

Business Policies and Procedures

A "How To" Manual for the University of Nebraska-Lincoln

Chapter 100 Human Resources

115.0 Other Policies

Policy and Procedures on Unlawful Discrimination, Including Sexual and Other Prohibited Harassment

Note: Red text indicates a policy addition (September 2000).

Preface

The University of Nebraska-Lincoln has an institutional obligation to provide a place where persons can work and study free of illegal discrimination. More specific aspects of that obligation are defined by Titles VI and VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, the Rehabilitation Act of 1978, the Americans with Disabilities Act of 1990, and the Age Discrimination in Employment Act, among other federal and state laws, agency regulations and judicial interpretations. **University officials have a duty to promptly investigate and take appropriate action on all known incidents of illegal discrimination.**

In addition to its legal obligations, the University of Nebraska-Lincoln is a community which, within legal restraints, may establish norms of behavior to govern the interaction of individuals within the community. These norms may, and often do, go beyond enforcement of any legal obligation established for the University as an institution. This

document provides fair procedures for applying these norms and for resolving disputes between members of the University community relating thereto. In establishing these procedures the University does not accept legal responsibility for the behavior of individuals which may contravene the norms established in this document, nor does it intend to extend its institutional responsibility beyond that already imposed by law.

Nothing in this document shall be construed to violate the guarantees of academic freedom or other rights established by the First Amendment to the U.S. Constitution.

1. Policy

1.1. Introduction

The University of Nebraska-Lincoln (UNL) seeks to achieve a working and learning environment that is open to all people. Diversity is one hallmark of great institutions of learning and has long been one of the strengths of our society. Dignity and respect for all in the UNL community is the responsibility of each individual member of the community. The realization of that responsibility across the campus is critical to UNL's success.

1.2. Policy

UNL has a policy of equal educational and employment opportunities and of nondiscrimination in the classroom and workplace. Educational programs, support services and workplace behavior, including decisions regarding hiring, promotion, discipline, termination and all other terms and conditions of employment, should be made without discrimination on the basis of race, color, religion, sex, national origin, age, disability, veteran status, marital status or sexual orientation. No person should be subject to retaliation for seeking a review of a complaint of

discrimination, for participating in an investigation of such a complaint, or for seeking redress for discrimination. One of the purposes of this document is to implement this policy.

1.3. Authority and Jurisdiction

Any student, employee or other invitee (e.g. vendor, volunteer, program spectator) shall have access to these procedures when concerns arise about discrimination, as described in this document. **University officials have a duty to promptly investigate and take appropriate action on all reported violations of this policy.** These procedures do not exempt supervisors or administrators from responsibility to exercise proper authority in achieving and maintaining an atmosphere of equity and professional conduct in their administrative units. A supervisor or an administrator may take disciplinary action, consistent with other University policies and procedures, to correct harassing or discriminating situations, notwithstanding any other provision of this document. An attempt to reach resolution through the informal procedures contained in this document does not jeopardize the ability to pursue a subsequent formal complaint, nor is it mandatory that the informal procedures be attempted prior to filing formally as described in Section 3 of this document. Miscellaneous provisions and definitions are included at the end of the document.

1.4. Sanctions

Acts and behaviors that violate this policy will result in corrective action up to and including dismissal.

2. Policy Implementation - Informal Procedures

2.1. Options

Members of the UNL campus community who believe they have been discriminated against may choose to pursue one or more of the

following informal options. Exercising these options does not preclude the person from pursuing formal procedures within or external to UNL.

2.1.1. Make a clear verbal or written statement to the respondent that the behavior is not welcome and that it should stop;

2.1.2. Ask for help through the appropriate administrative structure, for example, the chair, dean, director, vice chancellor, or other supervisor of the complainant or the respondent;

2.1.3. Seek assistance through the following existing campus structures that can give meaningful advice and/or that have provisions for informal resolution of such conflicts:

2.1.3.1. Students:

- Student Ombudsperson (located in office of the Vice Chancellor for Student Affairs, 124 Canfield Administration Building, 472-9292);
- Counseling and Psychological Services (located in the University Health Center, 15th & U Streets, 472-7450);
- Women's Center (340 Nebraska Union, 472-2597);
- Student Judicial Affairs (located in the office of the Vice Chancellor for Student Affairs, 124 Canfield Administration Building, 472-3620);
- Office of Affirmative Action and Diversity Programs (located in 127 Canfield Administration Building, 472-3417);
- Academic Rights and Responsibilities Committee (reached through current chair listed in Centrex under Academic Senate or through Senate Office at 472-2573).

