EOAA’s recommendations for responsive action when an employee has violated the University’s policies against sexual misconduct or discrimination

The University’s Office of Equal Opportunity and Affirmative Action (EOAA) is responsible for responding to reports of sexual misconduct and discrimination on the Twin Cities and Duluth campuses. Where appropriate, EOAA responds to these reports through formal investigation to determine whether there has been a violation of University policy.

In cases where EOAA investigates and finds that sexual misconduct or discrimination has occurred, EOAA makes recommendations for responsive action to the University authority who is responsible for determining and implementing the responsive action. In academic units, the responsible authority is the Dean. In non-academic units, the responsible authority is a supervisor or unit leader.

Purposes of EOAA’s recommendations for responsive action

- Hold the respondent accountable in a way that communicates the seriousness of their conduct.
- Prevent further misconduct from occurring.
- Address the harm caused to the complainant and community.
- Foster an organizational climate where community members perceive that discrimination and sexual misconduct is not tolerated, that reports of this conduct will be taken seriously, and that retaliation for reporting this conduct is unlikely to occur.¹

Principles underlying EOAA’s recommendations for responsive action

*Effectiveness:* The responsive action is effective in communicating the seriousness of the misconduct, preventing its recurrence and, to the extent possible, addressing the harm caused to the impacted party and University community.

*Proportionality:* The responsive action is proportional to the severity of the misconduct. Discrimination and sexual misconduct policy violations range in severity from verbal harassment to nonconsensual sexual touching and quid pro quo harassment. More severe policy violations warrant more serious responsive action.

Consistency: The responsive action is consistent across University units and job classifications to the extent possible, while also allowing for differences based on compelling justifications that are present in individual cases.

Types of EOAA recommendations for responsive action

When an employee has been found to have engaged in sexual misconduct or discrimination, EOAA often recommends disciplinary, rehabilitative, restorative and/or monitoring measures.

I. Disciplinary measures

As appropriate, EOAA recommends disciplinary measures for individuals who have engaged in sexual misconduct or discrimination. Disciplinary measures are designed to hold the respondent accountable, communicate the seriousness of the misconduct, and prevent its recurrence. Disciplinary measures can also serve to foster an organizational climate where community members perceive that sexual misconduct and discrimination are not tolerated and that reports of such misconduct will be taken seriously.

Disciplinary measures can include a letter of discipline, an unpaid suspension, a reduction in pay, removal of a title, and termination from employment, among other possibilities. The severity of the disciplinary measure is intended to be proportional to the severity of the misconduct, its impact, and its potential for recurrence. The following circumstances generally warrant more serious disciplinary action:

- The conduct is especially severe. For example, the conduct:
  - involves unwelcome touching;
  - threatens physical safety;
  - disrupts the educational, research, or service mission of the University;
  - is directed at a specific person, particularly if that person is a subordinate or otherwise has less relative power;
  - includes an implicit or explicit threat that a person will suffer academic, professional or social consequences if the person does not accept or participate in the unwelcome conduct; and/or
  - is likely to, or done with an intent to, cause harm, humiliation or intimidation.

- The conduct is especially persistent or pervasive. For example, the respondent continued to engage in discrimination or sexual misconduct despite prior expressions from the complainant that the conduct was unwelcome.

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2 While EOAA aims for consistency across its recommendations for responsive action, EOAA does not rely on sanctioning standards that require specific sanctions for certain types of conduct. Such standards do not allow for the necessary consideration of the severity of the particular conduct at issue and, as a result, are likely to result in responsive action that is too lenient or severe for the particular conduct at issue. Such sanctioning standards are also likely to discourage some reporting, as some complainants are primarily motivated by their desire to stop the misconduct and may be reluctant to report if they believe that the respondent will receive what they perceive to be an overly severe sanction.
• The evidence indicates that the respondent may repeat the misconduct. For example, the respondent:
  o has a prior history of related misconduct;
  o persisted in the misconduct despite prior warnings or coaching from others; and/or
  o refused to accept responsibility for their conduct.

