SAN JOSÉ STATE UNIVERSITY

Discrimination, Sexual Harassment and Title IX Overview

Human Resources
Office for Equal Opportunity

Agenda

- Definition of Discrimination
- Protected Characteristics
- Definition of Sexual Harassment
- Examples of Harassing Behavior
- Employee Responsibilities
- Supervisor/Manager Responsibilities
- Retaliation
- Title IX
- Complaint Process
- Questions

Discrimination - Definition

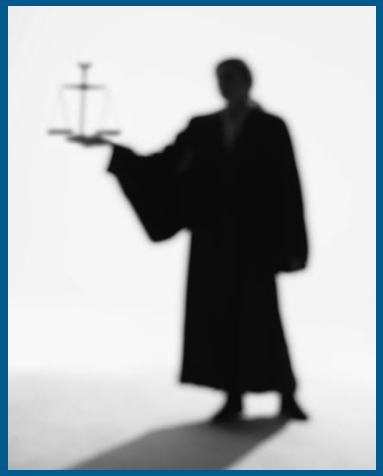
There are various ways to discriminate based on a persons membership to a protected characteristic:

Disparate treatment: Involves action(s), e.g. promotion, termination, grade decisions, admission that singles out an employee/student because of a protected characteristic

Disparate impact: Involves policies that have a disproportionate adverse effect on a protected characteristic group

Protected Characteristics

- Race
- Color
- National Origin
- Citizenship Status
- Ancestry
- Religion
- Age
- Disability/Medical Condition (pregnancy)
- Veteran Status
- Sex
- Gender Identity
- Sexual Orientation
- Genetic Information
- Breast Feeding
- Arrest Record
- Political Beliefs
- Marital Status



Definition of Sexual Harassment

Sexual harassment is defined as unwelcome conduct of a sexual nature that occurs and is either:

- **Made a term or condition of a benefit**
  - **Quid Pro Quo – "this for that"**
- **Has the purpose or effect of unreasonably interfering with work performance or creates an intimidating, hostile or offensive work environment.**

Sexual Harassment

Things to know:

- **Harassment is unlawful regardless of the gender of the victim or the harasser.**
- **Harassment can be same sex.**
- **Reasonable person standard is use to determine if sexual harassment occurred.**

Hostile Work Environment

All sorts of behavior can create what employees deem to be a "hostile work environment." When discussing discrimination, a hostile work environment is caused by unwelcome conduct in the workplace, in the form of discriminatory harassment toward one or more employees based on a protected characteristic (race, gender, etc.)

Examples of Harassing Behavior

- ✓ **Comments**
- ✓ **Posters**
- ✓ **Emails**
- ✓ **Sexual violence, sexual advances & requests for sexual favors**
- ✓ **Indecent exposure**
- ✓ **Physical acts, such as unwanted touching**

Employee Responsibilities

- **Be respectful at all times.**
- **Be familiar with SJSU & CSU policies.**
- **Do not keep quiet. Tell your supervisor!**
- **Do not ignore it. Interrupt it!**
- **If you are comfortable, tell the alleged harasser that the behavior is unwanted.**
- **Document the incident and report the situation to your manager/supervisor or the Office for Equal Opportunity in HR**

Supervisor/Manager Responsibilities

- **Supervisory responsibility: “Knew or should have known.”**
- **Take the complaint seriously.**
- **Document all discussions.**
- **Report unlawful discrimination/harassment to the Office for Equal Opportunity**
- **Take swift & appropriate action in substantiated cases.**
- **Leadership must help ensure that complainants are protected against retaliation.**
- **Remember, retaliation is prohibited by law.**

Retaliation

If you participate in an investigation or file a complaint, the law says you cannot

- **Get fired,**
- **Be demoted,**
- **Be harassed, or**
- **“Retaliated” against**

SJSU has a no retaliation policy.

Title IX

"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving federal financial assistance."

