



POLICY 1.35 – Non-Discrimination/Harassment/Sexual Misconduct Policy

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| Policy Category: | General |
| Subject: | Discrimination, Harassment and Sexual Misconduct |
| Approving Authority: | Board of Governors |
| Responsible Officer: | Vice-President (Operations & Finance) |
| Responsible Office: | Human Rights Office Associate Vice-President (Human Resources) |
| Related Procedures: | Procedure for Policy 1.35 Non-Discrimination/Harassment/Sexual Misconduct Policy |
| Related University Policies: | Safe Campus Policy |
| Effective Date: | June 29, 2023 |
| Supersedes: | July 13, 2017; November 22, 2012; December 1, 2011; November 27, 2003 |

I. PURPOSE

1. The purpose of this policy is to confirm the University's commitment to providing a learning and working environment free of Discrimination, Harassment and Sexual Misconduct.
2. This policy is in accordance with all applicable federal and provincial legislation related to Discrimination, Harassment and Sexual Misconduct such as the Ontario *Human Rights Code*. It also applies to those situations defined as Workplace Harassment under the *Occupational Health and Safety Act*. The [Safe Campus Policy \(MAPP 1.46\)](#) should be consulted whenever there are concerns about violence in the workplace or learning environment.

II. DEFINITIONS

Discrimination means a distinction, intentional or not, based on a prohibited ground, which has the effect of imposing burdens, obligations, or disadvantages on an individual or group not imposed on others, or which withholds or limits access to opportunities, benefits, and advantages available to other members of society.

Prohibited Ground means:

- (a) any of the following: race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status or disability; and
- (b) such additional grounds as may be designated as prohibited grounds in the Ontario *Human Rights Code* from time to time.

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Harassment means engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome. Harassment may be related to one or more of the Prohibited Grounds, and/or may include conduct and/or behaviours which create an intimidating, demeaning or hostile working or academic environment whether or not it is based on the prohibited grounds. Harassment includes Sexual Harassment and Personal Harassment.

Harassment does not include:

- (a) interpersonal conflict or disagreement;
- (b) the proper exercise of performance evaluation, appropriate managerial direction, delegation, performance management or attendance management; or
- (c) the exercise of expression protected by the UWOFA Article Academic Freedom

Personal Harassment means conduct and/or behaviour which creates an intimidating, demeaning or hostile working or academic environment whether or not it is based on the prohibited grounds defined in the *Human Rights Code*. For the purposes of this policy, Personal Harassment includes Workplace Harassment as defined under the *Occupational Health and Safety Act* as engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably known to be unwelcome.

Sexual Harassment means:

- (a) engaging in a course of vexatious comment or conduct because of sex, sexual orientation, gender identity or gender expression, where the course of comment or conduct is known or ought reasonably to be known to be unwelcome and/or
- (b) making a sexual solicitation or advance where the person making the solicitation or advance is in a position to confer, grant, or deny a benefit or advancement to the individual and the person knows or ought reasonably to know that the solicitation or advance is unwelcome.

This definition of Sexual Harassment is not intended to inhibit bona fide academic discussion or interactions or relationships based on mutual free consent or normal social conduct between individuals.

Sexual Misconduct means, in relation to a student of the University:

- (a) physical sexual relations with the student, touching of a sexual nature of the student or behavior or remarks of a sexual nature toward the student by an employee of the University where,
 - (i) the act constitutes an offence under the *Criminal Code* (Canada), or
 - (ii) the act constitutes a sexual solicitation or advance made by an employee of the University as defined above under Sexual Harassment, clause (b); or
- (b) a reprisal or threat of reprisal for the rejection of a sexual solicitation or advance where the reprisal is made or threatened by an employee of the University in a position to confer, grant or deny a benefit or advancement to the student.

III. POLICY

1. Western is committed to providing a working and learning environment that allows for full and free participation of all members of the community. Discrimination, Harassment or Sexual Misconduct toward individuals, whether as members of any recognizable group or otherwise, undermine these objectives and violate the fundamental rights, personal dignity and integrity of individuals or groups of individuals.
2. This policy applies to all members of the University community in their interaction with other

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members of the University community. The University community includes employees, students, volunteers and other individuals who work or study at the University.

3. All members of the University community share a responsibility to provide and maintain an environment free of Discrimination, Harassment and Sexual Misconduct.
4. Harassment and Discrimination may encompass Sexual Misconduct.
5. Clause III.1 (above) does not apply to any action or decision based on a bona fide requirement or qualification.
6. For the purposes of determining what limitations may reasonably be imposed in good faith to meet the objective employment or academic requirements, every individual is entitled to individual consideration.
7. This policy shall not infringe upon the implementation of special programs designed to relieve hardship or economic disadvantage or to assist disadvantaged persons or groups to achieve or attempt to achieve equal opportunity.
8. Harassment, Discrimination and Sexual Misconduct constitute serious offences that may be cause for disciplinary sanctions by the University up to and including termination of employment, or termination of any other relationship an individual has with the University.
9. Individuals may seek assistance from the Human Rights Tribunal of Ontario (HRTO) even when taking steps under this policy. If the circumstances giving rise to a complaint under this policy independently give rise to proceedings before Human Rights Tribunal of Ontario or to proceedings in the courts or to the laying of a criminal charge, then any action under this policy may be suspended until such proceedings are concluded.
10. Any reprisals, retaliation or threats of reprisals or retaliation for pursuing rights under this policy, for having participated in its procedures, or for acting in any role under this policy and its procedures are prohibited.
11. The University may take disciplinary action against those who make allegations of Discrimination, Harassment or Sexual Misconduct which are reckless, malicious or not in good faith.
12. The University shall not be restricted in fulfilling its responsibilities under the *Human Rights Code*, *Occupational Health and Safety Act*, or other applicable legislation, or where the safety of individuals is threatened or compromised.
13. The Human Rights Office shall make an annual report to the President with a copy to the University community and the Audit Committee of the Board of Governors.