

The Higher Education Workplace

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THE RISK MANAGEMENT AND COMPLIANCE ISSUE



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That Could Absolutely Happen Here

By Andy Brantley, CUPA-HR President and Chief Executive Officer



Students, student athletes, faculty, staff, highest-paid, lowest-paid, older, younger, male, female, gender neutral ... sexual harassment and sexual assault can happen to anyone on campus, and it can happen anywhere, at any time.

Like many of you, I frequently read the horrifying, almost daily revelations of harassment and assault on campuses and in our communities. Many of the stories are difficult to read, but I am grateful that more and more brave people are willing to share the trauma that has impacted and in some cases virtually destroyed their lives. It is also gratifying to see some of the “bad actors” who have gotten away with harassment and assault for decades lose their jobs and be called to task for their actions and the pain and suffering they have caused others.

I recently asked a group of higher ed HR leaders the following question, “As you think about your institution’s approach to addressing allegations of harassment and assault, what is different now compared to three years ago?” Some of their responses:

- The increased willingness of people to speak out has led to an assessment of the university’s processes. We are also increasing the number of employees who are able to quickly and professionally manage the review process.
- There is much more pressure from leaders, students and parents to quickly resolve Title IX inquiries. As we all know, due process is required and cannot always occur as quickly as everyone (including the investigators) would like.
- The time frame for investigations has gotten considerably shorter.
- Our campus is outsourcing more of the investigations and seeking more external legal guidance regarding Title IX.

- There is more coordination across campus that would not have happened three years ago.
- Students and employees are becoming more vocal, including the use of social media, when there is no finding or a finding they don’t like. They are using social media to challenge the process and the outcomes.
- We are having more discussions regarding culture and placing more emphasis on empowering people to call out bad behavior and to have more dialogue.
- Training is being ramped up across the campus to help people understand what harassment is and what assault is, and more importantly, how to quickly and immediately respond when either occurs. Training to more fully identify and respond to microaggressions has also become a priority.
- Our Title IX office leaders are trying to spend more time proactively engaging with students and other campus leaders outside of their compliance and investigative responsibilities.

There were more examples that were shared, but the bottom line is that campus leaders must create a culture that does not tolerate harassment or assault in any way, shape or form. And it’s critically important that we understand that this culture is created through both written and unwritten values that define the organization and the actions that we take, or choose not to take, every single day.

Part of this responsibility is that we hold everyone in our organizations accountable ... regardless of their pay level, status or tenure.

A handwritten signature in black ink that reads "Andy Brantley". The signature is stylized and fluid.

Andy Brantley | CUPA-HR President and CEO

State-Implemented Paid Leave Policies Translate to Regulatory Nightmare for Employers

The United States remains the only advanced nation that does not provide workers access to paid leave at the national level. In the absence of a national policy, several states and localities have taken it upon themselves to enact paid family leave and paid sick leave legislation — and the onus is on employers to navigate these sometimes overlapping, oftentimes conflicting laws.

Paid Family and Medical Leave

To date, six states and the District of Columbia have passed their own paid family and medical leave policies — California, New Jersey, Rhode Island and New York have plans already in place, while the District of Columbia, Washington and Massachusetts have yet to implement their policies.

Those states with plans in place administer their paid leave programs through pre-existing temporary disability insurance programs that are funded via employee payroll deductions. In the District, a Universal Paid Leave Implementation Fund will be used to collect money from a payroll tax on employees of covered employers and self-employed individuals who opt in to the program. Washington state created a similar program, which will be funded by premiums paid by both employees and employers and will be administered by the Employment Security Department. In Massachusetts, the state will administer the new leave program and fund the program through a payroll tax which will be split between employees and their employers.

The states' measures vary in the amount of leave that workers are eligible to take, the percentage of wages workers receive, the purposes for which the leave can be used, and which workers are eligible and covered by the leave plan. With respect to eligible amounts of leave, each plan separates those benefits between leave for a worker's own health reasons (up to 52 weeks in the most

generous plan) and family leave (up to 12 weeks in the most generous plan). Depending on the state, workers receive a certain percentage of their weekly earnings up to a weekly maximum benefit. While all the plans vary with respect to the valid purposes for which leave can be used, they generally permit workers to use leave for their own injuries or illnesses, to care for a child within one year of birth or adoption, or to care for a sick family member with a serious health condition ("family member" and "child" are defined differently depending on the individual state).

Paid Sick Leave

Over the past few years, there has been a dramatic increase in states and municipalities adopting policies to mandate paid sick leave. As of June 2018, 10 states and the District of Columbia have enacted laws requiring paid sick leave. Additionally, more than 30 jurisdictions have passed their own sick leave mandates as well. Of the 10 states with paid sick leave laws, three (Arizona, Massachusetts and Washington) were enacted by voters that approved ballot measures requiring employers to provide the leave. In Maryland, the state's paid sick leave law was only enacted following the legislature's override of a gubernatorial veto of paid sick leave legislation. This action at the state level is relatively new — Connecticut was the first state to pass paid sick leave legislation in 2011, with the nine other states doing so post-2014.

While family leave aims to provide longer-term leave, sick leave is for short-term health needs and preventive care. Under most of these mandates, employees earn or accrue paid sick leave based on how many hours they have worked. For instance, a paid sick leave policy could allow a worker to earn one hour of paid sick leave for every 30 or 40 hours worked. Again, while this varies, typically workers can accrue between 24 and 72 hours of paid sick time per year. In addition to providing paid short-term absences for an employee's illness or injury and to support care for

the employee's children or other family members, some laws also allow the employee to use leave to address the impact of domestic violence, sexual assault or stalking of the employee and/or a family member. Additionally, while paid family leave policies enable eligible workers to receive partial wage reimbursement, paid sick leave policies require employers to pay workers their usual rate of pay.

Statewide and local paid sick time laws also vary with respect to worker eligibility, the time at which a worker begins to accrue paid sick time, length of employment before paid sick time can be used, whether unused paid sick time carries over to the next year, and whether the law grants a private right of action to go to court. Most policies provide for eligible workers to begin accruing paid sick time at the commencement of their employment but restrict the use of that time until a certain number of hours or days have been worked.

Likewise, most states and localities permit workers to carry over unused sick time to the subsequent year, but the amount that can be forwarded and restrictions on the amount of forwarded time that can be used vary dramatically. For instance, the statewide sick leave policy in California permits workers to carry forward unused paid sick time, but employers are only mandated to permit the use of 24 hours of paid sick time per year regardless of the total amount accrued or carried over. If employers provide the full amount of sick time (24 hours) at the beginning of the year, the statewide law does not require the employer to carry over sick time to the subsequent year. Cities within California that have passed their own paid sick leave laws vary even further from the requirements of the state. For instance, in Los Angeles, employers can only cap unused paid sick time at 72 hours.

Compliance Headaches

While state programs provide greater access to leave for employees, they also increase regulatory burdens for employers in these states and localities. For multi-jurisdictional employers, this patchwork of state laws can be hard to navigate and can leave a single employer with the burden of addressing overlapping paid leave laws that specify different levels of leave, employee eligibility rules and accrual rates. For instance, an employer with operations in New Jersey must comply with both the state's paid family leave law and paid sick leave law.

However, depending on the location of their operations, the employer may also have to comply with additional paid sick leave mandates in 13 cities throughout the state, as they have passed their own sick leave laws. If a New Jersey-based employer has operations in neighboring New York and/or Pennsylvania, the employer would also have to comply with local sick leave mandates in New York City, Pittsburgh and Philadelphia, in addition to New York's paid family leave and sick leave laws.

Understandably, when faced with the compliance burdens of myriad competing laws, employers that do provide generous leave benefits to their employees, oftentimes in excess of those state and local minimums, are forced to absorb the added compliance costs, including the tracking of leave in different increments for different reasons to ensure it is properly counted for each entitlement.

A Stalemate at the Federal Level

Both chambers of Congress held hearings over the summer to consider policies and legislation offering different pathways toward achieving greater access to paid leave for American workers, but the efforts have stalled without bipartisan support. However, in the immediate short term, lawmakers can point to the Republican tax overhaul as evidence they are implementing family-friendly policies — the law enacted Sen. Deb Fischer's (R-NE) The Strong Families Act by including a new section in the tax code which offers employers that provide a certain level of paid family and medical leave to their employees a tax credit as an incentive. And the Trump administration can point to its 2019 budget proposal — which includes \$19 billion toward a six-week parental leave program linked to unemployment insurance — as evidence the issue remains top of mind.

While it remains to be seen what lies ahead for paid leave at the federal level, states and localities will no doubt continue passing their own mandates, while an increasing number of companies continue to expand their leave benefits to attract top talent.

This brief was authored by CUPA-HR's government relations team.

Nike Bolsters Wages of 7,000 Staffers to Close Pay Gap – Will Other Firms Follow Its Lead?

Nike just joined an increasing number of employers that are making sweeping pay changes in an effort to close the gap between male and female employees' paychecks and prevent bias problems down the road.

The athletic retail giant handed out raises to 7,000 employees — roughly 10 percent of its staff — to achieve competitive pay among men, women and minorities.

Moving forward, Nike says it will conduct deeper analyses of all roles in the company to ensure everyone is compensated fairly. The move comes on the heels of the findings in an anonymous employee survey which revealed many female employees have experienced gender discrimination as well as sexual harassment.

Not Over Yet

Of course, Nike isn't the only major corporation to make news over equal pay or lack thereof. Google just got a lot of press over an equal pay lawsuit. And, after a series of blows against its pay practices, a judge finally granted Google some good news. But the ruling also made it clear the tech juggernaut's legal saga wasn't over yet. San Francisco Superior Court Judge Mary E. Wiss dismissed the class proposed in a class-action lawsuit against Google, which claimed the company systematically paid male employees more than females. Specifically, Judge Wiss said the class status, which sought to cover "all women employed by Google in California" was too broad. According to Wiss, "This class definition does not purport to distinguish between female employees who may have valid claims against Google based upon its alleged conduct from those who do not."

As *HRMorning* reported previously, three ex-employees who filed the suit quit after being placed in career tracks that they claim would pay them less than their male counterparts. One of the ex-employees, Kelly Ellis, said she quit Google in 2014 after male engineers with similar experience were hired to higher-paying job levels and after she was denied a promotion despite stellar performance reviews.

What's Next?

While Judge Wiss dismissed the initial class status proposed by the plaintiffs, she is allowing the women to file an amended complaint. And the plaintiffs' attorney, James Finberg, says he intends to do just that. Finberg says the amended complaint will make it clear "that Google violates the California Equal Pay Act by paying women less than men for substantially equal work in nearly every job classification."