Title IX of the Educational Amendments of 1972
20 U.S.C. § 1681 & 34 C.F.R. Part 106

Title IX

Intended to end sex discrimination in all education

Applies to:

- Sex Discrimination
  - Educational Program/Activity Equity (e.g., athletics)
- Sexual Harassment
- Sexual Violence (2011)
- Domestic Violence, Dating Violence, Stalking (2013)

Applicable Laws and Guidelines

Some of the relevant laws and regulations include:

- **Title VII of the Civil Rights Act of 1964, as Amended** which prohibits employment discrimination on the basis of sex

- **Title IX of the Educational Amendments of 1972** which prohibits sex discrimination in educational institutions that receive federal funding
  - OCR Dear Colleague Letter, April 4, 2011
  - OCR Questions and Answers on Title IX and Sexual Violence, April 28, 2014

- **Jeanne Clery Act** which requires educational institutions to conduct an annual security report and make ongoing disclosures (emergency notifications, timely warnings, and public crime log)

Applicable Laws and Guidelines

- **Campus SaVE Act, as part of the reauthorization of the Violence Against Women Act** which includes domestic violence, dating violence, and stalking
- **State and Local Laws**
- **California State University System**
  - Executive Order 1095, 1096, 1097 and 1098

Definitions

- **Sex Discrimination**
- **Sexual Harassment**
- **Sexual Violence**
- **Domestic or Intimate Partner Violence**
- **Dating Violence**
- **Stalking**

An adverse action that is perpetrated against an individual because of his/her gender or sex:

- Actual or perceived gender identity
- Actual or perceived sexual orientation
- Failure to conform to stereotypical notions of masculinity or femininity

Definitions

- Sex Discrimination
- Sexual Harassment
- Sexual Violence
- Domestic or Intimate Partner Violence
- Dating Violence
- Stalking

Unwelcome conduct of a sexual nature:

- Sexual advances
- Requests for sexual favors
- Indecent exposure
- Verbal, nonverbal, or physical unwelcome conduct of a sexual nature
- Gender-based harassment

Definitions

- Sex Discrimination
- Sexual Harassment
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Physical, mental, or emotional acts perpetrated against an individual

- Without consent or incapable of giving consent (use of drugs or alcohol, or disability)
  - Unwelcome sexual touching
  - Sexual Assault
  - Sexual Battery
  - Rape

Definitions

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Abuse committed against:

- Current or former spouse
- Current or former cohabitant
- Someone with whom the abuser has a child
- Someone with whom the abuser has or had a dating or engagement relationship
- Person similarly situation under California domestic or family violence law

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Abuse committed by a person who is or has been in a social or dating relationship of a romantic or intimate nature with the victim

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Repeated course of conduct directed at a specific person that places that person in reasonable fear for his/her or others' safety, or causes that person to suffer substantial emotional distress

Your Responsibility Towards Disclosure

TITLE X

1. **Exempt from Disclosures:**
   - Professional counselors *(whose official responsibilities include providing mental health counseling)*
     - Not required to report ANY information regarding an incident of alleged sexual harassment or violence
2. **Required to Disclose Statistical Information:**
   - Employees with a professional license requiring confidentiality *(e.g., psychologists, health center employees)*
   - Employees designated by the University as confidential sources
     - Not required to report, without the student's consent, personal identifying information that would identify the student

Your Responsibility Towards Disclosure

TITLE IX

3. **Required to Disclose ALL Reported Information**
   - All other employees *(i.e., employees that do not align with the other two categories)*
     - Required to report all information reported by the student to the Title IX Coordinator or Title IX Deputy Coordinators

Scenario

An orientation leader is being overly friendly with one of his/her students. During the session days, the orientation leader spends a majority of his/her time talking to this student and openly flirting in front of his/her other students. The student looks clearly uncomfortable, however the Orientation Leader continues to behave in this matter. At the end of the last session day you overhear the Orientation Leader offering his/her number to the student and says "give me a call if you needs any support."

