

**WEST VIRGINIA UNIVERSITY HEALTH
SYSTEM**
POLICY AND PROCEDURE MANUAL

Policy V.220S
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EMPLOYEE NON-DISCRIMINATION & ANTI-HARASSMENT POLICY

SCOPE:

All West Virginia University Health System (WVUHS) Entities*

PURPOSE:

This Employee Non-Discrimination and Anti-Harassment Policy (“Policy”) is intended to comply with all federal, state, and local non-discrimination laws. It provides information about prohibited discrimination, harassment, and retaliation, and how complaints are filed, investigated, and resolved.

DEFINITIONS:

Discrimination: For the purposes of this Policy, discrimination means conduct that is based upon an individual’s Protected Status (as defined below) and that: adversely affects a term or condition of the individual’s employment; is used as the basis for or a factor in decisions affecting the individual’s employment; or has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile, or offensive work environment.

Harassment: Unwelcome conduct that is based on a Protected Status Harassment becomes unlawful where 1) enduring the conduct becomes a condition of continued employment or 2) the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider hostile, intimidating, harmful or offensive. Harassment may include, but is not limited to offensive jokes, slurs, epithets, or name calling, physical assaults or threats, intimidation, ridicule or mockery, insults or put-downs, offensive objects or pictures, and interference with work performance. Harassment can be in the form of direct interaction, by phone, email, text message, voice mail, print material or in social media.

Protected Status: A personal characteristic including race (including protected hairstyles and traits such as braids, twists, locks, hair texture and afro hairstyles), color, ethnicity, culture, ancestry, gender, sex, sexual orientation, sexual identity, gender identity

* West Virginia University Health System adopts this policy and procedure for WVU Hospitals, Inc.; Summersville Regional Medical Center; WVUHS Home Care, LLC; WVUHS Medical Group; Reynolds Memorial Hospital; Berkeley Medical Center; Jefferson Medical Center; Potomac Valley Hospital of W.Va., Inc.; United Summit Center; United Hospital Center, Inc.; Wheeling Hospital, Inc.; Barnesville Hospital Association; Harrison Community Hospital, Inc.; United Physician’s Care, Inc.; St. Joseph’s Hospital of Buckhannon, Inc.; Camden-Clark Memorial Hospital Corporation; Camden-Clark Physician Corporation; Braxton County Memorial Hospital, Inc.; Jackson General Hospital; Wetzel County Hospital; Uniontown Hospital; Allied Health Services, Inc.; West Virginia United Insurance Services, Inc.; Accountable Care Organization of West Virginia, LLC(ACO); AHS, LLC; Gateway Home Health Care, LLC; Peak Health Holdings, LLC; Garrett Regional Medical Center; Princeton Community Hospital Association, Inc.; Grant Memorial Hospital, Inc.; and Thomas Health System, Inc.

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and expression, socioeconomic status, language, national origin, religious affiliation, spiritual practice, mental and physical disability, pregnancy or childbirth (or medical condition related to pregnancy or childbirth), genetic information, veteran status, service in the uniformed services, trauma history, age, or any other characteristic protected by law.

Sexual Harassment: Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when submission to such conduct is made, either explicitly or implicitly a term of condition of an individual's employment; submission to or rejection of such conduct is used as a basis for employment decisions affecting the individual or such conduct has the purpose or effect of unreasonably interfering with an individual's work performance by creating an intimidating, hostile or offensive work environment. This provision applies to the target of such conduct as well as individuals who may observe or be affected by it. Following are some examples, which if unwelcome to any individual, may constitute sexual harassment, including but not limited to:

- a) Physical conduct such as unwanted touching, pinching, poking, or brushing against another person's body
- b) Unwanted sexual advances, propositions, or other sexual comments, such as sexually oriented gestures, remarks, jokes or comments about a person's sexuality or sexual experiences
- c) Sexually explicit emails, texts, or other written communications
- d) Pressuring someone to go on a date
- e) Preferential treatment or promises of preferential treatment for submitting to sexual conduct
- f) Displaying pictures, posters, calendars, objects, or other materials that are sexually suggestive, sexually demeaning, or pornographic

Sexual harassment can occur in a variety of circumstances, including but not limited to the following:

- a) The victim can be of the same or opposite sex
- b) The harasser can be the victim's supervisor, a supervisor in another area, a co-worker, or a non-employee
- c) The victim does not have to be the person harassed but could be anyone affected by the offensive conduct.
- d) The conduct does not have to take place on WVUHS premises

Staff member: Any person associated with a WVUHS entity and includes employees, members of the medical staff, volunteers, agency, or contracted staff.

