

Sexual Harassment Prevention and Title IX

***Annual Mandatory
University-Wide Training***

2022

What We Will Cover

1. Why is sex discrimination, harassment and retaliation prohibited at Upstate?
 - Illegal under State and federal laws
 - Prohibited by Upstate's Policies
2. Definitions of:
 - Discrimination
 - Sexual Harassment
 - Retaliation
3. Examples of harassment & how to address it
4. Internal and external resources

Relevant State and Federal Laws

Relevant State and federal laws that prohibit sex discrimination, sexual harassment, and retaliation are:

Prohibition in the workplace:

- Title VII of the Civil Rights Act of 1964
- Equal Pay Act
- NYS Human Rights Law

Prohibition in education:

- Title IX of the Education Amendments Act (“Title IX”)
- NYS Human Rights Law

Upstate Policies

- SUNY Upstate has University-wide policies that prohibit harassment and unequal treatment on the basis of:
 - sex, including:
 - gender,
 - pregnancy,
 - gender identity,
 - gender expression,
 - sexual orientation, and
 - transgender status,

and

- All other legally protected classes in New York State

Upstate Policies

These University-wide policies include:

- Equal Opportunity and Non-Discrimination Policy, UW E-01:
Prohibits unequal treatment and discrimination against an individual because of their membership in a legally protected class.
- Harassment Prevention Policy, UW H-01:
Prohibits harassment of an individual because of their membership in a legally protected class, including sexual harassment.
- Title IX Policy, UW T-05:
Prohibits sex discrimination, including sexual harassment and violence, in Upstate's educational programs and activities.

Upstate Policies – Check your Knowledge

1. TRUE or FALSE: The Upstate Harassment Prevention Policy only applies to the individuals who work in Upstate's hospitals, but does not apply to individuals who work on the campus or to students.

FALSE: The Upstate Harassment Prevention Policy applies University-wide to all individuals working on Upstate's campus, employed by Upstate, and participating in Upstate's programs and activities.

2. TRUE or FALSE: The Upstate Equal Opportunity and Non-Discrimination Policy prohibits unequal treatment of an individual because of their membership in a legally protected class.

TRUE: The Upstate Equal Opportunity and Non-Discrimination Policy prohibits unequal treatment and discriminatory treatment of an individual because of their membership in a protected class.

3. TRUE or FALSE: The Title IX policy prohibits discrimination in Upstate's educational programs and activities based on all legally protected classes.

FALSE: The Title IX policy prohibits discrimination in

Discrimination

Discrimination is:

- treating a person unfavorably,
- because of their membership in a protected class,
- so as to interfere with or limit the person's employment, education, or ability to participate in or benefit from any SUNY Upstate program, activity or service.

Sex Discrimination

- Sex discrimination includes discrimination based on:
 - sex,
 - gender,
 - pregnancy,
 - gender identity,
 - gender expression,
 - sexual orientation, and
 - transgender status
- All of these are considered protected classes.

Sexual Harassment

There are 2 types of sexual harassment:

1. Quid pro quo harassment; and
2. Hostile environment harassment.

Quid Pro Quo Sexual Harassment*

Is **unwelcome** verbal, non-verbal or physical conduct of a sexual nature when:

- Submission to or rejection of such conduct is made either explicitly or implicitly a term or condition of an individual's employment, academic standing, or status in a program, course, or activity; or
- Submission to or rejection of such conduct is used as the basis for employment or educational decisions, or for academic evaluation, grades, or advancement.

* Quid pro quo is Latin, and means “something for something” or “this for that.” For example – the promise of a good grade on a test in exchange for sex.

Hostile Environment Sexual Harassment

Is **unwelcome** verbal, non-verbal or physical conduct:

- of a sexual nature or
- because of sex

When such conduct has the purpose or effect of:

- unreasonably interfering with a person or group's academic or work performance, or
- creating an intimidating, hostile, demeaning, or offensive working, learning, or campus environment.