2.1.3.2. Office/Service, Managerial/Professional Staff:

- Staff Ombudsperson (located in Department of Human Resources, 407 Canfield Administration Building, 472-3101);
- Employee Assistance Program (located at 700 N. 16th, 472-

3107);

- UNL Grievance Committee (located in the Department of Human Resources, 407 Canfield Administration Building, 472-3101);
- Office of Affirmative Action and Diversity Programs (located in 127 Canfield Administration Building, 472-3417);
- Academic Rights and Responsibilities Committee (reached through current chair listed in Centrex under Academic Senate or through Senate Office at 472-2573).

2.1.3.3. Faculty:

- Academic Rights and Responsibilities Committee (reached through current chair listed in Centrex under Academic Senate or through Senate Office at 472-2573).
- Employee Assistance Program (located at 700 N. 16th, 472-3107);
- Office of Affirmative Action and Diversity Programs (located in 127 Canfield Administration Building, 472-3417).

2.2. Outcomes

Informal resolution may include, but is not limited to, the following voluntary options, if agreed to by the affected parties (see also Section 1.3):

- agreement as to the nature of the conflict and its resolution;
- oral or written promise that the behavior will stop or will not occur in the future;
- oral or written apology;
- correction of employment decisions, consistent with University policies and procedures, made as a result of the misconduct;
- arrangement to move one of the parties to a different work area;
- agreement about consequences for the accused;
- agreement about subsequent actions if the agreement is broken.

2.3.

Actions necessary to an informal procedure shall be taken promptly and completed, if possible, within 20 working days of the time the complaint

is brought forth. The filing of a complaint in a judicial or administrative forum outside of UNL shall not halt or otherwise alter the informal resolution process within UNL.

3. Policy Implementation - Formal Procedures

3.1. Formal Complaints

When the complainant wishes to forego an informal resolution, or when informal resolution fails, the complainant may file a formal complaint. Should the complainant's allegations provide the basis to file a formal complaint under more than one UNL grievance resolution procedure, the complainant must choose and file under only one procedure.

3.1.1. ADA Complaints. For complaints concerning discrimination based upon disability, the ADA/504 Compliance Officer in the Office of Affirmative Action and Diversity Programs, located in 127 Canfield Administration Building (472-3417) shall be contacted to access the separate formal grievance procedure governing disability issues.

3.1.2. The filing of a complaint in a judicial or administrative forum outside of UNL shall not halt or otherwise alter any formal resolution process within UNL.

3.2. Filing a Formal Complaint

A formal complaint must be filed within one year of the activity alleged to violate this policy, and shall set forth in writing a request for formal proceedings; the basis of the complaint; a specific description of the conditions, facts, events or circumstances upon which the complaint is based; and the remedy sought. The complaint must be signed by the complainant, and must also contain the name, mailing address and phone number at which the complainant may be reached. The formal complaint may be filed directly with a hearing committee (Section 3.4

below) or with the Office of Affirmative Action and Diversity Programs (AA/DP). On receipt of the formal complaint, the AA/DP shall conduct a preliminary investigation. If the complainant files a complaint directly with a hearing committee (Section 3.4 below), the AA/DP will be asked by that committee to conduct the preliminary investigation.

3.3. AA/DP Preliminary Investigation

Within 15 working days of the receipt of the complaint from either the complainant or a hearing committee, the AA/DP shall determine through a preliminary investigation whether it finds a basis for a complaint under this policy. The results of this investigation shall be presented to the complainant, the respondent, and the hearing committee. The hearing committee may consider the preliminary investigation report as evidence at the hearing.

3.4. Hearing Committees

A complainant may file a formal complaint with one of the committees listed below; alternatively, if the complaint is filed with AA/DP, AA/DP shall, within 15 working days of its receipt, forward the complaint with the results of the preliminary investigation to one of the following.

