FACULTY & STAFF
SEXUAL MISCONDUCT GUIDE
Defining & Addressing a Community Concern

University of Wisconsin
Eau Claire
Affirmative Action
UW-Eau Claire does not tolerate harassment of any member of our community. When sexual harassment occurs, it degrades the quality of work and education at UW-Eau Claire. It erodes the dignity and productivity of the individuals involved and diminishes the quality, effectiveness and stature of the institution.

Sexual harassment not only violates the law and university policy but can also damage personal and professional relationships; cause career or academic disadvantages; and exposes the university to legal liabilities, a loss of federal research funds and other financial consequences. For all these reasons, it is in our best interest to educate all community members and take other steps necessary to prevent sexual harassment. We have a collective responsibility to do so, thereby promoting a climate that supports excellence in teaching, research and service.

This guide is intended to address sexual violence, sexual harassment. The Affirmative Action Office can assist with concerns about any type of prohibited harassment based on gender, race, religion, ethnicity, age, disability, and sexual orientation.

Any one of us may experience harassment, be accused of harassment, or be consulted by someone who thinks he or she has been harassed. Sexual harassment can occur in any university setting: in the workplace, and learning environment or university programs.

Each of us has a duty not to harass others and to act responsibly when confronted with the issue of sexual harassment. Principal investigators, supervisors, managers, department chairs, directors and deans have additional responsibilities: individuals in positions of authority must take reasonable measures to prevent sexual harassment and take immediate and appropriate action when they learn of allegations of sexual harassment.
WHAT IS SEXUAL HARASSMENT?

Unwelcomed sexual advances, requests for sexual favors, and verbal or physical conduct of a sexual nature constitute sexual harassment when:

- Submission to such conduct is a condition of employment, academic progress or participation in a university program; or
- Submission to or rejection of such conduct influences employment, academic or university program decisions; or
- The conduct interferes with an employee's work or a student's academic career, or creates an intimidating, hostile or offensive work, learning or program environment.

Tangible Action or Quid Pro Quo (This for That) Sexual Harassment occurs when employment or academic decisions resulting in a significant change in status are based on an employee or student's submission to or rejection of the unwelcomed verbal or physical sexual conduct. Examples include but are not limited to:

- Requiring sexual favors in exchange for hiring, a promotion, a raise, or a grade.
- Disciplining, demoting or firing an employee because he or she ends a consensual relationship
- Refusing to write recommendations for a student because the student refuses sexual advances.
- Changing work or academic assignments because the employee or student refuses invitations for a date or other private social meetings.

Hostile Environment Sexual Harassment occurs when verbal, non-verbal and/or physical conduct is:

- Sexual and/or based on gender,
- Unwelcomed, and
- Sufficiently severe and pervasive to interfere with a person's work/learning/program performance or to create a hostile, intimidating or offensive environment.

The determination is made on a case-by-case basis looking at the whole record, including the circumstances (such as the nature of the sexual advances) and the context in which the alleged incidents occurred. Some behaviors acceptable in certain contexts are inappropriate in the workplace or classroom, particularly if an objection is expressed.
KEY POINTS ABOUT SEXUAL HARASSMENT

Differences in power or status can be a significant component to sexual harassment. A person who seems to acquiesce to sexual conduct may still experience tangible action harassment or hostile environment harassment if the conduct is unwelcome.

Harassment can occur between men and women or between members of the same gender.

Sexual harassment may or may not involve a tangible injury (e.g., economic loss, lowered grades). A sexually harassing environment, in and of itself, may constitute harm.

Sexual harassment must be addressed and corrected regardless of the position or status of the harasser or the person being harassed.

Conduct is not always offensive or unwelcomed to the same degree when perceived by different people. Courts use a “reasonable person” standard to determine whether the contested behavior constitutes sexual harassment.

Individuals in positions of authority are responsible for ensuring that employees, students, or others do not harass. In the workplace, offenders can be supervisors, co-workers, or non-employees such as vendors, customers, and suppliers. In an academic or program setting, offenders can be faculty, instructors, lecturers, teaching assistants, coaches, tutors, or fellow students or program participants.

The person filing a sexual harassment charge does not have to be the person harassed but could be anyone significantly harmed by the harassing conduct.