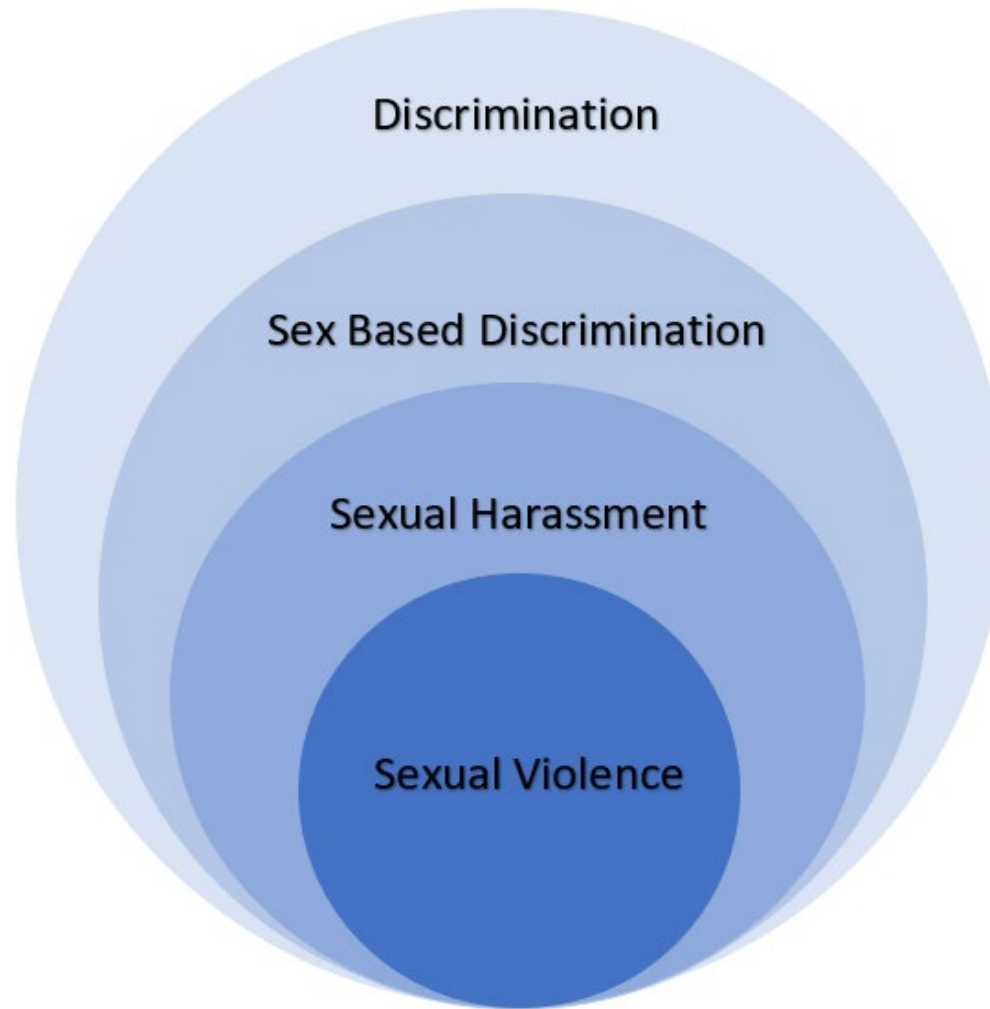
It is unlawful if it consists of more than mere “petty slights or trivial inconveniences.”

Sexual Harassment

It can occur:

- regardless of sex, gender identity, or sexual orientation;
- in a single episode, or in multiple acts of persistent; harassing behavior; and
- between co-workers, vendors, contractors, supervisor/subordinate, faculty/student, resident/student, volunteers, interns, etc.

Sexual harassment is a form of **sex discrimination**.



Sexual Harassment

Sexual harassment is illegal.

It is also prohibited by Upstate's Code of Conduct and University-wide policies.

