

ARTICLE 4

~~NON-~~ PROHIBITIONS ON WORKPLACE DISCRIMINATION, HARASSMENT, ABUSIVE CONDUCT, AND RETALIATION ~~IN EMPLOYMENT~~

A. GENERAL PROVISIONS

1. The University shall take consistent and affirmative action to ensure a working and learning environment that is free from discrimination, harassment, and bias. These principles are crucial to the University's mission, and implementation must be continuously evaluated and improved based on feedback from faculty, staff, and students, regardless of shifting legal minimums.
2. All Unit 18 faculty are entitled to a supportive and dignified workplace. This includes freedom from management retaliation as well as harassing behavior from students, administrators, colleagues, or outside agencies and actors.
3. The diverse array of backgrounds and identities among Unit 18 faculty is fundamental to the University's ability to serve, educate and engage California's students. Therefore, strong protections against all forms of discrimination, disparate treatment or access, unlawful immigration actions and hostile work cultures are likewise fundamental.

B. ~~NON~~ ANTI-DISCRIMINATION [moved from section A in CCL]

1. The University shall not discriminate against or harass any person employed by or seeking employment with the University of California on the basis of a person's actual or perceived ~~Within the limits imposed by law or University regulations, the University shall not discriminate or harass any Unit 18 faculty member on the basis of race, ethnicity, color, immigration status, religion, marital status, national origin, ancestry, sex, (including gender, gender expression, gender identity, gender transition, sexual orientation, pregnancy, childbirth, medical conditions related to pregnancy and or childbirth, breastfeeding, and medical conditions related to breastfeeding,), sexual orientation, gender expression, gender identity, physical or mental disability, having a history of a disability or being regarded as having a disability, medical condition, cancer-related condition or genetic characteristics, predisposing~~ genetic information (including family medical history), HIV

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status, off-duty cannabis use (as prohibited by California Government Code section 12954), military status, status as a covered veteran (special disabled veteran, recently separated veteran, Vietnam era veteran, or any other veteran who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized, service in the uniformed services as defined by the Uniformed Services Employment and Reemployment Act of 1994, state military and naval service), arrest record (unless required by law or there is a direct relationship between a conviction or pending case and the job or an unreasonable risk to people or property), non-conviction history, age, citizenship, political affiliation, ~~or~~ union activity, or based on an individual's association with a person or group with one or more of these actual or perceived characteristics, or any other factor irrelevant to their employment status or function.

2. The University shall not engage in discrimination against or harassment of any person employed by or seeking employment with the UC on the basis of an individual's association with a person or group with one or more of these actual or perceived characteristics, or any other factor irrelevant to their employment status or function.
3. The University shall not maintain, implement or perpetuate any policy, practice, procedure, structure, or pattern of decision-making that creates, reinforces, or perpetuates the subordination of a protected group or produces unjustified disparities, barriers, exclusion, or unequal access in employment. A violation of this Section does not require proof of discriminatory intent.
4. For the purposes of this Article, "subordination" means the creation, maintenance, reinforcement, or perpetuation of inequality in status, power, authority, compensation, working conditions, employment security, professional opportunity, advancement, participation in institutional decision-making, access to resources, or other terms or conditions of employment affecting a protected group.
5. The University shall take reasonable steps to identify and address policies and practices that create or perpetuate subordination, disparities, barriers, exclusion, or unequal access.
6. The protections set forth in this Article shall include any additional characteristic or status that becomes protected by applicable federal, state, or local law during the term of this Agreement.

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whether or not expressly identified in this Article.

C. PROHIBITION AGAINST RETALIATION

- 1. The University shall not retaliate against, discriminate against, intimidate, threaten, coerce, or otherwise take adverse action against any Unit 18 faculty member or other person because that individual:**
 - a. Reports, discloses, raises, opposes, or complains about discrimination, harassment, sexual harassment, abusive conduct, or any other violation of this Agreement, whether on their own behalf or on behalf of another person;**
 - b. Files, intends to file, or assists with a complaint, grievance, report, or charge;**
 - c. Participates in, refuses to participate in, cooperates with, assists with, provides information for, or serves as a witness in any investigation, reporting, remedial, grievance, arbitration, or disciplinary process concerning conduct covered by this Article;**
 - d. Declines to participate in conduct or a process that the individual reasonably believes would violate this Article or applicable law;**
 - e. Requests, takes, or exercises rights concerning protected leave;**
 - f. Requests or receives a reasonable accommodation or otherwise exercises rights concerning an accommodation; or**
 - g. Engages in, supports, or participates in union activity, including organizing, representation, collective bargaining, or enforcement of rights, or exercises any right under this Agreement.**
 - h. The protections of this Article shall apply to any Unit 18 faculty who assists, supports, represents, or participates in another person's exercise of any right protected by this Article or applicable law.**
- 2. An individual shall not lose the protections of this Article merely**

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because a complaint, report, grievance, or allegation is not substantiated. An unsubstantiated complaint, report, grievance, or allegation shall not, by itself, constitute a basis for discipline or other adverse action.

