

January 6, 2005

MEMORANDUM

TO: CSU Presidents

FROM: Charles B. Reed
Chancellor

SUBJECT: Systemwide Policy Prohibiting Harassment in Employment and Retaliation for Reporting Harassment or Participation in a Harassment Investigation - Executive Order No. 927

In response to recent legal and legislative developments in the area of anti-harassment laws, the attached Executive Order 927 replaces Executive Order 345. Executive Order 927 broadens the scope of what was once the CSU's sexual harassment policy to one that prohibits unlawful harassment based on any statutory category protected by the Fair Employment and Housing Act.

Consistent with the Fair Employment and Housing Act, Executive Order 927 protects employees, applicants, and independent contractors from unlawful harassment. The prohibition against harassment of students is established by each campus and is not covered by this systemwide policy.

Executive Order 927 reemphasizes the importance of training the CSU community on anti-harassment and anti-retaliation policies and procedures in order to prevent and correct harassment.

If you have questions regarding this executive order, please call Employee Relations at (562) 951-4425.

In accordance with CSU policy, the campus president has the responsibility for implementing Executive Order 927 and for maintaining the campus repository and index for all executive orders.

CBR/eb

Attachment

Distribution: Executive Staff, Office of the Chancellor
Associate Vice Presidents, Faculty Affairs
Human Resources Directors
Equal Employment Opportunity Directors

**THE CALIFORNIA STATE UNIVERSITY
Office of the Chancellor
401 Golden Shore
Long Beach, California 90802-4210
(562) 951-4747**

Executive Order: 927

Title: Systemwide Policy Prohibiting Harassment in Employment and Retaliation for Reporting Harassment or Participation in a Harassment Investigation

Effective Date: January 6, 2005

Supersedes: Executive Order No. 345

This executive order is issued pursuant to authority granted by Sections I and II of the July 14, 2004 Standing Orders of the Board of Trustees of the California State University. This executive order applies to all California State University campuses and the Office of the Chancellor.

A. Policy

The California State University (CSU) is committed to maintaining a work environment where every employee, applicant, and independent contractor is treated with dignity and respect. CSU will not tolerate unlawful harassment based on race, color, religion, national origin, ancestry, age, sex, sexual orientation, marital status, veteran status (as defined by the Vietnam-Era Veterans' Readjustment Assistance Act of 1974, as amended), physical disability, mental disability, or medical condition.

Individuals covered within the scope of this executive order who believe they have been subjected to harassment should promptly report it to the campus administrators designated to receive harassment complaints.

CSU will respond to all harassment complaints brought to its attention in a timely and appropriate manner. If the complaints have merit, CSU will promptly take actions to prevent recurrence and remedy the effects of the harassment. Persons who engage in harassment may be subject to discipline up to and including discharge. In determining whether the conduct at issue violates this policy, the totality of the circumstances shall be considered.

To prevent harassment, it is critical that individuals not be deterred from reporting it. CSU will not retaliate, nor will it tolerate retaliation.

B. Application

This systemwide policy prohibits: 1) harassment of any employee, applicant, or independent contractor; and 2) retaliation against such an individual for reporting conduct the individual reasonably and in good faith believes is harassment or participating in any investigation of harassment

C. Definitions

Harassment

Harassment occurs when unwelcome conduct is engaged in because of a protected status of an individual, which include race, color, religion, national origin, ancestry, age, sex, sexual orientation, marital status, veteran status, physical disability, mental disability, or medical condition, and:

1. Submission to such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment;
2. Submission to or rejection of such conduct by an individual is used as the basis or threatened to be used as the basis for employment or assessments affecting an individual; or
3. Such conduct is so severe or pervasive that its effect, whether or not intended, is a work environment that could be considered by a reasonable person in the shoes of the individual, and is in fact considered by the individual, as intimidating, hostile or offensive.

Harassment can be written (in print or electronically), verbal, visual, or physical. Examples of harassment include:

- Written communications, such as sending inappropriate jokes or comments in print or by e-mail;
- Verbal communications, such as making graphic or degrading comments about an individual and/or his or her body or personal characteristics, or using epithets, derogatory comments or slurs;
- Physical acts, such as unwanted touching, physical interference, or even assault;
- Visual acts or displays, such as derogatory cartoons, drawings, or posters, or inappropriate gestures.
- Making unwelcome sexual advances or propositions, or offering employment benefits or giving preferential treatment in exchange for sexual favors;
- Making or threatening reprisals after a negative response to unwelcome conduct

"Sex" includes, but is not limited to: the victim's actual sex; the harasser's perception of the victim's sex; the harasser's perception of the victim's identity, appearance, or behavior, whether or not that identity, appearance, or behavior is different from that traditionally associated with victim's sex at birth; and pregnancy; childbirth; or medical conditions related to pregnancy or childbirth.

Sexual harassment is prohibited whether perpetrated by a CSU employee or a non-employee. Where the CSU employee who engages in unlawful sexual harassment is a supervisor or manager, the conduct is especially invidious. Sexual harassment may be perpetrated by someone who is of the same sex as the victim. The person who complains of sexual harassment may be the victim toward whom the harassing conduct was directed or a third

party who witnessed the harassing conduct.