3.4.1. The chair of ARRC, for complaints against a member of the Academic/Administrative staff (as defined in Section 3.1.1.1 of the Bylaws of the Board of Regents of the University of Nebraska &X'B0."Regents Bylaws"&X'6A.), and Other Academic Staff (as defined in Section 3.1.1.2 of the Regents Bylaws) ARRC shall also receive complaints filed generally against UNL as an institution, when a complainant seeks institutional action as a remedy to alleged discrimination. The Code of Procedures for Professional Conduct-A of the ARRC shall govern formal complaint proceedings filed under this Section.

3.4.2. UNL Grievance Committee (through the Department of Human Resources) for complaints against members of the

Managerial/Professional staff (as defined in Section 3.1.1.3 of the Regents Bylaws) or Office/Service staff (as defined in Section 3.1.2 of the Regents Bylaws). Under those circumstances in which a member of the Academic/Administrative staff is acting in a non-academic capacity, a complaint may be filed with this committee. The Department of Human Resources shall adopt written procedures which are generally consistent with the Code of Procedures for Professional Conduct-A of the ARRC to govern formal complaint proceedings filed under this Section.

3.4.3. The Student Judicial Board (through the Office of Student Judicial Affairs) for a complaint filed against a student. Students occupy a variety of roles within the university setting. They may be engaged in traditional classroom study; they may be employees engaged in a variety of work opportunities at UNL; or they may be acting in an instructional role as a teaching or research assistant. The AA/DP, in its discretion, will refer a complaint filed against a student to the committee described above, which most closely fits the role in which the student was acting when the alleged violation took place. The University Disciplinary Procedures applicable to misconduct under the Student Code of Conduct shall govern formal complaint proceedings filed under this Section.

3.4.4. Augmented Committees.

3.4.4.1. Should the complainant before the ARRC be a person other than a member of Academic/Administrative or Other Academic Staff, the hearing committee appointed shall be augmented by three members of the committee to which the complaint would have been referred had the complainant been formally charged under this Policy and Procedures. The chair of ARRC shall select the additional members for the augmented committee, who will participate fully in discussions, hearings, and deliberations. If the opinion of the students or staff added to the hearing committee differs from that of the regular committee,

their opinion and the rationale for that opinion shall be included in the report of the committee.

3.4.4.2. Should the complainant before the UNL Grievance Committee be a person other than a member of Managerial Professional Staff or the Office/Service Staff, the membership of the UNL Grievance Committee shall be augmented by two members of the committee to which the complaint would have been referred had the complainant been formally charged under this Policy and Procedures. The Director of Human Resources shall select the additional members for the augmented committee. Further, the Director shall designate one person of the UNL Grievance Committee to act as chair.

3.4.4.3. No changes or additions to the Student Judicial Board membership shall be made in consideration of the complainant's relationship to UNL. When this document refers to the chair of the hearing panel, the student chair and the faculty chair shall coordinate their efforts to accomplish the duties of the chair for purposes of this procedure.

4. Particular Policy Amplifications

4.1. Prohibitions

4.1.1. Discrimination.

The University of Nebraska-Lincoln shall not discriminate based upon race, color, religion, sex, national origin, age, disability, veteran status, marital status or sexual orientation, except to the extent that such factors may conflict with bona fide occupational qualifications.

4.1.2. Discrimination in the Form of Sexual Harassment.

It is the policy of the University of Nebraska-Lincoln that no member of the UNL community may sexually harass another. Sexual harassment is

a form of discrimination based upon gender. It is prohibited at UNL and is subject to the procedures and sanctions contained in this policy.

Sexual harassment is unwelcome sexual advances, unwelcome requests for sexual favors, and other unwelcome verbal or physical conduct of a sexual nature when:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or academic standing; or
2. Submission to, or rejection of, such conduct by an individual is used as the basis for employment decisions or academic decisions affecting such individual; or
3. Such conduct has the purpose or effect of unreasonably interfering with the individual's work or academic performance or creating an intimidating, hostile, or offensive working or academic environment.

