



## MEMORANDUM

To: All Students  
From: Bill Opava, Human Resources  
Date: January 21, 2021  
Re: Sexual and Other Unlawful Harassment Not Covered by Title IX Policy

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### **SEXUAL HARASSMENT NOT COVERED BY TITLE IX AND OTHER UNLAWFUL HARASSMENT POLICY**

Fisher College is committed to providing students with an environment that is free from sexual harassment as well as any other form of unlawful discriminatory harassment. Each individual has the right to work and study in a professional atmosphere that promotes equal opportunities and prohibits discriminatory practices, including sexual harassment and harassment or discrimination because of race, color, age, national origin, ancestry, religion, service in the armed forces, marital status, sexual orientation, civil union, domestic partnership status, gender identity and expression, criminal record (inquiries only), atypical hereditary cellular or blood traits, genetic information, handicap/disability, mental illness or any other legally protected characteristic. Such harassment or discrimination, whether verbal, physical or environmental, and whether in the College itself or in outside work-sponsored settings, is unacceptable and will not be tolerated. Moreover, Fisher College will not tolerate harassing conduct by its students directed at students or non-students with whom Fisher College has a business, service or professional relationship. This policy applies to all Fisher College students and students whether related to conduct engaged in by fellow students, supervisors, or someone not directly connected to Fisher College (e.g., harassing conduct by an outside vendor, consultant or third party directed at an employee of Fisher College).

Discrimination should be brought to the attention of the Human Resource Department or the Dean of Students, either directly or through a supervisor, or other mandatory reporter within Fisher College. The procedure for the College's investigation of any allegation of discrimination is set forth in this policy.

#### **What is Sexual Harassment Not Covered by Title IX?**

Sexual harassment is a form of discrimination and is prohibited by federal and state laws. Title IX of the Educational Acts of 1972 is a federal law prohibiting gender discrimination in education. Federal regulations define sexual harassment for purposes of Title IX. Those definitions and regulations are detailed in the College's Title IX Policy <https://www.fisher.edu/about/title-ix>. Allegations of sexual harassment in violation of Title IX will be addressed using the College's Title IX procedures (Process A), as set forth at <https://www.fisher.edu/about/title-ix>.

Massachusetts State law, federal employment law, and Fisher College policy define unlawful sexual harassment as stated below. This definition is broader than the Title IX definition. Allegations of sexual harassment not covered by Title IX will be addressed using the College's internal investigation process (Process B), found at <https://www.fisher.edu/about/title-ix>.

Sexual Harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- 1) submission to such conduct is made either an explicit or implicit condition of an individual's employment;
- 2) submission to or rejection of such conduct by an individual is used as the basis of employment decisions affecting such individual; or
- 3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

The legal definition of sexual harassment is broad and includes harassment by students or others (such as vendors or clients) in the workplace and at work sites. Sexual harassment can include harassment between individuals of the same sex, meaning it is unlawful for males to sexually harass females or other males, or for females to sexually harass males or other females. All students must avoid action or conduct which may be viewed as sexual harassment.

Beyond obvious examples such as where employment benefits are offered in exchange for sexual favors, it is not possible to list all of the circumstances that may constitute sexual harassment. Students must keep in mind that the issue of whether conduct constitutes harassment may depend on how that conduct is viewed by the employee or other person who is subjected to it. The following is a non-exhaustive list of examples of conduct which, depending upon the circumstances (including the severity and pervasiveness of the conduct), could constitute sexual harassment:

- Unwelcome sexual advances or acts - whether they involve physical touching or not;
- Sexual epithets, jokes, written or oral references to sexual conduct, comments about an individual's body;
- Displaying sexually suggestive objects, pictures, cartoons;
- Leering, whistling, brushing against the body, sexual gestures and suggestive or insulting comments;
- Sexually explicit voice mail, email, text or instant message (including but not limited to those messages sent to or received by outside parties such as vendors), facsimile, graphics, downloaded material or website; and
- Inquiries into one's sexual experiences or discussion or gossip about one's sexual activities, deficiencies or prowess.

### **What is Unlawful Harassment?**

In addition to prohibiting sexual harassment, Fisher College is equally committed to prohibiting other forms of unlawful harassment. Unlawful harassment refers to harassment on the basis of race, color, age, national origin, ancestry, religion, liability for service in the armed forces, marital status, sexual orientation, civil union, domestic partnership status, gender identity and expression, criminal record (inquiries only), atypical hereditary cellular or blood traits, genetic information, handicap/disability, mental illness or any other legally protected characteristic. Unlawful harassment consists of discriminatory behavior which is not welcomed by the employee, which is personally offensive to him or her, and which undermines morale and/or interferes with the ability of the employee to work effectively. It is not possible to list all of the circumstances that may constitute unlawful harassment. The following are examples of conduct which, depending upon the circumstances (including the severity and pervasiveness of the conduct), may constitute unlawful harassment:

- Comments, slurs, epithets, negative stereotyping, jokes, teasing or verbal abuse directed at a person or persons because of his/her/their protected class status;
- Posting or distributing through any means, including through the use of electronic communications (e.g., email, instant messaging, text messaging, the Internet, voice mail or facsimile), messages, objects, pictures, cartoons or other materials that are degrading or offensive to a protected class;
- Threats, whether explicit or implicit, directed at a person or persons because of his/her/their protected class status;
- Continually treating students in a protected class differently from others, such as singling students out for harsh treatment because of a protected characteristic; and
- Taking adverse employment actions (including disciplinary warning, demotions, job assignments and termination) based upon a person's protected class status.