Those claims against the company were echoed by a recent federal labor investigation into Google's pay practices. The preliminary finding of that investigation uncovered systematic pay discrimination among 21,000 employees at Google's headquarters, and the initial stages of the review found women earned less than men in nearly every job classification.

The final outcome of this equal pay lawsuit could have implications for employers of all stripes.

This brief was authored by Jared Bilski and first appeared on HRMorning.com on August 22, 2018.



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MEDIATION: A Low-Cost Strategy for Resolving Workplace Disputes

Indiana University-Purdue University Indianapolis has for the past few years been using — with much success — a mediation program to address and resolve interpersonal conflicts among staff and faculty before they manifest themselves in bigger ways.

Daniel Griffith, who created the program and serves as director of conflict resolution and dialogue programs at Indiana University-Purdue University Indianapolis (IUPUI), and Dimples Smith, associate director of academic resources at Purdue University Fort Wayne, shared an overview of IUPUI's program and a similar program at Purdue Fort Wayne (how it was implemented, how it works, how mediators are trained) in a previous issue of *The Higher Education Workplace* magazine (read an overview or the full article at www.cupahr.org/resolving-workplace-conflict-ground-floor/).

Here, Griffith and Smith expand upon the how and why of mediation, including some considerations and limitations for facilitating a workplace mediation program, documentation best practices, and how to approach mediation in specific situations.

Q: What are your suggestions for promoting mediation in lieu of formal complaint processes?

A: It is important to implement an initial organization-wide communication plan and then continue communication on a quarterly or biannual basis. Credibility can be built through word of mouth when others share their experiences of how mediation was valuable, or how it helped address the matter with which they were dealing. Create awareness through your organization's newsletter, by presenting at departmental meetings, through testimonials from individuals who benefitted from mediation, and by sharing the resource with managers on a regular basis.

The best way for HR to promote a mediation program is to assess each employee relations situation to determine if mediation can provide a low-level conflict resolution alternative. Working in conjunction with the institution's ombuds program provides an additional means of promoting the resource.

Q: How does mediation work in a unionized environment?

A: We would advise consultation with legal counsel on whether the principles and processes used for mediation would in any way nullify any agreement reached under the collective bargaining agreement. Other components such as note taking and the destruction of notes should also be vetted with legal counsel.

Q: What should not be mediated?

A: The baseline we have established is that issues found to be unethical, in violation of university policy, regulations or guidelines, or in violation of a federal or state law or regulation should not be mediated. Examples include sexual harassment, violent behavior, academic dishonesty and theft. We have trained our mediators on what they need to be aware of as they go through the mediation process and to stop the mediation process if these types of issues are raised. Parties should be made aware, in writing, of the limitations of mediation as well as the possibility that the matter may be referred to the appropriate venue if mediation is deemed not appropriate.

Q: What is the recommended time frame for mediating a workplace conflict?

A: We recommend a 90-minute to two-hour time frame for mediating a workplace dispute. In many cases, after the parties have told their stories and the mediator has framed the issues for resolution, it will be evident after 60 to 90 minutes whether the parties are moving toward an agreement. That said, a good practice is to request that the parties plan for a half-day to be available for mediation so they don't feel rushed or pressured against another meeting commitment in case they need more time.

Parties should feel as relaxed as possible in order to discuss their concerns and work through disagreements. If the mediation requires more than three hours, you should schedule another meeting time to continue. In addition, even with an agreement, it is common to schedule a shorter meeting about two weeks to a month after the mediation to check in and ensure the parties are following through on the agreement reached.

Q: How should the resolution be documented?

A: Asking the parties if they would like to document the outcome for signature is important when mediation is marketed as a voluntary process. The best way to document a resolution is through a written document that both parties sign. Alternatively, you can follow up through email to establish the understanding both parties walked away with and to request their verification of the final understanding. However, not all resolutions require formal documentation. Some mediations are more informal, and the parties may feel a verbal understanding of what they agreed to is sufficient.

We recommend that any notes that are taken by the parties during mediation stay with the mediator until they are destroyed. This does not include notes and documents the parties bring to mediation, which they may retain. The mediator should destroy the notes taken by all parties during the mediation (including his or her own notes), though he/she may retain the notes long enough to prepare the mediation agreement, if one is required. Destroying notes is one additional measure for ensuring the confidential nature of the mediation.

The intent of mediation is to avoid or suspend formal grievance, discipline and other adjudicative processes so that parties can have control in resolving their issues in a manner that works for them rather than relying on a third party to decide. Mediations are not evidentiary hearings. If mediation is unsuccessful, what transpires in the mediation, and the information shared, should not be used as evidence in subsequent decisions made affecting the parties. Destroying notes is one measure that can help ensure this doesn't happen.

Q: What about mediating employee/supervisor disputes when the employee is afraid of retaliation?

A: The essence of mediation is that power differentials remain at the door so the parties can reach a shared resolution. Mediation will not work if either party has a preconceived resolution that they are not willing to alter, even if they gain additional insight during mediation. Both parties have to be transparent on what is non-negotiable and what their fears or concerns may be. Mediation may

not be appropriate if either party feels that retaliation could occur. For such disputes, it is all the more important for the mediator to understand the nature of the dispute.

Q: How do you encourage someone who would rather ignore the problem, or is reluctant to work with the person with whom they have an issue, to engage in the mediation process?

A: Individuals who ignore a problem often either do not know how to resolve it or lack the skills to do so. It is also possible that the individual does not *want* to resolve the problem or does not see that there *is* a problem. The mediator should seek to understand what aspect of the problem the individual is "ignoring." Often, when someone is reluctant, the biggest challenge is helping the individual see the value and benefits of mediation.

If parties do not come willingly, there is a risk that any resolution reached will not have their full commitment. Parties should not be forced to engage in mediation. If they are adamant about not participating, that request should be respected, or it may be perceived as coercion. The mediator can request to have a one-on-one meeting with the individual who is reluctant or refuses to participate, but only to understand the reluctance and to explain the benefits of participating, while ultimately respecting the individual's desire not to engage if that is his or her choice.

Q: How do you handle situations when parties raise their voices, won't listen to each other, or become confrontational with each other? How do you de-escalate or "reset"?

A: Mediators must be comfortable with high emotions, which parties may exhibit through confrontational behaviors, raised voices and similar behaviors. Mediators should not arbitrarily halt such behaviors, particularly if it appears that the parties are beginning to share their deepest concerns, which can then provide a basis for finding solutions. There are limits to allowing such behaviors to continue, however, particularly if someone is clearly uncomfortable or if the behaviors seem threatening, belittling or otherwise counterproductive. While there is


no prescribed way to de-escalate such situations, calling a break can help. During the break, the mediator can address these behaviors privately with a party. Taking a break also gives parties a chance to breathe and decompress, which can then help them focus and calm down once the session resumes.

Q: How do you address differences that are deeply rooted (for example, 10+ year conflicts)?

A: We advocate for appreciative inquiry rather than solely relying on problem-focused questions. A problem-focused inquiry focuses on what the problem is and tends to ask “who,” “what,” “where,” “when” and “how.” While these questions get at the facts, they can cause the parties to focus on only the negative past rather than consider a new and positive future. Appreciative inquiry helps them establish a new vision for their relationships. Even in long-

term relationships where deeply-rooted conflict exists and may have never had a positive or productive “past” from which the parties can build, appreciative inquiry questions may still help. Examples include:

- What would a positive, productive working relationship look like to you? What is currently occurring? How does it feel?
- What would you want your coworker to understand or do in order to support the positive, productive working relationship you have described?
- What is your greatest hope for your working relationship moving forward?
- What does “team” mean or look like to you?

Inquiring about the parties’ respective values around teamwork, work ethic, supportive relationships, a civil workplace and other concepts may help parties reflect on a better future, even if they never experienced a positive past. 

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**Compliance and Safety Imperatives for
Today's College Campus**

By Maureen De Armond

As this article was being written, allegations of sexual abuse of Ohio State University wrestlers were emerging. While the allegations may never be substantiated, as the team doctor alleged to have perpetrated the abuse died in 2005, the claims alone conjure recent memories of the trial of Dr. Larry Nasser, who abused female gymnasts at Michigan State University, and more distant memories of Coach Jerry Sandusky's abuse of boys at Pennsylvania State University. While the commonalities between how such horrendous abuse went unnoticed or unaddressed at Michigan State and Penn State requires its own analysis, a few points of significance help frame a discussion of the need for colleges and universities to modernize their compliance programs. Michigan State and Penn State (Ohio State, too) are highly regarded, if not outstanding, institutions. These same universities serve as positive examples and aspirational peers to many institutions of higher education. And that warrants some reflection ... if scenarios of this horrific nature could occur on such highly-esteemed campuses, that should send shock waves through us all. And yet, such widespread abuse crises keep happening.

A seemingly very different type of tragedy occurring with distressing regularity in educational and employment settings concerns active shooters. On February 14, 2018, 15 students and two staff members at Marjory Stoneman Douglas High School in Parkland, Florida, lost their lives to a teenage gunman who opened fire in the school hallways. While Parkland was hardly the first K-12 mass shooting, the magnitude of the shooting and the student response thereafter received extensive media coverage.

Plan for the Worst

Despite the frequency and visibility of active shooter incidents, some officials have not internalized the reality that a shooting could happen anywhere. Just two months after Parkland, investigators thwarted a school shooting in Vermont. On April 12, 2018, shortly after being briefed on the shooting plot, Governor Phil Scott publicly admitted, "As I processed this information, I was shocked. Just 24 hours before — even in the aftermath of Parkland — I thought [of Vermont] as the

safest state in the nation, [that] Vermont was immune to this type of violence."

While Governor Scott's shock may be unjustified, it is not a unique response. Says Dr. Gene Deisinger, a threat assessment expert with Sigma Threat Management Associates, "With 25 years of experience in the threat management field, I have never had a single person come up to me and say they think their institution is exactly the type of place an active shooter incident could occur. My experience has been quite the opposite ... every community thinks they are immune."

Although an active shooter event and a sexual abuse scandal may be different in many ways, there is one striking similarity: no college or university wants to believe that either scenario could really happen on their campus, regardless of size or prestige.

Does there need to be a shooting or foiled plot in every state for leaders to take this threat seriously? Does every institution of higher education need their own Sandusky scandal before acknowledging such events can happen at any institution? On the 21st-century campus, "This could never happen here" is an intolerably naïve response to

When it comes to effective campus safety and compliance programs, considerable data and commentary are readily accessible. Yet many institutions are not taking adequate advantage of that information.

incidents of abuse and violence. And shock is no longer an acceptable emotional response either. Instead, we must be fully prepared and ready to act immediately in case the unthinkable happens on our campus.