3. The University shall not retaliate against, discriminate against, intimidate, threaten, coerce, or otherwise take adverse action against an individual because of the individual's association or relationship with a person who has engaged in protected activity or exercised a right protected by this Article.

D. PROHIBITION AGAINST SEXUAL HARASSMENT [moved from section B in CCL]

Sexual Harassment is when:

1. Quid Pro Quo: a person's submission to unwelcome sexual conduct is implicitly or explicitly made the basis for employment decisions, academic evaluation, grades or advancement, or other decisions affecting participation in a University program or activity; or
2. Hostile Environment: unwelcome sexual or other sex-based conduct **that** is sufficiently severe, persistent or pervasive that it unreasonably denies, adversely limits, or interferes with a person'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, **hostile**, or offensive, **or humiliating**.
3. Sexual conduct includes sexual or romantic advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature.
4. Other sex-based conduct includes acts of verbal, nonverbal, or physical aggression, intimidation, **humiliation**, or hostility based on gender, gender identity, gender expression, sex- or gender-stereotyping, or sexual orientation.
5. Consideration is given to the totality of the circumstances in which the conduct occurred.

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E. PROHIBITION AGAINST ABUSIVE CONDUCT

- 1. The University and UC-AFT are jointly committed to promoting and maintaining a work environment that is healthy and free of Abusive Conduct, and in which every employee and member of the University community is treated with respect. The parties mutually acknowledge that Abusive Conduct and other forms of workplace harm may be power-based behavior that creates an intimidating environment and may interfere with a Unit 18 faculty member's work. These behaviors may occur in, but are not limited to, situations in which one person has authority over another and situations involving peer-to-peer interactions. The parties recognize that the impact of conduct may be shaped by differences in institutional power, authority, status, job security, compensation, or access to institutional resources. The University and UC-AFT shall strive to foster an environment in which employees feel comfortable making reports of Abusive Conduct in good faith.**
- 2. Abusive Conduct is harassing or threatening behavior that is sufficiently severe, persistent, or pervasive conduct in the workplace that denies, adversely limits, or interferes with a Unit 18 faculty member's participation in or benefit from University employment. Such conduct creates an environment, whether intended or not, that is objectively intimidating or offensive.**
- 3. Examples of behavior that constitutes Abusive Conduct may include, but are not limited to:**
 - a. Language or behavior that frightens, humiliates, belittles, or degrades the recipient or target, including but not limited to abusive, disrespectful, and/or insulting language (written, electronic, or verbal), or criticism or feedback that is delivered with yelling, screaming, threats (explicit or implicit), or insults;**
 - b. Spreading false information or malicious rumors;**
 - c. Making repeated or egregious comments about a person's appearance, lifestyle, family, culture, country of origin, visa status, religious/spiritual/philosophical beliefs, or political views in a manner not covered by the University's policies**

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prohibiting discrimination:

- d. Teasing or making someone the brunt of pranks or practical jokes;
- e. Hazing;
- f. Purposefully excluding, isolating, or marginalizing a person from normal work activities for non-legitimate business purposes;
- g. Encouraging others to act, singly or in a group, to intimidate or harass other individuals;
- h. Interfering with a person's property or work equipment without a legitimate business or educational purpose;
- i. Circulating photos, videos, or information via email, text message, social media, or other means without a legitimate business or educational purpose and without consent;
- j. Making unwanted physical contact or encroaching on another individual's personal space, in ways that would cause discomfort and unease, in a manner not covered by the University's Sexual Violence and Sexual Harassment policy;
- k. Repeatedly demanding of an individual that the individual do tasks or take actions that are inconsistent with that individual's job, are not that individual's responsibility, for which the employee does not have authority, or repeatedly refusing to take "no" for an answer when the individual is within the individual's right to decline a demand; pressuring an individual to provide information that the individual is not authorized to release (or may not even possess);
- l. Making threats to block a person's academic or other advancement, opportunities, or continued employment at the University without a legitimate business or educational purpose;
- m. Sabotaging or undermining a person's work performance,

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working relationship, or perceived value in the workplace;

n. When a supervisor engages in Abusive Conduct against a Unit 18 faculty member, such behavior may also include, but is not limited to: inappropriately assigning tasks beyond the faculty member's skill level; establishing unrealistic or inconsistent deadlines; denying access to information or resources; offering insincere or disrespectful feedback; and/or inconsistently or inequitably enforcing rules.

