

The University of Auckland Prevention of Bullying and Harassment Policy

PURPOSE

The University of Auckland is committed to ensuring people are treated with dignity and respect. Staff and students have a right to work and study in an environment that is harmonious and free from Unacceptable Conduct. In the context of this Policy, "Unacceptable Conduct" includes, but may not be limited to, unlawful discrimination, harassment, bullying and victimisation.

The purpose of the Policy is to provide guidance to staff and students on how to identify, report, and help prevent Unacceptable Conduct occurring at the University. This policy complies with all relevant human rights legislation and the University's obligation to provide a safe and healthy environment.

POLICY

Whilst working and studying at the University it is an individual's responsibility to;

- Treat all colleagues, students, visitors or anyone else associated with the University, with dignity and respect
- Not bully, harass or victimise anyone
- Report Unacceptable Conduct if they see or experience it as soon as possible to their Head of Department, Manager, Human Resources Manager, Union or the Student Advocacy Service.
- Keep confidential all discussions and documents in instances of alleged Unacceptable Conduct to the extent possible
- Only make complaints of Unacceptable Conduct which are genuine
- Not intentionally make malicious allegations of Unacceptable Conduct

All Managers, Academic Heads, and the Senior Management Team must take reasonable steps to ensure that the environment is free from all forms of Unacceptable Conduct. They are expected to:

- Lead by example, and ensure that they do not bully, harass or victimise
- Ensure that all staff reporting to them are familiar with, and understand their obligations under this policy
- Treat all complaints seriously and take prompt steps to resolve any complaints made under this policy.

AUDIENCE

This policy applies to the conduct of everyone working and studying at the University. This policy applies equally to the treatment of all staff, students, honorary appointees, contractors and visitors.

This policy applies when staff and students are:

- Working or studying at any one of the University campuses, during or outside normal working hours
- Undertaking University activities not on site, for example, conducting field research, field trips, conferences and University social events
- Using social networking tools, for example Facebook, Twitter or other online social networks
- Using Emails and internal and external websites
- Having other interactions within the University community

POLICY DEFINITIONS AND EXPLANATIONS

The University is committed to maintaining a work and study environment that promotes equity for all job applicants, staff, students, contractors and visitors. All decisions affecting work and study are made based on merit, not on attributes such as sex, sexual orientation, age, race, ethnic origin, religion or disability, or other grounds of unlawful discrimination protected by anti-discrimination legislation.

Unlawful discrimination

Unlawful discrimination occurs when one person is treated less favourably than someone else is treated, or would be treated, in the same or similar circumstances, because that person has a particular attribute, such as race, sex or religion that is specifically listed in Human Rights legislation.

It is unlawful to discriminate against a person based on any of the following grounds of discrimination (contained in the Human Rights Act 1993);

- Sex
- Marital status
- Ethical beliefs
- Religious beliefs
- Colour
- Race
- Ethnic or national origins
- Disability
- Age
- Political opinion
- Employment status
- Family status
- Sexual orientation

Discrimination is unlawful even if there is no intention to discriminate. Discrimination is unlawful in all areas, including:

- Recruitment
- Terms and conditions of employment
- Refusing or limiting access to opportunities for promotion, salary increases, leave or professional development

- Termination of employment
- Vocational services
- Provision of goods and services
- Education and employment

Direct and indirect discrimination

Discrimination can occur either directly or indirectly:

Direct discrimination occurs when a person is treated less favourably than another person, in the same or similar circumstances, because of a prohibited ground such as their sex, race, marital status, disability etc.

Indirect discrimination occurs when there is a requirement, rule, policy, practice or procedure that is the same for everyone, but has an unequal effect on particular groups. This type of requirement is likely to be indirect discrimination unless the requirement is reasonable in all the circumstances.

Harassment

Unlawful harassment is unwelcome conduct that is offensive, humiliating or intimidating to any other person and is either repeated, or of such significant nature, that it has a detrimental effect on the person, their performance or their work and study environment.

While all behaviour in this category is unacceptable, some behaviour will be considered to be more serious than others.

Even if there is no intention to offend or humiliate, seemingly harmless acts such as gossip, jokes, teasing or the use of inappropriate nicknames, could all possibly constitute unlawful harassment.

