



TO: University Council

FROM: Lori Erickson, Assistant Vice President for Human Resources
Kay Lennon-McGrew, Assistant University Counsel and Policy Counsel
Marlina Rogers, Compliance Counsel

DATE: October 11, 2021

RE: Policy on Discrimination, Harassment, and Sexual Misconduct
Employee Code of Conduct Policy

I. Introduction.

A. Policy on Discrimination, Harassment, and Sexual Misconduct.

The Policy on Discrimination, Harassment, and Sexual Misconduct specifies the system for reporting and addressing discrimination and harassment and explains employees' obligations regarding reports of discrimination and harassment. The Policy on Discrimination, Harassment, and Sexual Misconduct combines and updates ETSU's current Discrimination and Harassment and Sexual Misconduct policies. These policies currently cross-reference each other and unintentionally contradict each other. The purpose of combining these policies is to provide clarity and a uniform approach for reviewing allegations. Further, Title IX regulations have changed since these policies were originally approved.

The Policy on Discrimination, Harassment, and Sexual Misconduct was posted for public comment from September 8, 2021 through September 22, 2021.

B. Employee Code of Conduct Policy.

The Employee Code of Conduct Policy specifies the expectations of employees to conduct themselves in a responsible and ethical manner during their employment with ETSU. Employees is defined as anyone employed by the university in any capacity except for personnel classified as graduate assistant or student worker.

State Audit and the institution's Audit Committee Charter require that the institution's Employee Code of Conduct be reviewed on an annual basis by the Audit Committee for the Board of Trustees. ETSU has not enacted a code of conduct since transitioning to the Board of Trustees. It is scheduled to be presented at the November Board of Trustees meeting. The Employee Code of Conduct Policy was posted for public comment from September 13, 2021 through September 27, 2021. A copy of the policies is attached to this memorandum.

II. Public Comment Period.

Below is a summary of the comments and/or questions received during the public comment period, as well as the applicable response from the policy originator. We did not receive any comments on the Policy on Discrimination, Harassment, and Sexual Misconduct.

The following public comments were received on the Employee Code of Conduct Policy:

Comment from James R Bitter: This document should absolutely and concretely state that employees cannot engage in sexual or romantic relationships with students, supervisors, or those they supervise, nor can they date or marry the same without resigning. Failure to resign will lead to termination.

** Randy Byington concurred with this comment.

Policy Originator's Response: ETSU enacted a policy in 2019 related to relationships with students and subordinates. The request for a blanket statement would conflict with this policy and the rights of certain employees (e.g. faculty have rights under the detenure process). The Code of Conduct Policy states that all employees must comply with ETSU policies; however, we revised Section I Subsection K to include a specific reference to the Consensual Relationship Policy in response to this comment.

Comment from Elizabeth Davison: This needs clarification: Employees must use institutional and grant property, funds, technology, time, and other resources for legitimate business purposes. Employees may not use ETSU resources for personal gain or to benefit third parties. What does "personal gain" mean in this context?

Policy Originator's Response: Section I Subsection K was updated to state "ETSU business purposes" and to clarify the context of personal gain in response to this comment.

Comment from Diana Morelen: Regarding: M. Employees are expected to report any actual knowledge or any good-faith concern that a violation of this Policy may have occurred as soon as it is reasonably possible.

...does this mean report self violations, report violations of others, or both?

Regarding: E. Employees must use institutional and grant property, funds, technology, time, and other resources for legitimate business purposes. Employees may not use ETSU resources for personal gain or to benefit third parties.

Does this mean that one cannot use a university laptop to work on private projects (e.g., consulting, writing a book) that might result in personal profit?

Policy Originator's Response:

Section M: Yes, Employees are expected and required to report violations regardless of if the employee commits the violation or observed another employee committing a violation. This is similar to the requirement that an employee must disclose a conflict of interest.

Section E: This policy applies to all employees rather than a subset of employees. The employee's employment status is considered when the committee reviews a potential violation. For example, if the employee is using the resources for a project that is tangential to their job responsibilities (e.g. a faculty member drafting a text book), it would not be violation under this policy. However, if the employee is an admissions recruiter who should be calling and emailing prospective students, and the employee uses university time and resources to write a best-selling horror novel, this would be a violation of the policy.

Comment from Wallace Dixon: This is mostly fine. I agree with Drs. Bitter and Byington. However, there is one paragraph that seems a little petty and should be revised. It's the one about making money off of university property. I think there are degrees of this, some that are egregious and others that go directly against the university's mission. For example, I know faculty in the History Department are expected to produce books as part of their scholarly activity. This policy would prevent them from earning royalties on any books they produce unless they used their own laptop and worked from home, and yet it's a departmental expectation. According to the policy, these faculty couldn't work in their office on their books, because they would be using university lighting and HVAC to make money on eventual royalties. This seems unnecessarily restrictive. Also, it implies i can't use my university email address to correspond with NIH when i serve on an NIH study section, because NIH pays me a stipend, which is me making money. This also seems a little over the top. If the policy doesn't mean to include these kinds of things, it should say so.

Policy Originator's Response: *The employee's employment status is considered when the committee reviews a potential violation. If the employee discloses the additional income stipend, as required under the Conflict of Interest Policy and the Outside Employment and Extra Compensation Policy and the outside employment is approved (with no limitations), then using ETSU email to correspond with NIH would be acceptable because it had been reviewed and approved. If an employee is required to write books as part of their employment, the use of university resources would be appropriate and not a violation of this policy.*