

NORTHWESTERN STATE UNIVERSITY

Preventing and Addressing Retaliation

M-12 Preventing and Addressing Retaliation

Policy Number: M-(12)

University of Louisiana System

Title: PREVENTING AND ADDRESSING RETALIATION

Effective Date: March 28, 2014

Cancellation: December 3, 2010

Chapter: Miscellaneous

Policy and Procedures Memorandum

Northwestern State University of Louisiana is committed to maintaining an educational and workplace environment free of retaliation against persons who, in good faith, complain of discrimination and or harassment, or who assist or participate in the complaint process. Retaliation against an individual for making a good faith complaint of unlawful discrimination, harassment or other unlawful practice, or for using or participating in the complaint process, is a violation of System policy and is strictly prohibited.

The University shall adopt this policy and shall comply with its terms consistent with this and related UL System Memoranda, and in accordance with Federal and State laws and related guidelines of the Equal Opportunity Employment Commission. Campus policies adopted in compliance with this Memorandum shall be submitted to the System Office for review and approval. The UL System Office shall also comply with the terms of this policy with respect to employees of the UL System.

I. DEFINITIONS

- A. **Complaint**: Allegations of discrimination, harassment and or retaliation, filed in good faith and in accordance with established procedures.
- B. **Discrimination**: Inequitable treatment of an individual based on protected characteristics or status rather than individual merit.
- C. **Harassment**: Unwelcomed conduct directed against a person based on one or more of a person's protected characteristics or status which is so severe or pervasive that it creates an intimidating, hostile or offensive environment.
- D. **Protected Characteristic/Status**: race, color, gender, religion, sexual orientation, national origin, disability, genetic information, age, veteran status or retirement status.
- E. **Retaliation**: any adverse action taken against an individual who has complained about discrimination, harassment or other unlawful practice, or who may have participated in a court or administrative investigation, hearing or litigation relating to workplace conduct of discrimination or harassment by filing a charge or acting as a witness. This includes overt or covert acts of reprisal, interference, restraint, penalty, discrimination, intimidation, or harassment against an individual or group exercising rights under this policy. To establish a claim of retaliation, the individual need not be a

member of a protected group or class. Employees who assist others in raising a complaint of prohibited discrimination or harassment by offering advice and moral support, or by giving testimony or evidence in support of a complaint, are similarly protected. This protection exists even if the complaint is eventually dismissed or found to be lacking in merit.

II. PROTECTED CONDUCT AND ACTIVITIES

A. Protected individual conduct falls into three broad categories.

1. Individuals who take part in protected conduct or activities in their personal life are protected from retaliation for such protected activities.
2. Individuals who raise concerns in the workplace about harassment or discrimination based on protected status are protected from retaliation for such activities.
3. Individuals who cooperate in an investigation, proceeding or hearing regarding harassment, discrimination or retaliation involving protected activity are protected from retaliation.

B. Protected activity covers a wide spectrum of conduct. Generally, this involves taking some action that is permitted or protected by state and/or federal laws.

1. Some common retaliation claims arise in situations where an individual has:
 - a) initiated an internal complaint of discrimination or harassment;
 - b) filed a claim of discrimination;
 - c) requested an accommodation for a disability;
 - d) filed a worker's compensation claim following a work-related injury;
 - e) requested leave under the Family and Medical Leave Act;
 - f) filed a safety or environmental related complaint with state and/or federal oversight agencies;
 - g) filed a "whistleblower's" claim alleging that the employer engaged in fraud, corruption or other suspected wrongful activity.
2. Individuals may state their opposition to a specific practice or activity which they believe constitutes discrimination.
 - a) The person claiming retaliation does not necessarily need to be the person engaged in the opposition.

Example: an individual who alleges retaliation under the Age Discrimination in Employment Act of 1967 (ADEA) or any of the laws enforced by the EEOC, including, but not limited to Title VII and the Americans With Disabilities Act, as amended, does not have to allege that he was personally treated differently because of disability protected reason.