Harassment does not have to be reported immediately, but a significant delay may be a factor in the evaluation of a complaint. A delayed report may result in a dismissal of the complaint (e.g., 300 days, Wisconsin Personnel Commission).

Some behavior that is not in violation of university policy may, nonetheless, be unprofessional under the circumstances. Consequences of such unprofessional behavior may include poor performance evaluation or possible discipline.
RETALIATION

State and federal laws and university policy protect against retaliation. University policy prohibits retaliation against a person because he or she reported sexual harassment, filed a complaint, participated in the investigation of a complaint, or assisted others who raised a complaint.

Retaliation is a serious offense that can result in disciplinary action. This protection exists even if a complaint eventually is dismissed or found lacking in merit. It does not follow that false claims will be tolerated: a person will be held accountable for knowingly making a frivolous or malicious complaint of sexual harassment.

CONSENSUAL RELATIONSHIPS

The university presumes that the ability to make objective decisions is compromised if there is a romantic and/or sexual relationship between two individuals who have a reporting or evaluative relationship. There is almost always a power differential between such individuals that not only obscures objectivity but also influences perceptions of consensuality. The individual with the power or status advantage is required by university policy to report the relationship to his or her supervisor and will be accountable for failing to make this report. The supervisor who learns of the consensual relationship has the responsibility to make appropriate arrangements to eliminate or mitigate a conflict that might prove detrimental to the university or to either party in the relationship, particularly the person in the subordinate role. Supervisors can consult with any of the resources in this guide for assistance in meeting this responsibility. The policy applies when:

- One member of a couple supervises the other or teaches in an academic program in which the other member is enrolled.
- One member of a couple will vote on or substantially influence the other’s salary, job, contract, promotion or other condition of employment.
- One member of a couple is the other’s instructor or grader in a course or degree program or is in a position to influence the other’s academic progress.
WHAT TO DO ABOUT SEXUAL HARASSMENT?

We encourage early contact: consultation is not escalation. Timely discussion of people’s concerns may allow resolution before alternatives become limited. The university will protect confidentiality to the extent possible under the law.

If You Feel You’ve Been Sexually Harassed

Seek advice. Consult your supervisor, manager, HR representative, department chair, director, dean, Affirmative Action Officer, or any campus resource to discuss options for resolutions.

- You may choose to seek informal resolution or file a sexual harassment complaint.
- You may find it helpful to seek support from a trusted colleague. Be aware of your interest in keeping the matter as confidential as possible.
- Keep notes of what happened, when, where and who was present. Retain copies of any correspondences.

Consider informing the individual(s) involved that the conduct is unwelcomed and that you expect it to stop.

If You Are Accused of Harassment

- Early consultation may help avoid claims of retaliation and facilitate resolution of the situation.
- You will be informed of any complaint filed against you and provided with an opportunity to respond to the specific allegations.
- You should contact the Affirmative Action Office or other campus resources.
- You may choose to seek private legal advice.
- Be honest when questioned about alleged conduct and explain in context.

If Someone Confides in You

- Listen to the allegation of harassment sympathetically but objectively.
- Encourage the individual to contact a campus resource who can explain alternatives available to resolve the situation.
- If requested, and if you are comfortable doing so, assist the individual in reporting the behavior.
- Keep allegations confidential, except as necessary to cooperate with appropriate university officials.
If You Are in a Position of Authority
[e.g., principal investigator, supervisor, manager, department chair, director, dean etc.]

Sexual Harassment can arise in a healthy environment, but it often develops in negative climates. If you have concerns about the climate in your area, consult with a campus resource to learn about proactive measures to improve the climate for all individuals.

Distribute the Sexual Violence and Sexual Harassment Policy to new faculty and staff and to all employees periodically and when there are modifications to the policy.

Periodically remind employees of your expectation that they maintain a harassment free environment. Provide resources (e.g., this guide, or a link the sexual violence and sexual harassment policy (https://www.uwec.edu/kb/article/policy-sexual-violence-and-sexual-harassment-policy/)).

Schedule sexual harassment information sessions and promote attendance by all department members.

Encourage employees and students to come forward with questions, concerns and allegations. Avoid discouraging persons from "going outside the department with problems." (A person may not be comfortable reporting within the department and may not seek help if the department’s culture discourages outside assistance.)