"You cannot *connect* the dots, if you don't *collect* the dots," offers Dr. Jeffrey W. Pollard, senior consulting psychologist with Sigma Threat Management Associates and a faculty member at George Mason University. When it comes to

adopting effective campus safety and compliance programs, considerable data and commentary are readily accessible. Yet, many institutions are not taking adequate advantage of that information. For example, identifying lessons learned from the Sandusky and Nasser scandals does not require extraordinary effort — the key lessons are there for the taking, in public documents that can be found with a quick Google search.

HR's Role in Supporting a Culture of Safety and Compliance

While HR professionals might defer the weighty tasks of threat assessment and safety planning to the subject matter experts, HR does have a role to play in supporting a culture of safety and compliance on campus. Using a framework discussed in the blog post *10 Elements of an Effective Compliance Program* (www.fcablog.com), the discussion below focuses on how HR can assist in examining and updating compliance programs to adapt to the most extreme risks facing modern campuses.

HR can help push, pull and, if need be, drag campus leaders across the hurdle of stubborn denial that “that could never happen here.”

Review and Expand Upon Your Written Compliance Program

If your institution's policies and programs have not been recently reviewed, it's time. Many compliance programs were initially designed to detect and root out financial fraud and abuse. Even where policies are “owned” by HR, consider a multi-disciplinary team to review them to assure varying perspectives are considered as you modernize and improve your written guidance. Re-examine and modernize the scope of your efforts to fold in or cross reference your Title IX and equal opportunity efforts. Get buy-in from your campus safety partners — particularly where misconduct may constitute criminal conduct.

Get Board Oversight

Board oversight and direction will always be important and should be sought on a regular basis. Be sure your board is informed on the risks of abuse and violence. Buy-in and advocacy from campus leaders are critical in identifying institutional priorities, establishing culture and setting expectations for policy and conduct. As you vet high-level-leader candidates, use behavior-based questions to ask about their philosophies and experiences dealing with worst-case scenarios. Factor in the advantages of hiring new leaders who are not only willing but eager partners in establishing and maintaining a safe campus.

Ensure That Everyone Knows They Are Responsible for Reporting Misconduct

While designating individuals to manage and implement compliance programs is necessary, placing an affirmative duty on every employee to report misconduct is reasonable. Such affirmative job duties foster a culture of compliance. Reinforce these expectations in more than one place.

Highlight the obligation, process and routes for reporting misconduct in your compliance program and policies, job postings, job descriptions, website, onboarding, orientation and performance evaluation tools.

Operating and Reporting

Many compliance officers, risk coordinators and Title IX coordinators wear multiple hats. While additional staff and increased budgets are never easy asks, universities should regularly review operational and staffing needs.

Margo Foreman, assistant vice president for diversity and inclusion and equal opportunity at Iowa State University, suggests, “Focusing discussions on the critical role internal investigations play in compliance and risk mitigation is often more effective than starting the conversation with requests for additional staffing.”

Foreman, who also oversees Title IX compliance, adds, “When serious Title IX issues do arise at a college or university, the question of adequate staffing is always part of the after-the-fact review. Asking for assistance is never a fun part of the job, but if you're responsible for Title IX efforts and you are understaffed, you have an obligation to speak up. The same goes for departments dealing with public safety. This is an area where HR can be a partner and an advocate.”

Management's Record of Compliance

Reexamine how your institution addresses employees in supervisory positions who fail to report misconduct, and take such failures seriously. Consider how HR can offer additional guidance, shape best practices and provide minimum requirements for reference checks. Many institutions conduct criminal background checks at the time of hire but stop there. Consider whether there may be a benefit for conducting periodic checks thereafter. Or, determine whether any internal actions may trigger a new check — such as promoting an internal candidate to a leadership position.

Some institutions fall short in requiring meaningful conversations with qualified references. It is quite common in higher education for one institution to hire another institution's problem employee simply because they did not do sufficient vetting.

Communication and Training

Physical posters describing compliance programs or advertising an anonymous hotline have token value. Keep the posters up, but spend time analyzing your website. How search-friendly is it? Consider search optimization tools on compliance, risk and safety topics to ensure the most pertinent pages get top billing (e.g., if you run a search for “active shooter” within your home page, does your emergency management or public safety page on the topic get top billing or is it buried on page five of the search results)?

Every fall, a new academic year begins. Institutions can anticipate holidays, semester breaks, ebbs and flows of students on campus, finals week, etc. Designing an annual communications plan to roll out, like clockwork, adds consistency and predictability. It can routinely highlight important compliance standards, reporting requirements, and other risk and safety topics.

While online training has its place, there is no substitute for in-person training opportunities — especially training that can be tailored to the audience. Explore the benefit of offering faculty-focused training, especially for active shooter scenarios. Work with your threat assessment and safety experts to ensure you still have the right people serving on critical response and safety committees. Where appropriate, get student buy-in and support. Remember, many of the students on our campuses grew up with “if

you see something, say something” and with active shooter drills in their K-12 years. Campus safety and police aside, there exists a real possibility that the groups most prepared and best trained to react to a shooting are our Generation Z students and employees.

Monitoring and Evaluating

Explore how your compliance program can adopt additional proactive measures. Push questions on misconduct to athletes and athletic staff, faculty and students (consider adopting a short annual or bi-annual survey). Consider revising your exit and retention interview forms to include open-ended questions on compliance concerns and coworker misconduct. Most compliance programs require the adoption of an anonymous hotline, and this remains a necessary option. However, this is not the communication tool of choice, especially for more tech-savvy students and employees who prefer to both seek and share information from their handheld devices.

Consider adding mobile-friendly options for electronically submitting concerns. If you have not already, develop or purchase a campus safety app that allows for emergency and non-emergency reporting.

Consistent Enforcement and the Right Response

HR plays a fundamental role in facilitating consistent responses and discipline in instances where misconduct is substantiated. HR also bears responsibility for educating leadership on the importance of taking misconduct seriously. Ensuring appropriate hiring processes are followed, tracking disciplinary data, mentoring leaders, and helping onboard new employees and leaders are all tasks HR can help make more visible and meaningful. Consider whether there is any benefit in talking to your student-conduct partners. Are students and employees being treated in similar fashion for threats and violence? It is possible (if not likely) that common policies apply equally to faculty, staff and students (e.g., violence-free campus, Title IX, non-discrimination policies). Despite varying enforcement mechanisms, are employees and students engaging in similar misconduct treated in a similar fashion? Where there are differences, they should be intentional and defensible.

Risk Assessment

While conducting threat assessments and documenting criminal conduct are typically considered the responsibilities of law enforcement, there may be

opportunities for HR to collaborate in this area with campus safety and student conduct partners. If you're thinking about an initiative relating to employee engagement, considering a campus climate survey, or updating your exit interview surveys, talk to these partners. Using similar questions across the board may result in more compatible and meaningful data and dialogue.

Consider whether there are opportunities for more efficient and timely sharing of information with campus safety, compliance and risk partners. Collaborating when specific complaints come in and looking for patterns and hot spots are opportunities for sharing information and collaborating on wider solutions.


While student counseling and employee assistance programs (EAPs) justifiably keep many details confidential, consider what de-identified information may be appropriately shared (e.g., number of reports and incidents tracked over time, trends in types of reported concerns, spikes in reports or incidents in departments or divisions).

Join the Choir, and Book Some Gigs

When asked what role HR can or should play in campus safety, Deisinger observes, "Talking to HR professionals about the importance of prioritizing campus compliance and safety initiatives is often like preaching to the choir." But he is quick to add, "Don't forget how important the choir is. It serves a purpose. HR professionals play a significant role in training. They also help facilitate awareness of policies and resources, like EAPs. And due to HR's frequent interactions and relationships with

campus leaders, HR leadership can facilitate engagement among campus leadership around risk management and compliance in ways that may be more challenging for law enforcement personnel who may not have the same access to these leaders."

HR can be a vocal advocate for compliance programs and safety measures in its relationships and interactions with academic and operational leaders. When considering employee recruitment and retention, HR professionals can help create and maintain a safe work environment, as these are critical factors in employee engagement. HR can also serve as a watchdog when there are concerns about retaliation against people reporting misconduct. HR often has some control (or at least influence) over orientation programs and onboarding materials for faculty and staff, and therefore can incorporate the language of compliance, safety and obligations to report misconduct into HR policies, trainings and communications.

Lastly, HR can help push, pull and, if need be, drag campus leaders across the hurdle of stubborn denial that "that could never happen here." HR professionals must be insistent that previously unimaginable crises can indeed happen in our communities. And when they do, we will not have time to be shocked. We will need to be prepared. 

***About the author:** Maureen De Armond is assistant vice president of human resources at University of Florida. Prior to this, she served as associate counsel at Iowa State University. She has presented several sessions at CUPA-HR conferences and has authored articles on employee free speech, the use of social media in vetting job applicants and more.*

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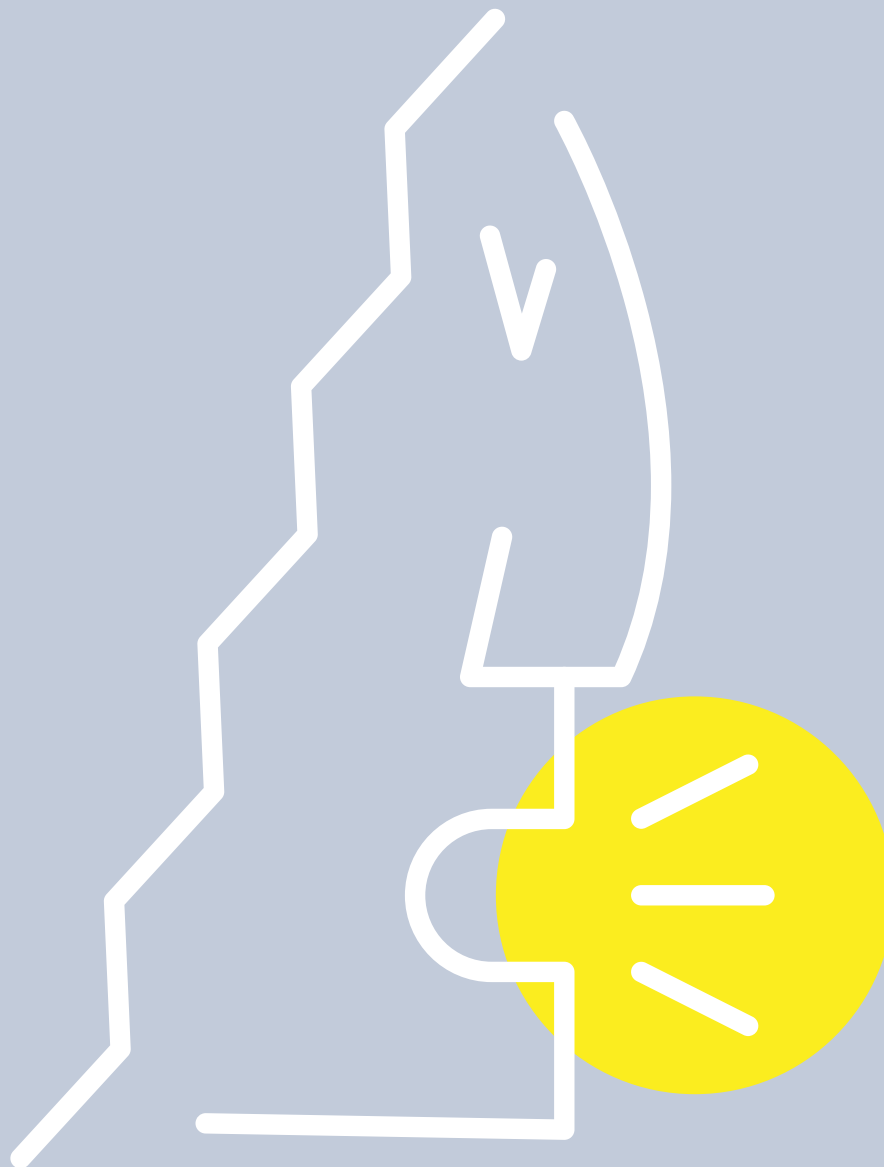
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Faculty and Staff Free Speech