- b) Practices challenged in prior proceedings may give rise to a claim of retaliation.

Example: a violation would be found if it were determined that an applicant was not hired because he/she had filed discrimination charges against a former employer.

3. Individuals may participate in an investigation, proceeding, hearing or litigation without fear of retaliation.
 - a) Participation is protected regardless of whether the allegations in the original charges were valid or reasonable. So a violation of retaliation policy could be found whether or not the challenge is found to be unlawful.
 - b) Person claiming retaliation may not necessarily be the one who participated in the original complaint.

Example: it would be unlawful to retaliate against a spouse or relative of an employee who filed an EEOC charge.

III. ADVERSE ACTIONS

A. General Actions

The most obvious types of retaliation are denial of promotion, refusal to hire, denial of job benefits, demotion, suspension, and termination. Other actions include threats, reprimands, negative evaluations, salary reductions, and change in job assignments, unjustified evaluations or reports, acceleration of disciplinary action, sudden enforcement of previously unenforced policies, abolishing a position, or other harassing or hostile behavior or attitudes toward the complainant.

B. Actions affecting the terms, conditions or privileges of employment

Other adverse actions that may or may not be intentionally motivated but which result in negative treatment of an individual can also be considered retaliatory, such as exclusion from activities the employee may have participated in previously, denial of employment benefits, or changing the shift of a female employee who complains of sexual harassment by her supervisor. Such actions could be considered retaliatory, even if the employee expresses a preference regarding the new arrangement.

C. Post-Employment Actions

Actions that are designed to interfere with an individual's prospects for employment, such as negative job references and informing prospective employers of the individual's protected activity also constitutes retaliation. Negative job references based on a retaliatory motive may also constitute retaliation.

IV. ESTABLISHING AND INVESTIGATING COMPLAINTS

A. Evidence

1. Direct Evidence: In order to establish direct evidence of retaliation, there must be proof that the adverse action was taken as a result of a protected activity. Such evidence is any written or verbal statement by an official that he/she took actions against an individual for engaging in protected activity.

2. Circumstantial Evidence: A violation can also be established if there is circumstantial evidence of retaliation. Typically this link can be demonstrated if the adverse action took place shortly after the protected activity or if the entity undertaking the adverse action was aware of the individual's activity before taking the action.
3. Non-Retaliatory Reason: Retaliation can be established if the entity fails to provide evidence of a legitimate and non-retaliatory reason for the action. Common non-retaliatory reasons for adverse employment actions include poor job performance, inadequate qualifications for the position sought; and violation of work rules or insubordination.
4. Pretext to Motive: Even if an entity produces evidence of a legitimate reason for the adverse action, a violation can still be found if the reason is a pretext to hide actual motive. This can be proved through evidence that an individual was treated differently from similarly situated employees or subjected to heightened scrutiny after engaging in a protected activity.

B. Reporting and Investigation Process

Northwestern State University shall designate an EEO Coordinator/Officer. The responsibilities of the EEO Coordinator/Officer for Northwestern University includes receiving and investigating complaints of retaliation at the University.

The EEO Coordinator/Officer can serve in other capacities or roles within the University, but will report directly to the respective University President regarding all complaints of unlawful retaliation.

If a complaint of unlawful retaliation is against the EEO Coordinator/Officer, the complainant shall complain directly to the University President. Complaints of unlawful retaliation by the University President shall be made directly to the UL System EEO Coordinator/Officer whose name and contact information is:

Bruce Janet
Interim EEO Coordinator/Officer
UL System
Claiborne Building
1201 N. Third, Suite 7-300
Baton Rouge, LA 70802
225-342-6950

UL SYSTEM STAFF Employees/staff of the UL System should file complaints of unlawful retaliation directly with the Interim EEO Coordinator/Officer for the UL System. If a complaint of unlawful retaliation is against the EEO Coordinator/Officer, the complainant shall complain directly to the UL System Executive Vice President and Provost. Complaints of unlawful retaliation by the UL System Executive Vice President and Provost can be made directly to the UL System President. Complaints of unlawful retaliation by the UL System President can be made directly to the Chair of the UL System Board of Supervisors. In such situations, the complaint can be appealed to the UL System Board of

Supervisors Grievance Committee at the Level 2 stage of the complaint process (see below for more information).