All Upstate community members have a **legal right** to have a workplace and campus **free from sexual harassment** and may:

1. file an internal complaint with Upstate's Office of Institutional Equity; or
2. file an external complaint with an administrative agency or in federal or state court.

Where Can Sexual Harassment Occur?

Anywhere on Upstate's campus or within Upstate's programs or activities, including:

- Employer-sponsored events, whether on or offsite, such as conferences, and office parties.
- Possibly in a non-work scenario during non-work hours, depending on the facts.

Examples of Sexual Harassment

Verbal or physical actions based on sex, including:

- Sexist comments;
- Unwelcome advances;
- Physical acts of a sexual nature, such as touching, pinching, patting, grabbing, kissing, hugging, brushing against or poking another person's body;
- Interfering with, destroying or damaging a person's workstation, tools, or equipment, or otherwise interfering with the individual's ability to perform the job; and
- Rape, sexual battery, molestation, or attempts at these assaults.

Examples of Sexual Harassment

Sexual or discriminatory displays or publications anywhere in the workplace or learning environment, such as:

- Displaying pictures, posters, calendars, graffiti, objects, reading materials that are sexually demeaning or pornographic;
- Sexual displays on workplace computers or cell phones and sharing such displays in the workplace or classroom; and
- Sexual gestures, noises, remarks, jokes, or comments about a person's sexuality or sexual experience.

**A hostile environment may be created by a single episode or by persistent behavior. **

Examples of Sexual Harassment

When a **person in authority** trades, or **tries to trade**, **job benefits** or a **favorable grade** or **academic opportunity** for **sexual favors** or a **sexual relationship**, including:

- Offering better employment conditions or opportunities in exchange for sex;
- Offering a good grade in exchange for sex;
- Threatening a denial of opportunity or adverse conditions if sex is refused;
- Retaliating for refusing to engage in a sexual relationship.

Sex Stereotyping

Sex Stereotyping is form of Sexual Harassment and consists of:

- Harassing a person because that person may not conform to other people's ideas or perceptions about how individuals of a certain sex should act or look.
- Harassment because someone is performing a job that is usually or was previously performed mostly by persons of a different sex.

Other Types of Workplace Harassment

Harassment or discrimination based on any protected characteristic is prohibited at Upstate and will result in disciplinary or other appropriate action.

Protected Characteristics:	
Race	Color
National Origin	Religion
Age	Disability
Sex	Gender
Pregnancy	Gender Identity
Gender Expression	Sexual Orientation
Transgender Status	Predisposing Genetic Characteristic
Marital Status	Familial Status
Veteran Status	Military Status
Domestic Violence Victim Status	Criminal Conviction Record

Check your knowledge

1. TRUE or FALSE: An employee cannot be found to have harassed their supervisor.

False: Harassment can occur between any two individuals.

2. TRUE or FALSE: If unwelcome conduct of a sexual nature only happens one time, it cannot be sexual harassment.

False: A single event can constitute sexual harassment if it is more than a petty slight or a trivial inconvenience.

3. TRUE or FALSE: I can report harassment by a non-Upstate employee with whom I interact at work.

True: You can report any harassment that occurs at Upstate, or in Upstate's programs or activities.

Check your knowledge

4. TRUE or FALSE: Sexual harassment can only occur during working hours, while at your worksite.

FALSE: Sexual harassment can occur while at work or outside of work if it has the impact of unreasonably interfering with an individual's work or education.

5. TRUE or FALSE: Harassment towards someone because of their gender identity is not considered sexual harassment.

FALSE: Sexual harassment includes harassment towards someone because of their sex, gender, gender identity, sexual orientation, transgender status, and pregnancy status.

