Preventing Harassment and Discrimination
What is Discrimination?

Discrimination occurs when an employee suffers unfavorable or unfair treatment due to his or her race, religion, national origin, disabled or veteran status, or other legally protected characteristics. Federal law prohibits discrimination in a number of work-related areas, including recruiting, hiring, job evaluations, promotion policies, training, compensation and disciplinary action.

Major federal laws that prohibit discrimination in the workplace include:

- **Civil Rights Act of 1964, 1991**—Prohibits employment discrimination based on race, religion, color, sex/gender, and national origin.
- **Age Discrimination in Employment Act**—Prohibits employment discrimination based on age.
- **Family and Medical Leave Act**—Protects individuals who take leave for medical purposes for themselves or family members.
- **Americans with Disabilities Act**—Prohibits employment discrimination based on disabilities.
- **Pregnancy Discrimination Act**—Prohibits employment discrimination based on one’s pregnancy, history of pregnancy, or potential to become pregnant.

What is Harassment?

Harassment is a form of discrimination that takes the form of unsolicited speech or conduct based upon a person’s protected class (e.g., race, sex, ethnicity, creed, religion, national origin, age, color, disability, veteran status, etc.). Depending on the state and organizational policy, other classifications may be protected as well. For example, within North Idaho College, policy strictly prohibits harassment based on one’s sexual orientation as well as those classes listed within federal law.

Workplace harassment is any unwelcome verbal, written or physical conduct that either denigrates or shows hostility or aversion towards a person on the basis of a protected class that:

1. Has the purpose or effect of creating an intimidating, hostile or offensive work environment.
2. Has the purpose or effect of unreasonably interfering with an employee’s work performance.
3. Affects an employee’s employment opportunities, compensation or other terms and conditions of employment.
Retaliation

Overt or covert acts of reprisal, interference, restraint, penalty, discrimination, intimidation or harassment against an individual or group exercising rights under this or similar college policies is strictly prohibited by NIC.

Unlawful Sexual Harassment

While the guidelines regarding unlawful harassment and discrimination apply to all protected classes, of special note is harassment based on gender. Sexual harassment includes any unwelcome sexual advance, requests for sexual favors, or verbal, written or physical conduct of a sexual nature by a manager, supervisor, co-worker, or even non-employees (third party).

Two types of sexual harassment include:

- **Quid pro quo**: A form of sexual harassment when a manager/supervisor or person of authority gives or withholds a work-related benefit in exchange for sexual favors. Typically, the harasser requires sexual favors from the victim in some way.

  Specifically, quid pro quo typically involves an agent of the employer who seeks or obtains sexual favors which are made as a condition of employment or influences employment decisions, or with apparent authority to do so. The decision typically affects tangible aspects of an individual’s employment.

- **Hostile environment**: A form of sexual harassment when a victim is subjected to unwelcome and severe or pervasive repeated sexual comments, innuendoes, touching, or other conduct of a sexual nature which creates an intimidating, hostile or offensive place for employees to work.

While it was not always necessary to demonstrate tangible negative impact taking place to the victim, that is not necessarily the case any longer. Just the potential for damage is enough to create an unlawful harassment situation.
Verbal Behavior

Examples of unlawful harassment may include (but are not limited to) words or comments that are offensive and that touch upon a person’s protected class status. Examples may include...

- Verbal kidding/joking that is sexually oriented or concerning a person’s protected class status, and considered unacceptable by another individual
- Telling dirty, sexist, or racially oriented jokes that are unwelcome and offensive to others
- Verbal abuse that includes put-downs or insults related to a person’s gender, race, or other protected class.
  - Comments, innuendos, epithets, derogatory comments, slurs, etc. that are sexually, racially, or otherwise oriented towards a person’s protected class.
  - Swearing that includes words of a sexual nature.

Physical Behavior

Examples of unlawful harassment may include (but are not limited to) physical behavior that is interpreted by the victim to be unwelcome or offensive and that touch upon a person’s protected class status. Examples may include...

- Assault, impeding, or blocking movement
- Any physical interference with normal work or movement when of a sexual nature
  - Unwanted sexual advances which may include unwanted patting, pinching, brushing up against, hugging, cornering, kissing, fondling, touching, etc.
  - Unwanted propositions of a sexual nature
- Continued requests for a date or social interaction after the individual has rejected the initial request
  - Aggressively exposing one’s self, including flashing
  - Stalking, or otherwise following a person, on or off the worksite
- Sending written, telephone or computer messages or pictures of a sexual nature
  - Sexual flirtations
• Ogling, leering, sexually suggestive looks or gestures, or otherwise extending unwanted sexual attention to someone
• Any other physical conduct considered unacceptable by another individual.
  o Sexually oriented conduct that interferes with performance.
  o Any behavior that is unwelcome or sexually oriented that unreasonably interferes with an individual’s ability to perform his/her duties
  o Requests for sexual favors, especially when made as a condition of employment.
• Pressures or requests for any type of sexual favor accompanied by an implied or stated promise of employment benefits.
• Actual or implied threats of negative consequences for refusing to accept inappropriate requests of a sexual nature.

