Purpose of the Training

• Discuss the laws that prohibit discrimination and harassment in the educational work environment

• Discuss Florida Gulf Coast University's prohibition against discrimination or harassment

• Identify action/steps to be taken if you believe that discrimination or harassment is occurring against you or others
Applicable Federal Laws that Prohibit Discrimination and Harassment in the Workplace

• **Title VII of the Federal Civil Rights Act of 1964** protects an individual from employment discrimination and/or harassment on the basis of race, color, religion, sex, or national origin.

• **The Americans with Disabilities Act of 1990** protects an individual from discrimination or harassment based on the individual’s disability status.

• **The Age Discrimination in Employment Act of 1967** protects people who are 40 or older from discrimination because of their age.
Types of Discrimination

• **Different Treatment**
  • Not hiring an individual based on a protected class
  • Not promoting an individual based on a protected class
  • Not offering priority work assignments to an individual based on a protected class

• **Disparate Impact**
  • A facially neutral policy, procedure or practice has a disproportionate negative effect on a protected class.
  • There does not have to be a discriminatory motive in order for there to be a disparate impact on a protected class of individuals.
Types of Harassment

Quid Pro Quo- “this for that”

• Typically occurs when a job benefit is directly tied to an employee submitting to unwelcome sexual advances, favors, comments.

• Often (but not always) happens when two people are at different hierarchical levels within an organization.

• Quid pro quo harassment also occurs when an employee makes an evaluative decision, or provides or withholds professional opportunities based on another employee's submission to verbal, nonverbal or physical conduct of a sexual nature.
Types of Harassment

Hostile Working Environment

• Unwanted conduct that is sufficiently severe, persistent, or pervasive that it eliminates, denies, or limits an employee’s ability to perform their job and/or receive the benefits, services, or opportunities afforded to them by FGCU.

• Please Note: A person does not have to be the target of the harassment in order to file a complaint of harassment. The conduct could constitute harassment if it is:
  • unwanted,
  • based on a protected class (race, color, religion, etc.), and
  • limiting or diminishing an employee’s participation in the benefits of an educational program.

• When determining whether a hostile work environment exist, the OIEC will use the reasonable person standard as a part of its investigative analysis.
The Reasonable Person Standard

• A “reasonable person” standard is used in evaluating whether conduct is sufficiently severe, persistent or pervasive to create a hostile environment based on a protected class.

• Under the “reasonable person” standard the alleged conduct will be viewed not only from the standpoint of the Complainant but also from the standpoint of how a “reasonable person” would feel given the same set of circumstances.

• In addition to looking at the “reasonable person” standard, the OIEC will also take a number of other factors into account.
Factors to Consider When Applying Severe, Persistent, or Pervasive Standard (Reasonableness)

- Context
- Nature (e.g. verbal or physical)
- Scope
- Frequency
- Duration
- Identity, number, and relationships of persons involved

- Particularized characteristics
- Generally, the more severe the conduct, the less need to show repeated incidents
- Alleged results of bad behavior
Deny or Limit

• There will also be a determination regarding whether the alleged conduct did (or could) deny or limit the employee’s participation in any activity associated with FGCU.

• **Examples of not being able to fully participate may include:**
  
  • An employee fails to meet performance goals due to the conduct;
  
  • An employee feeling forced to withdraw from or not become involved in an activity, program, or department or does so reluctantly; and/or
  
  • An employee continues to participate in programs and activities but does so with great difficulty, embarrassment or apprehension/frustration because of the unwanted behavior.
Who Can Be Discriminated against or Harassed?

• All ages, races and ethnicities
• All genders
• People who are perceived to be of a particular race, sex or disability status

Who Can Be the Discriminator or Harasser?

• Supervisor, an agent of the employer, a supervisor in another department
• Co-worker or Student
• Third party external to the University
Title VII of the Civil Rights Act
Title VII of the Civil Rights Act

- Title VII prohibits discrimination on the basis of race, color, religion, sex, or national origin.

- Prohibits unequal/discriminatory treatment of similarly situated groups or individuals.

- It is important to note that not all unequal treatment is prohibited.

- To be a violation of Title VII and/or FGCU’s nondiscrimination Policy, the discrimination must affect a term, condition, or opportunity of employment based on membership in a protected category.

- The University’s Non-Discrimination Policy goes further and adds gender identity/expression, marital status, sexual orientation, veteran status or genetic predisposition.
Examples of Prohibited Conduct:

• Failing to hire/promote an individual based on a protected class
• Assigning an employee to a particular job assignment because of a protected class.
• Providing inadequate work resources based on a protected class.
• Retaliating against an individual that files a complaint.
Scenario 1

James was in the break room talking to another faculty member, David. James mentions that he recently went on vacation to the Bahamas. James tells David that he did not feel comfortable on the plane because there were certain people on it and goes on to whisper “Muslims” under his breath. James suddenly realizes that this his comment is offensive to David as David is Muslim. To fix the awkwardness James tells David, “I did not mean any harm. You’re one of the good ones”.
Scenario 1 Response

• Race, color, religion, nation origin, or sex?