Supervisor: Any level of supervisory leadership, clinical or administrative, responsible for the employee and who has authority to conduct tangible employment actions, specifically to hire, fire, demote, promote, transfer, or discipline.

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POLICY:

- A. This Policy prohibits all forms of Discrimination and Harassment based on Protected Status. It also prohibits retaliation against individuals who report Discrimination or Harassment in good faith and those who participate in investigations of complaints of Discrimination or Harassment.

1. Discrimination

This Policy prohibits Discrimination based upon Protected Status, including conduct that unreasonably interferes with or limits:

- a. An employee's or applicant for employment's access to employment or conditions and benefits of employment (e.g., hiring, advancement, assignment).
- b. An authorized volunteer's ability to participate in a volunteer activity; or
- c. A guest's or visitor's ability to participate in, access, or benefit from the WVUHS' services.

Discrimination includes failing to provide reasonable accommodations that do not create undue hardship, consistent with state and federal law, to a qualified person with a disability, for pregnancy or related medical conditions, and to a qualified person who has a sincerely held religious belief.

A reasonable accommodation is a necessary and appropriate modification or adjustment to the work environment that enables a qualified individual to participate in the application process or to perform essential job functions to the extent that the modification or adjustment does not result in a fundamental alteration of a WVUHS program or of the essential functions of a job or impose an undue burden on WVUHS.

2. Harassment

This Policy prohibits Harassment, which is a type of Discrimination that occurs when unwelcome verbal, physical, electronic, or other conduct based on an individual's Protected Status is severe, persistent, or pervasive enough to interfere with the Complainant's (a) work environment (e.g., hiring, advancement, assignment); (b) participation in a WVUHS program or activity; or (c) receipt of legitimately-requested services (e.g., disability, pregnancy or childbirth, or religious accommodations), thereby creating Hostile Environment Harassment or Quid Pro Quo Harassment, as defined below.

i. Hostile Environment Harassment

Unwelcome conduct based on Protected Status that is so severe, persistent, or pervasive that it alters the conditions of employment or participation in a WVUHS program or activity, thereby creating an environment that a reasonable person in similar circumstances and with similar identities would find hostile, intimidating,

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or abusive. An isolated incident, unless sufficiently severe, does not amount to Hostile Environment Harassment.

ii. **Quid Pro Quo Harassment**

Unwelcome conduct based on Protected Status where submission to or rejection of such conduct is used, explicitly or implicitly, as the basis for decisions affecting an individual's employment, or participation in a WVUHS program or activity.

- B. This Policy expressly prohibits sexual violence and sexual exploitation, which involve conduct of a sexual nature and are prohibited forms of sexual or gender-based harassment.
- C. This Policy prohibits complicity for knowingly assisting in an act that violates this Policy and retaliation, intimidation, threats, coercion, or attempts thereof, whether direct or indirect, by any Staff Member against an individual because of their good faith participation in the reporting, investigation, or adjudication of violations of this Policy.
- D. WVUHS is committed to a work environment that is free from all forms of unlawful discrimination and harassment based upon two key relationship principles:
 - 1. All individuals are to be treated with dignity and respect.
 - 2. Staff Members are expected to uphold high standards of personal conduct at work.

Individuals who have concerns or complaints about conduct or behavior that they have experienced or observed are encouraged to use the processes and resources outlined in this Policy. Each member of the WVUHS community is responsible for fostering mutual respect, for being familiar with this Policy, and for refraining from conduct that violates this Policy.

- E. Employees, Staff Members, and non-employees (e.g., visitors, volunteers, vendors, and contractors) while on WVUHS property, participating in a WVUHS sponsored activity, or providing services to the WVUHS, or applicants for employment with WVUHS may bring complaints of violations of this Policy.
- F. WVUHS prohibits filing complaints or reports of discrimination, harassment and/or related retaliation that the complainant knows to be false. The filing of intentionally false complaints may result in disciplinary action.
- G. Supervisors have an affirmative duty and are required to report promptly to the Human Resources Director or designee any forms of harassment that they observe, learn about from others, or reasonably suspect have occurred.
- H. WVUHS is committed to prompt, thorough, and impartial investigation of harassment complaints. While WVUHS strives to maintain confidentiality and conduct the investigation as discreetly as

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possible, at times it may be necessary for the identity of the complainant and nature of the complaint to be revealed to witnesses and the individual who is the subject of the investigation.

