

ARTICLE XX. PROTECTIONS FROM DISCRIMINATION, HARASSMENT, & ABUSE
HAW-UAW Proposal November 15, 2024

ARTICLE XX.
PROTECTIONS FROM DISCRIMINATION, HARASSMENT, AND ABUSE

Section A. The Employer shall prohibit and shall not tolerate any Discrimination, Sexual Misconduct, Bullying, and Abuse against any Employee.

Section B. Definitions

1. Complainant: An Employee who may have experienced discrimination, sexual misconduct, bullying, or abuse as defined in this article. Complainants are defined in this article irrespective of the channel by which the Employer learned of a potential experience fitting the definitions of discrimination, sexual misconduct, bullying, or abuse set forth by this article.
2. Protected Characteristics include any or all of the following: age, race, color, ethnicity, national origin, citizenship status (subject to compliance with federal and state law), sex, sexual orientation, gender identity, gender expression, religion, creed, ancestry, disability, neurodivergent status, height, weight, marital or domestic partnership status, genetic information, medical condition, caste, or other form of inherited social hierarchy, current or previous socio-economic status, public assistance status, membership or activity in a local commission created for the purpose of dealing with discrimination, membership in any labor union, political persuasion or affiliation, length of previous employment or service to the Employer, HIV or another chronic illness status, pregnancy, familial status, housing status, military service, special disabled veteran or veteran status, criminal record, history of incarceration, or membership in other protected classes as set forth in state or federal law.
3. Discrimination as defined in this Article encompasses any form of unfair or prejudicial treatment or harassment on the basis of a protected characteristic. Discrimination includes, but is not limited to, epithets, slurs, comments, or jokes that target an individual or group based on a protected characteristic; conduct that threatens, intimidates, belittles, demeans, or undermines an individual or group because of a protected characteristic; conduct that communicates that people with a certain protected characteristic do not belong in the community or in a particular professional or academic field; conduct that applies stereotypes to an individual or group based on a protected characteristic, including treating an individual or group differently because they conform or do not conform to what is perceived to be a stereotypical representation of a protected characteristic; or any one or more of the following actions:

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- a. an action taken against an Employee based on a protected characteristic that (1) unreasonably interferes with an individual's employment, education, or participation in a University program or activity; (2) creates a work, employment, or other University environment that a reasonable person would find to be intimidating, hostile, or offensive; or (3) effectively denies an individual equal access to a University employment, professional development, resources, benefits, activity or education;
 - b. a denial of reasonable accommodations necessary because of an individual's protected characteristics;
 - c. an action where it is stated or implied that an individual needs to submit to, or participate in, unwelcome conduct based on a protected characteristic in order to maintain or advance in their employment, professional development, education, or participation in a University program or activity;
 - d. providing assistance or support to someone in performing an act of discrimination;
 - e. encouraging, instigating, or inducing someone to perform an act of discrimination.
4. Sexual Misconduct includes any one or more of the following:
 - a. sexual and gender-based harassment, sexual assault, stalking, relationship violence, and/or relationship abuse as defined within this article.
 - b. providing assistance or support to someone in performing an act of sexual misconduct.
 - c. encouraging, instigating, or inducing someone to perform an act of sexual misconduct
5. Sexual and gender-based harassment under this article encompasses all harassment on the basis of sex or gender. Sexual and gender-based harassment includes, but is not limited to, harassment based on gender, pregnancy, gender identity, gender expression or sexual orientation. Sexual and gender-based harassment are unwelcome conduct on the basis of sex or gender, including but not limited to, unwelcome sexual advances, including touching, embracing, caressing, or sexual comments; implicit or explicit requests for sexual favors in exchange for employment or benefits; distributing ratings of individuals' attractiveness or sexual activity or performance; a pattern of sexually suggestive comments, jokes, or gestures; a pattern of disparaging comments or jokes about certain genders or based on gender stereotypes; sexual assault, dating violence and domestic violence; taking sexual advantage of a person, which may include, but is not limited to, unwelcome exposure of one's genitals to another person, distribution of sexual information, images, or recordings of or about another person, observation or recording

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of sexual activity or nudity where there is a reasonable expectation of privacy, or knowingly transmitting sexual infections or diseases without the other person's knowledge; or any action that satisfies one or more of the following conditions:

- a. when the provision of aid, benefit, employment, professional development or service is made conditional on an individual's participation in sexual conduct.
 - b. when conduct is severe, persistent or pervasive and:
 - i. unreasonably interferes with an individual's employment, professional development, or job performance, or
 - ii. creates an environment that an individual finds, and a reasonable person would find, to be intimidating, hostile or offensive, or
 - iii. effectively denies an individual equal access to a University resource, employment, professional development, or activity.
6. Sexual Assault is actual or attempted sexual contact without affirmative consent or a threat to engage in contact that would be, if the threat were carried out, sexual contact without affirmative consent.
7. Sexual Contact is intentional sexual touching with an object or body part and can occur whether or not an individual's body parts are covered by clothing. Depending on the context, it may include, but is not limited to: intentionally touching or kissing the mouth, breasts, buttocks, groin or genitals of another individual; intentionally touching another individual with any of these body parts; or making an individual touch another individual or themselves with, or on, any of these body parts.
8. Affirmative Consent is defined as freely and affirmatively communicated words or actions by an informed individual that a sober reasonable person under the circumstances would believe to communicate a willingness to participate in the sexual contact.
- a. The following factors shall be considered when determining whether affirmative consent was given:
 - i. Each individual who wishes to engage in sexual contact is responsible for obtaining consent from the other individual or individuals with whom they intend to be involved in the sexual contact.
 - ii. A lack of protest, the absence of resistance, or silence do not by themselves indicate consent.

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- iii. The existence of a present or past sexual, dating, or other romantic relationship between the individuals involved does not by itself imply consent to sexual contact.
 - iv. Consent must be present throughout the sexual contact and may be withdrawn at any time.
 - v. When consent is withdrawn, all sexual contact must stop. Where there is confusion about the state of consent, sexual contact must stop until the individuals have verified the affirmative consent of all individuals involved.
 - vi. Consent to one form of sexual contact does not by itself constitute consent to another form of sexual contact.
- b. Consent is NOT obtained where:
- i. An individual is compelled to engage in unwanted sexual contact through the use of coercion. Coercion may include, but is not limited to, use of physical force, intimidation, threats, or severe or persistent pressure that would reasonably cause an individual to fear significant consequences if they refuse to engage in sexual contact.
 - ii. An individual involved in sexual contact is incapacitated due to the influence of drugs, alcohol, or any other means, and a sober reasonable person would suspect incapacitation.
 - iii. An individual involved in sexual contact is unable to communicate or understand the nature or extent of the sexual situation because of a physical or mental condition.
 - iv. An individual involved in sexual contact is asleep, unconscious, or involuntarily restrained.
 - v. Sexual contact occurs with an individual who is not of legal age to give consent pursuant to Massachusetts state law.
9. Stalking includes acts in which an individual directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about another individual, or interferes with another individual's property that would cause a reasonable person to:
- a. fear for their safety or the safety of others; or
 - b. suffer substantial emotional distress.
10. Relationship Violence can include any one or more of the following actions:

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- a. actual, attempted or threatened violence by one individual against another individual with whom they are, or have been, in a social relationship of a romantic or intimate nature.
 - b. conduct that would constitute a felony or misdemeanor crime of violence by one individual against:
 - i. a current or former spouse or intimate partner;
 - ii. another individual with whom they share a child;
 - iii. another individual similarly situated to a spouse under the Massachusetts state domestic or family violence laws; or
 - iv. any adult or youth who is protected from the individual's acts under the Massachusetts state domestic or family violence laws.
11. Relationship Abuse is any conduct used to gain or maintain control or power over an intimate, domestic, and/or romantic partner. Abuse may include, but is not limited to, physical, sexual, emotional, economic, or psychological actions or threats of actions that influence an intimate, domestic, and/or romantic partner. This includes any behaviors that frighten, intimidate, terrorize, manipulate, hurt, humiliate, blame, injure or wound an individual.
12. Bullying includes any conduct that:
- a. unreasonably interferes with an individual's employment, professional development, or job performance;
 - b. creates an environment that an individual finds, and a reasonable person would find, to be intimidating, hostile or offensive, or humiliating;
 - c. effectively denies an individual equal access to a University resource, employment, professional development, or activity; or
 - d. would reasonably cause an individual to fear significant consequences in their career.
13. Abuse is defined broadly as any acts that cause, intend to cause, threaten to cause, or may be reasonably perceived to lead to harm, injury, psychological distress, or unreasonable burden to an individual. Abuse may include, but is not limited to, the following:
- a. Physical Abuse entailing any use of harmful physical force against an individual, including, but not limited to, slapping, hitting, kicking, biting, choking, smothering, shoving, dragging, throwing, punching, shaking, burning, cutting, or exposure to harmful or foul substances. Forcing or coercing a workload beyond

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reasonable expectations or any exposure to dangerous or harmful work conditions are considered forms of physical abuse.

