



**AUM**  
AMERICAN UNIVERSITY OF MALTA

## **Harassment, Bullying and Anti-Discrimination Policy**

**2020-2021**

## **Harassment, Bullying and Anti-Discrimination Policy**

**AUM is an equal opportunity organisation and as such it will not tolerate any form of harassment, bullying or discrimination. AUM is committed to ensuring that all of its community members are aware of the importance of maintaining a workplace that is safe, free from discrimination and personal assault.**

### **1. Scope**

The scope of this Policy is to define what is perceived as Harassment, Bullying and Discrimination and to stipulate the procedures that shall be adopted in cases of allegations of the aforementioned at the American University of Malta (AUM).

### **2. Guiding Principles**

2.1 As part of its commitment to providing a proper workplace environment free from behaviours such as harassment, bullying and discrimination, AUM firmly believes in the importance of articulation, education and prevention. AUM therefore places a high priority on its articulation of the pledge to eradicate harassment, bullying and discrimination as well as educating the AUM community on what it believes constitutes inappropriate behaviour and preventing such conduct. Through this Harassment, Bullying and Anti-Discrimination Policy the AUM wants to ensure that all members of staff and students are treated with respect and dignity.

2.2 AUM prohibits discrimination in terms consistent with Maltese law. AUM is committed to providing faculty and staff with an environment in which they may pursue their careers free from discrimination. Employees who believe that they have been denied opportunities because of discrimination may file a grievance following AUM's procedures for such instances.

2.3 The Employment and Industrial Relations Act (Chapter 452 of the Laws of Malta) emphasizes that harassment is an intolerable violation of the dignity of every person.

2.4 AUM adheres to these precepts and condemns all forms of harassment and is committed to uphold the well-being and dignity of members of faculty, staff and students alike irrespective of gender, marital or civil status, family responsibilities, race (including colour, nationality, and ethnicity), disability, sexual orientation, age, religion or belief, political opinion, or membership or non-membership of a trade union.

2.5 AUM recognizes that victims of harassment may experience emotional stress, physical stress, and/or a negative change in performance and that AUM itself may also be adversely affected in terms of morale amongst members of staff and students alike, higher rate of absenteeism, increased job turnover and low performance. Therefore, AUM takes report of

inappropriate behavior seriously and is committed to investigate each instance in a fair and thorough manner.

### 3. Objectives

The policy is aimed at:

3.1 Securing the dignity and personal development of all members of staff and students within the AUM regarding aspects of harassment, bullying and discrimination.

3.2 Informing and educating members of staff and students on the type of behaviour that is acceptable or unacceptable within AUM.

3.3 Building a proactive environment that prevents the occurrence of harassment, bullying and discrimination within the AUM.

3.4 Providing redress to victims of harassment, bullying and discrimination within AUM. No members of staff or students need fear that he/she will be victimised for bringing forward a complaint of harassment. All claims will be treated very seriously, and all the necessary action will be taken to deal with the claim. Furthermore, AUM does not tolerate retaliation in any form for reporting a complaint.

### 4. Definition of Terms

**Harassment** and **Bullying** are generally defined as conduct, gestures or comments which are insulting, intimidating, humiliating, hurtful, malicious, degrading or otherwise offensive to an individual or group of individuals, and which create a hostile or intimidating environment for work, or which negatively affect performance or work conditions. Individuals must recognise that what is acceptable to one person may not be acceptable to another. Harassment is not behaviour that is based on mutual attraction, friendship or respect.

**4.1 Harassment** can be based on any grounds such as race, religion, colour, creed, ethnic origin, physical attributes, gender or sexual orientation. It includes one-off incidents or a series of incidents. It may be carried out in person or online. Harassment may be deliberate, unsolicited and coercive. It may occur among anyone: between peers (eg student to student, parent to official, lecturer to lecturer) or between someone in a position of power or authority and an adult in a subordinate position (e.g. lecturer to student, manager to coordinator).

The following may be considered as a broad classification system in this regard:

(a) Physical conduct: Any unwelcome physical contact.

(b) Verbal conduct: Unwelcome remarks about a person's age, sexual orientation, dress, appearance, gender, race, marital status, disability, religion, membership of a trade union or social group, family responsibilities and upbringing, including insensitive jokes and offensive remarks as well as slander, personal insults, persistent criticism, threats and abuse of power.

(c) Non-verbal forms of harassment: Isolation, obscene gestures, setting impossible deadlines, non-cooperation and exclusion, offensive photography and racist propaganda, stereotyping to a specific national group.

The above lists are not exhaustive and should not be considered as such.

**4.2 Sexual Harassment** is a discriminatory assertion of power that has no place within the AUM. Sexual harassment is essentially defined as 'unwelcome sexual conduct' and is unlawful under *The Equality for Men and Women Act, 2003* (Chapter 456 of the Laws of Malta) and under *The Employment and Industrial Relations Act, 2002* (Chapter 452 of the Laws of Malta). It is unethical and unprofessional and a threat to the integrity of the individual and the institution. Such harassment may exist in one or a series of incidents.