4. Exercising Academic Freedom, as outlined in Article 2–Academic Freedom, is distinct from and does not constitute Abusive Conduct.

5. Differences of opinion, miscommunication, differences in work styles, interpersonal conflicts, and occasional problems in working relations are an inevitable part of working life and do not necessarily constitute Abusive Conduct.

F. If the definitions in the Sexual Violence Sexual Harassment Policy (“SVSH”), or University’s Discrimination, Harassment, and Affirmative Action in the Workplace Policy Anti-Discrimination Policy, or University’s Abusive Conduct in the Workplace Policy change, the new definitions will apply to this Article. [moved from section C in CCL]

G. EQUITY IN EMPLOYMENT

1. The University and UC-AFT recognize that equal employment opportunity requires both protection against discrimination and affirmative efforts to identify and address barriers and disparities, and conditions of structural or institutional subordination in employment. These programs and activities shall be designed not only to promote equal employment opportunity, but also to identify and address conditions of structural or institutional subordination affecting Unit 18 faculty. In furtherance of the University’s affirmative-action and equal employment opportunity obligations, and without limiting the rights and obligations established by this Agreement, the University shall establish, maintain, and adequately fund programs and activities designed to:

a. Broaden recruitment and outreach;

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- b. Support the recruitment, hiring, and retention of Unit 18 faculty;
 - c. Promote equitable access to professional development and career advancement opportunities; and
 - d. Identify and address barriers and disparities affecting the employment, compensation, retention, and advancement of Unit 18 faculty.
- 2. The University shall undertake meaningful outreach and recruitment efforts designed to attract broad applicant pools, including applicants from groups that are underrepresented in University employment. The University shall periodically review recruitment and employment practices and, where appropriate, modify such practices to address identified barriers or disparities.
- 3. The University shall conduct an annual compensation equity review of Unit 18 faculty to identify and address disparities in compensation across gender identity, race, and ethnicity. The review shall consider base salary and other forms of compensation and shall account for relevant factors, including rank, title, appointment, experience, years of service, discipline or field, workload, and other legitimate compensation factors.
- 4. The University shall establish measurable goals, benchmarks, and timelines for evaluating the effectiveness of the programs and activities required by this Section. The University shall annually provide UC-AFT with aggregate data sufficient to evaluate recruitment, hiring, retention, compensation, professional development, promotion, and advancement outcomes for Unit 18 faculty, together with the methodology used to conduct the relevant analyses. The University shall provide such data to UC-AFT at least thirty (30) calendar days before the annual review.
- 5. The University and UC-AFT shall jointly conduct an annual review of the data and progress toward the goals established under this Article. The parties shall mutually agree upon the date, time, location, and participants at least sixty (60) calendar days in advance, and shall mutually agree upon the agenda at least five (5) calendar days in advance. Either party may propose agenda items.

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The University shall provide UC-AFT with relevant and available materials reasonably necessary for the review at least five (5) calendar days in advance, subject to applicable law and confidentiality requirements. The annual review shall include discussion of disparities and barriers, and conditions of structural or institutional subordination, assessment of existing programs and practices, and consideration of additional or modified measures to address identified concerns. The parties shall document any actions, goals, or timelines mutually agreed upon as a result of the review. The parties may mutually agree to establish a Joint Equity Review Committee or other process to facilitate the annual review.

6. Where the annual review identifies persistent, unexplained, or otherwise unjustified disparities, barriers, or conditions of structural or institutional subordination, or where established equity goals are not met, the University shall, in consultation with UC-AFT, develop and implement a corrective action plan. The plan shall identify the measures to be taken, resources to be allocated, responsible offices, and timelines for implementation and follow-up.
7. The programs and activities required by this Section shall be implemented to the fullest extent permitted by applicable California and federal law and in furtherance of the University's affirmative-action and equal employment opportunity obligations. University policies shall not be construed to limit or diminish any rights or obligations established by this Agreement.