**Balancing Individuals' Rights
With Those of the Institution**

By Trenten Klingerman

College and university campuses face myriad free speech scenarios spanning an array of viewpoints and involving stakeholder populations with a variety of interests ... from visitors and alumni to students, faculty and staff. Human resources professionals can and must play an active role in recognizing and appropriately addressing faculty and staff free speech issues, which are sometimes brought to the university as “employee conduct” matters accompanied by a call for the university to “take action.”

Recognizing what does and does not constitute free speech and understanding the closely related concept of academic freedom is critically important to ensure that HR’s advice and support balance competing stakeholder interests while respecting faculty and staff’s legal and policy rights. The critical concepts of responding to faculty and staff speech issues are well within the purview and strengths of effective HR departments. This article provides a general understanding of each of the concepts so that HR practitioners can recognize them and can develop a consistent approach to supporting and advising decision makers on both the academic and administrative sides of campus.

A Fundamental Right, With Some Exceptions

The starting point for any legal analysis of what does and does not constitute protected speech is the source of the law. In the case of public institutions, the starting point is the First Amendment, which states:

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

While the fundamental rule is simply stated, it is important to recognize that “make no law” does not mean that a college or university does not have an interest in what is said or done in its name or on its campus. There are narrow exceptions to the general rule against regulating speech. Those exceptions serve as an important first point of reference in any faculty or staff speech matter. If speech falls within any of the exceptions, it is not protected by the First Amendment. Still, each of the exceptions poses challenges for a college or university as an employer to regulate.

Obscenity

The first exception is for **obscenity**. Expression that appeals only to the morbid, shameful interest in nudity or sex and has no artistic or other value is “obscene.” That is the standard, and it must be applied using the judgment of a reasonable person in the relevant community. Some private institutions and institutions with religious affiliations may have relevant community standard codes that assist with an obscenity analysis. Most institutions, however, do not, and so the best advice is often that obscenity must be adjudicated with regard to what is lawful and within other university policies.

For example, if employees are sharing pornography during work time and using university computing facilities, it is appropriate to discipline that conduct. Such a conclusion is completely separate from any subjective review of whether the material is obscene or “art.” Also, if the conduct is illegal (as in the case with child pornography), employment sanctions are appropriate.

Defamation

The second narrow exception to the rule against regulating free speech is **defamatory speech**. Untrue statements about another person (or an identifiable group of people) which tends to harm the reputation of the other is not protected speech. In every state there is a set of court-made laws and rules for defamation, and understanding those rules is important.

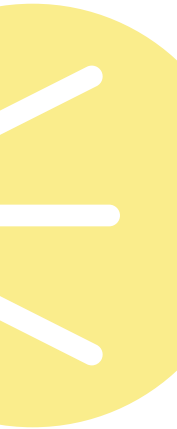
An employer certainly has an interest in preventing the disruption caused by defamatory speech and may undertake an investigation to ascertain: (1) whether the statements are true or false, (2) the purpose for which the statements were made, and (3) the impact of the statements on the workplace. Based on those factors, HR can assist decision makers in assessing appropriate disciplinary sanctions.

True Threats, Fighting Words and Harassment

The next set of narrow exceptions really is a group of exceptions along a continuum of similar speech. First on the continuum is expression that constitutes a **true threat**. According to the FindLaw Legal Dictionary, a true threat is a “threat that a reasonable person would interpret as a real and serious communication of an intent to inflict harm.” Unfortunately, there is no uniform analytical approach or test for determining when expression comprises a true threat. One approach finds a true threat to

exist only when: (1) there is a clear expression of the harm that will occur, (2) there is a clear target of the harm, and (3) there are other circumstances to lead one to believe that the speaker is capable of carrying out the threatened harm. When these factors exist, the university has a legitimate public safety/law enforcement concern that it must urgently address.

Next on the continuum is **fighting words**, or expression that is designed to incite imminent lawless action. The essential requirements for incitement are that the expression is clear and is intended to provoke an immediate breach of the peace or imminent lawless action. Like true



Recognizing what does and does not constitute free speech and understanding the concept of academic freedom is important to ensure that HR's advice and support balance competing stakeholder interests while respecting faculty and staff legal and policy rights.

threats, incitement is a difficult concept to apply in the employment context. It is clear that incitement means more than the mere abstract statement of the moral and necessity or propriety of violence. In order to constitute unprotected “incitement,” there must be evidence that the speaker intends to incite or produce violence. The speech must be “likely” to incite or produce violence, and the violent action(s) must be immediate or imminent.

Harassment is also on the same continuum as true threats and fighting words. Of these three exceptions to free speech, harassment is the most obvious area that calls for intervention by human resources. Most universities have an anti-harassment policy that defines harassment and procedures under which harassment claims are investigated and adjudicated. It is critical to ensure that your institution's definition of harassment comports with free speech principles and includes only a scope of expressive conduct that is unprotected by the First Amendment. One recognized standard defines harassing speech as speech that is “severe” or “pervasive” and “unreasonably interferes with the work or educational environment.”

The standard necessarily has two components. First, it must be objectively interfering — that is, the complaining employee must establish how the expression has impacted them at work. Second, the evidence has to establish that a reasonable person in the shoes of the employee would find the expression interfering.

These narrow exceptions are the “easy” part of handling faculty and staff free speech. This is because if speech falls within one of the recognized exceptions, the speech is unprotected and an employer may act without violating constitutional rights. More difficult is the question of what an employer can or should do when speech is arguably

protected. How does an employer know when it should act? The answer is not always clear and depends on both the type of speech and the type of employee.

Public Employee Speech Doctrine

To fully understand the current state of the public employee speech doctrine, it

is important to briefly revisit its history. The seminal case was *Pickering v. Board of Education* — a 1968 case in which a high school teacher wrote a letter to the editor of the local newspaper criticizing his school board over its strategies for developing revenue for the schools. The school board fired him, and he sued the school. The school board's firing was upheld, and the plaintiff appealed to the U.S. Supreme Court, which held that because Pickering was speaking via a letter to the editor as a private citizen and was speaking on an issue of public importance, the school could not terminate him without violating his First Amendment right to free speech.

The next important case is *Connick v. Myers* (1983). In that case, Myers was an assistant district attorney who resisted a transfer from one division of her office to another. She was transferred anyway, and in response to the transfer created a questionnaire that asked coworkers' opinions on issues like employee morale, trust and other issues related to the workplace. She was fired for creating the questionnaire, disrupting the workplace and undermining the authority of the district attorney. She sued for reinstatement, and the lower courts ordered the employer to reinstate her.

The district attorney's office appealed to the U.S. Supreme Court, which held that Myers' dismissal was lawful and justified. The Court pointed out that Myers was not speaking as a private citizen on a matter of public importance when she circulated the questionnaire in the workplace; rather, she was speaking as an employee on personal issues involving her workplace.

From *Pickering v. Board of Education* and *Connick v. Myers*, the Pickering-Connick balance test was born. In **Step 1** of the test, the employer asks two questions: "Is the employee speaking as a citizen?" and "Is the employee speaking on a matter of public concern?" If both answers are "yes," the employer must move to Step 2. If the answer to either is "no," then the speech is unprotected and the employer may act.

Step 2 moves away from the employee's interest and asks whether the employer has a legitimate interest in disciplining the employee. Central to this is a consideration of how the speech impacted the employer's operations. Was it disruptive? Is the employer acting within a proper area of management authority and discretion? If so, the employer can act.

In the 2006 *Garcetti v. Ceballos* decision, the free speech test was updated to its current form. Ceballos was an assistant district attorney who believed that the Los Angeles County Sheriff's Department had falsified information in order to obtain a search warrant. Ceballos took his concerns to his supervisor and asked him to dismiss the case. The supervisor did not dismiss the case, so Ceballos notified the criminal defense attorney of his belief that the warrant was wrongfully obtained. Ultimately, the criminal case moved forward without dismissal. Ceballos then sued his employer, claiming that he was subjected to several retaliatory actions, including being transferred, reassigned and denied opportunities for promotion. After the Ninth Circuit Court of Appeals held that his employer had violated Ceballos' First Amendment rights, the district attorney's office appealed to the U.S. Supreme Court.

The Court elaborated on the public employee speech test, which is now a three-part Garcetti-Pickering test that works like this:

Step 1: The employer asks whether the speech was made pursuant to an employee's official duties. If the answer to this question is "yes," then the *Garcetti* decision says the employer has an interest in that speech, and it is not

protected. If the answer to this question is "no," then the analysis proceeds to the second step.

Step 2: The employer asks whether the speech was on a matter of public concern. If the answer is "no" (e.g., a workplace grievance), then it is not protected speech. If the answer is "yes," then the analysis moves to the third and final step.

Step 3 seeks to balance interests, weighing the interests of the employee in speaking against the employer's interest in an efficient and effective workplace. If the employer's interests outweigh the employee's interests, then it is proper for the employer to act to protect its interests, including disciplining the employee for disrupting those interests.


The Garcetti-Pickering test provides a framework for a consistent approach to handling difficult, fact-sensitive disputes. For most staff cases, the employer can look at the worker's job responsibilities, the context of the expression and the impact of the expression on the workplace and decide whether it is within its discretion to act without violating the staff member's constitutional right to free expression.