• Stereotypes?

• “you're one of the good ones”
Scenario 2

Sarah, a current faculty member recently applied for a new opening in her department. Another faculty member, Sammie, applied for the same position. Sarah and Sammie were both interviewed for the position, but Sammie was the one that was offered the position because she had more experience than Sarah. Sarah was very upset when she found out that Sammie was offered the position. Sarah told everyone in their department that Sammie was offered the position because she is Native American and that they had to give it to her because of Affirmative Action.
Scenario 2 Response

• Race, religion, color, national origin, or sex?“
• Offensive?
The Americans with Disabilities Act of 1990 as Amended
The Americans with Disabilities Act of 1990

An Individual with a Disability is:

• A person with a physical or mental impairment that “substantially limits” a “major life activity”; or

• An individual with a record of such impairment; or

• An individual who is “regarded as” having such an impairment.

• The ADA protects against discrimination and/or harassment based on disability including, not hiring a qualified individual with a disability because of their disability status.

• Requires employers to provide employees’ with disabilities reasonable accommodations.
What is a Reasonable Accommodation?

◦ A reasonable accommodation is any modification or adjustment to a job or work environment that will enable a qualified applicant or employee with a disability to participate in the application process or to perform essential job functions.

◦ A qualified individual with a disability is a person who, with or without reasonable modifications to rules, policies, or practices or the provision of auxiliary aids and services, meets the essential eligibility requirements of a particular position.

◦ Reasonable accommodations can include modifications or adjustments to work schedules, special computers, special computer software, etc. that enable employees with disabilities to perform the essential functions of their job.

◦ Determining whether an accommodation is or not reasonable in a particular case involves an analysis of the facts of the specific situation, including the cost of the accommodation and the employer’s ability to pay for it.
The Americans with Disabilities Act of 1990

To request a reasonable accommodation under ADA, an employee of FGCU should:

- Submit a written request outlining the requested accommodation(s) to the Office of Adaptive Services (OAS).

- Attach documentation to the written request, including diagnosis of a disability from the employee’s primary health care practitioner.

- The Director of the OAS or her designee will engage in an interactive process with the employee in order to determine what accommodation(s) can be provided and how to best implement the accommodation(s).

- The Director of OAS shall determine the appropriateness of the reasonable accommodation to the employee via memorandum.
Scenario 3

Jamal an Administrative Assistant in the Diversity Office, asks his Supervisor, Bradley, to order a special keyboard and computer screen for his office because he is legally blind in one eye and can barely see the keys on his current keyboard. Bradley reviews the budget for their department and determines that they cannot afford to purchase the keyboard and screen that Jamal needs. A couple of weeks pass by and Jamal inquires on the status of his request. Bradley informs Jamal that they cannot afford to purchase the items and that Jamal would need to purchase them himself or quit.
Scenario 3

• Does Jamal’s request fall under The Americans with Disabilities Act?

• What Process should Jamal have followed?

• What should Bradley have done upon receiving Jamal’s request?
The Age Discrimination in Employment Act of 1967
The Age Discrimination in Employment Act of 1967

• Protects people who are 40 or older from employment discrimination because of their age.

• Applies to both employees and job applicants.

• Age of employee cannot be considered in determining layoffs, promotions, etc.

• The University's Non-Discrimination Policy covers all individuals (regardless of age).
Recap

• Title VII of the Federal Civil Rights Act of 1964 protects an individual from employment discrimination and/or on the basis of race, color, religion, sex, or national origin.
  • Different Treatment
  • Disparate Impact
  • Prohibits Retaliation

• The Americans with Disabilities Act of 1990 protects an individual from discrimination or harassment based on the individual’s disability status.
  • Requires an employee to provide reasonable accommodations
  • Accommodations process at FGCU
  • Law requires “reasonable accommodations” not any accommodation
  • Prohibits discrimination based on disability or perceived disability status

• The Age Discrimination in Employment Act of 1967 protects people who are 40 or older from discrimination because of their age.
  • Prohibits discrimination based on age
  • Protects against retaliation
  • In Florida, the state law (also applicable to FGCU) does not require a person filing employment discrimination based on age to be over the age of 40 nor does FGCU’s Non-Discrimination Policy
What to do if you believe you are being discriminated against or harassed?

• Report the discrimination and/or harassment to the University’s OIEC

• Identify all incidents of discrimination harassment and explain how they have affected you.

• If possible maintain good documentation of each alleged incident of discrimination and/or harassment

• If you have taken steps to address the issue yourself, please communicate that as well.
How will FGCU Respond to Discrimination and/or Harassment?

• FGCU will take immediate and appropriate action to investigate or otherwise determine what happened.

• Inquiry will be prompt, thorough, and impartial.

• If discrimination or harassment is discovered, the University will take steps, reasonably calculated, to:
  • End the harassment
  • Eliminate any hostile working environment
  • Prevent harassment from recurring
  • Remedy the effects of harassment
  • Prevent retaliation against the target or complainant
Any questions can be addressed to:

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Questions can also be mailed to the OIEC mailbox at OIEC@fgcu.edu