

Article VII. Policy Definitions

A. Prohibited Conduct Defined

This Nondiscrimination Policy prohibits Discrimination, Harassment, Sexual Misconduct, Sexual Exploitation, Dating Violence, Domestic Violence, Stalking, and Retaliation as described below. Capitalized terms used in the policy are described in Article VII. B. The definitions of Prohibited Conduct below should be used for alleged misconduct that occurs on or after January 1, 2022. The definitions that should be used for alleged misconduct that occurred prior to January 1, 2022, are those in the policy in place at the time of the alleged misconduct.

1. **Discrimination**

Discrimination is (an) **Adverse Action(s)** against a Complainant **because of** their Protected Status.

- a. **Adverse Action** means an action engaged in by the Respondent that has a substantial and material adverse effect on the Complainant's ability to participate in a university program, activity, or employment. Minor or trivial actions or conduct not reasonably likely to do more than anger or upset a Complainant does not constitute an Adverse Action.

An adverse employment action is any conduct or employment action that is reasonably likely to impair an employee's job performance or prospects for advancement or promotion.

- b. If Adverse Action is taken **because of** a Complainant's Protected Status, that means that the Complainant's Protected Status is a substantial motivating reason (but not necessarily the only reason) for the Adverse Action.
- c. An allegation that an Employee is receiving unequal pay because of their Protected Status (for example, under the California Equal Pay Act) constitutes a Discrimination Complaint under this Nondiscrimination Policy.

2. **Harassment**

Harassment means unwelcome verbal, nonverbal or physical conduct engaged in **because of** an individual Complainant's Protected Status.

If a Complainant is harassed **because of** their Protected Status, that means that the Complainant's Protected Status is a substantial motivating reason (but not necessarily the only reason) for the conduct.

Harassment may occur when:

- a. Submitting to, or rejecting, the verbal, nonverbal or physical conduct is explicitly or implicitly a basis for:
 - I. Decisions that adversely affect or threaten employment, or which are being presented as a term or condition of the Complainant's employment; or
 - II. Decisions that affect or threaten the Complainant's academic status or progress, or access to benefits and services, honors, programs, or activities available at or through the university.

OR

- b. The conduct is sufficiently severe or pervasive so that its effect, whether intended or not, could be considered by a reasonable person under similar circumstances and with similar identities, and is in fact considered by the Complainant as creating an intimidating, hostile or offensive work or educational environment that denies or substantially limits an individual's ability to participate in or benefit from employment and/or educational, services, activities, or other privileges provided by the CSU.

Harassment includes, but is not limited to, verbal harassment (e.g., epithets, derogatory comments, or slurs), physical harassment (e.g., assault, impeding or blocking movement, or any physical interference with normal work or movement), and visual forms of harassment (e.g., derogatory posters, cartoons, drawings, symbols, or gestures.). Single, isolated incidents will typically be insufficient to rise to the level of harassment.

3. **Sexual Misconduct**

All sexual activity between members of the CSU community must be based on **Affirmative Consent**. Engaging in any sexual activity without first obtaining Affirmative Consent to the specific activity is Sexual Misconduct, whether or not the conduct violates any civil or criminal law.

- Sexual activity includes, but is not limited to:
 - kissing,
 - touching intimate body parts
 - fondling,
 - intercourse,
 - penetration, no matter how slight, of the vagina or anus with any part or object,
 - oral copulation of a sex organ by another person.
- Sexual Misconduct includes, but is not limited to, the following conduct:
 - an attempt, coupled with the ability, to commit a violent injury on the person of another because of that person's Gender or Sex,
 - the intentional touching of another person's intimate body parts without Affirmative Consent,
 - intentionally causing a person to touch the intimate body parts of another without Affirmative Consent,
 - using a person's own intimate body part to intentionally touch another person's body without Affirmative Consent,
 - any unwelcome physical sexual acts, such as unwelcome sexual touching,
 - using physical force, violence, threat, or intimidation to engage in sexual activity,
 - ignoring the objections of the other person to engage in sexual activity,