Application to Faculty Speech

There are many difficulties in applying the framework, particularly in the context of faculty speech. The Garcetti-Pickering test instructs that once it is determined that speech is within the context of employment, an employer can find that the speech is unprotected and act to sanction the conduct. However, the published *Garcetti* opinion noted that speech related to academic scholarship or classroom instruction might implicate "additional constitutional interests that are not fully accounted for by this Court's customary employee-speech jurisprudence."

Defining an approach to faculty speech issues requires a balance between available analytical frameworks and principles of academic freedom. Almost every college and university has defined what "academic freedom" means there. The foundation for most definitions is the American Association of University Professors (AAUP)'s definition, first memorialized in writing in 1915 and still relied on today as the foundation of the term. AAUP defines the principle of academic freedom as "protecting the freedom of inquiry and research, freedom of teaching within the university or college, and freedom of extramural utterance and action."

This common framing of academic freedom reveals the obvious problem of applying Garcetti-Pickering's first step, which requires us to define whether the speech is within the scope of employment or outside of it. Proper recognition of the principle of academic freedom minimizes, if not eliminates, any such distinction, because academic freedom protects "teaching" and "research"



HR professionals who are confronted with faculty and staff free speech issues must develop a consistent and fair approach for advising employees and managers regarding their rights and responsibilities.

expression that is within the scope of employment as well as some expression that is outside of the scope of employment.

Still, post-*Garcetti* decisions provide guidance on a framework for faculty speech. For example, courts have recognized that a university can legitimately protect its intellectual property rights and academic integrity in the context of faculty research and scholarship. Also, while faculty are afforded academic freedom in the classroom, they must teach matters that are germane to the curriculum, and employers may act to correct frequent or extended digressions from relevant course material.

Based on these cases, a potential framework for faculty free speech follows two steps:

Step 1: Is the speech within the course of employment?

- **If yes:**
 - Is the speech germane to employment activity?
 - o If no, the employer can likely take action (see Step 2)
 - o If yes, the speech is likely protected


- **If no:**
 - Is the faculty member speaking as a private citizen on an issue of public importance?
 - o If yes, the speech is likely protected
 - o If no, the employer can likely take action (see Step 2)

Step 2: Do the employer's interests in an efficient and orderly educational environment outweigh the faculty member's free speech/academic freedom rights?

- **If yes:** The employer may take action notwithstanding protected speech
- **If no:** The employer may not act

Be Consistent, Be Fair

HR professionals who are confronted with faculty and staff free speech issues must develop a consistent and fair approach for advising employees and managers regarding their rights and responsibilities. As a threshold issue, it is important to ensure that policies clearly recognize free speech protection and that employers only act within the narrow exceptions as defined by the courts.

When matters do not fall within those exceptions, most staff free speech issues can be resolved by carefully applying the Garcetti-Pickering analytical framework. The framework protects personal speech while recognizing an employer's interest in workplace expression and efficient and effective work environments. Developing a framework for faculty that balances free speech and academic freedom rights with important employer interests is challenging, but can be done if the employer's interests are clearly defined and consistently applied. While the faculty framework outlined here is one suggested approach, as the law evolves on the issue, it should be frequently revisited and updated as necessary. 

About the author: Trenten Klingerman is deputy general counsel at Purdue University. He presented a session on navigating staff and faculty free speech at CUPA-HR's Spring Conference earlier this year.



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A Blueprint for Conducting a Fair, Legal, Comprehensive Internal Civil Rights Investigation

By Joseph Vincent

Internal civil rights investigations have become an important tool for higher education institutions as they work to align culture and practice with the values embodied in federal civil rights laws. Obviously, in a perfect world, investigations would be obsolete. In that ideal universe, employees and students would espouse cultural proficiency naturally and easily. Diversity in recruitment, hiring and advancement and gender equality in pay and programming would simply exist without prompting or intervention. However, a quick scan of the past 10 years of federal court action related to civil rights in education and employment demonstrates that there is still significant work to be done.

Making the idea a reality — or at least moving toward that reality — requires a concerted, systematic approach. It also requires internal cultural alignment and adoption of certain values. Too often, the protection of civil rights is an add-on to other initiatives — an afterthought. Until systems and institutional cultures prioritize protection of civil rights as an effective and natural part of their organizational processes, inequity and the resultant conflicts will continue to exist. Accordingly, the people on the front lines of this particular brand of dispute resolution, often in human resources and student affairs departments, must be recruited, equipped and trained to conduct legally sound, fair and comprehensive investigations.

A good investigator conducting a proper civil rights investigation protects the organization from legal liability. Title VII investigators, mostly in HR departments, have been conducting these types of investigations for decades as a way to show their organization's commitment to protecting their employees' civil rights. Title IX-based investigatory practices are built on the foundation laid by Title VII laws, regulations and case law. Thus, the rise of Title IX litigation related to sex-based discrimination in higher education has provided a new opportunity to assess and reflect on institutional approaches to these investigatory practices.

Some recent highly publicized court cases have exposed significant shortcomings in the very same systems and cultures that were designed to support and respect individual civil rights. These cases have demonstrated how a failure to conduct an appropriate civil rights investigation — a crucial stopgap in the nondiscrimination era — can exacerbate and magnify the effect of unwanted behavior to the detriment of the institution and its community. When schools lose cases at the federal court level, it's largely due to a failure to resolve allegations internally in a manner consistent with industry standards.

While civil rights investigations are complex, often the internal mistakes are basic ones. While investigations require particular skills and training, they also follow simple guidelines. When we observe the damage to the health and reputation of academic institutions during high-profile discrimination cases, the sheer scope of the scandal may cause us to overlook an initial failure to follow the simple, well-established guidelines for internal investigation and resolution.

Commitment of Institutional Leadership

Successful civil rights investigations require the commitment of institutional leadership to grant investigators the authority and autonomy necessary to perform their role. Civil rights investigators need authority to make decisions, sometimes in a very short time frame, with the confidence that their leadership supports them. That means if an employee's work schedule needs to change to comply with a "no-contact" order, the investigator needs the institutional authority to make it happen. The same is true for changing a student's class schedule or adjusting the time or date of an exam. Without delegated authority and endorsement from the institution's leadership, supervisors and faculty may resist cooperation with an investigator and become more of an obstacle than an ally. If faculty and staff know that ultimately administration is committed to eliminating discrimination, they're more likely to engage in the dialogue and investigation process in good faith, thus aiding the process as a whole.

Institutional leadership must also commit to staying out of the way. This is a difficult thing to ask, considering these administrators have built their careers on successful leadership skills and strategic problem solving. Yet, impartiality is critical to a good investigation; therefore, officials with a higher stake in the reputational and operational health and growth of the institution have a harder time appearing impartial. For instance, the institution's general counsel should not conduct or oversee civil rights investigations. As a "zealous advocate" defending the institution from legal liability, general counsel may struggle to conduct a neutral, fact-finding civil rights investigation without the appearance of bias.

Have a Policy, Know Your Policy, Follow Your Policy

A robust nondiscrimination policy should outline the personnel handling institutional reports and the progression of steps the institution will take to achieve resolution. The policy should also establish the institution's commitment to stop, prevent and remedy a discriminatory environment. For civil rights investigators, the policy should provide a simple but effective rubric administrators and investigators can use to vet the appropriateness of the institution's response. It should compel important questions: Is the current approach stopping the discrimination from continuing, and preventing it from happening again? What actions are necessary to repair or

remedy the situation created by the current circumstances? When investigators test institutional actions against these questions, they are on the road to ensuring an appropriate investigation and resolution.

By law, investigations are required to be prompt, thorough and impartial. An institution's nondiscrimination procedures should outline the major phases of an investigation with these goals in mind. Further, investigators and administrators must commit to faithfully observe each phase. Federal cases that fail at the motion to dismiss or motion for summary judgement phase — thus exposing the institution to liability and forcing settlements to avoid lengthy litigation — often begin with the simple failure to follow the institution's own procedures.

By learning and understanding the guidelines, seemingly complex civil rights investigations become methodical, intentional and just.

Historically, judges have granted institutions a wide berth regarding the internal resolution of discrimination complaints. These days, however, judges are increasingly more willing to intervene when an institution's procedures are inconsistent with industry standards. Still, there remains some deference when an institution's procedures comply with federal law. When the institution materially follows those procedures, the risk of an interventionist judicial decision is much lower. In many cases, the court will defer to the institution's findings if the proper procedures are followed, even if there is another reasonable outcome (i.e., the institution found the responding party "not responsible," but the facts of the case could also support a finding of responsibility).

Bottom line: Investigators not only need procedures that are legally compliant and consistent with industry standards, but also must be knowledgeable regarding those procedures and must materially comply with them throughout the process.

Prompt, Thorough, Impartial

Civil rights investigations must be prompt, thorough and impartial. To be considered "prompt," an institution's procedures should specify the initial response time to an allegation, outline when and under what circumstances an investigation will begin, and provide a timeline for the major stages of an investigation, including a conclusion, opportunity for appeal if applicable and final resolution. The procedures should also provide for exceptions to the timelines and specify how exceptions will be assessed and communicated to all parties.

A thorough investigation begins with a methodical approach. Ideally, this approach is described in the institution's procedures. Both the individual reporting the discriminatory circumstances and the individual(s) implicated by the allegations should have the chance to make statements to investigators relating to the claims brought. They should also get the chance to identify others whose perspective or information could help bolster or refute the claims. At the end of the investigation, the institution should provide the parties with a documented assessment of the facts, evidence and conclusion. This type of progression typifies a thorough investigation. While it can be time consuming, it is not a complex approach, and yet it greatly enhances the fairness of the process. Skipping any of these steps, like disciplining an employee or student without telling them why or using statements from witnesses to drive an investigatory conclusion but not giving the opposite party an opportunity to review and respond to those statements, cripples the integrity of the investigation and opens the door to potentially catastrophic legal liability.

An impartial investigation avoids any indication of bias on the part of the investigators or final decision makers. As mentioned before, institutional leaders or other administrators must avoid weighing in or intervening in the course of an investigation. Investigators are expected to be neutral — favoring neither side, but instead seeking only to discover the truth. Ensuring the process is fairly designed and provides equal opportunities to receive and review information removes potential bias. Allegations of bias also threaten the investigation's integrity when investigators meet with one or both parties without notice to the other party or notes from the meetings. When

sidebar or outside meetings between investigators and a party to the complaint come to light, accusations of bias soon follow.

Notify and Share

In addition to procedural noncompliance, investigations suffer just as often from due process violations. While the term is applied differently in an institutional setting than it is in a court, and differently again depending on whether the institution in question is public or private, the basic requirements of due process are notice of the charges/allegations and an opportunity to comment. When the proceeding is an institutional civil rights investigation, both parties (the reporting party and the respondent) have a right to know certain elementary but critical information, such as who made the complaint, who is the accused, what are they accused of, what evidence is provided to support and oppose the accusation, and the identity and content of witness testimony supporting and opposing the accusation.