SJSU Employee Guidelines for Responding

TITLE IX

If someone tells you about an experience of sexual harassment or violence, remember the THREE (3) R's:

- RECEIVE
- REFER
- REPORT

"It sounds like you are about to share something important. Before you continue I would like to let you know my limits to confidentiality. If you would like to continue speaking with me, I will need to consult with the Title IX Coordinator and provide the information you have shared. If you would like to speak to someone who can maintain full confidentiality, I would be happy to support you in doing so and can help connect you to those individuals. How can I support you?"

Refer – Reporting Options

TITLE X

Office for Equal Opportunity (408) 924-2250, UPD BUILDING 3RD FLOOR

- Accepts inquires, formal, and informal reports of sexual harassment or violence

Student Conduct and Ethical Development (408) 924-5985, ADMIN 218

- Responds to violations of the student conduct code by an internal University disciplinary process when the alleged perpetrator is a student (separate from a civil or criminal hearing)

University Police Department (408) 924-2222, UPD BUILDING

- Responds to safety concerns and to violations of California law, which may lead to criminal proceedings

Refer – Support Services

Athletics (408) 924-2462, SIMPKINS ATHLETIC BUILDING

- Provides consultation and support to those who are concerned about a situation or issue regarding athletics.

Counseling Services (408) 924-5910, ADMIN 201

- Provides confidential services to students

Next Door (408) 279-2962, 234 E. GISH ROAD, SUITE 200, SAN JOSE

- Provides confidential services for those dealing with domestic and relationship violence

Student Health Center (408) 924-6122, HEALTH CENTER

- Provides medical care to students

University Ombudsperson (408) 924-5995, ADMIN 218

- Provides consultation and support to those who are concerned about a situation or issue.

YWCA Silicon Valley (408) 295-4011, 375 SOUTH THIRD ST., SAN JOSE

- Confidential services for those dealing with sexual assault and domestic violence

Report

Report to the Title IX Coordinator and/or Deputy Title IX Coordinator within 24 hours of the disclosure

- All relevant details that the student/other person **has shared**
  - Name of the person who experienced the alleged sexual violence
  - Name of the alleged perpetrator
  - All relevant facts (date, time, location, others involved)
- It is **NOT** your responsibility to investigate

How must SJSU respond?

TITLE X

It is the University's obligation to take reasonable steps to eliminate sexual harassment or violence, prevent recurrence, and address its effects

- Address the situation immediately
- Ensure student's safety
- Consider all relevant details
- Determine the appropriate approach
- Ensure a fair process for all parties
- Determine an appropriate outcome

Report

Title IX Coordinator

- **Beth Pugliese**; Associate Vice President Human Resources
  (408) 924-1116, beth.pugliese@sjsu.edu

Title IX Deputy Coordinators

- **Julie Paisant**, Director Office for Equal Opportunity & Employee Relations, (408) 924-2255, julie.paisant@sjsu.edu

- **Shannon Quihuiz**, Interim Director Student Conduct and Ethical Development, (408) 924-5946, shannon.quihuiz@sjsu.edu

- **Liz Jarnigan**, Associate Athletics Director for Student Services
  (408) 924-2462, elizabeth.jarnigan@sjsu.edu

External Complaints

Federal EEOC

Must file within 300 days of alleged discrimination
(800) 669-4000

State DFEH

Must file within one year of alleged discrimination
(800) 884-1684

Office of Education

Complaints can be filed before, during, or after the internal process.

Complaint Process

SJSU must:

- Investigate allegations of harassment or discrimination
- Take remedial action to stop the behavior within a reasonable time frame
- Have a commitment to have an environment free of discrimination and harassment.

For more information on the complaint process:

http://www.sjsu.edu/hr/employee_rights/

http://www.sjsu.edu/hr/students/students_harassment_complaints/

Questions?