- b. Psychological Abuse entailing non-physical behaviors aimed to cause distress or anguish that humiliate, intimidate, frighten, isolate or control an individual. Psychological abuse can include, but is not limited to, harassment or coercion.
- c. Intellectual Theft entailing actions that lead to the unauthorized use, copy, or misappropriation of an individual's intellectual or creative material. Any coercive action that disenfranchises an individual from benefiting rightfully and reasonably from their intellectual productivity is considered intellectual theft.
- d. Career Development Abuse entailing actions that unreasonably and negatively impact an individual's career development, ability to perform their job tasks, ability to seek alternative employment, or their status in the professional or academic field. Such actions include, but are not limited to, changing the quality or nature of recommendation letters, withholding recommendation letters, publication authorship credit, or grant applications, or the denial of some professional opportunity.
- e. Power-based Harassment entailing abusive or intimidating behavior by individuals who hold supervisory authority or who are reasonably perceived to hold power over another individual when such conduct interferes with or limits the subordinate's ability to participate in or benefit from their employment at the University or when such conduct coerces an individual to action they would not otherwise perform.
- f. Labor Abuse entailing any behavior that sets unreasonable expectations upon the individual beyond the scope of their position's described expectations or the setting of described expectations to a level beyond what is broadly considered the norm in the field. Labor Abuse may include, but is not limited to, asking for, implying the need for, or requiring unreasonable workloads, communications at a frequency or severity that a reasonable person would consider burdensome or threatening, or setting unattainable or unreasonable productivity expectations.

Section C. A Complainant's acquiescence to the conduct, or failure to complain about the conduct, is not by itself determinative of whether the conduct was welcome. An individual who is reasonably perceived to hold power over another individual is expected to understand that the subordinate individual may potentially submit to or participate in unwelcome conduct because the subordinate individual fears potential negative repercussions if they refuse, and not because they welcome the conduct.

Section D. The Employer shall not discriminate against, intimidate, restrain, coerce, or interfere with any Employee because of, or with respect to, their lawful Union activities, including participation in a grievance, or membership.

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Section E. The Employer shall provide supportive measures designed to restore or preserve equal access to the Complainant's employment, education, or participation in a University program or activity, protect the safety of all parties and the environment, and deter prohibited conduct. Supportive measures may include, but are not limited to, the following:

1. counseling and support services;
2. academic or course-related adjustments;
3. modifications of work or class schedules;
4. campus escort services;
5. restrictions on contact between the parties;
6. changes in work locations;
7. paid leaves of absence;
8. assistance in making a report to law enforcement or obtaining a protective order;
9. technological support to mitigate the impact of online bullying, abuse, or doxxing.

Section F. In cases of online bullying or doxxing which endangers an individual's safety, the Employer must reach out proactively to the affected Employee(s) and offer any available resources and supportive measures described in Section E of this Article and in Article XX (Health and Safety).

Section G. Employees who allege experiencing Discrimination, Sexual Misconduct, Bullying, or Abuse as defined by this Article or are identified as Complainants shall have the right to Union representation at any meetings or processes pertaining to the case. The Employer shall inform the Employee of this right at any meetings or processes pertaining to the case at which a Union representative is not present.

Section H. The Employer shall maintain the confidentiality of an Employee exercising any right under this Article and shall not share an Employee's information except with the Union, appropriate Harvard personnel as necessary to perform their duties, or as required by law.

Section I. Employees who allege experiencing Discrimination, Sexual Misconduct, Bullying, or Abuse as defined by this Article or are identified as Complainants are able to pursue grievance procedures outlined in Article XX (Grievance and Arbitration), starting at any step.

Section J. Grievances relating to this article are not restricted by the time limits set forth in Article XX (Grievance and Arbitration) Section C. All other time limits set forth by Article XX (Grievance and Arbitration) remain in effect.

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Section K. Nothing in this Agreement shall be construed to prevent an Employee who alleges experiencing Discrimination, Sexual Misconduct, Bullying, or Abuse from exercising their constitutional or statutory rights. Nothing in this Agreement shall be construed to prevent an Employee from pursuing any other remedy, sanctions, or investigatory procedures available per Employer policy or any other lawful mechanism.

Section L. Within 24 hours of a Complainant being identified, the Employer shall inform the Complainant in writing of the protections within this Article, the appropriate Offices to make use of these protections, and of their right to Union support.

Section M. The Employer shall provide, at no cost to the Complainant, confidential personal support and advocacy resources for Complainants.

Section N. The Employer failing to implement procedures and policies that effectively prevent Discrimination, Sexual Misconduct, Bullying, or abuse shall constitute a violation of this Agreement.