• The complainant or community experienced an especially negative impact as a result of the misconduct.

Though not to be interpreted as formal sanctioning guidelines, we offer the following illustrative examples of the types of disciplinary action that EOAA may recommend in certain situations where an employee is found to have violated University policies prohibiting discrimination or sexual misconduct. The disciplinary action recommended by EOAA in any particular case is highly fact-dependent. In all of the below-described examples, similar, but not identical, facts could lead to different recommendations. Mitigating factors present in a given case could also impact EOAA’s recommendations on discipline in these examples. In all of these examples, EOAA would also likely recommend rehabilitative, restorative, and/or monitoring measures.

**Examples of factual findings likely to warrant termination from employment.** Findings of sexual assault. Findings of a pattern of egregious and unwelcome touching and/or comments of a sexual nature that is targeted at one or more individuals. Findings of a pattern of egregious and unwelcome comments based on a protected characteristic that is targeted at one or more individuals. Findings of graphic, explicit, or lewd unwelcome conduct, such as sending or requesting nude photos, and/or making lewd sexual comments or gestures directed at individuals. Findings that a respondent targeted a particular individual or group of individuals with a racial or other identity-based slur. Findings of quid pro quo harassment, in which a person in a position of power conditions an academic or employment benefit on a subordinate engaging in or submitting to conduct that is based on a protected characteristic. Findings that a respondent intentionally made an academic or employment-related decision based on a protected characteristic that negatively impacted an individual’s employment or academic standing. Findings that a respondent engaged in discriminatory or harassing conduct after being disciplined for engaging in similar misconduct in the past, or in which there is other evidence that the employee cannot be rehabilitated.

Some cases with the above-described findings, but involving mitigating factors or less severe misconduct, may warrant a recommendation for lesser discipline. In all above-described

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3 In contrast, conduct that happened a long time ago, and has not since recurred, may warrant less severe discipline.

4 For example, conduct that occurred a long time ago, and has not recurred, as well as conduct that is the manifestation of a disability may, in certain circumstances, warrant lesser discipline.

5 Protected characteristics include: race, color, creed, religion, national origin, gender, age, marital status, familial status, disability, public assistance status, membership or activity in a local commission created for the purpose of dealing with discrimination, veteran status, sexual orientation, gender identity, or gender expression.
examples, a recommendation for termination from employment is particularly likely when a respondent occupies a position of power relative to the complainant.

**Examples of factual findings likely to warrant serious disciplinary action (e.g., a significant suspension from employment and other measures such as removal of title, pay reduction, inability to be considered for promotion for a defined time period, etc.).** Findings that a respondent in a position of power made an unwelcome romantic or sexual overture toward a subordinate and crossed other personal-professional boundaries. Findings of implicit quid pro quo harassment, in which a complainant reasonably feared that an academic or employment benefit would be conditioned on their engaging in or submitting to conduct that is sexual or otherwise based on a protected characteristic. Findings that a respondent engaged in a pattern of unwelcome and offensive comments that were targeted at an individual or group of individuals because of a protected characteristic. Findings that a respondent engaged in lower-level discriminatory or harassing conduct after being disciplined or coached for engaging in similar misconduct in the past.

Cases with these findings may alternately warrant a recommendation for termination from employment or lesser discipline, depending on the severity and context of the misconduct.

**Examples of factual findings likely to warrant moderate disciplinary action (e.g., a letter of discipline, a suspension from employment, etc.).** Findings that a respondent made one or more unwelcome and offensive comments related to a protected characteristic that were not targeted at an individual or a group of individuals. Findings that a respondent made multiple unwelcome sexual or romantic overtures toward a colleague, over whom they do not have positional power.

Cases with these findings may alternately warrant greater or lesser discipline, depending on the severity and context of the misconduct.

