

# FLORIDA GULF COAST UNIVERSITY

## NOTICE OF REGULATORY ACTION

DECEMBER 9, 2009

**REGULATION TITLE:**

Non-Discrimination and Anti-Harassment Regulation

**REGULATION NO.:**

FGCU-PR1.003

**SUMMARY:**

This Non-Discrimination and Anti-Harassment Regulation is being updated to clarify and reaffirm the University's commitment to non-discrimination and anti-harassment. The above-referenced Regulation was most recently revised in January 2009. The currently proposed revisions are meant to further clarify the rights and obligations of employees under this Regulation.

**FULL TEXT:**

The full text of the regulation being proposed is attached and can also be found at <http://www.fgcu.edu/generalcounsel/promulgation.asp>

**LAW IMPLEMENTED:**

§760.10 Florida Statutes

**UNIVERSITY OFFICIAL INITIATING THE PROPOSED REVISED REGULATION:**

Cheryl Seals-Gonzalez, Director Institutional Equity and Compliance

**UNIVERSITY OFFICIAL APPROVING THE PROPOSED REGULATION:**

Wilson G. Bradshaw, President

**PERSON TO BE CONTACTED REGARDING THE PROPOSED NEW REGULATION:**

Diane St. John, Administrative Assistant, [dstjohn@fgcu.edu](mailto:dstjohn@fgcu.edu); (239) 590-1101 (Phone), (239) 590-7470 (Facsimile); 10501 FGCU Blvd. South, Fort Myers, FL 33965-6565

**ANY COMMENTS REGARDING THE PROPOSED NEW REGULATION SHOULD BE SUBMITTED IN WRITING ON OR BEFORE DECEMBER 23, 2009 BY 5:00 P.M. THE COMMENTS MUST IDENTIFY THE REGULATION ON WHICH YOU ARE COMMENTING.**

**THIS NOTICE WAS POSTED ON THE FGCU WEBSITE ON: DECEMBER 9, 2009.**



## REGULATION: FGCU-PR1.003

Effective Date of  
Regulation:

### Non-Discrimination and Anti-Harassment Regulation

*January 20, 2009*

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(1) General Statement:

(a) Affirmation. Florida Gulf Coast University (FGCU) affirms its commitment to ensure that each member of the University community shall be permitted to work, study, participate in educational programs including those receiving federal funding, services and activities, or conduct business in an environment free from any form of illegal discrimination, including race, color, religion, age, disability (or handicap), sex, national origin, marital status, sexual orientation and veteran status, except as otherwise permitted by law. Admission to, and participation in, the educational programs and activities of FGCU shall be open to all qualified individuals regardless of race, color, religion, disability (or handicap), sex, national origin, marital status, sexual orientation or veteran status. The University strives to foster a community in which diversity and inclusion are valued and opportunity is realized. This Regulation creates a mechanism of procedures for applicants, students, employees, volunteers, visitors as well as vendors and contractors of the University community to file a complaint of alleged discrimination or harassment, to include sexual harassment.

(b) Violation. It shall be a violation of this Regulation for any officer, university employee, student, visitor, agent, vendor, or contractor to discriminate against or harass, as hereinafter defined, any other officer, university employee, student, visitor, agent, vendor, contractor or applicant ~~for employment or admission~~. Discrimination and harassment are forms of conduct which shall result in employee disciplinary action pursuant to University Regulations, and the terms of any applicable collective bargaining agreement. University vendors and contractors found to have violated this Regulation will receive sanctions or other punitive actions consistent with law and/or contract.

(2) Coverage:

(a) Parties. All complaints of discrimination or harassment, as unless otherwise provided herein, shall be adjudicated under this regulation. Complaints between students, or where one student (the Respondent) is a student and not employed by the University, shall be reported to the Office of the Vice President efor Student Affairs and adjudicated under the Student Code of Conduct. Students who are also employees may be subject to University disciplinary action as well as disciplinary action under the Student Code of Conduct.

(b) Scope of prohibitions. This Regulation covers all employment practices, as well as educational, athletic, cultural and social programs, services and activities occurring at or sponsored by, FGCU.

(3) Reporting: If the university becomes aware of activity which could be violative of this Regulation, it will take necessary actions, which may include an investigation, even when a complaint has not been filed. While all members of the university are expected to promptly report known activity which could violate this Regulation, only those in supervisory or managerial personnel may be subject to disciplinary action pursuant to FGCU PR5.016 should they know of such activity and fail to report. Complaints will be promptly investigated, consistent with the University's Complaint Policy and Procedure ~~Policy~~. The Office of Institutional Equity and Compliance (OIEC) will be responsible for the investigation of Complaints covered under this Regulation.

(a) Responsibility of supervisors and managers: All supervisors and managers are encouraged to take steps necessary to prevent discrimination or harassment based on a protected class from occurring. They should clearly communicate to employees that such behavior will not be tolerated and that periodic training on these topics should be attended. Whenever an employee, student, or non-employee files a complaint, immediate and appropriate action is advisable. Any University supervisory or managerial employee who receives a report, observes or learns of an alleged violation of this Regulation has an absolute and unqualified duty to immediately report the alleged violation to the OIEC Director in a timely manner.