It is important to note that while this policy sets forth our goal of promoting an environment that is free of unlawful harassment, it is not designed or intended to limit the College's authority to take disciplinary action, up to and including termination, for conduct which Fisher College deems unacceptable, regardless of whether that conduct violates this policy or rises to the level of unlawful harassment.

### **Reporting Sexual Harassment or Other Unlawful Harassment**

Fisher College strongly encourages the reporting of all perceived incidents of sexual harassment or other types of unlawful discrimination or harassment, regardless of who the alleged offender may be. Individuals who believe that they may have been the victim of sexual or other unlawful harassment or discrimination or believe they have witnessed sexual or other unlawful harassment or discrimination should discuss their concerns with the Human Resource Department, the Title IX Coordinator, or Dean of Students.

### **Reporting Procedure**

1. As noted above, individuals who believe they have been the victim of sexual or other unlawful harassment or discrimination or believe they have witnessed sexual or other unlawful harassment or discrimination should promptly report their concerns to the Title IX Coordinator, or the Dean of Students. Fisher College encourages students who believe they are being harassed to promptly advise the alleged offender that his or her behavior is unwelcome, provided the student is comfortable in doing this. However, Fisher College also recognizes that it is not necessary for an individual to talk to an offender if this is uncomfortable -- students are not required to confront an alleged harasser. Even if the student is comfortable in telling the alleged harasser that his/her behavior is unwelcome, that student is still strongly encouraged to bring the situation to the attention of the Title IX Coordinator or Dean of Students as soon as possible.
2. Prompt reporting of incidents is important so that action may be taken. Therefore, students are required to report any inappropriate incidents immediately after they occur (within 48 hours after the alleged harassment or discrimination occurs if possible).
3. Fisher College will perform a prompt, fair and expeditious investigation of all complaints of unlawful harassment and discrimination. The investigation may include interviews with the parties involved and, where necessary, with individuals who may have observed the alleged conduct or may have relevant knowledge. Any reported allegations will be handled in a sensitive and discreet manner. Failure to promptly report allegations of unlawful harassment or discrimination may impede the College's ability to ensure that appropriate remedial measures are instituted.
5. Confidentiality will be maintained throughout the investigatory process to the extent practicable and appropriate under the circumstances to protect the privacy of the persons involved.
6. Retaliation -- whether against an individual who makes a report of alleged harassment or discrimination or against an individual who assists in providing information relevant to such a claim -- is a

serious violation of Fisher College policy. Fisher College will not tolerate acts of retaliation (including retaliatory harassment, intimidation, threats, coercion, discrimination, or other adverse employment decisions described above) taken because an employee has filed a complaint; assisted or participated in an investigation or hearing related to the administration of any federal or state law requiring equal employment opportunity; opposed any act or practice made unlawful by any federal or state law requiring equal employment opportunity; or exercised any other right protected by any federal or state law requiring equal employment opportunity. Any such retaliatory acts should promptly be reported to the Human Resource Department. Such reports will be investigated and handled expeditiously and appropriately.

7. Conduct in violation of this policy or constituting sexual or other unlawful harassment or discrimination or retaliation will be dealt with appropriately. If Fisher College determines that conduct in violation of this policy of prohibited harassment or discrimination or retaliation has occurred, it will take appropriate responsive action against a person found to have engaged in such conduct. Responsive action may include sensitivity training, referral to counseling, and disciplinary actions such as warnings, reprimands, withholding of promotions, withholding of pay increases, reassignment, temporary suspension without pay or termination, depending upon the gravity of the offense, the work record of the individuals involved, and any other factors presented in the particular circumstances. In the event that the investigation should prove inconclusive, responsive action may include sensitivity training or counseling. In no event will retaliatory action be taken or tolerated.

8. An individual who engages in unlawful harassment, including sexual harassment, may be personally liable for such actions and their consequences.

Fisher College has developed this policy to ensure that all its students can work in an environment free from all forms of discrimination, including sexual and other unlawful harassment. Fisher College will make every reasonable effort to ensure that its entire population is familiar with the policy and is aware that any complaint received will be investigated and resolved appropriately.

Any employee who has any questions or concerns about this policy should talk with the Human Resource Department.

### **State and Federal Remedies**

In addition to the above, if you believe you have been subjected to sexual or other unlawful harassment, you may file a formal complaint with either or both of the government agencies set forth below. Using our complaint process does not prohibit you from filing a complaint with these agencies.

1. The United States Equal Employment Opportunity Commission (“EEOC”), John F. Kennedy Federal Building, 475 Government Center, Boston, MA 02203, 1-800-669-4000

2. The Massachusetts Commission Against Discrimination (“MCAD”), One Ashburton Place Sixth Floor, Room 601, Boston, MA 02108, 617-994-6000