Take every complaint seriously and ensure that others do as well. Ensure that your department appropriately address all complaints. If you have questions about the scope of your responsibility, contact the Affirmative Action Office or another campus resource.

Keep allegations confidential except on a "need to know" basis.

Ensure that no retaliation occurs against the person making the allegations and that the person charged with harassment is not assumed guilty and/or disciplined on the basis of allegations.

For the protection of both parties, comply with all applicable university procedures and ensure that your department/unit fully cooperates with any investigations.
ADVICE FOR CONVERSATIONS

If you are approached by someone who thinks they have been sexually harassed, you can help by referring the person to campus resources. Encourage the person to seek advice about reporting the behavior and learn about alternatives for resolution from one or more of these resources.

When listening to the person’s concern, you should refrain from labeling the described conduct as harassment or saying that it is not harassment. Listen to the concern and move on to identify resources who can help resolve the situation.

In addition to providing information about campus resources who will assist in dealing with sexual harassment, you may also discuss the situation and provide support. If you are asked to become involved and/or take action, you should first contact a campus resource for guidance. Each case is unique and needs individual attention; there is no standard advice you can provide.

If you choose to assist the person through the process of resolution, the principles guiding your approach should be to listen, be respectful, be objective, and consult campus resources.

DURING YOUR CONVERSATION

Determine quickly what the individual approaching you wants. Ask, “what would you like me to do?” or “How would you like me to help you?” This will help avoid misunderstandings and clarify the person’s objective in approaching you. Respect their decisions and don’t impose what you think you would do in the same circumstances.

Be respectful. Do not dismiss the complaint as trivial; avoid telling the person to “grow thicker skin” or “saying that the alleged perpetrator “means well but sometimes slips.” Although they may be intended to help, these types of comments make the person feel discounted. Try to keep in mind that what may seem unimportant to you may be offensive or threatening to someone who has different life experiences or less power.

Acknowledge the courage needed to approach you and the difficulty of the situation. If the person cries, remember that tears have various meanings and are often a sign of frustration and anger in profession settings. Acknowledge the person’s emotions, without labeling them, by saying something like: “This must be difficult for you.” Offer a box of tissues and allow time for the person to regain composure.
Remember that the fear of retaliation is common among those who have been sexually harassed and is often the reason they do not bring complaints forward. Reassure the person and explain that the university policy operates in conjunction with federal and state laws to prohibit retaliation against complainants. Retaliation against someone who participates in an investigation or assists someone in making a complaint is also prohibited. The policy applies even if a complaint ultimately is not substantiated to a degree required by law.

Be neutral. Avoid comments such as “I’m sure he didn’t mean anything by it” or “Oh, she does that to everyone,” which may sound as if you are defending the accused. Also avoid comments such as “Well, you’re so young and pretty,” or “You shouldn’t have been in the lab by yourself at night,” which may sound as if you are blaming the person confiding in you.

If you elect to support the person, you should not feel you must follow the matter through to its final conclusion. If you become uncomfortable with your involvement at any time, acknowledge your discomfort and let the person know that you are sorry, but you cannot continue in the support role. Acknowledge how difficult it must be for them and encourage the person to consult a campus resource to receive appropriate assistance.

If the person asks you to contact a campus resource, be sure you understand whether you are free to mention their name, or other identifying information such as the department or the alleged harasser’s name, before you approach the campus resource for assistance.

It is generally best for all persons involved and for the effectiveness of any investigation into the matter if confidentiality is maintained. You should not discuss the situation with anyone unless the person has authority to assist in the investigation or resolution of the matter.

Remember that conversations between a faculty or staff member and another individual are not privileged communication and can be elicited in the course of legal or administrative proceedings that might ensure.

**LIABILITY FOR HARASSMENT**

While we have a collective responsibility to provide a work and learning environment free of sexual harassment, the university’s leaders must make proactive efforts to prevent sexual harassment and respond in a timely and effective manner to allegations of sexual harassment. Actions taken by individuals in positions of authority (e.g., principle investigators, supervisors,
managers, department chairs, directors, deans etc.) are pivotal to the determination of legal liability when lawsuits or complaints are filed with federal or state enforcement agencies.

In cases where sexual harassment by a supervisor culminates in a tangible employment action, the university will be liable in spite of preventative and corrective actions and the absence of fault on the part of senior administration.

