

# The City University of New York Employment Discrimination Complaint Procedure

## Introduction

The City University of New York adheres to federal, state and city laws and regulations regarding equal employment opportunity and affirmative action. Federal laws that incorporate equal employment opportunity components include, among others, Title VII of the Civil Rights Act of 1964, as amended in 1991, Title IX of the Educational Amendments of 1972, the Age Discrimination in Employment Act, the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1974, and the Immigration Reform and Control Act of 1986. The University also complies with New York State and New York City human rights laws. Collectively, these laws prohibit discrimination in employment on the basis of race, color, religion, gender, national origin or citizenship status, disability, age, marital status, sexual orientation, prior arrest or conviction record under certain conditions', and genetic predisposition or carrier status. These laws also prohibit retaliation against an individual for raising an allegation of discrimination, filing a complaint alleging discrimination, or participating in a proceeding to determine if discrimination has occurred. The affirmative action laws governing The City University of New York include Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, and Section 402 of the Vietnam Era Veterans Readjustment Act of 1974. . 'The affirmative action policies and practices of The City University of New York are part of CUNY's goal to provide equal employment opportunity and prevent discrimination. Such policies and practices of The City University of New York apply to persons in federally protected groups including women, persons with disabilities, Vietnam Era veterans, Blacks, Hispanics, Asian/Pacific Islanders, and American Indians/Alaskan Natives. In addition, the University has designated Italian Americans as a protected group for whom these policies apply.

## I. Discrimination Defined

Discrimination can take several forms. It can occur when a person is excluded from an employment opportunity or treated less favorably than other similarly situated persons because of race, color, religion, gender, national origin or citizenship status, disability, age, marital status, sexual orientation, prior arrest or conviction record, genetic predisposition or carrier status, or any other basis prohibited by law. This type of discrimination is considered "disparate treatment" or a difference in treatment. "Adverse impact" discrimination results from neutral employment policies and practices that may be applied evenly to all applicants or employees but have the effect of disproportionately excluding a group with a protected status. The failure to reasonably accommodate the religious practices of an applicant or employee, as well as the failure to provide reasonable accommodations for the known disabilities of an otherwise qualified applicant or employee, may be also discriminatory. Furthermore, harassment on any of these bases is contrary to law. The ADA also provides protections on the basis of a person's perceived protected status.

The laws prohibiting discrimination in employment apply to all terms and conditions of employment, including, but not limited to, recruitment, testing, selection, hiring, work assignments, salary and benefits, performance evaluations, promotions and tenure, training opportunities, transfers, discipline, discharge, and working conditions.

## II. Coverage

This equal employment opportunity procedure applies to all job applicants and employees and in some instances, former employees of The City University of New York. Students employed by The City University of New York have the right to equal employment opportunity in their capacity as employees.

This procedure for handling allegations of discrimination is objective and impartial, designed to assist in resolving equal employment opportunity issues and in investigating alleged illegal discrimination. This process does not supplant any rights employees may have to pursue allegations of discrimination through a collective bargaining agreement that includes discrimination as a ground for grievance, or any other rights conferred by law.

## III. Determining How to Proceed

The City University of New York places a strong emphasis on prompt action to resolve complaints alleging discrimination. Members of the University community who believe themselves to have been discriminated against are strongly encouraged to report allegations as promptly as possible. Delay in making a complaint may make it more difficult for the college to investigate the allegations.

### A. Consultation with the Affirmative Action/Equal Employment Opportunity (AA/EEO) Officer

A job applicant, employee, or former employee who wishes to make a complaint related to equal employment opportunity or affirmative action may consult with the Affirmative Action/Equal Employment Opportunity (AA/EEO) Officer of the college. Each vice president, dean, director, department chairperson, administrator, or other person with managerial or supervisory authority who becomes aware that an applicant or employee believes that s/he has been discriminated against should advise that applicant or employee of her/his right to contact the AA/EEO Officer.

An employee has the right to meet privately with the AA/EEO Officer during working hours; however, the employee should obtain approval for leaving his/her work assignment. An employee need not disclose the details of the purpose of the meeting with the AA/EEO Officer to the supervisor. Managers and supervisors shall allow employees to meet with AA/EEO Officer at the earliest practicable time consistent with the operational needs of their units. The AA/EEO Officer may arrange to meet with an employee outside the college when necessary in order to ensure confidentiality. At an employee's request, arrangements may also be made to hold meetings before or after working hours or during the employee's lunch period.

The initial consultation provides an opportunity for the AA/EEO Officer to learn the general nature of the employee's allegations and to determine whether those allegations would, if demonstrated to be true, violate any law, regulation or policy related to equal employment opportunity or affirmative action. If the facts presented do not point to any violation of law, regulation or policy related to equal employment opportunity or affirmative action, the complainant will be so advised. The AA/EEO Officer,

whenever possible, will provide information about other college or University offices that might provide guidance or assistance to the employee.

There may be circumstances where the AA/EEO Officer initiates an investigation of a matter that has come to the attention of the college, even when no specific complaint has been made.

### B. Using the Grievance Procedure

In lieu of consulting with the AA/EEO Officer, employees who are covered by collective bargaining agreements may use their contractual grievance procedures, within the time limits provided in those agreements, to report allegations of discrimination. Employees choosing this avenue should contact their union representative directly.

