

# RESPONSIBLE EMPLOYEES UNDER UC'S ANTI-DISCRIMINATION POLICY FREQUENTLY ASKED QUESTIONS

## What if I believe I have experienced Discrimination, Harassment, or Retaliation?

If you believe that you have experienced discrimination, harassment, or retaliation, you can file a report with [your campus/location Local Implementation Officer](#) or, if you are a University employee, you can file a grievance or complaint, which will be forwarded to the Local Implementation Officer for processing under the Anti-Discrimination Policy. Whether to report or file a formal complaint is a personal choice. Regardless of whether you choose to file a report or make a grievance/complaint, please know that support services are available to you, and the Local Implementation Office can assist you with identifying those services.

## What is the purpose of the Anti-Discrimination Policy?

UC's [Anti-Discrimination Policy](#) ("A-D Policy") addresses UC's responsibilities and procedures with regard to Discrimination, Harassment, and Retaliation, as defined in the Policy (together, "Prohibited Conduct") to ensure equitable and inclusive education and employment environments. Note that the A-D Policy addresses Harassment, such as Harassment based on pregnancy or related conditions, not covered under the University's [Sexual Violence and Sexual Harassment Policy \("SVSH Policy"\)](#).

## Who is covered by the A-D Policy?

The A-D Policy applies to all UC employees, as well as undergraduate, graduate and professional students, and third parties. The A-D Policy applies at all UC campuses, the Lawrence Berkeley National Laboratory, Medical Centers, the Office of the President, Agriculture and Natural Resources, and to all UC programs and activities.

## What constitutes "Prohibited Conduct" under the A-D Policy?

Prohibited Conduct includes:

- **Discrimination:** Unfavorable action taken because of an individual's actual or perceived Protected Category. Failure to provide reasonable accommodations to individuals when required by law may also constitute discrimination;
- **Harassment:** Unwelcome conduct based on an individual's actual or perceived Protected Category that is sufficiently severe, persistent, or pervasive that it unreasonably interferes with, denies, or adversely limits an individual's participation in or benefit from the education, employment, or other programs or activities of the University, and creates an environment that a reasonable person would find to be intimidating or offensive; and
- **Retaliation:** An adverse action against an individual based on a) their report or other disclosure of alleged Discrimination and/or Harassment, or b) their

participation in, or assistance with the processes provided for in the A-D Policy.

The A-D Policy defines Protected Category as an identity protected by federal or state law, including: race, religion, color, citizenship, national or ethnic origin, ancestry, sex (including pregnancy, childbirth, lactation or related medical conditions), gender, gender identity, gender expression, gender transition, sexual orientation, physical or mental disability (including having a history of a disability or being regarded as being disabled), medical condition (cancer-related or genetic characteristics), predisposing genetic information (including family medical history), marital status, age (at least 40 years of age in the employment context), or veteran or military status.

National or ethnic origin and/or ancestry extends to actual or perceived shared ancestry, which includes actual or perceived shared ancestry or ethnic characteristics, or citizenship or residency in a country with a dominant religion or distinct religious identity. This includes, for example, antisemitic, anti-Arab, and Islamophobic Discrimination or Harassment.

For more detailed definitions of Prohibited Conduct, please refer to Section II.A. and the FAQs section of the [A-D Policy](#).

### **Which UC employees are required to report Discrimination, Harassment, or Retaliation to the Local Implementation Officer and are considered “Responsible Employees?”**

Please note that some UC campuses/locations broadly define who is a Responsible Employee, so it is important to check with your Local Implementation Officer if you are not sure whether or not you are a Responsible Employee. At a minimum, the following categories of UC employees are Responsible Employees under the A-D Policy:

- Campus Police
- Human Resources Administrators, Academic Personnel Administrators, and Discrimination and Title IX Professionals
- All Managers and Supervisors, including Deans, Department Chairs, and Directors of Organized Research Units
- Faculty Members

Failure to comply with the A-D Policy’s Responsible Employee reporting obligations could result in disciplinary action up to and including dismissal or termination of employment.