- I. WVUHS is committed to promptly addressing all claims of prohibited conduct and to taking appropriate action, consistent with this Policy, in response to such reports. WVUHS employees who violate this Policy may face discipline up to and including termination.
- J. Acts of harassment that involve criminal activity may be referred to law enforcement agencies and/or licensing boards.
- K. The processes described in this Policy do not preempt or supersede any legal procedures or remedies otherwise available to a victim of harassment under local, state, or federal law.

REPORTING ALLEGATIONS OF HARASSMENT OR DISCRIMINATION

If a Staff Member believes that he or she has been subjected to, or becomes aware of, any harassment or discrimination in violation of this Policy, the Staff Member has the responsibility to promptly report the incident to the Staff Member's immediate supervisor. If the complaint involves the Staff Member's immediate supervisor, or if the employee feels uncomfortable discussing the matter with the supervisor, WVUHS has established processes to assure that complaints are promptly, thoroughly, and impartially investigated.

Any Staff Member who reports an incident in accordance with this Policy may, if comfortable under the circumstances, inform the person responsible for the conduct that it is unwelcome and offensive, and request that it cease. Taking this action will not, however, relieve the Staff Member of the Staff Member's obligation to report the incident as set forth above.

If a Staff Member is not sure whether he or she has been the victim of harassment or discrimination, the Staff Member is encouraged to speak with a supervisor or member of the Human Resources Department for assistance and clarification.

STAFF MEMBER AND SUPERVISOR RESPONSIBILITIES

All Staff Members are expected and required to comply with this Policy. All Staff Members, and particularly members of management, which includes without limitation all administrative and clinical supervisors, are responsible for keeping the work environment free of harassment and discrimination. Any Staff Member who becomes aware of an actual or alleged incident of harassment or discrimination must promptly report it using any of the options identified in this Policy.

If a Supervisor observes or receives information regarding an actual or alleged incident of harassment or discrimination, the Supervisor **MUST** take immediate action to stop it, whenever possible or appropriate, and is obligated to report the incident immediately to Human Resources. Any Supervisor who is made

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aware of harassment or discrimination and fails to report it may be subject to disciplinary action, up to and including termination of employment.

Supervisors must take effective measures to ensure that no further apparent or alleged harassment or discrimination occurs pending completion of Human Resource's investigation. Supervisors should consult with HR in this regard.

An Staff Member who knowingly submits a false or frivolous claim of harassment or discrimination may be subject to disciplinary action up to, and including, termination of employment.

FILING A COMPLAINT

Any Staff Member who believes that he or she has been the victim of, affected by or observes harassment is strongly encouraged to file a complaint. All reports will be taken seriously and all information regarding the investigation will be kept confidential to the extent possible.

1. A complaint may be made verbally or in writing to the Staff Member's supervisor or to any level in the line of supervision
2. A complaint may be made to the entity Director of Human Resources or designee
3. A complaint may be made to the Compliance Hotline by calling 1-855-236-2041 or by accessing the Compliance Hotline at <http://www.wvuhs.ethicspoint.com/>
4. In WVUHS entities covered by Title IX, a complaint may be made by contacting the Title IX Coordinator by email at TitleIX@wvumedicine.org or calling 1-833-599-2100.

When a supervisor receives a complaint of harassment, he or she is required to notify the entity Director of Human Resources or designee immediately. A supervisor cannot delay or avoid contacting Human Resources, even if requested by the complainant to do so.

If the complaint involves anyone in the Human Resources Department, the complaint is to be filed with the WVUHS Compliance Officer or with the entity Chief Executive Officer or designee.

COMPLAINT INVESTIGATION

When Human Resources becomes aware of an alleged violation of this Policy, Human Resources or its designee will conduct a prompt, thorough, and impartial investigation. Human Resources will seek to complete discrimination and harassment investigations within 30 days of notice or less, but some investigations may take longer to complete depending upon the nature and scope of the allegations; the number of witnesses involved; the availability of the parties, witnesses, or evidence; evidence gathering in a concurrent law enforcement investigation.