Sexual harassment

Sexual harassment is unwelcome conduct of a sexual nature that is offensive, humiliating or intimidating to any other person and is either repeated, or of such a significant nature, that it has a detrimental effect on the person, their performance or their work and study environment.

It is unlawful to sexually harass another person even if there was no intention to harass the person.

Sexual harassment can take various forms. It may involve, for example

- Sexual Assault
- Requests for sexual favours, or sexual advances
- Leering, wolf whistles, obscene gestures, jokes or innuendo
- Comments or a conversation about a person's sex life or relationships
- Unwelcome comments about a person's sexual orientation
- Displays of sexually offensive material, such as emails, posters, pictures, graffiti, screen savers or text messages
- Suggestive or sexual jokes, suggestive behaviour, telephone calls
- Uninvited touching, hugging or kissing or other forms of physical contact
- Invading a person's personal space
- Persistent comments or images placed on social networking sites, for example Facebook and Twitter

- Persistent and unwelcome personal contact after being asked to desist

Racial harassment

Racial harassment is behaviour that is racist, hurtful or offensive and is either repeated or serious enough to have a detrimental effect on a person. The Human Rights Act 1993 defines racial harassment as behaviour that is uninvited and humiliates, offends or intimidates someone because of their race, colour, ethnic or national origin. It can involve spoken, written or visual material or a physical act.

Racial harassment may include:

- Making offensive remarks about a person's race
- Mimicking the way a person speaks –
- Making jokes about a person's race
- Calling people by racist names
- Deliberately pronouncing people's names incorrectly

Bullying

Bullying is any repeated unreasonable behaviour directed towards a person, or group of people, that creates a risk to their mental or physical health and safety.

"Unreasonable behaviour" means behaviour that a reasonable person, having regard to all the circumstances, would judge to be victimising, humiliating, undermining or threatening. "Behaviour" includes actions of individuals or a group, and may involve using a system of work or study as a means of victimising, humiliating, undermining or threatening. Some examples of behaviour that may constitute bullying are:

- Continually making jokes or demeaning remarks about a person, or making more remarks about one member of a team compared to other team members
- Verbal abuse, swearing or name calling
- Excluding or isolating individuals
- Intimidation
- Assigning meaningless tasks unrelated to a person's role
- Deliberately changing rosters to inconvenience particular individuals
- Deliberately withholding information that is vital for effective work performance
- Placing demeaning comments on social networking sites
- Abuse of supervisory or managerial authority

Whilst all of these behaviours are unacceptable, some will be considered more serious than others.

Examples of behaviours that are not bullying include:

- Occasional differences of opinion, non aggressive conflicts, and problems in working relationships
- Robust intellectual debate
- Constructive feedback
- Performance management and other disciplinary action in accordance with the University's policies and procedures
- Setting expectations and discussing performance assessments
- Direction of day to day management

Victimisation

Victimisation occurs if someone suffers unfavourable treatment because they have made, or propose to make, a genuine complaint of Unacceptable Conduct, or appear as a witness or provide information about such a complaint.

Examples of victimisation include:

- Suggesting to a would be complainant that it would be better for them (or the team) if they did not make a formal complaint
- Threatening behaviour
- Disciplinary action that is not otherwise warranted and would not have been taken if a complaint had not been made
- Unreasonable change in duties or relocation
- Exclusion or isolation
- Failure to promote a person or downgrading a performance rating because they are regarded as a 'trouble maker' due to the complaint
- Allocating tasks which are not usually part of a person's normal duties because they have made a complaint
- Deliberately grading/marking a student's paper differently to their peers

PROCESS

There are a number of different options for dealing with complaints of Unacceptable Conduct. Staff are encouraged to seek support from their line manager, senior university manager other members of the University community or Employee Assistance Programme (EAP) Students are encouraged to seek support from their Head of Department, Dean or Student Advocacy Service (WAVE) Support may be available from the complainants own cultural or ethnic group. Where a crime has been committed staff and students should make a complaint to the police.

Self resolution

An individual should consider approaching the person or people involved to resolve the concern, by means of direct discussion or by a written communication, unless they feel uncomfortable with this approach. In many cases, telling the person concerned that their behaviour is causing distress, explaining why it is unwelcome and asking for it to stop will be sufficient. Often, the person is not aware that their behaviour is causing distress, and they will stop immediately once told.