4.1.3. Discrimination in the Form of Prohibited Harassment Based Upon Protected Status.

Contributing to the creation of a hostile environment for any UNL student or employee based upon his or her race, color, religion, sex, national origin, age, disability, veteran status or sexual orientation is a form of discrimination prohibited by this policy. No person shall contribute to a hostile or abusive environment at UNL based upon race, color, religion, sex, national origin, age, disability, veteran status, marital status or sexual orientation (collectively "protected status") by engaging in harassing conduct (e.g. physical, verbal, graphic, or written) that is unwelcome and sufficiently severe, pervasive or persistent so as to clearly interfere with or limit the ability of (1) a student to participate in or benefit from the services, activities or privileges provided by UNL; or (2) an employee to engage in his or her work duties. UNL shall not knowingly cause, encourage, accept, tolerate or fail to correct such a hostile environment. By authorizing a complaint against a person

contributing to a hostile environment based upon protected status, these procedures provide one method of implementing UNL's responsibility. Speech protected by the First Amendment to the Constitution of the United States shall not be subject to sanctions under this section or any other section of this policy.

Whether conduct constitutes a hostile environment must be determined from the totality of the circumstances. The harassing conduct must be severe, pervasive or persistent. Generally, the severity of the incidents needed to establish a hostile environment varies inversely with their pervasiveness or persistence. The context, nature, scope, frequency, duration, and location of the harassing incidents, as well as the identity, number, and relationships of the persons involved should be considered.

4.1.4. **Discrimination in the Form of Hostile Institutional Climate.**
The University of Nebraska-Lincoln recognizes its responsibility to provide to its students, employees and others considered members of the UNL community, in all of its facilities and programs, an environment which permits such persons the opportunity to successfully engage in study or perform work duties. Should any such environment become hostile in relation to one's race, color, religion, sex, national origin, age, disability, veteran status, marital status or sexual orientation, such that it unreasonably interferes with an individual's ability to engage in study, work or other UNL business, then such an individual may seek redress against UNL (Section 3.4), as an entity in and of itself, under this policy for knowingly failing to maintain the appropriate work/study environment.

4.1.5. **Academic Freedom.**
Academic freedom does not protect persons who discriminate against or harass others on the basis of race, color, religion, sex, national origin, age, disability, veteran status, marital status or sexual orientation. However, discussion or inclusion of germane, sensitive issues such as those relating to sexual relationships or race relations within the context

of teaching, research, extension or other academic activities does not constitute harassment based upon protected status and does not contribute to a hostile environment. Moreover, the academic setting is distinct from the workplace in that wide latitude is required for professional judgment in determining the appropriate content and presentation of academic material.

4.2. Consensual and Domestic Relationships

UNL policy requires recusal (the relinquishment of the supervisory role; see also Definition 7.6) when supervisory or evaluative relationships exist between members of the university community who share sexual, romantic, or domestic relationships. This policy covers, but is not limited to, persons in the following professional relationships: line officers and faculty; faculty and students; tenured and non-tenured faculty; graduate assistants and students; supervisors and the employees they supervise; and student or employee and administrator, coach, advisor, counselor, or residential staff member who has supervisory responsibility for that student or employee.

4.2.1. Such work or academic relationships typically involve a power differential that makes mutual consent inherently suspect and that raises questions of conflict of interest. Maintaining either the appearance or the reality of impartiality in the face of such a relationship is equally difficult. As described in Definition 7.6, should a personal relationship develop between members of the UNL community who are also in a supervisory or an evaluative relationship, the person in the position of greater authority shall recuse himself or herself; that is, shall relinquish (with or without explanation) the supervisory or evaluative role and make suitable arrangements for the objective performance or academic evaluation of the other. Much the same procedure is already in practice when members of the same family find themselves in situations in which one supervises the other.

4.2.2. In the event that recusal as described would seriously and

adversely disadvantage the academic or professional future of the person under supervision or evaluation, the supervisory or evaluative relationship may be retained when provision is made with the next higher administrative officer for objective oversight of the performance.

4.2.3. Any person may file charges of professional misconduct with the ARRC or Grievance Committee against a person who fails to recuse him/herself or to establish an objective oversight process in accordance with these procedures.

4.2.4. When recusal occurs, the person whose work is being supervised must be informed of the recusal in writing.

4.3. Time Requirements

Throughout this policy, certain time limits are set out to encourage prompt resolution of discrimination complaints. The Director of AA/DP may expand any time requirement contained in this policy when he or she determines that such an expansion is necessary to meet the requirements of institutional responsibility or to serve the interests of fairness.