(b) Responsibility of alleged victim: The person deeming any action or conduct as unwelcome is encouraged to so advise the offending party and inform him or her that it must stop. However, the alleged victim is not required to inform an alleged offender of the offensiveness of the behavior in order to make a claim under this Regulation. The University's Complaint Policy and Procedure ~~Policy~~ should be used to address any concerns or issues.

(c) Responsibility of employees involving conflicts of interest: Employees in a position of authority must resolve any actual or potential conflict of interest by taking necessary steps, including removing himself or herself from evaluative decisions concerning the other individual. If the employee in authority is unable to resolve the conflict of interest, he or she is required to inform his/her immediate supervisor promptly. Failure to resolve potential or actual conflicts of interest as described in this regulation ~~shall~~may result in disciplinary action pursuant to University regulations.

(4) Definitions:

(a) Discrimination. For the purposes of this ~~R~~Regulation, discrimination is defined as the intentional or unintentional treatment of any member of the University community differently than those who are similarly situated, or any unfair treatment

solely based upon race, color, religion, age, disability (or handicap), sex, national origin, marital status, sexual orientation and/or veteran status.

(b) Harassment. For the purposes of this regulation, harassment, a form of discrimination, is unwelcome conduct that is based upon race, color, religion, age, disability (or handicap), sex, national origin, marital status, sexual orientation and/or veteran status. ~~Harassment occurs when: (1) enduring the offensive conduct becomes a condition of continued employment or educational participation, or (2) the conduct is severe or pervasive enough to create a work or educational environment that a reasonable person would consider intimidating, hostile, or abusive.~~

(c) Sexual Harassment. ~~For the purposes of this Regulation, s~~Sexual harassment is defined as unwelcome sexual attention, to included requests for sexual contact, and other verbal or physical conduct of a sexual nature from any person. when:

~~1. Submission to such conduct is either explicitly or implicitly a term or condition of an individual's hire or employment, salary increase, position advancement or other employment-related benefits as well as a student's educational experience;~~

~~2. Submission to or rejection of such conduct by an individual is used as the basis for employment or education-related decisions affecting such individuals; or~~

~~3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating or hostile working or educational environment.~~

(d) Conflict of Interest. When an individual evaluates or supervises another individual with whom he or she has, or desires to have, an amorous or sexual relationship, a conflict is created. ~~The University discourages such amorous or sexual relations between employees and students.~~ Such relationships, even when consensual, may be exploitive, and jeopardize the integrity of the educational process or work environment and may lead to charges of sexual harassment. The University requires the resolution of any conflict of interest created by these relationships. See Section 3(c). ~~The employee in a position of authority must resolve any actual or potential conflict of interest by taking necessary steps, including removing himself or herself from evaluative decisions concerning the other individual. If the employee in authority is unable to resolve the conflict of interest, he or she is required to inform his/her immediate supervisor promptly. Failure to resolve potential or actual conflicts of interest as described in this regulation shall result in disciplinary action pursuant to University regulations.~~

(e) Complainant. A Complainant is a person or persons alleging a violation under this Regulation.

(f) Respondent. A Respondent is a person or persons whose conduct is the subject of ~~concern~~ a complaint under this Regulation.

(g) Frivolous Complaint. A frivolous complaint is one that is trivial, superficial, senseless or groundless and brought in bad faith.

(5) Retaliation: Retaliation occurs when an officer, agent, contractor or employee takes an adverse action against a covered individual because he or she engaged in a protected activity under this regulation. Therefore, ~~an supervisory or managerial officer, agent, contractor or~~ employee may not terminate, demote, harass or otherwise "retaliate" against an individual for engaging in protected activity. ~~Neither may an employee harass or otherwise "retaliate" against an individual for engaging in protected activity.~~ Protected activity includes, but is not limited to, filing a discrimination charge, testifying or participating in any way in an investigation, proceeding, or lawsuit, opposing employment practices that one reasonably believes discriminates against individuals or encourages someone to exercise their rights.

(6) Cooperation: All members of the university community are expected to cooperate in any university investigation of discrimination or harassment. An employee's failure to cooperate fully with an investigation will result in disciplinary action up to immediate termination for cause pursuant to FGCU-PR5.016.

(7) Frivolous or False Complaints and/or False Information: Knowingly making frivolous, false or malicious statements or allegations under this Regulation will result in disciplinary action.

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*Action by Florida Gulf Coast University Board of Trustees:*

*Approved: ~~1/20/09~~*

*Law Implemented:*

*§760.10 Florida Statutes*

*History of Rule:*

*New 03/18/03*

*History of Regulation:*

*New 01/15/08, Amended 1/20/09; Amended*

*Effective Date of Regulation:*

*~~1/20/09~~*