Visual Displays

Examples of visual displays that may create a hostile work environment may include (but are not limited to) anything of an erotic or explicit nature. Any display of materials or objects, or materials that are left or shown to another, that are of a sexual or otherwise offensive nature are not acceptable in the workplace. Such displays may include...

• Posters or pictures of a crude or sexual nature
• Cartoons or other portions of written materials or publications that are unwelcome or sexual in nature
• Drawings that are unwelcome or sexual in nature
• Statues or other objects displayed that are unwelcome, offensive, or of a sexual nature

Be advised that in an academic setting such as ours, academic freedom allows for certain displays in a classroom setting that may be construed as inappropriate or offensive to others. A case in point may include an art class where a nude model is used for classroom purposes.

In situations such as this where the display of questionable graphic materials or bodily exposure is used as a bona fide part of classroom instruction, such exposure should be taken into account by observers. If an individual feels uncomfortable in such a situation to which they are exposed in a bona fide classroom setting, they should discuss the matter with their supervisor or Human Resources. In such cases, if unnecessary exposure takes place, such exposure may constitute an unwelcome situation. However, we ask that all employees use good judgment and discretion for both the potential observer and the instructor using such materials or displays.
What Is Unwelcome?

Behavior and comments that are inappropriate and related to a person’s protected class status may become unlawful precedent when it is “unwelcome”. Conduct is unwelcome when the individual did not solicit or incite it, and the employee regards the conduct as undesirable or offensive. This leaves a lot of room for interpretation, so factors such as frequency and gravity of each incident are considered on a case-by-case basis.

Reasonable Person Standard
One consideration of what constitutes unwelcome behavior is what is known as the reasonable person standard. In *Harris v. Forklift Systems, Inc.*, the Supreme Court reaffirmed that the definition of unwelcome behavior is based upon a reasonable person’s definition. According to the court, the standard by which to evaluate harassment claims contains two primary requirements:

1. That a reasonable person would find the environment hostile or abusive
2. That the victim subjectively perceives the environment to be abusive

Although the Harris court did not elaborate on its definition of “reasonable person,” the EEOC interprets the reasonable person standard by the perspective of the victim.

While this leaves a lot to be considered, keep in mind that it is not the offender’s opinion that matters in the case of defining what constitutes unwelcome behavior. It is the victim’s opinion that matters. If you find yourself behaving in a manner that may be or is considered offensive by another, stop it. Read the signs. If it appears that your behavior is unwelcome or that you make the other person uncomfortable, disengage in your behavior.

Sexual Harassment Is (or may be)

Some examples of inappropriate conduct that may create a hostile work environment within the scope of sexual harassment include:

- Giving a neck or shoulder massage
- Touching a person’s hair, clothing or body
- Hugging, kissing or patting
- Standing close to or brushing up against a person
- Touching or rubbing oneself sexually or provocatively around another person
- Unwanted deliberate touching, leaning over, cornering, or pinching
• Referring to an adult as a “girl,” “hunk,” “doll,” “Babe,” “Honey” or similar terms that may be construed as sexual, inappropriate, demeaning, belittling, etc. in nature
• Whistling at somebody (catcalls)
• Making sexual comments about a person’s body, clothes, looks, manner of walking, etc.
• Making sexual comments or innuendos
• Discussing television shows or movies with sexually explicit content or content that is inappropriate to discuss at work
• Turning work discussions into sexual topics
• Telling sexual jokes or stories
• Asking about sexual fantasies, preferences, or history
• Repeatedly asking out another person who is not interested or who tells you “no”
• Making kissing sounds, howling, smacking lips
• Telling lies or spreading rumors about a person’s sex life
• Looking a person up and down
• Staring at someone
• Blocking a person’s path or standing too close
• Following a person around
• Giving personal gifts (use your best judgment here)
• Displaying sexually suggestive items
• Making sexual gestures with hands or through body movements
• Making facial expressions such as winking, throwing kisses, or licking lips

**Sexual Harassment is Not...**

Some may question whether certain behaviors actually constitute harassment. Here is a few examples of what typically does not constitute sexual-harassment...

• Personal complements of an app
• Appropriate nature welcomed by the recipient of those comments
• Social interactions or relationships freely entered into by employees (e.g., dating or other consensual relationships)
• General use of profanity that is not sexual in nature.