Informal issue

If a complaint cannot be resolved by direct discussion, or an individual does not feel comfortable addressing the issue face to face or in writing, they should discuss the matter and seek guidance from an appropriate person. For staff this can be, their Head of Department, Manager, Human Resources Manager, or Union.

For students this can also be the Head of Department or Dean, another appropriate University Manager, Student Advocacy Service or the Student Information Centre. If none of these people are appropriate a student may also contact the Office of the Registrar and Legal Council.

They can provide information on the policy and are able to discuss options available to the individual on how to deal with their particular concerns. Initiating a discussion with one of these people may help to determine whether the behaviour experienced constitutes Unacceptable Conduct and will help to understand the process, and develop options for resolving the concerns. They can help to:

- Establish fundamental issue – explore options for resolution
- Determine if the issue is mediable
- Develop skills to address the alleged behaviour
- Clearly understand the further options available if the matter cannot be resolved by direct discussion

Formal complaint

The first stage in requesting an investigation of a complaint of Unacceptable Conduct, is to speak with the Head of Department, a Manager or Human Resources Manager. Conflict of interest must be identified and managed appropriately. They will examine the issue and determine the process – depending on the nature of the complaint and statute or policy the complaint is being made under. At this time the complainant must supply all evidence supporting their complaint. The complainant also needs to be aware that this evidence will be presented to the alleged harasser.

Where bullying or harassment as defined in this policy is carried out by a staff member it may be deemed to be serious misconduct. An investigation into the complaint will follow the appropriate disciplinary procedures as noted in the applicable schedule in the Collective or Individual Employment Agreement. Where the alleged perpetrator is a student, the investigation will follow the procedures in the Disciplinary Statute and Student Charter.

Mediation

Mediation is a voluntary process whereby parties are assisted to resolve a problem between them by an independent, impartial third party in a confidential forum. The mediator has the role of encouraging those with a problem to explain what has occurred, to discuss the difference that has arisen, and to come to a resolution that is satisfactory to both parties. Mediation may be an option as part of the informal or formal stage of the process. The University Mediator is available for all staff and students if required.

False accusations, vexatious complaints and defamation

Allegations of Unacceptable Conduct such as unlawful discrimination, harassment and bullying are serious matters and can potentially damage an individual's reputation.

All complaints need to be made in good faith. Intentionally false accusations, or allegations that are found to be unsubstantiated because they are of a frivolous or vexatious nature will be viewed seriously and, may result in the University taking disciplinary action.

Confidentiality

In instances of any alleged breach of this policy, discretion is important to protect all people concerned. All information must be treated confidentially, to the extent possible, by all parties involved.

Where a complaint is serious and a Head of Department, Manager or Human Resources Representative believes that action needs to be taken, absolute confidentiality may not be

able to be maintained even if a complainant does not wish the matter to be taken further. In these circumstances, information will be disclosed only to those people who need to know about the complaint. The obligation of confidentiality does not prevent the University from using or disclosing any material necessary to instigate or defend any legal proceedings, or make submissions in relation to any enquiry or complaint or to refer a matter to the police.

Breach of this Policy

The University will investigate and may take disciplinary action as referred to in the applicable schedule of the Collective or Individual Employment Agreement, against anyone who engages in Unacceptable Conduct or breaches any other aspect of the policy, up to and including termination of employment or exclusion.

Where to go for help about this policy?

If further help or guidance is required on this policy, contact:

- Head of Department/Manager
- Human Resources Representative
- Equity Office
- Union Representative
- EAP Services
- Student Advocacy Services
- Student Information Centre on 0800 61 62 63

If making a complaint, an individual should do so as soon as possible after the conduct concerned about occurs.

RELEVANT LEGISLATION

- Human Rights Act 1993
- Employment Relations Act 2000
- Health and Safety in Employment Act 2000
- Harassment Act 1997

RELATED PROCEDURES/DOCUMENTS

- Resolution of Employment Relations Problems
- Equity Policy
- Academic Collective Agreement
- General Staff Collective Agreement
- Individual Employment Agreement
- The Disciplinary Statute 1998
- Student Charter

DOCUMENT MANAGEMENT AND CONTROL

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