Reporting Discrimination and Harassment

If you have experienced or witnessed discrimination or harassment based on any protected class, you should report it to your **Supervisor**, Upstate's **Office of Institutional Equity**, or Upstate's **Title IX Coordinator**:

Katie King, JD

Institutional Equity Officer & Title IX Coordinator

equity@upstate.edu; titleix@upstate.edu; 315-464-9590

You may file a complaint with OIE online at:

[Upstate Discrimination/Harassment Reporting Form](#) or
[Upstate Sexual Harassment Reporting Form](#)

Upstate's Investigation Procedures

Upstate has two procedures that may be used to investigate reports of discrimination, harassment and/or retaliation:

1. Title IX investigation procedure

- Followed when:
 - a) A complaint is made by an individual participating in or attempting to participate in Upstate's educational programs or activities; and
 - b) Conduct is severe, pervasive, and objectionably offensive

2. General complaint investigation procedure

Complaints that do not meet the criteria under the Title IX procedure are investigated under the general complaint investigation procedure.

What Should Be Reported?

- Any known or suspected incidents/patterns/displays etc. of discrimination or harassment based on protected class, including sexual harassment
- Identities of reporting individual, accused person, and any known witnesses to the incident(s)
- Date, time, and location of the incident(s)
- Any factual allegations known about the incident(s)

Rights of Reporting Individuals

- “You have the right to make a report to university police or campus security, local law enforcement, and/or state police or choose not to report;
- to report the incident to [your supervisor, the Title IX Coordinator, and/or the Office of Institutional Equity];
- to be protected by [the University] from retaliation for reporting an incident; and,
- to receive assistance and resources from [the University].”

NY Education Law, Section 6444 (2)

See Upstate’s complaint process at: www.upstate.edu/equity

Who MUST Report: Responsibility of Supervisors, Managers, Faculty and UUP Represented Employees

The following individuals at Upstate are held to a higher standard regarding reporting, and must report all suspected or actual discrimination and harassment:

- Supervisors
- Managers
- All faculty and UUP-represented employees serving in academic rank or qualified academic rank including those in:

Academic Advisement

Career Services

Continuing Education

Financial Aid

Instructional Support

Residential Life

Student Affairs

Student Activities

Responsibility of Supervisors, Managers, Faculty and UUP Represented Employees

Supervisors, Managers, Faculty, and specified UUP-represented employees are:

- **Required to immediately report** harassment reported to them, which they observe, or which they reasonably should have known about;
- Expected to model appropriate behavior;
- Subject to discipline or other appropriate action for failing to report suspected sexual harassment, or otherwise knowingly allowing sexual harassment to continue; and
- Subject to discipline or other appropriate action for retaliating against someone who complains of sexual harassment in good faith.

Responsibility of Supervisors, Managers, Faculty and UUP Represented Employees

- Reporting obligations for UUP-represented employees are summarized in Appendix A-5 of the 2016-2022 Collective Bargaining Agreement between UUP and NYS.
 - <http://uupinfo.org/negotiations/pdf/2016-22TA-ratification.pdf> (at pp. 80-81)

Retaliation

Retaliation is:

1. Taking an adverse employment or academic action against an individual;
2. Because they engaged in a protected activity.

Retaliation is illegal and is prohibited by Upstate's policies.

Retaliation

An individual engages in a **protected activity** when they, in good faith:

- Raise a concern or file a complaint about actual or suspected harassment;
- Participate in an internal or external investigation or lawsuit, including as a witness, involving claims of discrimination or harassment; or
- Oppose unlawful discrimination or harassment.

Retaliation is also prohibited against individuals who are associated with an individual who engages in any of the above protected activities, such as a family member.

Retaliation

- Examples of retaliation include:
 - termination,
 - demotion,
 - refusal to promote,
 - changing a grade,
 - denying access to a program,
 - sudden change in work schedule or location, or
 - any other adverse action that would discourage a reasonable person from engaging in any of the above protected activities.
- Note: Not every adverse employment or academic action is retaliation. In order to constitute retaliation, the adverse action must be because of a protected activity.