*Ongoing use of profanity in the workplace is unprofessional and should not be used. However, while inappropriate, it does not constitute sexual harassment unless it involves sexual content.*
• Personal pictures in an individual’s office or displayed on an individual’s desk that are in good taste and appropriate for the workplace.

• General discussions among coworkers of a personal nature as long as the content of such discussions does not involve content of a sexual nature.

• Touching another individual in a way that is socially acceptable when communicating (e.g., shaking hands, touching the shoulder or arm of another individual so long as it is not unwelcome). However, in situations where the recipient of what is intended to be appropriate touching requests that such physical contact not take place, such requests must be respected.

• Honest slip of the tongue, inappropriate jokes, inappropriate comment, or other verbiage that may be construed as inappropriate that takes place only one time. In cases where this is observed, the individual should be counseled against using such language or terminology. So long as it does not continue, is not pervasive in nature and is not considered to be offensive in nature. A single offense typically does not create the basis for harassment.

Unlawful Harassment: Other Forms

The intent of this information is to provide you with some guidelines and recommendations to avoid harassment and discrimination in the workplace as well as to create a respectful and inclusive work environment. The information contained within this booklet is not meant to create an exhaustive list of do’s and don’ts or situations that define specifically what is and is not discrimination and harassment. You should use good judgment as you interact with others to ensure that you do your part to establish and maintain a respectful and inclusive work environment.

While federal and state laws cover certain protected class status is, it is important to treat others with respect no matter their circumstances. College policy further restricts and prohibits harassment and discrimination based on sexual or gender orientation, preference, or identity. There is no place at work for teasing others in nontraditional situations or relationships, and that such behavior will not be tolerated.
Religious Harassment

Any unwelcome or inappropriate behavior or comments related to one’s religion is inappropriate for the workplace. Just as in the case of sexual harassment, comments, innuendos, joking around, or anything that is directed towards a person’s religious interests or practices is inappropriate. Such action can be construed as unlawful harassment. Specific examples of religious harassment may include:

- Joking about practices related to a person’s religion
- Teasing an employee for practicing religious rituals
- Making fun of traditions, holidays, etc. related to religious practices
- Making decisions related to a person’s employment based on their religious practices or beliefs

Practicing Religion in the Workplace
The Constitution allows a certain freedom to believe and practice religion. It does not, however, include the right to proselytize in the workplace. Employees who wish to demonstrate and practice their religion in the workplace must be sensitive to other people around them. While we do not wish to deny anyone their legal right to practice and worship as they see fit, we must also protect the interests of other people who are not interested in those same religious practices or who may take offense to them. Some guidelines regarding the practicing of your religion include the following:

- If you pray at work, do so privately and do not impose prayer upon others in the workplace.
- Use good judgment in your displays of religious paraphernalia (e.g., crucifix, pictures of religious personages, rosaries, menorahs, religious literature, icons, etc.) so as to not offend others who may observe it
- Avoid proselytizing at work. This means that while you may discuss religion with those who are willing and on your own time, be sensitive to others around you who do not share your same interests or do not have the desire to be subject to proselytizing.
- Respect others who are practicing their religion. Do not tease others who may engage in prayer or other religious practices on their own time and as appropriate in the workplace.
Racial Harassment

When we talk about the term “discrimination,” we often consider examples of race and color. Any kind of unwanted or unwelcome behavior or treatment based on a person’s race, color, creed, national origin, or related factors is unlawful in nature. Though we have discussed this as a topic for decades within our country, we still find the use of racially based epithets, jokes, or comments to be common. The college expects employees to be respectful in all interactions with one another, especially as it pertains to race.

You should use your best judgment when working with other people so as to avoid offending them. Things that may appear to be funny to you may not be funny to other people. Comments relating to other cultures, backgrounds, countries, or different people in general may be construed as unwelcome even if the recipient of the comments does not belong to that protected class. (For example, an individual who belongs to a racial minority may overhear jokes or comments made about the different race, and still take offense because of the nature of the comments towards minorities in the workplace.)

Be aware of your vocabulary. If you find that you still use terms that are slang in nature as they pertain to people of different cultures, races, countries, etc., work those out of your vocabulary. Remember that it is not what you intend to say, but the actual interpretation of what was said that matters. It is the resulting outcome, not the intention, which creates a hostile work environment and discrimination.

Age Discrimination

Because we have over four generations working in our organization, it is important to be respectful and mindful of differences in age. The Age Discrimination in Employment Act prohibits discrimination and harassment on the basis of age. While the federal guidelines established age 40 as the point at which the law takes effect, the US Supreme Court has clearly upheld case law that demonstrates that using age as the basis for decision-making no matter the age is bad employment practice.