5. Record-Keeping

5.1.

Because this document establishes procedures for informal resolution of questions or concerns about discrimination through a variety of UNL organizations, the issue of confidentiality is of major significance. It is desirable that, whenever possible, discrimination issues be resolved with minimum personal trauma or embarrassment and maximum effectiveness. Thus, extensive documentation is not necessarily desirable. However, it is equally important that a mechanism exist by which problematic situations are identified and recorded even if formal

procedures are not pursued.

5.2. Informal Resolution Records

In order to achieve a balance that accommodates both sides of this question, when informal attempts to resolve discrimination issues are undertaken by any UNL body or office, a record shall be kept of each incident, as follows:

5.2.1. a brief description of the circumstances shall be made, noting the administrative unit and the principal parties involved;

5.2.2. unless otherwise prohibited by the laws protecting client/patient confidentiality, all such descriptions shall be forwarded to the Office of AA/DP for review and archiving. **An incident report should be forwarded to the Director of the AA/DP Office contemporaneous with the occurrence of the incident (or not longer than 10 working days after the occurrence.) After the informal resolution of the incident (see section 2 and 2.3 of this policy) a complete report about the resolution of the incident should be forwarded to the AA/DP Office within 15 working days of the resolution.** Such records shall be retained in accordance with AA/DP's record retention procedures. Any record kept by UNL officials of informal resolution efforts shall be consistent with Regents and UNL Bylaws governing confidentiality and rights of access.

5.2.3. UNL may initiate an appropriate response against an individual or an administrative unit if a pattern of inappropriate behavior becomes apparent.

5.3. Formal Procedure Records

As soon as practicable following the completion of any formal complaint procedure, the committee (or the Chancellor in the case of an appeal to that office) possessing the records relating to the complaint shall deposit them with the AA/DP for keeping in accordance with AA/DP's record retention procedures. Any record kept by UNL officials

of formal resolution efforts shall be consistent with Regents and UNL Bylaws governing confidentiality and rights of access.

6. Miscellaneous Provisions

6.1. Academic Freedom and Responsibility

The principles of academic freedom and academic responsibility are outlined in Board of Regents Bylaws 4.1. and 4.2, and establish the tenets of academic scholarship and its attendant rights and responsibilities, with which this policy is consistent. Also see Section 4.1.5. of this policy.

6.2. Confidentiality

Participation in a faculty, staff, or student advising, conciliation, or adjudication effort makes one privy to sensitive information involving the personal and professional lives of members of the UNL community. Therefore, such service carries with it special obligations to keep confidence. Sections 2.5.2, 2.5.4, and 2.5.6 of the UNL Bylaws are particularly relevant to anyone approached under these procedures for advice or informal resolution of discrimination concerns. However, this duty of confidentiality does not preclude the authority to conduct a meaningful investigation or to communicate with the principal parties' line officers or other supervisors.

6.3. Retaliation

UNL shall not retaliate against any person for alleging discrimination, or for participating in an investigation of such allegations. However, certain activities are not protected under this section. Bringing formal or informal complaints under this policy does not give any employee the right to engage in insubordinate and disruptive behavior which exceeds the limit of reasonable opposition. An attitude and atmosphere of civility shall be maintained by all parties to a complaint at all times,

under all circumstances.

6.4. Severability

If any provision of this policy and procedure shall be determined to be void, invalid, unenforceable, illegal or contrary to overriding University of Nebraska or UNL policy, it shall be ineffective only to the extent of such prohibition, and the validity and enforceability of all the remaining provisions shall not be affected.

7. Definitions

7.1. ARRC (Academic Rights and Responsibilities Committee)

As described in the Academic Senate Syllabus of Committees, the Academic Rights and Responsibilities Committee consists of five elected faculty members, and was established to receive and adjudicate, through Special Hearing Committees, complaints of grievance, academic freedom and tenure, or professional conduct. Special Hearing Committees submit their reports to the Chancellor (grievance, professional conduct) or the Board of Regents (academic freedom and tenure). A Special Resource Group also exists within the committee structure, whose functions include informal, confidential conciliation efforts.

7.2. Complainant

A complainant is anyone who seeks advice, conciliation, or other informal or formal resolution of an alleged incident of discrimination.