Complaint Procedures – Complaints, whether informal or formal, should be reported as soon as possible after any alleged retaliation incident has occurred. There is no deadline or required timeframe within which unlawful

retaliation must be reported. However, a large proximity of time in between the alleged retaliation and the reporting may negatively affect the investigation.

Informal Complaint: A complaint of unlawful retaliation does not have to begin at the Informal Complaint stage. However, use of the Informal Complaint process may allow a matter to be resolved quickly if the complainant believes that the circumstances make the Informal Complaint process appropriate for a particular situation. Informal complaints should be made in writing within 10 business days of the date that the employee knew or had reason to know of the alleged retaliation. Although attempts will be made to address all complaints of harassment, discrimination, and retaliation, complaints that are made more than 30 calendar days after the complainant knew or should have known about the alleged conduct will be more difficult or impossible to investigate depending on the facts involved.

Informal complaints can be resolved through informal meetings (either separate or together) with the complainant and person engaging in the alleged conduct and informal information gathering. Supervisors and department heads, and other administrators may be involved in resolving an informal complaint. If the Complainant is not satisfied with the results of an informal complaint, a Level 1 Complaint can be filed to begin the Formal Complaint Process. The EEO Coordinator/Officer may document the resolution of an Informal Complaint.

Formal Complaint – Formal complaints of unlawful retaliation must be submitted in writing or will be reduced to writing on the form by the EEO Coordinator/Officer or designee on behalf of the Complainant.

Details concerning the incident(s) or conduct giving rise to the complaint; and

1. Dates and locations of incident(s); and
2. Any witnesses to the alleged incident(s) or conduct; and
3. Any previous actions of retaliation reported. If so, to whom and when; and
4. Action requested to resolve the complaint and prevent future violation of the policy.

A complaint shall not be dismissed for failure to include any or all of the above information. However, complaints with little or no substance will be difficult to investigate. As much substance as possible within the complaint will assist the EEO Coordinator in conducting the investigation.

Formal Complaint Process

Level 1 – Written complaints of retaliation should be submitted to the University's EEO Coordinator/Officer or (UL System EEO Coordinator/Officer for UL System employees) within 10 business days of the alleged incident if the complainant does not wish to use the informal complaint process. This is not a deadline that will prevent a claim of unlawful retaliation from being heard by the EEO Coordinator/Officer. However, complaints that are made more than 30 calendar days after the complainant knew or should have known about the alleged conduct will be more difficult or impossible to investigate depending on the facts involved. The EEO Coordinator/Officer will either conduct an investigation or authorize an investigation and will issue a written summary of the outcome of the investigation within a reasonable timeframe. A copy of the EEO Coordinator/Officer's written summary of the investigation will be accessible to both parties.

Level 2 – If either party to a complaint of unlawful retaliation wishes to appeal the Level

1 decision, an appeal of the written decision must be made in writing within 10 business days of the receipt of the Level 1 Complaint determination. The appeal should be sent to the Office of the President of the University who will forward the appeal to the University EEO Advisory Committee for a review and determination. UL System

Employees should appeal the decision of the EEO Coordinator/Officer to the UL System Executive Vice President and Provost who will issue a decision in collaboration with the UL System President and Chair of the UL System Board of Supervisors.