In cases where a supervisor creates a hostile environment, the university will be liable unless:

- The university took reasonable care to prevent and correct the harassing behavior, and
- The employee unreasonably failed to take advantage of preventative or corrective steps provided by the university to avoid harm.

In cases of sexual harassment between co-workers, the university will be liable for harassment if the university (through its agents) knew or should have known of the conduct and failed to take immediate and appropriate corrective action to stop the harassment, prevent its recurrence, and remedy effects that reasonably could have been prevented.

In cases of sexual harassment by non-employees, such as customers, program participants or suppliers, the university will be liable for harassment if the university (through its agents) knew or should have known of the conduct and failed to take immediate and appropriate corrective action to stop the harassment, prevent its recurrence, and remedy effects that reasonably could have been prevented.

The general principles expressed in the above employment examples also apply in academic environments and program settings.
CONSEQUENCES OF HARASSMENT

Sexual harassment injures both the individuals involved and the university. It also damages the campus climate for all of us. Possible consequences include:

For the Individuals

- Emotional and psychological harm
- Diminished ability to work and study, which may have a lasting career impact
- Lost confidence in the university’s ability to provide a comfortable and safe environment for work and learning
- Potential personal liability for damages if unlawful conduct is deemed outside the scope of the employment.

For the University

- General disruption and reduced productivity and morale
- Diminished reputation that may impair efforts to attract, recruit and retain students, faculty and staff
- Time spent responding to complaint investigators and lawyers
- Increased absenteeism and turnover
- Costs that may be substantial, including back pay, lost benefits, attorney fees and expert witness fees
- Compensatory and punitive damages

POLICIES

Consensual Relationships Policy (https://www.uwec.edu/kb/article/policies-consensual-relationships-policy/)

SAFETY

Call 911 immediately if your safety is at risk.

For a guide to student safety policies and resources can be found here: https://www.uwec.edu/dean-of-students/safety-resources/

SEXUAL ASSAULT, DATING/DOMESTIC VIOLENCE, AND STALKING

If you need immediate assistance, please call 911 or one of these numbers:

If you have been sexually assaulted, call 715-836-4357 (Center for Awareness of Sexual Assault)

If you are being stalked, call University Police 715-836-2222

Dean of Students offers helpful resources for individuals who have concerns about sexual assault, dating or domestic violence, or stalking.

UW-Eau Claire code of conduct prohibits the crimes of dating violence, domestic violence, sexual assault and stalking. These crimes will not be tolerated and will result in sanctions up to and including expulsion. UW-Eau Claire is committed to the prevention of all forms of discrimination and abuse including coercive sexual contact and unwelcome comments or behavior of a sexual nature.

SEXUAL ASSAULT REPORTING REQUIREMENTS

Wisconsin law (Chapter 36.11(22)) requires employees who witness a sexual assault on the UW-Eau Claire campus or in the immediate surrounding area, or receive a first-hand report of sexual assault, to report the sexual assault to the Affirmative Action Office or University Police. This effort is not the same as filing a criminal report. Disclosing the victim’s name is not required as part of this report.

Students who experience, witness, or receive a first-hand report of sexual assault are strongly encouraged to contact the Dean of Students Office which as been designated to receive reports from students and will assist them in their healing process.
EMPLOYEE SUPPORT FOR SEXUAL ASSAULT OR SEXUAL HARRASSMENT

If you are an employee of the university, you also have rights to access confidential resources and reporting options on campus, as well as, request safety measures and other necessary accommodations.

ON CAMPUS AND COMMUNITY RESOURCES

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<th>On-Campus</th>
<th>Law Enforcement:</th>
<th>Seek Medical Assistance:</th>
<th>Make a Complaint:</th>
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<tbody>
<tr>
<td>Confidential Resources:</td>
<td>Counseling Services</td>
<td>EMERGENCY 911</td>
<td>Student Health Service</td>
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<td>Old Library 2122</td>
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<td>Crest Wellness Center, 150</td>
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<td>Sacred Heart Hospital Emergency Room</td>
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<td>Old Library 2119</td>
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VICTIM’S RIGHTS

General Information

- Victims have the right to report to law enforcement and to be assisted by UW-Eau Claire campus authorities in doing so.