Confidentiality vs. Privacy

- Only individuals with a legal privilege and who maintain that privilege in their specific role can maintain true confidentiality
 - e.g., Clergy, therapist-patient, doctor-patient, attorney-client
- All other individuals may offer “privacy” only.
 - They may only share the report with individuals on a need to know basis.
- Note: Doctors who are communicating outside of the doctor-patient relationship cannot promise confidentiality.

Reports must be made in good faith

- All good faith reports and/or complaints of harassment, sexual harassment, and/or retaliation, will be taken seriously and dealt with promptly.
- False and/or malicious complaints (as opposed to complaints that, even if erroneous, are made in good faith), may result in discipline or other appropriate action.

Check your knowledge

1. TRUE or FALSE: Supervisors, Managers, Faculty, and UUP-Represented employees serving in an academic rank or qualified academic rank have the option of reporting harassment reported to them or harassment that they observe.
FALSE: Supervisors, Managers, Faculty, and UUP-Represented employees serving in an academic rank or qualified academic rank **MUST** report actual, suspected, and reports of harassment and discrimination to the Office of Institutional Equity as soon as possible.
2. TRUE or FALSE: Supervisors, Managers, Faculty, and UUP-Represented employees will be subject to discipline or other appropriate employment action if they fail to report suspected harassment and knowingly allow the harassment to continue.
TRUE: Supervisors, Managers, Faculty, and UUP-Represented employees will be subject to discipline or other appropriate action if they fail to report suspected harassment and knowingly allow harassment to continue.

Check your knowledge

4. TRUE or FALSE: If I make a knowingly false report of harassment in order to get back at my coworker, I cannot be disciplined.
FALSE: You can be disciplined or subject to other appropriate employment action if you knowingly make a false report of harassment.
4. TRUE or FALSE: My supervisor is permitted to keep a report of harassment confidential.
FALSE: Supervisors may not keep a report of harassment completely confidential. Instead, Supervisors may promise to keep the report private and are required to share the report with several members of administration only on a need to know basis to maintain a safe working and learning environment.

Resources for Victims and Respondents

SAVR includes contact information for campus resources, including:

- Human Resources
- Title IX
- University Police/Public Safety
- LGBTQI+ Specific Resources
- Disability Services
- Counseling
- Anonymous Reporting
- Outside local and national resources, and
- Campus specific resource page



SUNY SAVR Resource Site

EXIT SITE

Click to leave site, or press ⌘(Esc) key - this page will redirect to Google & browsing history entry will be removed



SUNY's policy is that response to sexual violence and related crimes is driven by the reporting victim/survivor. What that means is that in line with Federal and New York State law, while the University encourages you to use all of the response, support and reporting (including criminal reporting) resources offered here, the choice of what resources to use and when is for the victim and survivor.

Find Resources

List within

25 miles ▾

from

Zip Code

OR

By Map

OR

By Campus: ▾

OR

View NYS & National
Resources



RESET PAGE

Your Right To Report (NY Educ. L. 129-B Statement)

- Choose a language - ▾



SUNY students and employees have the right to make a report to University Police/Campus Security, local law enforcement, and/or the State Police or choose not to report; to report the incident to your college; to be protected by the college from retaliation for reporting an incident; and to receive assistance and resources from your college.

Additional Protections and Remedies

In addition to reporting to your supervisor, the Title IX Coordinator, and/or the Office of Institutional Equity, you may also seek information from and file a complaint with:

Equal Employment Opportunity Commission (EEOC)

<https://www.eeoc.gov//>

Division of Human Rights (DHR)

<https://dhr.ny.gov/>

Department of Education Office for Civil Rights (OCR)

<https://www2.ed.gov/about/office/list/ocr/index.html>

More information on reporting is available at:

<https://www.upstate.edu/equity/>

Questions?

Please feel free to direct any further questions to:

Katie King
Institutional Equity Officer/Title IX Coordinator
The Office of Institutional Equity

equity@upstate.edu

titleix@upstate.edu

315-464-9590