In a civil rights investigation, investigators bear the burden, as outlined in the institution's policies, of notifying all parties at all major stages of an investigation. These stages include the opening of an investigation, a statement of alleged policy violations, an outline of the investigation before it unfolds, and when an investigation has concluded. This also includes updating the parties on delays or extensions to any part of the planned investigation timeline and outlining appeals procedures and deadlines.

The notification burden also includes communicating when evidence or testimony is collected and sharing that information with both parties for review and comment. So, for example, if a witness testifies to the truth of allegations against an individual, that witness testimony should be provided to both parties for review. The accused then has the opportunity to point out flaws in the evidence gathered — be it flaws in the actual information provided by the witness, counterevidence, or additional information which calls the credibility of the witness into question.

Following these simple steps helps preserve the integrity of the investigation. Failing to properly notify parties or provide ample time to review and comment on the allegations, evidence and testimony puts the investigation in jeopardy and the institution at risk.


Training, Consultation and Resources

Civil rights investigations are often complex and difficult. They typically consume time and resources, often where

there are not much of either to spare. The vast majority of higher education institutions are conducting these investigations internally using existing staff. With the right training, these employees can successfully conduct investigations.

A benefit of heightened awareness due to the rise in Title IX litigation is that the quantity and quality of training and even certification for civil rights investigators and nondiscrimination program administrators has grown significantly. Peter Lake, J.D., of Stetson University, a prolific teacher and trainer, has created a wealth of online training resources. Mainstay law firms like Fisher Phillips offer email, newsletter and webinar-based guidance for civil rights policy and resolution of discrimination. Finally, specialized law firms like The NCHERM Group offer tailored consulting as well as online and in-person training and certification courses in civil rights investigations, program coordination, prevention and awareness, policy development and other related fields. These are but a few of the resources available to investigators and institutions. The bottom line is that investigations can be done well by properly trained investigators, and properly trained investigators have more resources at their disposal now than at any other time in the past. In addition to training and consultation, professional membership associations, workgroups and listservs (such as the Association for Title IX Administrators (ATIXA) and CUPA-HR) provide an endless stream of thoughtful, up-to-date advice from investigators in the field.

Follow the Blueprint

On the whole, higher education institutions are improving in addressing and resolving discriminatory circumstances on their campuses and in their programs. For every case that makes it into federal court, there are literally hundreds, if not thousands, that are successfully and fully resolved internally. What we see in the courts is usually big, messy and shocking; however, the reality is that these cases often result in litigation due to institutions' neglect of some of the fundamental tenets of civil rights investigations. By learning and understanding the guideposts, complex investigations become methodical, intentional and just. And our campus communities deserve nothing less. 

About the author: *Joe Vincent is director of training, compliance and Title IX at A.T. Still University of Health Sciences. He presented a session on best practices in civil rights investigations at CUPA-HR's Spring Conference earlier this year.*

ADDRESSING DISTRESS BEFORE IT BECOMES DISASTER

By Julie Roe and Nate Taylor

DO NOT CROSS POLICE LINE DO NOT CROSS
POLICE LINE DO NOT CROSS

*How HR at One University Is Driving a Threat
Prevention and Assessment Program for Staff and Faculty*

With acts of violence seemingly becoming more common in workplaces and schools across the country, many organizations are taking a fresh look at their threat prevention and assessment strategies. At the University of Tennessee, Knoxville (UTK), human resources has for the past eight years been the driving force behind a strategy to identify, assess and address the risk of violence or threatening behavior among staff and faculty.

Identifying a Need

In 2006, UTK's division of student life developed a referral line to help distressed or distressing students (974-HELP). Around that time, the Bureau of Labor Statistics released results from its 2005 *Survey of Workplace Violence Prevention*. The findings indicated that more than half of state agencies with 1,000+ employees reported employee-on-employee violence. The findings from this survey, along with the Virginia Tech tragedy in 2007, three UTK employee suicides in 2008-09, and an increasing number of calls to the university's police department in regards to concerning employee behavior, catapulted conversations about campus threat assessment and prevention strategies at UTK. Says Dr. Mary Lucal, associate vice chancellor for human resources, "We realized there was a need that we had to address, and that we couldn't do it alone."

In 2010, with support from the chancellor and provost, HR launched the 946-CARE program for distressed faculty and staff. By using a holistic approach, the program provides tools and resources to enhance safety and mitigate risk among the campus's workforce, allowing the university to connect early and often to help those in distress long before an issue becomes a disaster.

A Threat Assessment Model

The 946-CARE program uses the threat assessment strategy outlined in the book *The Handbook for Campus Threat Assessment and Management Teams*, which states that threat assessment comprises four components: (1) learning of a person who may pose a threat; (2) gathering information about that person from multiple sources; (3) evaluating whether the person poses a threat of violence

to others; and (4) developing and implementing an individualized plan to reduce the threat.

The 946-CARE line provides distressed faculty and staff and those who notice a peer or colleague exhibiting concerning behavior a place to turn when they don't know what else to do. Available resources include the UT police department, employee assistance program (EAP) referrals, suicide prevention resources and more. Using the SIGMA model rating system (www.sigmatma.com), the 946-CARE response team evaluates threats and responds accordingly. Many cases, such as reports of concerning behavior, may fall under general case management. However, statements of self-harm or threats toward others constitute automatic referral for threat assessment and receive a priority rating, allowing the response team to assess and intervene as necessary to ward off potential impending threats.

In the diverse, complex and legal environment of higher education, threat prevention and assessment are critical to the health, safety and well-being of every campus community.

The Response Team

The 946-CARE program is coordinated by HR and led by a response team comprised of individuals from HR, the provost's office, the office of equity and diversity, the UT psychological clinic and the UT police department. The general counsel's office serves in an advisory capacity. This diverse team is able to address concerns using a holistic approach to case management. Collectively, they are subject matter experts on things such as policy, procedure, faculty affairs, diversity, mental health and more. This group is equipped to creatively address faculty and staff cases with professionalism. Having this diverse group enables the response team to collaboratively review cases and develop plans. Ad hoc members may be utilized as needed, and may include representatives from various campus partners, including media relations, the dean of students office, the Title IX office, or other senior leaders

as appropriate. This ensures that all the appropriate parties are connected for cases involving both students and faculty. Of the 946-CARE hotline, John Zomchick, vice provost for faculty affairs, says, “It is one of the many ways that faculty and staff can help those that they work with on campus. It can be in the form of calling to ask advice on how to help a fellow employee or voicing concerns based on what they have been seeing. Since its inception,

946-CARE has been instrumental in getting timely and effective help to employees experiencing life challenges.”

What Happens When an Employee Calls?

The campus community is encouraged to contact 911 or local authorities for emergencies, as the 946-CARE line is not designed to replace 911. 946-CARE is a separate dedicated phone line maintained by trained HR

Psychological Testing: A Tool for Assessing At-Risk Behavior

The goal of a risk assessment is to determine an individual’s vulnerability and propensity for at-risk behavior and to recommend the appropriate resources to address the behavior. Some activities that create potential risks for organizations include workers’ or students’ emotional/psychological problems, unsafe work or campus practices, drug/alcohol abuse, performance issues and coworker or family disputes. According to Dr. Gerald Lewis, a prolific writer on at-risk behavior, we can understand the causes and conditions that precipitate a tornado, but we do not know when or where it will actually occur or how bad the damage will be. We can identify populations more likely to respond violently, but we cannot predict the risk for any specific individual. While there are possible warning signs or signals, there are no absolute predictors.

The utilization of psychological testing to help predict unusual or extreme behaviors is widespread. These tests are developed to estimate the probability that an individual’s traits occur more than just by chance. They can be effective indicators of at-risk tendencies when they identify personality traits, a history of problem behaviors and/or clinical pathology. Combinations of tests seem to have greater usefulness and predictive power. However, judging threat potential involves more than written assessments. Consideration must be given to the relationships of participants, preceding events, the culture, the life outside of work or school, and the emotional state of the threatening individual.

The most effective evaluation process includes both a battery of tests and an in-depth oral interview with a skilled evaluator who understands that the primary client is the organization. Although the individual’s needs are carefully identified, the focus is on the level of impairment and whether there is a risk to the organization. The process is developed to provide relevant, supportive information to organizations’ HR and legal teams who view the results as only one component of the overall evaluation. Organizations and institutions have a duty to provide a safe and healthy environment for students and workers. Therefore, it is vital that management learn to recognize the signs and symptoms of troubled individuals. Employee assistance professionals can provide this training, which includes the process for referring troubled individuals to get the help they need to live and function better.

Predicting dangerous or harmful behavior is difficult. We may understand the causes, but again, we cannot know if the harm will occur or the degree of harm it will cause. While there are simply no absolute predictors, psychological assessments provide a valid and helpful measure of troubling behavior.

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professionals. These individuals have been trained in the areas of conflict resolution, dealing with difficult people, and Question, Persuade, Refer (a suicide prevention technique). The line is staffed by HR professionals Monday through Friday from 8:00 a.m. to 5:00 p.m. After 5:00 p.m., on weekends and during scheduled university closings, the line is answered by the UT police department. The police department completes an intake form for CARE calls and forwards the form to the HR response coordinator.

Once a call is received, information is recorded on an intake form and then reviewed with the HR response coordinator. The types of calls vary. Sometimes an employee will call about him/herself. More often, someone will call with concerns about a colleague exhibiting signs of distress (some of which include depression, fixation on weapons, anger or paranoia, chemical dependency, social isolation, zealotry, pushing the limits of acceptable behavior, contempt for authority, newly acquired poor personal hygiene, verbal threats, bullying, stalking or harassing others, etc.) The information is assessed with three general methods of addressing a case.

Most calls fall under Step One: a referral to the appropriate resource. Many calls result in a referral to the state EAP. Other referrals might include the campus ombudsperson for mediation services or the Title IX office for complaints related to sexual harassment. Some calls may fall solely under HR purview for consultation and coaching, while others may warrant a discussion with the response team in order to assess next steps.

Step Two involves case management by the response team, which is convened at the discretion of the HR response coordinator. A case may be reviewed during a regular monthly meeting for non-urgent calls, or the response coordinator may call an immediate meeting for more urgent cases. Cases that fall under case management generally include concerning behaviors, potential harm to self, inability to care for self, or domestic violence.

Step Three consists of a threat assessment conducted by the response team using a specialized assessment form. Individuals are assigned a priority level (1-5) indicating the resulting threat level. From there, a case management plan


is developed with short- and long-term approaches to intervene, minimize the threat(s), mitigate risk and ultimately enhance campus safety and provide support for the individual.