Employee

"Employee" includes any full- or part-time CSU employee, whether permanent, tenured, probationary, temporary, intermittent, casual employment, or Management Personnel Plan employee.

Applicant

"Applicant" refers to an individual who has completed the application process for a specific, available position at a CSU campus or at the Chancellor's Office.

Independent Contractor

"Independent contractor" refers to "a person providing services pursuant to a contract." As defined by the Fair Employment and Housing Act, "a person providing services pursuant to a contract" is a person who meets all of the following criteria:

- The person has the right to control the performance of the contract for services and discretion as to the manner of performance.
- The person is customarily engaged in an independently established business.
- The person has control over the time and place the work is performed, supplies the tools and instruments used in the work, and performs work that requires a particular skill not ordinarily used in the course of the employer's work.

Disability

A person with a "disability" is a person who:

- Has a physical or mental impairment which limits one or more major life activities; or
- Has a record of such an impairment; or
- Is regarded as having such an impairment.

Medical Condition

Medical condition" means:

- A health impairment related to a diagnosis of cancer or a record or history of cancer; or
- A genetic characteristic that is known to cause a disease or disorder, or to statistically increase the risk of developing a disease or disorder, but currently is not manifested in any symptoms of the disease or disorder.

D. Policy Implementation

The chancellor and the presidents, or their designees, shall be responsible for implementing this systemwide policy at each campus. This includes, but is not limited to, publicizing the policy, conducting training, and establishing an administrative structure consistent with this executive order that facilitates the prevention and elimination of unlawful harassment.

Training & Internal Communication

To prevent harassment and encourage the reporting of harassment, training shall be provided by each campus to all employees upon their initial arrival at the campus. Such training shall explain, but not be limited to: what constitutes harassment under applicable law; the rights and responsibilities of each individual relating to workplace harassment; the protection against retaliation for individuals who report harassment or participate in an investigation; the internal complaint procedures for filing, investigating and resolving a harassment complaint; and the option and method for filing a harassment complaint with external government agencies such as the Department of Fair Employment and Housing (DFEH) and the Equal Employment Opportunity Commission (EEOC). After training has been given to employees upon their first arrival at the campus, training shall be provided, when necessary, to refresh and update

employees' knowledge of harassment and retaliation laws.

Recent amendments to FEHA include additional training requirements for supervisory employees, who generally must receive at least two hours of interactive sexual harassment training within six months of assignment to a supervisory position, and continued training every two years.

Each campus should ensure that the requisite training is provided and maintain documentation of the provided training.

Each campus shall distribute a copy of the following documents to all employees upon their first arrival at the campus. It is recommended that this information be made accessible for reference to current employees annually.

- The DFEH pamphlet "Discrimination and Harassment in Employment are Prohibited by Law" [DFEH-162 (04/04)];
- This executive order, or a superseding document, if applicable;
- Executive Order 883, or a superseding document, if applicable; and
- Executive Order 675, or a superseding document, if applicable.

Each campus shall obtain the poster on discrimination in employment from the DFEH, or create an equivalent document, and shall post such poster/document in prominent and accessible locations on campus.

The chancellor and the presidents, or their designees, shall designate the individuals responsible for receiving and investigating complaints of harassment on their respective campuses. Once selected, each campus shall publicize the job titles, phone numbers and addresses of these individuals. Their job titles, rather than names, should be publicized so as to eliminate confusion when there is a staffing change. Training shall be provided to these individuals, as needed, to update their knowledge and skills.

Complaint Processing

Complaints of harassment are processed in the same manner as complaints of discrimination. The type of internal complaint procedure that is available to each person for filing a discrimination complaint will vary depending upon two factors: (1) the employment status of the person, and (2) the applicable collective bargaining agreement. To direct a person who has a harassment complaint to the appropriate complaint procedure, the campus should first determine whether the person is an employee, applicant, or independent contractor. If the person is an employee, the campus should next determine if the employee is covered by a collective bargaining agreement.

Employees Covered by a CBA

Employees who are covered by a collective bargaining agreement that provides a procedure for filing discrimination or harassment complaints shall be directed to the relevant provision in the respective labor contract.

Where the collective bargaining agreement does not provide a procedure for filing discrimination or harassment complaints or, where the collective bargaining agreement does not provide for the type of discrimination or harassment claim the employee articulates (e.g., co-worker harassment), the employee shall be directed to Executive Order 675, or a superseding executive order, if applicable.

Employees Not Covered by CBA

Employees who do not belong to a collective bargaining unit (e.g., MPP and Confidential) shall be directed to utilize Executive Order 675, or a superseding executive order, if applicable.

Applicants & Independent Contractors

There is currently no systemwide discrimination or harassment complaint procedure for applicants or independent contractors. Yet, their harassment complaints must be investigated and appropriate actions taken pursuant to this executive order and in accordance with state and federal nondiscrimination laws. Consequently, each campus shall provide for these investigations by having in place a complaint procedure to handle harassment complaints from

applicants and independent contractors. Such a procedure shall designate several persons to whom a report of harassment can be made.

Charles B. Reed
Chancellor

Dated: January 6, 2005