H. ACCESSIBLE CAMPUS RESOURCES

1. The University shall ensure accessibility for Unit 18 faculty with disabilities to perform the essential functions of their jobs consistent with local, state, and federal laws. Unit 18 faculty workspaces shall therefore accord with Universal Design principles.
2. The University shall provide reasonable accommodations for Unit 18 faculty with pregnancy or pregnancy-related conditions that shall include, but are not limited to the following:
 - a. Modified work schedules that include, but are not limited to, reassigned work locations, expedited approval of temporary provisions to allow for online or hybrid modality, and

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expedited approval for medical leaves.

b. Access to lactation rooms or spaces for the purpose of expressing or storing breast milk, which will be a locked and private space that is sanitary and equipped with a table, comfortable chair, and electrical outlet. If no such space exists within reasonable proximity to a Unit 18 faculty member's work location, their department, program, or unit will designate an appropriate temporary space, which is not available to non-lactating persons, for the purpose of expressing and storing breast milk.

c. Equipment for seating.

3. The University shall provide access to gender-neutral bathrooms in accordance with applicable state laws and UC policy.

4. Within thirty (30) calendar days of ratification, the University shall provide information regarding the availability of lactation support, accommodations for pregnancy or pregnancy-related conditions, and all-gender restrooms located within a reasonable distance to the Unit 18 faculty's work location.

I. RESOLUTION PROCEDURES [moved from section D in CCL]

1. If a Unit 18 faculty member files a timely grievance that includes an alleged violation of this article's discrimination, sexual harassment, and/or Abusive Conduct policies, the University shall forward such a complaint to the campus office responsible for formally investigating allegations of discrimination ~~and/or~~ sexual harassment, and/or Abusive Conduct. See Section J for grievance and arbitration procedures for grievances alleging violations of discrimination, sexual harassment, and Abusive Conduct. ~~The grievance shall be held in abeyance during the time the investigation is ongoing, in accordance with the University's SVSH Policy and/or the University's Discrimination, Harassment, and Affirmative Action in the Workplace Policy. [CCL moved to PCL J.2]~~

2. All other grievances alleging violations of Article 4 shall follow the grievance procedure outlined in Article 32–Grievance Procedure.

3. ~~2–~~Unit 18 faculty may file a Complaint directly with the Title IX Office, ~~or~~

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Equal Opportunity Office, or other campus offices responsible for investigations at each campus location. The Complaint and Resolution processes of the University's Anti-Discrimination, Sexual Violence Sexual Harassment, and Abusive Conduct in the Workplace Policies shall apply.

- ~~3. Nothing in this Article precludes Unit 18 faculty from filing a claim with an outside agency. [CCL moved to PCL I.8]~~
4. Unit 18 faculty shall have the right to be represented by the Union UC-AFT or another advisor in the complaint procedure.
- ~~5. The University's Step 1 response will be issued within 10 calendar days after the Title IX Office or the Office of Equal Employment Opportunity process has concluded. [CCL moved to PCL J.4]~~
- ~~6. This procedure shall be in place for grievances alleging sexual harassment and/or discrimination in accordance with Section A and B above. [CCL moved to PCL J.1]~~
5. ~~7.~~ Nothing in this article shall preclude a Unit 18 faculty member from filing a sexual harassment complaint, Abusive Conduct complaint, and/or other complaint alleging discrimination directly with the campus office responsible for formally investigating allegations of discrimination, ~~and/or~~ sexual harassment, and/or Abusive Conduct in accordance with established timelines.
6. ~~8.~~ The Title IX Offices and the Offices of Equal Employment Opportunity responsible for investigations of discrimination and sexual harassment are listed in Appendix ~~D~~ C. The University shall electronically post the information in Appendix C at:
(<https://www.ucop.edu/title-ix/title-ix-officers/index.html>).
7. The University shall electronically post the offices responsible for investigations of Abusive Conduct at: [insert new UCOP link here]. In accordance with the University policy, the following guidelines shall be applied when evaluating a Unit 18 faculty member's claim of Abusive Conduct:
 - a. Claims of Abusive Conduct shall be evaluated on a case-by-case basis, taking into account the circumstances of

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the parties, relationship between the parties (including power imbalance); the frequency, nature, and severity of the alleged conduct; whether the conduct was physically threatening; and whether the conduct may be protected as academic freedom or free speech. A single act may constitute Abusive Conduct if especially severe or egregious.