An HR-Led Initiative

HR plays a vital role in the operation of the 946-CARE line. The response coordinator is an HR representative who manages the process. This person trains the call-line staff, tracks calls, organizes and updates the cases in case management, and schedules regular monthly meetings or urgent meetings for the response team. HR also plays a significant role in educating UTK faculty and staff about this resource, regularly speaking at staff and department meetings across campus to remind the campus community of the 946-CARE line resource and to familiarize people with the signs of potentially distressed colleagues. HR shepherds the entire process, paying close attention to important elements such as confidentiality, HIPAA, FERPA, FLSA, mandatory reporting responsibilities and other laws and mandates.

What's Next?

In the near future, we plan to incorporate additional technological advances into the 946-CARE program, including creating a 946-CARE app for smartphones, an ability to text the hotline, and providing ways to report concerns through the HR web page. The goal at UTK is to close the gap of resources available to distressed faculty and staff. We strive to mirror the process and resources available for students and to translate these into a proactive resource for faculty and staff.

Threat prevention and assessment is not a one-size-fits-all process. With HR leading the way, UTK has taken steps to address this issue and make the campus a safer place for all. Threat assessment will not eliminate disasters, but it can serve as a critical step toward overall campus safety. In the diverse, complex and legal environment of higher education, threat prevention and assessment are critical to the health, safety and well-being of every campus community. 

About the authors: *Julie Roe is senior employee relations counselor at University of Tennessee, Knoxville. Nate Taylor is employee relations counselor at University of Tennessee, Knoxville. They presented a session on UTK's 946-CARE program at CUPA-HR's Spring Conference earlier this year.*

A Practical Approach to Mitigating Risk Related to Workplace Harassment and Pay Equity



When it comes to creating a safe, inclusive, equitable campus, culture is the bottom line. But changing the culture and transforming the mindset of an enterprise as large, complex and multifaceted as a higher education institution certainly doesn't happen overnight — it's a slow and steady journey.

While helping their colleges and universities navigate this bigger change over the long term, there are also things HR can do in the short term to help reduce risk, ensure fairness, and support institution-wide efforts to create a culture of respect and inclusion.

Lynn Clements, formerly with the Equal Employment Opportunity Commission and the Office of Federal Contract Compliance Programs and current director of regulatory affairs at Berkshire Associates, recently presented a CUPA-HR webinar on how the #MeToo and

pay equity movements are impacting employers, including higher education, and how HR can act in a strategic way to help their organizations not only respond to but also proactively address these issues.

Sexual Misconduct and Harassment

The last several months have brought a tidal wave of well-publicized allegations of workplace sexual harassment and abuse. These allegations span industries and demographics, and they run the gamut from sexual assault, misconduct or harassment at an individual level to accusations against an entire organization that it was complicit in allowing the abuse or harassment to happen. Out of this increase in reports of alleged wrongdoing and the continuing conversation around sexual abuse and harassment, two nationwide movements have sprung up: #MeToo and Time's Up. And out of these movements have come increased scrutiny on employers to root out the bad apples,

address sexual misconduct allegations in a timely and thorough manner, and ensure a safe and compliant work environment. According to Clements, there a couple of key components of the Time's Up and #MeToo movements of which employers should be aware. One is a legal defense fund, managed by the National Women's Law Center, for low-income women who have experienced harassment but don't have the means to litigate, which means employers may see more and more litigation as this defense fund ramps up. The other is an increased focus on advocacy, with a call for changing employment laws or contracts that make it difficult to bring claims against an alleged perpetrator (for example, non-disclosure agreements and mandatory arbitration provisions). "Some states and localities are starting to act on this and are considering laws banning such agreements and provisions in workplaces," she says.

So, what does this mean for employers? According to Clements, "Now is the time to audit your practices, policies and procedures related to workplace harassment in order to evaluate vulnerable work environments and examine risky employment practices." In addition, she recommends employers review confidentiality and mandatory arbitration provisions of employment agreements to ensure they comply with state law; conduct organization-wide anti-harassment training and reinforce messaging around the topic; and evaluate investigative procedures to ensure they address contemporary issues and ensure accountability.

Identify Your Vulnerable Populations

Clements recommends taking a close look at your workplace's vulnerable populations to ensure they are educated on what harassment looks like, what is and is not acceptable behavior, and how to report misconduct. These vulnerable populations include:

- Young workers, who typically don't have a lot of experience in the work world;
- Low-wage service positions — more than 20 percent of EEOC's harassment cases over the past decade have involved low-wage service positions (individuals in these types of jobs typically don't have the means to litigate and/or they are afraid of losing their job if they report);
- Women who work in male-dominated fields; and
- Power imbalance situations (for higher ed, this includes the faculty-grad student relationship).

Audit Your Harassment Policies

According to a 2017 NBC News poll, nearly half of working women in the U.S. say they have experienced harassment in the workplace. And according to a 2015 survey by *Cosmopolitan* magazine of more than 2,200 working women between the ages of 18-34, one in three said they had been sexually harassed at work — but less than 30 percent reported it.

Clements offers some guidance around how employers can audit their harassment policies to ensure that reporting is safe, easy and encouraged:

- Make sure your organization's policies, procedures and training address all forms of actionable harassment, not just sexual harassment.
- Ensure that policies clearly prohibit retaliation and that witnesses are also protected from retaliation (even if the EEOC deems a harassment claim is not actionable, many times retaliation claims that come out of these harassment claims are deemed actionable).
- For higher ed specifically, clearly spell out what kinds of interactions are appropriate between faculty and students.
- Confirm that your policy covers inappropriate behavior by third parties.
- Have multiple avenues for filing complaints, including formal and informal mechanisms.
- Decide how you will address harassment allegations involving a repeat offender — determine the line between progressive discipline and the need to terminate.
- Distribute your harassment policy to all employees at the beginning of employment and on a periodic basis thereafter, ideally requesting some sort of acknowledgment from employees that they received the policy, read it and understand it.

Provide Training

Clements recommends revisiting who provides and attends harassment training. "It's not sufficient anymore for just supervisors to attend," she says. "The audience should be broader than that." It's also important for senior campus leaders to attend training. If they're not, she says, "think about the message that sends to staff and faculty." Avoid

“canned” and generic training. Instead, she suggests, employers should evaluate their areas of weakness and train around those areas and the issues specific to that particular workplace or industry. The EEOC strongly encourages unconscious bias training and bystander training as well, and prefers employers conduct sexual harassment training in-person as opposed to online.

Conduct Effective Investigations

The number one rule here, Clements says, is to investigate every harassment complaint, no matter how “minor.” Here are some ways to ensure investigations are fair, thorough and effective:

- Define the purpose and scope of the investigation, in writing.
- Determine whether the investigation should be conducted by an internal or external resource.
- Investigate promptly, but don’t rush to judgement.
- Maintain confidentiality to the greatest extent possible.
- Ensure investigators are trained on unconscious bias; on all organizational policies and procedures related to workplace harassment and reporting; and on how to conduct a thorough investigation and write comprehensive reports.
- Ensure that the due process rights of the accused are protected (there have been a few counterclaims in court recently that the accused did not get due process).
- Document your investigation carefully — an outside party should be able to reconstruct the entire investigation from your report.

“By putting in place well-defined and consistent practices, policies and procedures related to harassment and reporting, HR can help their organizations build a solid foundation of respect and inclusion,” says Clements.

Equal Pay

Pay equality is another movement that is gaining ground in the U.S., and an issue that employers that strive to be inclusive should be addressing head on. Says Clements, “There is a continued focus on equal pay at both the state and federal levels, and private litigation in this area is growing.”

According to Clements, a flurry of state and localities have revised pay discrimination laws since 2016. These revisions include changing the scope of who should be compared when looking at pay; narrowing defenses employers can use to explain raw wage differences; requiring employers to explain “entire pay” differences; banning inquiries about salary history in the application and hiring processes; and creating affirmative defenses for conducting proactive salary equity studies. “With the increased focus on equal pay for equal work, employers must look closely at their pay structures and their compensation strategies and adjust them as needed,” she says.

A good first step is to evaluate your legal risks and vulnerabilities as an organization. Clements recommends asking the following questions:

- How similar are we to other organizations who have lost or settled a pay equity case? Do we have the same susceptibilities?
- When is the last time we analyzed compensation data for pay discrimination?
- Do we have all the data we need to do an analysis? (If not, make it a priority to start collecting more pay-related data.)
- How many employees receive pay from multiple sources, and how can we evaluate that pay to ensure it is fair?
- Are employees voicing complaints about pay inequity?
- Are there pay compression concerns? (OFCCP has been very interested in this particular issue as of late.)
- How much of our explanation for pay differences is tied to assignment, promotion, performance history, department or similar factors? When have we last examined the fairness of these processes? (Many of the recent equal pay cases that have progressed to litigation have been related to promotion, performance or assignment discrimination.)

Related to this last point, Clements suggests it might be a good idea to analyze your organization’s performance-related data to determine if certain groups consistently receive lower overall performance ratings than others. If so, she says, it’s time to reexamine your organization’s performance review system to evaluate fairness (and possibly consider unconscious bias training for managers).


After pinpointing potential legal risk areas and vulnerabilities, Clements recommends doing a pay equity study for positions and areas of concern. She advises following the approach below:

First, determine what the budget is for pay equity salary increases. Next, determine what you will look at related to pay — base pay only, or base pay plus merit increases, bonuses, overtime pay and/or other factors. Then, gather all of the data that you believe influences pay. Start with time with institution and time in job; job level/grade/salary band; department/school/college; and geographical differences (analyze this data first because it's easy to gather and in and of itself may explain a lot of raw wage differences). If you need to dig further, gather data in educational attainment/certifications; prior experience; performance history; and other relevant factors. It's also important to know what data you're missing and think about how you might begin collecting that data going forward. Next, analyze the positions of concern, and refine these analyses as you gain insight into how pay decisions are being made.

Be strategic when implementing pay adjustments. It's important to think about timing, communications and messaging and to have a plan in place for how to address back pay requests that are almost certain to roll in as

a result of the study and its findings. Finally, evaluate system changes that can help remedy the kinds of pay equity issues you uncovered in your analyses and that can help prevent future concerns. For example, if you find that starting pay is a reason for a lot of your wage differences, decide whether your organization will rely on salary history when setting pay (if that's still permitted in your state). Think about how you can enhance early communications about salary levels or monitor/limit late-stage negotiations around pay. Train all managers on pay equity considerations and develop a clear process for documenting exceptions.

The Best Defense Is a Good Offense

Employers have both a legal and a moral obligation to ensure safe, respectful, equitable and compliant workplaces. While reactionary measures are sometimes required when it comes to pay equity and workplace harassment, proactive action is paramount. By evaluating policies, procedures and processes, and leading and championing change where it's needed, HR organizations can help create a culture where all employees feel safe, valued, respected and included. 