Equal Employment Opportunity (EEO) ADVISORY COMMITTEE

The University EEO Advisory Committee – Northwestern State University shall create an EEO Advisory Standing Committee composed of members of the faculty and staff from various departments. The EEO Committee should include individuals representing the interests of classified and unclassified staff and should reflect the diverse workforce on the campus. The EEO Committee for Northwestern State University will communicate regularly regarding issues related to policy implementation including University climate and systemic concerns. In addition to its other responsibilities, a sub- group of between three (3) to five (5) of the EEO Advisory Committee Members shall serve as the Level 2 appeal review committee for this Retaliation Complaint process.

Northwestern State University shall maintain a pool of trained investigators who are employees of the universities who have had formal training in investigation techniques, policies, and procedures for purposes of resolving administrative complaints and actions within the campus environment. Such individuals should have knowledge in interviewing, evidence collection, and report writing, and will be the primary individuals responsible for making initial inquiries of complainants and respondents in a variety of administrative proceedings.

Prior to the EEO Advisory Committee's review, a trained investigator appointed by the President of the University (or appointed by the UL System President in the case of the UL System) will:

1. Review and investigate the Level 1 complaint decision;
2. Collect and clarify additional available facts about the alleged incident;
3. Meet with the complainant and the accused individual, separately, if appropriate.

The trained investigator will provide a report to the EEO Advisory Committee. The EEO Advisory Committee will review the Level 1 decision and the appeal as well as the investigator's report, and will make a determination regarding the Level 1 decision and will provide detailed findings along with any recommendations for appropriate action to the President of the University for consideration. Recommendations may include: uphold the Level 1 decision in full or in part or render an alternative decision in full or in part. The President of the University will review the report submitted by the EEO Advisory Committee and, depending upon the nature and severity of the charge(s), the President may approve the recommended action or may recommend an alternate resolution.

The complainant and the accused individual will be notified of the decisions at each level. The complainant will also be notified of all elements of the decision that directly relate to the complainant, involve general campus wide changes, or are otherwise required by state or federal law. To the fullest extent practicable and consistent with a thorough investigation, all complaints will be kept confidential, considering the specific circumstances of the allegations, to protect the rights of both the complainant and the individual accused.

V. SANCTIONS

The merits of the complaint giving rise to the retaliation claim are irrelevant. As stated above, retaliation gives rise to a separate claim from the underlying complaint. Consequently, anyone violating the policy may be in violation of federal laws protecting retaliation for protected activity and this policy regarding retaliation even if the original complaint of discrimination or harassment is not proven, is dismissed or is withdrawn and held responsible for such conduct. The policy shall clarify that, following an investigation, if a faculty, student or staff member is found in violation of the policy, that individual may be subject to disciplinary actions, and the sanctions may include reprimand, probation, suspension, demotion, reassignment, termination, and expulsion. In the event that personnel action is determined necessary and appropriate with respect to the accused, the University should use its appropriate personnel policies after a determination regarding the allegations.

VI. TRAINING

The EEO Coordinator/Officer on each campus shall identify the human resources personnel as well as the managerial and supervisory personnel on each campus each year. These individuals shall be provided annual training by the EEO Coordinator/Officer or designee on the Anti-Retaliation Policy and shall have access to the EEO Coordinator/Officer to address any questions or concerns that arise with respect to this policy. The EEO Coordinators/Officers shall have access to and shall use the UL System EEO Coordinator/Officer as a resource as needed to ensure compliance with this policy.

The EEO Committee shall also receive training with respect to how to properly review and analyze complaints of retaliation as part of their annual EEO Training.

VII. ANNUAL REPORTING

The EEO Coordinator/Officer for each campus will provide an annual report to the UL System EEO Coordinator/Officer. Such report will include information such as instances of informal and formal complaints regarding retaliation as well as resolutions of such complaints. The report will also include information regarding any identified systemic concerns regarding unlawful retaliation such as identified areas within the campus such as employment areas or colleges as well as recommended solutions to ensure that unlawful retaliation does not continue within the University.

Policy References:

ULS PPM Prohibiting Workplace and Sexual Harassment, Discrimination and

Retaliation (M-11a)

U.S. Equal Employment Opportunity Commission