**Examples of factual findings likely to warrant rehabilitative, restorative and/or monitoring measures, but not disciplinary action.** Findings that a respondent made a good faith effort to make reasonable accommodations for disability, religion, pregnancy, or breastfeeding but ultimately failed to do so because of a lack of understanding of complex legal and policy requirements. Findings that several individuals engaged in offensive behavior based on a protected characteristic that did not rise to the level of a policy violation for any individual respondent but, when taken together, created a hostile work environment for the complainant in violation of the non-discrimination policies.

**II. Rehabilitative measures**

As appropriate, EOAA recommends rehabilitative measures for individuals who have engaged in sexual misconduct or discrimination. Rehabilitative measures are primarily designed to prevent those individuals from engaging in further misconduct. Rehabilitative measures can also have the additional benefit of fostering an organizational climate where community members perceive that sexual harassment and discrimination is not tolerated, and that reports of such behavior will be taken seriously.
Rehabilitative measures aim to help respondents learn foundational information about University policy, expectations and values, and develop the skills and self-awareness that they need to act accordingly. Ideally, such measures will follow research-based practices for effectiveness, including being delivered in-person, longer in duration, and repeated. Depending on the severity of the conduct at issue, as well as other contextual factors, EOAA may recommend the following rehabilitative measures:

- a written letter of expectations for the respondent’s future behavior and professional development;
- training about relevant University’s policies and procedures;
- training about basic equity and diversity topics;
- one-on-one coaching to promote self-reflection and behavior change;
- development of a professional development plan to promote learning, self-reflection, and behavior change;
- a formalized plan for peer mentorship and peer support for the respondent’s continued learning and growth; and/or
- changes to a respondent’s work duties or locations until the respondent has completed rehabilitation measures and demonstrated their capacity to resume work in a professional and acceptable manner.

III. Restorative measures

As appropriate, EOAA recommends restorative measures. Restorative measures are designed to address the harm caused to the complainant or community by the misconduct. Restorative measures related to the complainant may include recommendations that a unit or department leader: develop a plan to check in with the complainant, provide information about resources to the complainant, and implement accommodations, protective measures, or employment or academic modifications to allow the complainant to continue to make progress toward their employment or academic goals.

Restorative measures to address harm done to the community may include recommendations that a unit leader develop a plan to communicate about the case and the unit’s responsive action to some or all community members; remind community members about the unit’s behavioral expectations; and/or provide them with reporting and support resources. EOAA may also recommend townhall meetings, restorative justice practices or facilitated dialogues where appropriate to address harm and promote healing.

IV. Monitoring measures

As appropriate, EOAA recommends some or all of the following monitoring measures:

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6 Communications about discrimination or sexual misconduct matters must follow applicable privacy laws. The Office of the General Counsel can advise on the application of these laws.
monitoring of the respondent’s conduct to ensure that misconduct is not recurring;\(^7\)
- monitoring of the effectiveness of the support and accommodations provided to the parties;
- monitoring to ensure that retaliation is not occurring; and/or
- monitoring of the climate and culture of the community to ensure that community members perceive that sexual misconduct, discrimination, and retaliation will not be tolerated.

These monitoring measures are designed to ensure that the implemented disciplinary, rehabilitative and restorative measures are effective in: 1) holding the respondent accountable, 2) preventing further misconduct from occurring, 3) addressing the harm caused by the misconduct, and 4) fostering an organizational climate where community members perceive that harassment is not tolerated, that reports of harassment will be taken seriously, and that retaliation for reporting harassment is unlikely to occur.

\(^7\) Depending on the facts of the individual case, these monitoring measures may include reviewing course evaluations in the case of a faculty member respondent, conducting a 360 review of the respondent, checking in with individuals who work closely with the respondent at designated intervals, providing individuals who work closely with the respondent with resources for reporting concerns anonymously, conducting exit interviews for departing individuals who worked closely with the respondent, designating an authority to increase their physical presence in the respondent’s work area, requiring a respondent to hold meetings with their door open, etc.