reasonable Person to— (1) fear for his or her safety or the safety of others; or (2) suffer Substantial Emotional Distress.

## Relevant Definitions

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### Consent

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Consent is the affirmative, conscious, and voluntary expression to engage in sexual activity through clear words or actions. Consent is ongoing and can be revoked by words or actions at any point during the interaction. When consent is withdrawn or can no longer be given, sexual activity must stop. Consent cannot be given when it is the result of coercion, intimidation, force, or threat of harm

It is the responsibility of each person to ensure they have consent from the other to engage in the sexual activity. Lack of protest, lack of resistance, or silence do not, alone, constitute consent.

The existence of a dating relationship or past sexual relations between the Complainant and Respondent will never by itself be assumed to be an indicator of consent (nor will subsequent sexual relations or dating relationship alone suffice as evidence of consent to prior conduct).

The Respondent's belief that the Complainant consented will not provide a valid defense unless the belief was actual and reasonable. In making this determination, the decision-maker(s) will consider all of the facts and circumstances the Respondent knew, or by a reasonable person standard, should have known at the time.

In particular, the Respondent's belief is not a valid defense where: (1) The Respondent's belief arose from the Respondent's own intoxication or recklessness; (2) The Respondent did not take reasonable steps, in the circumstances known to the Respondent at the time, to ascertain whether the Complainant affirmatively consented; or (3) The Respondent knew, or by a reasonable person standard should have known at the time, that the Complainant was unable to knowingly and willingly consent because the Complainant was incapacitated, in that the Complainant was: (a) asleep or unconscious, (b) involuntarily restrained, (c) unable to understand the fact, nature, or extent of the sexual activity due to the influence of drugs, alcohol, or medication, and/or (d) unable to communicate due to a mental or physical condition.

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## Course of Conduct

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Course of Conduct means two or more acts, including, but not limited to, acts in which the individual directly, indirectly, or through third parties, by any action, method, device, or means follows, monitors, observes, surveils, threatens, or communicates to or about, a person, or interferes with a person's property.

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## Incapacitation

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Incapacitation means that a person lacks the ability to actively agree to sexual activity because the person is asleep, unconscious, under the influence of alcohol or other drugs such that the person does not have control over their body, is unaware that sexual activity is occurring, or their mental, physical or developmental abilities render them incapable of making rational informed decisions. Incapacitated is a state beyond

drunkenness or intoxication. A person is not necessarily incapacitated merely as a result of drinking, using drugs, or taking medication.

A person violates this policy when they engage in sexual activity with another person who is incapacitated and a reasonable person in the same situation would have known that the person is incapacitated. Incapacitation can be voluntary or involuntary. Signs of incapacitation may include, without limitation: sleep; total or intermittent unconsciousness; lack of control over physical movements (e.g., inability to dress/undress without assistance; inability to walk without assistance); lack of awareness of circumstances or surroundings; emotional volatility; combativeness; vomiting; incontinence; unresponsiveness; and inability to communicate coherently. Incapacitation is an individualized determination based on the totality of the circumstances.

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## Reasonable Person

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Reasonable Person means a reasonable person under similar circumstances and with similar identities to the victim.

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## Substantial Emotional Distress

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Substantial Emotional Distress means significant mental suffering or anguish that may, but does not necessarily require medical or other professional treatment or counseling.

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See [Facts about Sexual Harassment: \(https://www.eeoc.gov/laws/guidance/fact-sheet-sexual-harassment-discrimination\)](https://www.eeoc.gov/laws/guidance/fact-sheet-sexual-harassment-discrimination) from the U.S. Equal Employment Opportunity Commission and view the University Policy 1.14 - Title IX Sexual Harassment Policy

## Retaliation

Retaliation is engaging in adverse action against a reporting party/complainant, responding party/respondent, or any individual or group of individuals involved in the complaint, investigation, and/or resolution of an allegation of a violation, which affects their employment, academic/student, or business status that is motivated in whole or in part by their participation in the process.

In addition, the University will not tolerate retaliation against persons due to their assertion of their protected civil rights, including filing complaints with federal or state civil rights enforcement agencies, bringing the University's attention to prohibited activity, or participation in an investigation of such a complaint.

Retaliation is expressly prohibited by University policy and could lead to discipline including possible termination or dismissal.

Retaliation can take many forms, including but not limited to threats, intimidation, pressuring, demotion, and/or continued harassment. Persons who feel that they have been subject to retaliation may file a complaint based on the alleged retaliation in the same manner as for the initial complaint. Conduct that constitutes retaliation may be found regardless of whether or not the underlying complaint is found to have merit.

## Related Information

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**Complaint Procedures: (/eo-compliance/policies-procedures/complaint/)**

## Contacts

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