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All Staff Members, whether complainant, witness, or the subject of the investigation, are required to be truthful, forthcoming, and cooperative throughout the investigation. Human Resources seeks to conduct a thorough investigation, and refusal to participate in the investigation may result in disciplinary action, up to and including termination of employment.

Depending on the outcome of the investigation, Human Resources will take appropriate corrective action to stop the discrimination or harassment and prevent its recurrence. Any employee who is found to have engaged in discrimination or harassment prohibited by this Policy will be subject to appropriate disciplinary action, up to and including termination of employment. Non-employee Staff Members will be subject to other appropriate remedial action including termination of contracts, suspension, or removal from the premises.

The purpose of the investigation is to establish whether there is a reasonable basis for determining that there has been a violation of this Policy. The investigation may include:

1. Interviews with the person making the complaint and the person accused.
2. Interviews with witnesses, such as other employees, supervisors, and visitors believed to have relevant information.
3. Gathering of any physical evidence, which may include objects, photos, surveillance videos, emails, text messages, voice mails, documents, etc.
4. Monitoring the situation to make sure that the person making the complaint or any party to the complaint suffers no discrimination or retaliation. Final investigative reports are filed with the local Human Resources entity and forwarded to the system Office of Diversity, Equity, and Inclusion,

COMPLAINT RESOLUTION

Depending on the outcome of the investigation, WVUHS will take appropriate remedial action. Such action is based on the severity or frequency/pervasiveness of the conduct and may include any of the following:

1. Verbal or written reprimand.
2. Coaching, education or training and a commitment to modify conduct.
3. An apology.
4. Suspension.
5. Termination of employment.
6. Termination of or refusal to allow any resident or employee to continue or begin training.

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7. Refusal or rescinding access to WVUHS property unless it is for the need of medical services.

If any employee or former employee is dissatisfied with the response to a complaint, he/she may file a problem review request as provided under WVUHS Problem Resolution policy.

NON-RETALIATION

WVUHS prohibits retaliation against individuals who report harassment or discrimination in good faith and who participate in an investigation of a harassment or discrimination complaint. Any employee who has filed a complaint or has participated in an investigation under this Policy must immediately notify HR or a supervisor (who must promptly notify HR) if the employee believes he or she has been subjected to retaliation or intimidation. Retaliation may include but is not limited to, actions such as:

- Disciplining, changing work assignments of, providing inaccurate work information to, or refusing to cooperate or discuss work-related matters with any employee because that employee has complained about or resisted, or participated in the investigation of harassment, discrimination, or retaliation.
- Subjecting the person's work to greater scrutiny or making the person's work more difficult.
- Providing less favorable evaluations, scheduling, or promotion/transfer consideration.
- Intentionally pressuring, falsely denying, lying about, or otherwise covering up or attempting to cover up conduct such as that described immediately above.
- Employee-to-employee isolation, ridicule, intimidation, "silent treatment," or embarrassment; or
- Encouraging others to retaliate.

CONFIDENTIALITY

Human Resources will protect the confidentiality of individuals who file complaints and who are involved in an investigation to the extent possible and will enforce its non-retaliation policy. While Human Resources strives to conduct the investigation as discretely as possible, Human Resources may need to disclose information, including but not limited to the identity of the complainant and/or witnesses, to appropriately conduct the investigation and take appropriate action.

OTHER INFORMATION

Nothing in this Policy provides any contractual rights regarding terms and conditions of employment, nor does anything in this Policy alter or modify the employment relationship between WVUHS and its

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employees. Further, nothing in this Policy creates an employment relationship for members of the workforce who are not employed by WVUHS.

REFERENCES

Cross System References: (Please refer to your local applicable hospital policies)

- A. WVUHS [PROBLEM RESOLUTION](#), V210S
- B. WVUHS [CORRECTIVE ACTION AND DISCHARGE](#), V.230S
- C. WVUHS [NEPOTISM](#), V.052S
- D. Title IX policy, as applicable by WVUHS facility

Federal Regulations:

- A. Age Discrimination Act of 1975 ("Age Act")
- B. Americans with Disabilities Act of 1990, as amended ("ADA")
- C. Section 504 of the Rehabilitation Act of 1973
- D. Section 1557 of the Affordable Care Act (ACA)
- E. Title VI of the Civil Rights Act of 1964
- F. The Genetic Information Nondiscrimination Act of 2008
- G. Federal Regulations: 29 C.F.R. § 1604.11

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