The definition of sexual harassment contained in article 9(1) of the Equality for Men and Women Act, Chapter 456 of the Laws of Malta shall be adopted and therefore without prejudice to the provisions of article 29 of the Employment and Industrial Relations Act, it shall be unlawful for any person to sexually harass other persons, that is to say:

- to subject other persons to an act of physical intimacy; or
- to request sexual favours from other persons; or
- to subject other persons to any act or conduct with sexual connotations, including spoken words, gestures or the production, display or circulation of any written words, pictures or other material, where the act, words or conduct is unwelcoming to the persons to whom they are directed and could reasonably be regarded as offensive, humiliating or intimidating to the persons to whom they are directed; or
- the persons so subjected or requested are treated less favourably by reason of such persons' rejection of or submission to such subjection or request, it could reasonably be anticipated that such persons would be so treated.

#### **4.3. Thus, sexual harassment may involve:**

- unwelcome physical contact such as touching, hugging or kissing;
- leering;
- suggestive comments or jokes;
- unwanted invitations to go out on dates or requests for sexual interaction;

- intrusive questions about a person's private life or body;
- unnecessary familiarity;
- insults or taunts based on your sex or sexual orientation;
- sexually explicit emails or SMS messages;
- unwanted contacts / intrusion;
- messages / offensive postings on social networks, texts, e-mails etc.;
- sexual images displayed electronically, in print etc;
- sexually explicit pictures, screen savers or posters; and
- behaviour which would also be an offence under the criminal law, such as physical sexual assault, indecent exposure, and obscene or pornographic communications.

The above list is not an exhaustive list and should not be considered as such.

When a case of sexual harassment is proven, it could constitute both a civil and a criminal offence. These include but are not limited to physical molestation or sexual assault, indecent exposure and obscene communications (telephone calls, letters etc). Moreover, one should be aware that not all of us view behaviour the same way. As one moves away from the extreme examples of harassment, what one person views as acceptable behaviour another person might define as unacceptable.

**4.4 Bullying**, though interchangeable with harassment, is more of an emotive event with more emphasis on intimidation. Bullying involves a person expressing their power through the humiliation of another person or persons. Bullying occurs between people of any age. It includes inappropriate behaviours that are typically cruel, demeaning and hostile toward the bullying targets. The actual issue of bullying is typically not addressed by the law, except when the behaviour does become a criminal issue – e.g. extortion, physical assault etc. Bullying can be broken down into four types:

- Physical (hit or kick victims; take/damage personal property);
- Verbal (name calling; insults; constant teasing);
- Relational (try to cut off victims from social connection by convincing peers to exclude or reject a certain person);
- Cyber bullying

The following is a non-exhaustive list of tactics used by bullies to control their targets:

- Unwarranted yelling and screaming directed at the target
- Continually criticizing the target's abilities
- Blaming the target of the bullying for mistakes
- Making unreasonable demands related to performance
- Repeated insults or put downs of the target
- Repeated threats to remove or restrict opportunities or privileges
- Denying or discounting the targets accomplishment
- Threats of and actual physical violence

**4.5 Discrimination** - Discriminatory treatment means any distinction, exclusion, or restriction which is not justifiable in a democratic society including discrimination made based on marital status, pregnancy or potential pregnancy, gender or sexual orientation, colour, race, ethnicity, creed, disability, religious conviction, political opinion or membership in a trade union or in an employers' association.

## **5. Legal Implications**

5.1 Members of staff and students of AUM are hereby being informed that sexual harassment is a crime punishable with a fine (*multa*) or imprisonment from one to three months, or to both such fine and imprisonment as stated in Article 251A (4) of the Criminal Code, Chapter 9 of the Laws of Malta.

5.2 The presence of this Policy does not preclude the complainant from seeking legal redress through criminal proceedings or a civil action for damages.

## **6. Responses and Remedies**

Both harassment and bullying cover a wide spectrum of behaviours, and the response to both must be equally broad in range, appropriate to the behaviour in question and capable of providing a constructive remedy. There must be no summary justice or hasty punishment resulting from a complaint of harassment or bullying. The process of investigation and settlement of any complaint must be fair to all parties; allowing adequate opportunity for the presentation of a response to the allegations.

Minor incidents of harassment, discrimination or bullying should be corrected promptly and informally, taking a constructive approach and with the goal of bringing about a change in negative attitudes and behaviour.

More serious incidents should be dealt with according to the relevant guidelines including legal recourse. Complaints should be handled in a timely, sensitive, responsible and confidential manner. There should be no tolerance of reprisals taken against any party to a complaint. The names of parties and the circumstances of the complaint should be kept confidential except where disclosure is necessary for the purposes of investigation or taking disciplinary measures. Any disclosure of information will strictly abide by GDPR requirements.

## **6.1 Grievances Procedures**

These procedures are intended to make explicit to both members of staff and students how cases of harassment are to be tackled. These procedures reflect current standards of good practice and follow the basic precepts of justice, namely:

- (a) The alleged harasser should be informed of the nature of the accusation against him/her.
- (b) The alleged harasser will be given the opportunity to state his/her case prior to the undertaking of any disciplinary action.
- (c) Those presiding over both investigative and disciplinary hearings will act in good faith prior to reaching any decisions.