7.3. Employee Assistance Program (EAP)

The EAP consists of a staff of counselors with advanced clinical degrees and a wide range of experience, available to assist with personal or work-related concerns. Inquiries to and assistance by this office are confidential.

7.4. UNL Grievance Committee

Coordinated by the Department of Human Resources, this is a standing committee, appointed by the Chancellor, from which rotating 3-member subcommittees receive, investigate, and recommend to the Chancellor on matters affecting the Office/Service and Managerial/Professional staff.

7.5. Office of Affirmative Action and Diversity Programs (AA/DP)

The office with the following responsibilities that pertain to this policy: fielding inquiries regarding potential discrimination situations, assisting with informal resolutions (Section 2), and assisting with preparation of formal complaints (Section 3). All contacts are handled confidentially, except to the extent that knowledge of certain types of harassment requires that this office take official action (e.g. sexual assault requires notification of police). In addition, this office responds to EEOC complaints, that are beyond the scope of this document. The AD/DP Office conducts diversity, affirmative action, and sensitivity training workshops for campus units and search committees. It also provides diversity programming for the UNL community and beyond.

7.6. Recusal

Recusal is the voluntary relinquishment of the supervisory role when a personal relationship develops between individuals within the UNL community who are linked by supervisory relationships. This recusal may occur without explanation, but it must occur, regardless of the status of the individuals involved (i.e. administrator-faculty, administrator-staff, faculty-student, faculty-staff, staff-staff, student-student).

7.7. Resolution - Informal

Informal resolution is conciliation reached between two people, either on their own or with the assistance of a third person. Several UNL committees or offices (see Section 2) have authority to designate a third person for this purpose. By definition, informal resolutions do not

include the imposition of sanctions, but they may involve mutually agreed upon consequences. Each of the committees and offices listed in Section 2.1.3 has its own procedures that include informal efforts to resolve conflict. In general, informal efforts to resolve discrimination disputes involve only a brief request for assistance; an attempt to reach agreement between the two parties involved; some consequences, as appropriate and as agreed upon by all parties; and a record which identifies parties, describes the situation and departments involved. This information is presented to AA/DP once each year, at the end of the Spring semester, or at any time if circumstances appear to warrant it. Several reports of a similar nature would trigger AA/DP to initiate an inquiry for clarification or possible action, as appropriate.

7.8. Resolution - Formal

A formal resolution consists of a formal complaint and includes investigations of allegations, a hearing subject to the appropriate due process protections, and sanctions appropriate to findings of facts. Formal complaints may be filed prior to, during, and after, but not concurrent with an informal resolution.

7.9. Respondent

A respondent is anyone accused of discrimination against another individual (here, complainant); use of this term does not imply a judgment of guilt.

7.10. Sanctions

A sanction is the forced imposition of disciplinary action, ranging from verbal reprimand to termination of employment. Sanctions cannot be imposed as part of an informal resolution of a complaint pursuant to Section 2 of this policy. This shall not preclude the ability to reach mutually agreed upon outcomes or action through conciliation as part of an informal resolution.

7.11. Staff Ombudsperson

The Staff Ombudsperson is the person within the Department of Human Resources who provides confidential assistance to staff employees needing advice or help with informal resolution of difficulties within the context of their employment. A neutral resource rather than an advocate, the Staff Ombudsperson helps develop options and approaches to constructive problem-solving.

7.12. Student Ombudsperson

The Student Ombudsperson is the person, within the office of the Vice Chancellor for Student Affairs, who assists student members of the UNL community with concerns about their rights and the policies and procedures of UNL. Assistance may be given in the informal resolution of academic, administrative or personal problems, and may take the form of listening, mediating and/or resolving complaints or grievances, and making recommendations.

7.13. Institutional Responsibility

This policy has been approved for the purpose of providing procedures at the University of Nebraska-Lincoln whereby individuals may seek redress of grievances alleging unlawful discrimination and sexual harassment. In addition to the procedures provided in this policy, UNL, acting through the Chancellor and UNL Office of Affirmative Action and Diversity Programs, has responsibility to investigate and, if warranted, act upon matters of apparent or suspected unlawful discrimination or sexual harassment (even in the absence of a complaint under this policy) when there is reasonable cause to believe there has been a violation of UNL's policy prohibiting unlawful discrimination, including sexual and other prohibited harassment.