- causing the other person's incapacitation through the use of drugs or alcohol to engage in sexual activity,
 - taking advantage of the other person's incapacitation to engage in sexual activity.
- Intimate body part means the sexual organ, anus, groin, buttocks, or breasts of any person.
 - Sexual activity between a Minor (a person younger than 18 years old) and a person who is at least 18 and two years older than the Minor always constitutes Sexual Misconduct, even if there is Affirmative Consent to all sexual activity. The existence of Affirmative Consent and/or the type of sexual activity may be relevant to the determination of an appropriate Sanction.
 - Persons of all Genders, Gender Identities, Gender Expressions, and Sexual Orientations can be victims of these forms of Sexual Misconduct. Sexual Misconduct can be committed by an individual known to the victim including a person the Complainant may have just met, i.e., at a party, introduced through a friend, or on a social networking website.
 - **Affirmative Consent**
Affirmative Consent must be voluntary, and given without coercion, force, threats, or intimidation.
It is the responsibility of each person involved in the sexual activity to ensure Affirmative Consent has been obtained from the other participant(s) prior to engaging in the sexual activity.
Affirmative Consent means an agreement to engage in sexual activity that is:
 - Informed,
 - Affirmative,
 - Conscious,
 - Voluntary, and
 - Mutual.
 - Lack of protest or resistance does not mean there is Affirmative Consent.
 - Silence does not mean there is Affirmative Consent.
 - The existence of a dating or social relationship between those involved, or the fact of past sexual activities between them, should never by itself be assumed to be an indicator of Affirmative Consent.
 - A request for someone to use a condom or birth control does not, in and of itself, mean there is Affirmative Consent.
 - Affirmative Consent can be withdrawn or revoked. Consent must be ongoing throughout a sexual activity and can be revoked at any time, including after sexual activity begins. Once consent is withdrawn or revoked, the sexual activity must stop immediately. Consent to one form of sexual activity (or one sexual act) does not constitute consent to other forms of sexual activity. Consent given to sexual activity on one occasion

does not constitute consent on another occasion.

- **Incapacitation**

Affirmative Consent cannot be given by a person who is incapacitated. A person is unable to consent when asleep, unconscious, or incapacitated due to the influence of drugs, alcohol, or medication so that the person could not understand the fact, nature, or extent of the sexual activity. A person is incapacitated if the person lacks the physical and/or mental ability to make informed, rational decisions. A person with a medical or mental disability may also lack the capacity to give consent. Whether an intoxicated person (as a result of using alcohol or other drugs) is incapacitated depends on the extent to which the alcohol or other drugs impact the person's decision-making ability, awareness of consequences, and ability to make informed judgments. A person's own intoxication or incapacitation from drugs or alcohol does not diminish that person's responsibility to obtain Affirmative Consent before engaging in sexual activity.

Sexual activity with a minor (a person under 18 years old) is not consensual, because a minor is considered incapable of giving consent due to age.

It shall not be a valid excuse that a person affirmatively consented to the sexual activity if the Respondent knew or reasonably should have known that the person was unable to consent to the sexual activity under any of the following circumstances:

- The person was asleep or unconscious
 - The person was incapacitated due to the influence of drugs, alcohol, or medication, so that the person could not understand the fact, nature, or extent of the sexual activity
 - The person could not understand the fact, nature, or extent of the sexual activity, or was unable to communicate, due to a mental or physical condition
- It shall not be a valid excuse that the Respondent believed that the person consented to the sexual activity under either of the following circumstances:
 - The Respondent's belief in Affirmative Consent arose from the intoxication or recklessness of the Respondent;
 - The Respondent did not take reasonable steps, in the circumstances known to the Respondent at the time, to ascertain whether the person affirmatively consented.