- Victims have the right to decline to report to law enforcement

- Victims have the right to report the crime to UW-Eau Claire and are encouraged to report to the offices designated to receive complaints: Affirmative Action Office (Title IX Coordinator), and UW-Eau Claire Police.

- Victims have the right to a victim advocate of their choosing.

- Victims have the right to be notified, in writing, of existing resources for counseling, health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid, and other services available to both on campus and in the community.

- Victims shall be notified of options for, and available assistance in, changing academic, living, transportation, and working situations or protective measures, if so requested by the victim and such accommodations are reasonably available, regardless of whether the victim chooses to report the crime to campus police or local law enforcement.

- Victims have the right to request confidentiality from the accused.

- The right to be free from retaliation for filing an institutional complaint/report.

- The right to file a complaint with the US Department of Justice and/or the US Department of Education Office for Civil Rights.
VICTIM’S RIGHTS

When Reporting to Wisconsin Law Enforcement Agency

All victims of crime in Wisconsin who report to law enforcement are entitled to crime victim rights outlined in Chapter 950 of the Wisconsin Statute. These rights include:

- The right to be treated with fairness, dignity, and respect for his or her privacy by public officials, employees, or agencies.

- The right to have his or her interest considered when the court is deciding whether to grant a continuance in the case.

- The right to be provided with appropriate intercession services to ensure that employers of victims will cooperate with the criminal justice process in order to minimize an employee’s loss of pay and other benefits resulting from court appearances.

- The right to have the opportunity to consult with the prosecution in a case brought in a court of criminal jurisdiction.

- Crime victims in the state of Wisconsin have the right to apply for Crime Victim Compensation, which helps pay for unreimbursed expenses that are the result of crimes causing personal injury or death, including lost wages, counseling, medical costs, and replacement of property held as evidence.
CONFIDENTIALITY

How the University Protects Your Private Information

When a student or employee victim reports to a university office or official who is not explicitly designated as confidential, UW-Eau Claire takes every precaution to protect victim privacy and confidentiality by sharing information only with university officials who have a legitimate education interest and/or those who need to know for the purpose of providing an institutional response.

In an effort to protect victim safety and privacy, UW-Eau Claire maintains information about sexual violence in a secure manner. If the University has notice of an incident, UW-Eau Claire will balance the victim’s request to keep identifying information confidential with Title IX’s mandate to investigate hostile environments.

To the extent permissible by law, UW-Eau Claire will endeavor to keep victim and necessary party information private. However, once a report is made to the University, or the University has notice of an incident of sexual assault, sexual harassment, domestic violence, dating violence, or stalking, confidentiality cannot be guaranteed unless that information is reported directly to one of the confidential resources.

UW-Eau Claire will strive to maintain as confidential any accommodations or protective measures provided to the victim but keeping victim information confidential may limit UW-Eau Claire’s ability to provide accommodations or protective measures.
CONFIDENTIALITY

How the University Protects Your Confidentiality

For victims aged 18 and older who report to non-confidential resources, reports of sexual assault, domestic violence, dating violence and/or stalking are directed to the Title IX Coordinator, who will share relevant information only with those who need to know, such as Deputy Title IX Coordinators, complaint investigators, and other individuals who are responsible for handling the school’s response to incidents, or as necessary to comply with the Wisconsin Public-Records law, a valid subpoena, a lawful discovery request, or a governmental inquiry or investigation. UW-Eau Claire follows applicable Title IX guidance and the requirements of the federal Family Education Rights and Privacy Act, 20 U.S.C. s. 1232g, when evaluating whether to disclose student information. In the case of minors, UW-Eau Claire employees must report child abuse to Child Protective Services or local law enforcement.

For Cleary Act reporting and disclosures, a victim’s name or identifying information will never appear in the ASR. UW-Eau Claire will redact a victim’s identifying information when responding to requests for information pursuant to the Wisconsin Public Records Law. The University also will not disclose identifiable information about research subjects if prohibited by an NIH-issued Certificate of Confidentiality, HIPAA regulations and state laws pertaining to the privacy of health information or promises of confidentiality made to research subjects pursuant to the federally required consent form and authorization form. UW-Eau Claire must respond to valid subpoenas that are not prohibited by other applicable law and may not be able to redact information when responding to a subpoena.