### **Who may qualify as a “Confidential Resource?”**

The following employees who receive information about Prohibited Conduct while acting in their confidential capacity are Confidential Resources:

- Ombuds;
- licensed counselors in student counseling centers and in employee assistance programs;
- any individuals with a professional license requiring confidentiality (including health center employees but excluding campus legal counsel), or someone who is supervised by such an individual; and
- pastoral counselors (individuals associated with a religious order or denomination, who are recognized by that religious order or denomination as someone who provides confidential counseling).

Individuals who consult with Confidential Resources will be advised that their discussions in these settings are not considered actual reports of Prohibited Conduct and that without additional action by the individual, these discussions will not, alone, result in any formal action by the University to resolve their concerns.

Information about how and where to contact Confidential Resources is posted on each location's website. Note that designation as a "Confidential Resource" under the A-D Policy only exempts an individual from reporting to the Local Implementation Officer. It does not affect other mandatory reporting obligations under other policies or laws that require reporting to campus or local law enforcement or Child Protective Services.

### **How do I know when I am acting in my confidential capacity as a Confidential Resource and therefore am exempt from the A-D Policy Responsible Employee reporting duties?**

An employee may act as a Confidential Resource in some contexts and not in others. It depends on whether the employee is acting in a confidential capacity when receiving a report of Prohibited Conduct. For example, a CAPS counselor who receives a disclosure regarding racial harassment during a counseling session is acting in their confidential capacity and is exempt from reporting. However, if that same counselor receives a student disclosure about racial harassment while shopping in a campus bookstore, the counselor would not be receiving that disclosure in their confidential capacity and would have an obligation to report the disclosure to the Local Implementation Officer.

### **I am a Responsible Employee. How do I fulfill my obligation?**

When an individual discloses a possible incident of Prohibited Conduct, you should inform them that you are a Responsible Employee who must report any information they share with you to the Local Implementation Officer. As a Responsible Employee, you **must** contact your Local Implementation Officer as soon as possible and share whatever information you have, including the names of any individuals involved, their

contact information, and any details of the incident. (See the response below regarding the information that may be disclosed to the Local Implementation Officer when the incident involves a patient.)

As a Responsible Employee, you should report to the Local Implementation Officer even if you are unsure that the incident actually occurred or whether it constitutes Prohibited Conduct. Reports should be made even if time has passed since the alleged conduct occurred, the alleged conduct occurred off campus, or the Respondent is a nonaffiliate.

**Must I report Harassment, Discrimination, or Retaliation even when the conduct involves a patient?**

Yes, if you learn the information in your role as a Responsible Employee. See above or consult the definition of “Confidential Resources” in the A-D Policy for exceptions relevant to licensed health care providers who learn information in connection with their treatment of a patient.

**Does the Health Information Portability and Accountability Act (HIPAA) preclude reporting to a Local Implementation Officer as a Responsible Employee when the conduct involves a patient? What if the relevant information is subject to additional privacy protections (e.g., mental health, substance abuse, communicable diseases)?**

In general, health and medical privacy laws, like HIPAA, do not preclude reporting to a Local Implementation Officer when the alleged conduct involves a patient. Pursuant to the University’s systemwide [HIPAA Administrative Requirements Policy](#), the Local Implementation Office is considered a part of the University’s “covered component,” and, as such, is subject to HIPAA’s regulations and the University’s systemwide HIPAA policies. See HIPAA Administrative Requirements Policy at pp. 2-3. As a part of the covered component, Local Implementation Office personnel must be trained on systemwide HIPAA policies and any relevant local procedures necessary to perform their assigned job functions. In addition, they must take appropriate measures to protect the privacy of protected health information (PHI), in any form. For additional questions, consult your local legal counsel or HIPAA privacy officer. While you await guidance, the incident should be reported to your Local Implementation Office in an anonymized way that protects the identity of the patient.

**Where can I find more information about the A-D Policy and my reporting obligations as a Responsible Employee?**

For additional information, please see UC’s A-D Policy and/or contact your Local Implementation Officer.