4. **Sexual Harassment**

Sexual Harassment means unwelcome verbal, nonverbal or physical conduct of a sexual nature that includes, but is not limited to, sexual advances, requests for sexual favors, offering employment benefits or giving preferential treatment in exchange for sexual favors, or indecent exposure, and any other conduct of a sexual nature where:

- a. Submission to, or rejection of, the conduct is explicitly or implicitly used as the basis for any decision affecting a Complainant's academic status or progress, or access to benefits and services, honors, programs, or activities available at or through the university; or

- b. Submission to, or rejection of, the conduct by the Complainant is explicitly or implicitly used as the basis for any decision affecting a term or condition of the Complainant's employment, or an employment decision; or
- c. The conduct is sufficiently severe, persistent, or pervasive that its effect, whether or not intended, could be considered by a reasonable person in the shoes of the Complainant, and is in fact considered by the Complainant, as limiting their ability to participate in or benefit from the services, activities or opportunities offered by the university; or
- d. The conduct is sufficiently severe, persistent, or pervasive that its effect, whether or not intended, could be considered by a reasonable person in the shoes of the Complainant, and is in fact considered by the Complainant, as creating an intimidating, hostile or offensive environment.

Sexual Harassment could include being forced to engage in unwanted sexual contact as a condition of membership in a student organization or in exchange for a raise or promotion; being subjected to video exploitation or a campaign of sexually explicit graffiti; or frequently being exposed to unwanted images of a sexual nature in a work environment, or in a classroom where the images are unrelated to the coursework.

Claiming that the conduct was not motivated by sexual desire is not a defense to a complaint of Sexual Harassment.

Sexual and/or romantic relationships between members of the campus community may begin as consensual, and may develop into situations that lead to Discrimination, Harassment, Retaliation, Sexual Misconduct, Dating or Domestic Violence, or Stalking subject to this Nondiscrimination Policy.

5. ***Sexual Exploitation***

Sexual Exploitation means a person taking sexual advantage of another person for the benefit of anyone other than that person without that person's consent, including, but not limited to, any of the following acts:

- a. The prostituting of another person.
- b. The trafficking of another person, defined as the inducement of a person to perform a commercial sex act, or labor of services, through force, fraud, or coercion.
- c. The recording of images, including video or photograph, or audio of another person's sexual activity or intimate parts, without that person's consent.
- d. The distribution of images, including video or photographs, or audio of another person's sexual activity or intimate parts, if the individual distributing the images or audio knows or should have known that the person depicted in the images or audio did not consent to the disclosure.
- e. The viewing of another person's sexual activity or intimate parts, in a place where that other person would have a reasonable expectation of privacy, without that person's consent, for the purpose of arousing or gratifying sexual desire.

6. ***Dating Violence and Domestic Violence***

Dating Violence means physical violence or threat of physical violence committed by a

person—

- a. who is or has been in a social relationship of a romantic or intimate nature with the Complainant; **and**
- b. where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - I. The length of the relationship.
 - II. The type of relationship.
 - III. The frequency of interaction between the persons involved in the relationship.

Domestic Violence means physical violence or threat of physical violence committed by a current or former spouse or intimate partner of the Complainant, by a person with whom the Complainant shares a child in common, by a person who is cohabitating with or has cohabitated with the Complainant as a spouse or intimate partner, or by a person similarly situated to a spouse of the Complainant.

Physical violence means physical conduct that intentionally or recklessly threatens the health and safety of the recipient of the behavior, including assault.

7. **Stalking**

Stalking means engaging in a Course of Conduct directed at a specific person that would cause a reasonable person to fear for the safety of self or others' safety or to suffer Substantial Emotional Distress. For purposes of this definition:

- **Course of Conduct** means two or more acts, including but not limited to, acts in which one party directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about the other party, or interferes with the other party's property.
- **Substantial Emotional Distress** means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

8. **Prohibited Consensual Relationships**

A Prohibited **Consensual Relationship** is a consensual sexual or romantic relationship between an Employee and any Student or Employee over whom they exercise direct or otherwise significant academic, administrative, supervisory, evaluative, counseling, or extracurricular authority.

9. **Retaliation**

Retaliation means that a substantial motivating reason for an Adverse Action taken against a person was because the person has or is believed to have:

- a. Exercised their rights under this Nondiscrimination Policy,
- b. Reported or opposed conduct which was reasonably and in good faith believed to be in violation of this Nondiscrimination Policy,
- c. Assisted or participated in an investigation/proceeding under this Nondiscrimination Policy, regardless of whether the Complaint was substantiated,
- d. Assisted someone in reporting or opposing a violation of this Nondiscrimination Policy or assisted someone in reporting or opposing Retaliation under this