While Idaho does not have a specific state law that lowers the age that is protected by federal law, you should still keep in mind that age discrimination is wrong. In the case of older employees, it is inappropriate to joke with them in a manner that refers to their age or to assess diminished capability in their positions because of their age. If performance issues are a consideration, then the focus must only be on the performance and job related factors involving the employee. The age of the employee does not matter.
In creating a respectful workplace, it is also important to avoid discriminating against or harassing younger employees as well. While you may consider a person’s experience level as part of their qualifications to perform a job, it is inappropriate to refer to younger employees as “youngster” or “kid”. Such titles are typically interpreted to be disrespectful and can create a somewhat hostile work environment for those employees affected.

**Pregnancy, Family Leave**

As with the other laws, the Family Medical and Leave Act provides protection to employees throughout the organization. Employees can use this protected leave if they meet minimum qualifications. While the leaves may be protected, it is also important that we maintain respect and dignity in the workplace in matters relating to families, pregnancies, and other conditions that are affected by the individuals.

Common causes of litigation include teasing or harassing employees who are pregnant regarding time off that will be taken, weight gain, weight loss, appearance, and other factors that relate to their physical condition. Other harassment may result from discussing issues such as parenting, the ability to cover child care, accrued time that is used to take care of a family member, and other related matters.

It is important to maintain respect and dignity in the workplace no matter the condition or situation. If supervisors have concerns about situations involving employees, and they would like advice, they can contact the Human Resources Department for additional information. However, all employees should be aware of their behavior and comments directed towards individuals who use or may use protected leave.

**Disabilities**

Another significant cause for legal action comes from those individuals who fall under the protection of the Americans with Disabilities Act. This act protects individuals who are considered to be disabled, or who may be impaired in one or more significant or major life functions. While the list of conditions covered is extensive, it is important to remember that we should be respectful of all employees no matter their condition.

From time to time you may experience working with an individual who has a physical disability such as a missing limb, use of a prosthesis, speech impediment, or other noticeable physical disability or impairment. In other cases they may suffer from mental disabilities that can affect cognitive abilities, critical thinking processes, and other mental or brain related functions. As well, employees may suffer from emotional disabilities which is also protected. This may involve their ability to interact with others, deal with stress, deal with work, etc.
The Americans with Disabilities Act requires that an employee be able to perform the essential functions of the job either with or without reasonable accommodation. So long as the employee is qualified under this standard to perform the job, he or she is protected and should not be subject to any harassment or discrimination. If you are an employee and you have concerns about a coworker’s ability to meet performance standards, you should discuss the matter with your supervisor. If you are a supervisor and you have concerns about an individual’s ability to meet the essential job standards, please be sure to contact human resources to discuss options.

It is not up to you to decide if somebody is disabled. It is a complex process that requires several steps and considerations. The important thing to remember as an employee is to treat others with respect and avoid any derogatory or inappropriate comments or behavior that can create a hostile work environment based on their disability status.

How to Report It

If you feel that you are subject to harassment or discrimination, it is important that you take immediate action as soon as possible. The problem cannot be fixed unless you tell somebody about it.

North Idaho College has a duty to investigate all claims of harassment and discrimination.

**Harassment/discrimination based on sex or gender:**
If you feel that you or someone else had been a victim of harassment or discrimination based on sex or gender, you should contact either Human Resources or the NIC Title IX Coordinator to communicate your concern/file a report. Your report/concerns will be held as confidential as possible. As you communicate with Human Resources or the Title IX Coordinator, be mindful that once a claim is made, action must be taken by the employer to investigate the matter and ensure that such behavior stops and no longer takes place. Be aware that all information you share is held on a need to know basis, and only those individuals who have a need to know will be made aware of the details.

**Other unlawful harassment/discrimination (not sex or gender based)**
If you feel that you or someone else had been a victim of unlawful harassment or discrimination, you should contact Human Resources to communicate your concern/file a report. Your report/concerns will be held as confidential as possible. As you communicate with Human Resources, be mindful that once a claim is made, action must be taken by the employer to investigate the matter and ensure that such
behavior stops and no longer takes place. Be aware that all information you share is held on a need to know basis, and only those individuals who have a need to know will be made aware of the details.

In any case of harassment or discrimination, if you are not able or not comfortable speaking with Human Resources or the Title IX Coordinator, you should speak with your supervisor or other responsible employee about your concerns. Please keep in mind, however, that the responsible employee you speak with has a duty to inform Human Resources or the Title IX Coordinator of the concerns/claims that were brought to their attention.

CONTACT INFORMATION:

Executive Director of Human Resources: Laura Hill
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Title IX Coordinator: Alex Harris
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