- b. In determining whether the conduct at issue rises to the level of Abusive Conduct, the standard of “reasonable person” should be used. This standard is whether a reasonable person in the same or similar circumstances would find the conduct hostile or offensive in the workplace given the totality of the circumstances. Although the intention of the person responsible for the conduct may be considered, it is not determinative. When evaluating the conduct at issue, the parties’ perspectives and circumstances should be considered.
- c. At no point in the grievance process may the University’s grievance Step reviewer be responsible for conducting investigations of Abusive Conduct.

8. Nothing in this Article precludes Unit 18 faculty from filing a claim with an outside agency. [moved from D.3 in CCL]

9. No provision of this Article is intended to waive any rights of the Unit 18 faculty member under state and federal statutes.

10. If there is a contradiction between the University’s Anti-Discrimination, Sexual Violence Sexual Harassment, or Abusive Conduct in the Workplace policies and procedures and this Agreement, this provision that provides greater protection to Unit 18 faculty shall prevail. In no event shall a change to University policy diminish any right or protection provided by this Agreement. The University must notify UC-AFT thirty (30) calendar days before any changes to these policies go into effect.

J. GRIEVABILITY AND ARBITRABILITY

- 1. This procedure shall be in place for grievances alleging ~~discrimination, sexual harassment, and/or discrimination~~ Abusive

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Conduct in accordance with Sections ~~A and B~~, D, and E above.
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2. ~~The grievance~~ Any grievance that alleges a violation of Article 4 Section B, D and/or E shall be held in abeyance during the time the investigation is ongoing, in accordance with the University's SVSH Policy and/or the University's Discrimination, Harassment, and Affirmative Action in the Workplace Policy. UC-AFT may terminate the abeyance upon written notice, and the grievance shall resume under the process in Article 32–Grievance Procedure. Nothing in this Section shall preclude resuming abeyance, by mutual agreement of UC-AFT and the University. [moved from D.1 in CCL]
3. For grievances alleging violations of Article 4 Section B, D, and/or E and violations of other articles and/or sections of this Agreement:
 - a. Upon written notice by UC-AFT, the grievance shall be severed to allow allegations of other articles of this Agreement and/or sections of this article to proceed through the grievance process.
 - b. If the grievance is severed, the portion of the grievance alleging violations of Article 4 Section B, D, and/or E will be automatically held in abeyance pending the conclusion of the Title IX, Equal Opportunity Office, or other campus office's investigation.
4. The grievance shall proceed through the grievance process, as outlined in Article 32–Grievance Procedure, for any part of the grievance not placed in abeyance. For any part of the grievance in abeyance, ~~the University's Step 1 response to the portion of the grievance placed in abeyance~~ will be issued within 10 calendar days after the Title IX Office, ~~or the Office of Equal Employment Opportunity, or Abusive Conduct~~ process has concluded. [moved from D.5 in CCL]
5. A formal investigation shall be completed by the appropriate campus office within sixty (60) business days of its initiation.
6. For grievances alleging violations of Section B, D and/or E, the University shall have the burden to disprove the alleged violations.

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7. Arbitration:

- a. If the grievance is severed, at the point of appeal to arbitration, UC-AFT and the grievant will have the option to reconstitute the original grievance for the purpose of arbitration.
- b. The parties recognize that having a fair investigation and proceeding to an arbitration hearing on the merits with a completed investigation report (report of findings) is optimal, so the University shall make reasonable efforts to complete their investigation before the deadline for an appeal to arbitration.
- c. Independent from the University campus office's findings or conclusions, an arbitrator shall retain the authority prescribed in Article 33 to review the evidence, make findings of facts, and determine whether the Unit 18 faculty experienced acts of discrimination, harassment, and/or Abusive Conduct.

8. Notwithstanding Article 33, section E.3, remedies for grievances alleging violations of Section B, D, and/or E may include, but are not limited to: restoration of the Unit 18 faculty member's appointment; timely restoration of lost pay with interest; assigning a new supervisor to which a Unit 18 faculty member reports; removal of materials in a Unit 18 faculty member's personnel or review files; cease and desist orders and no contact remedies; punitive damages; damages for emotional distress; targeted and mandated training for any supervisor or authority figure named in the complaint or grievance; enacting appropriate accommodations; mitigating measures that provide support, restore or preserve access to a University program or activity, or deter Prohibited Conduct per University Policy and this Agreement; discontinuation or modification of any policy, practice, procedure, or requirement found to be in conflict with this Article; other remedies that offset and actively combat discrimination, subordination, sexual violence or harassment, and abusive conduct.

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