6.2 The President or his/ her delegate shall appoint a Case Advisor who shall assist all parties involved in allegations of harassment and bullying, in determining the basis, if any, for a complaint of harassment; in formulating the complaint and/or response; and by explaining the options available through the University's Harassment and Bullying Policy. The Case Advisor will be a senior AUM official who has been trained on dealing with cases of Harassment.

6.3 The Case Advisor shall provide information, advice and assistance to staff members and students filing complaints of harassment. The Case Advisor shall also play a key role in investigating and resolving complaints, as detailed in the procedures below.

6.3.1 Two routes may be provided for parties involved in a harassment complaint: an informal and a formal route. Although the parties involved would be encouraged to resolve the complaint in an informal manner, it is ultimately the choice of the complainant which route to take.

6.3.2 HR will hold a database of all complaints and details of outcomes

## **6.4 Complaints**

6.4.1 Any student or employee who wishes to make a complaint may address it either to their line manager or Provost or HR in the case of an administrative employee and to the Registrar, the Director of Student Affairs or the Provost in the case of a student.

In the first instance, a student or employee who believes that he or she has a complaint of harassment, discrimination or bullying shall be encouraged to make a direct request to the harasser that the offensive behaviour or actions cease. Where the complainant is too embarrassed or prefers not to approach the harasser to reach informal settlement, the former may ask a colleague or line manager to raise the issue with the person concerned.

6.4.2 Following the consultation with the Case Advisor and within five (5) working days or more as the Case Advisor and/or the complainant may deem necessary, the complainant shall advise the Case Advisor which one of the following options they intend to pursue:

- (a) to follow the informal procedures
- (b) to make a formal complaint
- (c) to take no further action.

## **6.7 Informal Procedures**

6.7.1 All proceedings taking place under informal procedures shall be treated as confidential.

6.7.2 If a complainant wishes to proceed to use the informal procedures, the following must occur:

- (a) The complaint must be filed within six (6) months of the incident(s). This does not apply when the situation is ongoing;
- (b) The complainant must provide the Case Advisor with a written complaint giving details of the alleged harassment or bullying, as defined above, including dates, times, places, names of individuals involved in the incident(s), names of any witnesses and any other relevant information. This should normally be provided within five (5) working days after the initial consultation with the Case Advisor;
- (c) Within five (5) working days from the receipt of the written complaint, Case Advisor shall inform the alleged perpetrator of the allegation(s) and shall provide the alleged perpetrator with a copy of the written complaint;
- (d) Within twenty (20) working days of the action described in (c), the Case Advisor shall investigate the complaint and interview the complainant and the alleged perpetrator. The complainant and the alleged perpetrator may be accompanied during the interview by a person of trust. If resolution is achieved because of this informal process, a written copy of the resolution shall be signed by the complainant and the alleged perpetrator. A copy of the

written complaint and the resolution shall be maintained by the Human Resources Department, as applicable, in a confidential file for a period of five (5) years from the date of the signing of the resolution and shall be destroyed thereafter.

(e) If the informal procedure has not been successful, the Case Advisor shall inform the complainant and the alleged perpetrator in writing that she/he will be recommending to the President that formal procedures shall commence.

## **6.8 Formal Procedures**

6.8.1 The complainant or the alleged perpetrator may proceed to the formal procedures if:

(a) the alleged perpetrator or the complainant does not agree to participate in the informal process, within ten (10) working days of the rejection of the informal procedures; or

(b) the informal process does not resolve the dispute within ten (10) working days of the completion of the informal process.

6.8.2 If a complainant wishes to proceed to use the formal procedures, the following must occur:

(a) The Case Advisor shall forward a copy of the written complaint compiled by the complainant to the President or his/her delegate;

(b) Should the Case Advisor deem the complaint to be justified, the President shall within five (5) working days appoint a Hearing Panel to hear and decide the case. The composition of the Hearing Panel may vary depending on whether the case involves a student or an administrative employee or a Faculty member; however, the Panel will always comprise a minimum of 2 managers one of whom will be of a Senior Manager grade.

The Hearing Panel will hear the case and will decide whether the complaint was justified or otherwise. The Panel will also recommend to the President and HR in the case of employees and the President and the Student Committee in the case of a student, whether disciplinary action should be taken against the alleged perpetrator or potentially the complainant if it results that the complaint was not genuine.

## **8. Application**

These procedures apply to harassment, bullying and discrimination cases experienced by the AUM staff as well as students. It furthermore applies to clients of the AUM, its sub-contractors and other third parties with whom they conduct dealings.

## **8.1 Advice and Assistance**

Staff and students shall be informed of this Harassment, Bullying and Anti-Discrimination Policy through the distribution of this Policy document and through training thereof for students. The Advisor shall be the main point of reference to provide advice and assistance on this Policy. The Director of Student Affairs will also advise the students about the policy.