### C. Using External Agencies

Although the college would prefer the opportunity to investigate allegations of discrimination internally and remedy situations where the law or college and University policies have been violated, a complainant may, at any time, file a complaint of discrimination with a city, state or federal administrative agency that enforces the law prohibiting discrimination. The names and contact information for such agencies are here.

## IV. Pursuing a Complaint with the Affirmative Action Office

After consultation with the AA/EEO Officer, where it has been determined that a possible violation may have occurred, the complainant will be informed of options available for subsequent action. These options can fall into two main categories:

- Alternative Dispute Resolution
- Internal Complaint Investigation

### A. Alternative Dispute Resolution (ADR)

The objective of this option is to stop the behavior or action that forms the basis for the complaint of illegal discrimination without the college's engaging in a full investigation or making a finding as to whether discrimination has occurred. This option will be recommended if the AA/EEO Officer and the complainant agree that this approach has the potential to address the allegation(s). A decision to proceed through the ADR channel does not preclude a subsequent investigation if the complaint cannot be resolved through ADR. Possible resolutions through ADR include, but are not limited to:

1. the complainant taking steps to resolve the complaint on her/his own without intervention by the AA/EEO Officer or a college official; or
2. Having complaint resolution activities facilitated by the AA/EEO Officer or another appropriate college official. Whenever possible, complaints should be resolved within 90 working days following initiation of the complaint. Any settlement, withdrawal or other disposition of such a matter does not constitute binding precedent in the resolution of similar complaints.

### B. Internal Complaint Investigation

Process: When ADR is not feasible or possible, the AA/EEO Officer will completely and thoroughly investigate discrimination complaints and will make a determination as to whether an antidiscrimination law, regulation, or college or University policy has been violated. If a violation has occurred, action will

be taken to correct the violation and where appropriate to discipline employees who have engaged in discriminatory conduct.

Any employee wishing to pursue an investigation is encouraged to file a written complaint with the AA/EEO Officer. When a complainant is unwilling or unable to file a written complaint, the AA/EEO Officer will nevertheless investigate the complaint based on the complainant's oral statements as soon as possible after the AA/EEO Officer receives a complaint. The appropriate parties will be notified that a complaint has been filed and that an investigation has begun.

Where the investigation of a complaint requires it, the AA/EEO Officer shall have the authority to request and examine relevant records and files and to make inquiries necessary to investigate the complaint. All employees of the college are expected to cooperate with the investigation.

Anonymous complaints will be investigated, to the extent possible, as any other complaint to ascertain the existence of illegal discrimination and to remedy the problem, if necessary.

#### 1. Three Possible Outcomes of an Internal Investigation

##### a. A Finding that the Allegations are not supported by the Facts:

In the event that the investigation uncovers no reasonable basis for the allegations of discrimination, the complainant, the President, and all other appropriate parties will be notified of such outcome in writing. At that time, the complainant will be notified of options available to her/him.

##### b. A Finding that the Allegations are supported by the Facts:

When the allegations of discrimination are substantiated by the facts, the AA/EEO Officer shall make a written summary of the findings for the President. Following receipt of the report, the President shall promptly take such action as he or she deems necessary and proper to correct the effects or to prevent further harm to an affected party or others similarly situated. Examples of corrective action include but are not limited to commencing disciplinary proceedings that could result in discharge, issuing verbal warnings, transferring an employee, and/or granting a benefit wrongfully withheld. The college's action will vary from case to case and will depend upon the degree and type of violation that has occurred. If, before an investigation is fully completed, the President feels immediate action must be taken to protect the college community, she/he may do so.

#### 2. Withdrawal of Complaint

The complainant has the right to request that the investigation be terminated at any stage of the process; however, the AA/EEO Officer may not terminate an investigation when there is evidence that the law or a University or college policy has been violated. In such an instance, the investigation must continue until a finding is made. Where an investigation is terminated at the request of a complainant, however, all parties will be notified in writing of the termination.

## V. Confidentiality

This procedure seeks to protect the privacy of persons making inquiries about their rights, as well as the rights of persons otherwise involved in an investigation. Therefore, while it is not possible to provide absolute confidentiality, the entire complaint, investigation and resolution process will be handled

discreetly. Information concerning the process will be divulged only on a need-to-know basis. All parties to the process are requested to adhere to a similar standard of discretion.

## VI. Record Keeping

The AA/EEO Officer will maintain records of all complaints of discrimination whether they are processed through ADF, an internal investigation or by an outside agency.

## VII. Retaliation Prohibited

It is a violation of federal, state and city law, as well as University and college policy, to retaliate against any person for opposing discrimination, filing a complaint, or participating in a proceeding to determine if discrimination has occurred. Complaints of retaliation will be investigated and a finding reached. Where findings warrant, appropriate disciplinary action will be taken.

## VIII. Time Limits

Applicants and employees are encouraged to consult with the AA/EEO Officer as soon as they become aware of an alleged violation. Delays in reporting allegations may impair the ability of the AA/EEO Officer to conduct a proper investigation and reach a resolution. Thus, employees are encouraged to report allegations immediately. Also, time limits, some of which are extremely short, apply when filing complaints with external agencies or when filing grievances under collective bargaining agreements. Those administrative agencies and/or labor relations representatives should be consulted directly for time limits and other filing requirements (see page 2.)

## IX. Revisions

This policy and procedure may be revised at any time to remain current with the law and University and college policy.