The information in this article is not intended to provide legal advice and should not be relied upon as such.

Helpful Resources

Sexual Assault, Misconduct and Harassment

- **Sexual Harassment Resources Web Page** (www.cupahr.org/knowledge-center/harassment)
- **CUPA-HR On-Demand Webinar: Delivering Engaging, Informative, Impactful Sexual Harassment Training** (www.cupahr.org/events/webinars)
- **Training Video: Higher Ed-Specific Harassment Scenarios** (www.cupahr.org/knowledge-center/essentials)
- **EEOC Checklists and Chart of Workplace Harassment Risk Factors** (https://www.eeoc.gov/eeoc/task_force/harassment/checklists.cfm)

Equal Pay

- **Compensation Programs/Plans Toolkit** (www.cupahr.org/knowledge-center/toolkits/compensation-programsplans)
- **How to Use Benchmarking to Ensure Competitive Pay for Faculty** (www.cupahr.org/benchmark-faculty-salaries)
- **CUPA-HR Research Briefs on Pay and Representation of Women and Minorities in the Higher Ed Workforce** (www.cupahr.org/surveys/research-briefs)

CONGRATULATIONS

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Donald E. Dickason Award

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Barbara Carroll

Associate Vice Chancellor and Chief HR Officer,
Vanderbilt University

Barbara Carroll has made significant contributions to CUPA-HR over the past decade. A tireless advocate in the public policy arena, she served for three years as chair of CUPA-HR's public policy committee and has worked closely for many years with the association's government relations team in Washington, D.C., on issues affecting higher ed employers. She has also been actively involved in CUPA-HR's research work, serving for several years as the primary advisor to the association's research team, and helping facilitate a redesign of the association's salary surveys. In 2015-16, she served as chair of CUPA-HR's board of directors.

Carroll has served as a mentor to both emerging CUPA-HR leaders and her colleagues. She has played a major role in the professional development of many of her peers by sharing her knowledge and experiences.

Thanks to the generous support of TIAA, CUPA-HR is pleased to offer a \$6,000 contribution to Vanderbilt University's endowment or a scholarship fund of Carroll's choice.

The Higher Ed HR Awards are presented annually to some of the most outstanding leaders and innovators in our field. Nominations for the 2019 awards will open in January.

Distinguished Service Award

Recognizing distinguished service to the association and the profession
Sponsored by Kronos Incorporated



Laurita Thomas

Associate Vice President for HR, University of Michigan

Laurita Thomas began her CUPA-HR leadership service in 2012 as a member of the association's learning task force. She then went on to serve as a member of the board of directors from 2014 to 2017. She also served on CUPA-HR's public policy committee and learning and professional development committee, and was instrumental in the creation of the association's learning framework, which is a guide for the learning and development of higher education HR professionals. Thomas has been active in the association's diversity and inclusion work, is a frequent presenter at national and regional CUPA-HR events, and has served as a mentor to several early-career higher ed HR professionals.

Thanks to the generous support of Kronos Incorporated, CUPA-HR is pleased to offer a \$4,000 contribution to University of Michigan's endowment or a scholarship fund of Thomas's choice.

Chief Executive HR Champion Award

Honoring a president or chancellor who has demonstrated significant support for HR
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Jacqueline Moloney

Chancellor, University of Massachusetts Lowell

In August 2015, Jacqueline Moloney became the first woman appointed as chancellor of UMass Lowell. Throughout her time in senior leadership positions at the university, Moloney has supported a broad-based, large-scale organizational change effort that has resulted in, among other things, doubling the operating budget of finance and operations; adding over 1.5 million square feet of building space; growing enrollment by nearly 60 percent; and increasing the workforce by 40 percent. Moloney is also a strong HR ally and has supported HR's initiatives to ensure market-based competitive salaries; clear and comprehensive job descriptions; inclusive recruitment and selection processes; a comprehensive performance management and accountability system; robust strategic data reporting; the appropriate use of technology in business process review and redesign; robust employee recognition; and organizational climate assessment.



Thanks to the generous support of Sibson Consulting, CUPA-HR is pleased to offer an \$8,000 contribution to UMass Lowell's endowment or a scholarship fund of Chancellor Moloney's choice.

Inclusion Cultivates Excellence Award

Celebrates programs that have made a significant impact with respect to inclusive workplace practices and culture

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Utah Valley University (for its diversity and inclusion work)

At the direction of UVU President Matthew Holland, Utah Valley University has reinforced its commitment to inclusion, access, diversity, multiculturalism and global and intercultural engagement through 40 new initiatives and projects in the past four years, some of which include the Women's Success Center, Veteran's Center, LGBT Student Services, the Center for Global, Intercultural Engagement, plans for a childcare center on campus that will cater to low-income students with children, and a recognition program to celebrate individuals and departments for their work to advance diversity and inclusion.

Thanks to the generous support of PageUp, CUPA-HR is pleased to offer a \$6,000 contribution to Utah Valley University's endowment or a scholarship fund.

HR Excellence Award

Honors transformative HR leadership that results in significant organizational change

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University of Virginia Human Resources (for its Ufirst project)

Chief HR officer Kelley Stuck led her HR team in the development of the Ufirst project, which reimagined and restructured how UVA's human resources organization does its work. The new HR organization, supported by best-in-class technology, aims to provide consistent, quality and efficient services to the UVA community, enabling the recruitment and retention of faculty, staff and team members who are experts in their respective fields. Outcomes of the Ufirst project thus far have included a reduction from more than 85 HR units within three organizations to three streamlined communities of expertise with eight functional areas; the emergence of a service-oriented, collaborative, innovative HR culture; enhanced HR operations for improved customer satisfaction; and more.

Thanks to the generous support of VALIC, CUPA-HR is pleased to offer a \$3,000 contribution to University of Virginia's endowment or a scholarship fund of the HR team's choice.

HR Innovation Awards

Recognizes models of innovative thinking in higher ed HR

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PennState
Human Resources

Pennsylvania State University Human Resources (for its HR Business Process Transformation project)

Penn State's HR organization's HR Business Process Transformation project has resulted in innovative changes to better enable the HR organization to support the university's strategic goals. Specific outcomes have included the creation of a new state-of-the-art HR shared services center, alignment

of HR strategic partners and consultants with Penn State's various units, departments and campuses, implementation of a new learning resources network, and more. The transformation has redefined how the HR organization does business and how it has positioned itself as leading-edge within higher education, and has allowed the organization to see the path forward to more contributions to the university.

Thanks to the generous support of PageUp, CUPA-HR is pleased to offer a \$5,000 contribution to Penn State's endowment or a scholarship fund of the HR team's choice.



University of California, Irvine Human Resources (for its new HR business model)

UC Irvine's HR team received this award for the creation and implementation of a new HR business model, which provides for streamlined processes and procedures and the alignment of resources across the university's three HR organizations — campus, medical center and health sciences. Outcomes of

the new HR model include the creation of executive director positions for each of the three HR organizations; the Partnership for Strategy and Innovation — a subset of HR consisting of four individuals with expertise in workforce planning, communications, organizational effectiveness and workforce relations who lead enterprise-level initiatives; and the replacement of annual performance reviews with quarterly goal-setting meetings between supervisors and employees.

Thanks to the generous support of PageUp, CUPA-HR is pleased to offer a \$5,000 contribution to UC Irvine's endowment or a scholarship fund of the HR team's choice.

Congratulations to CUPA-HR's Newest Honorary Life Members

As a show of appreciation for their dedication to CUPA-HR over many years and in recognition of their professional achievements, four former CUPA-HR volunteer leaders have been granted honorary life membership in the association.



Chris Byrd

Chris Byrd has been a member of CUPA-HR for seven years and has served on several CUPA-HR committees, the CUPA-HR/NACUBO joint task force, on the national board as an at-large member in 2014-15 and as treasurer from 2015 to 2018. He worked in HR for nearly 35 years — 20 in state government and 15 in higher education — and has presented at several regional and national conferences. He retired in June after 11 years at the University of South Carolina.



Larry Farmer

Larry Farmer has served in several leadership roles in CUPA-HR over the past 14 years, including on the board of directors of the association's North Carolina Chapter for eight years, where he served two terms as chair. He also served on the CUPA-HR Southern Region board of directors, where he served as chair in 2011-12, and on the national board of directors in 2013-14. Farmer was the recipient of the CUPA-HR Distinguished Service Award in 2016. He retired in May from Catawba College after 20 years.



Linda Harber

Linda Harber has served in CUPA-HR leadership roles for 24 years at the chapter, regional and national levels. She has served as chair of the Southern Region board of directors, as a member of the CUPA-HR national board, and as a volunteer leader for the association's Virginia Chapter. She was the recipient of the CUPA-HR Southern Region Distinguished Service Award in 1998, the national Distinguished Service Award in 2005 and has been a presenter at many CUPA-HR learning events. Harber retired in July after 15 years at George Mason University.



Maria Martinez

Maria Martinez served in CUPA-HR leadership roles for a decade at the regional and national levels, including as chair of the Southern Region board and as a member of the national board of directors. She also served on several CUPA-HR committees and was the recipient of the Southern Region's Distinguished Service Award and Meritorious Service Award as well as CUPA-HR's national Distinguished Service Award. She retired in May after 30 years at Rollins College.

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Hosted by CUPA-HR's Midwest and Western Regions
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- 25** Webinar – HR Transformation at UVA: A Case Study, in Progress



- 4** New York Metro Chapter Program – New York, New York
- 7-9** CUPA-HR Annual Conference – Indianapolis, Indiana
- 17** Webinar – Quarterly Washington Update With CUPA-HR's Government Relations Team



- 1-2** Kansas Chapter Conference – Wichita, Kansas
- 13** Webinar – Ethical Leadership: What Every HR Professional Needs to Know
- 15-16** Missouri Chapter Conference – Lake Ozark, Missouri
- 29** Webinar – How Does the General Data Protection Regulation Affect Colleges and Universities

- 24-26** North Carolina Chapter Conference – Wrightsville Beach, North Carolina
- 25** Webinar – Liberating Structures: Novel Tools for Engagement, Innovation and Inclusion
- 26** Utah Chapter Conference – Taylorsville, Utah
- 26** Northern New England Chapter Conference – Portland, Maine
- 30** Indiana Chapter Legal Seminar – Indianapolis, Indiana
- 30** Virtual Workshop – Employment Law Problem-Solving With CUPA-HR General Counsel Ira Shepard

We're constantly adding to our calendar of events – chapter meetings, conferences, just-in-time webinars, virtual workshops and more. Visit www.cupahr.org/events/calendar for a full listing.



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