7.14. University Official

University official shall refer to any individual employed by the University of Nebraska-Lincoln with job authority/responsibility to supervise, hire, assign/reassign responsibilities, promote/demote, and/or recommend/take any disciplinary/corrective actions.

Note: Red text indicates a policy addition (September 2000).

Tobacco Free Campus Policy

Drug Free Workplace

Testing for Alcohol and Controlled Substances for Employees Required to Hold a Commercial Driver's License

Introduction

Effective January 1, 1995, the University of Nebraska-Lincoln was required by the United State Department of Transportation (DOT) to establish a policy and process which provides testing for alcohol and controlled substances of all employees required to hold a Commercial Driver's License (CDL) as a function of their UNL employment.

Description of Drivers Covered

This policy applies to all employees of UNL who are required to hold a CDL as a condition of employment. For purposes of this policy covered employees will be referred to as "drivers".

This policy applies to applicants selected for a position, current employees, and current employees applying to move into a position requiring a CDL as a condition of employment.

Drivers must submit to testing for alcohol and controlled substances, including but not limited to urinalysis and breath testing. Upon instructing a driver to report for such testing, the supervisor must notify the driver that testing is being performed as required by DOT regulations. Drivers will be tested under the following circumstances:

Circumstances for Testing

Pre-employment

A driver-applicant must be tested for controlled substance use as a condition of employment. Employment offers will be conditional until two requirements are met: 1) the applicant must sign consent forms for testing as required by policy, and 2) the applicant must have negative results from required testing.

Exception: Drivers who can document previous participation in testing for alcohol and controlled substances have **possibly** fulfilled pre-employment testing requirements. Questions should be directed to Human Resources.

Reasonable Suspicion

Drivers must be tested when conduct or appearance gives reasonable suspicion of alcohol or controlled substance use. The driver's behavior must be witnessed by a supervisor or other unit manager (two if reasonably possible) trained in the detection of alcohol and controlled substance use. The supervisor must escort the driver to the testing site.

Reasonable suspicion must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the employee. The supervisor observing such behavior must make a written record of the behavior within 24 hours of the

observed behavior or before results of tests are released, whichever is earlier.

Random

Under a scientifically valid selection method, drivers must be chosen at random for unannounced testing. Random testing must be reasonably spaced throughout the year and must result in alcohol-testing of at least 25% of the total number of the average number of University of Nebraska driver positions. Random testing for controlled substances must result in testing of at least 50% of the average number of the University of Nebraska driver positions.

Post-accident

Tests for alcohol and controlled substances must be administered to any driver who is involved in an accident if the accident results in loss of human life or if the driver receives a citation under state or local law for a moving traffic violation. At the discretion of the driver's supervisor and Human Resources, tests may be administered to a driver involved in any accident. Drivers must report the accident immediately, and they must immediately thereafter report for testing to a previously identified laboratory approved by the Department of Health and Human Services. Drivers must be provided necessary post-accident information, procedures, and instructions prior to beginning employment duties.

Tests must be administered as soon as practicable. An alcohol test must be administered within two hours (and no later than eight hours) following the accident. A controlled substance test must be administered within 32 hours following the accident. If tests are not administered within established time frames, efforts to test must stop, and a report

must be filed with the DOT to explain why tests were not promptly administered. A driver who is subject to post-accident testing must remain readily available for the testing or may be deemed to have refused to submit to testing.

Return-to-duty

A driver who has positive results from a test for alcohol or controlled substances must submit to retesting and test negative prior to resuming driving responsibilities.

Follow-up

A driver who has positive results from a test for alcohol or controlled substances and who is identified by a substance abuse professional as needing assistance in resolving problems with alcohol abuse or controlled substances must submit to a minimum of six follow-up tests within the first twelve months following return to duty.

Testing Procedures

Testing procedures at UNL will comply in every respect with DOT requirements. Careful attention will be given to insuring the integrity of the process with a high priority placed on the confidentiality of the employee.

For controlled substances

Collection sites will be designated by UNL. Sites will have all necessary equipment and supervision to provide for the completion of split samples, security, temporary storage, and shipping of the specimens to a drug testing laboratory certified by the Department of Health and

Human Services. The split sample method of collection will be used. Collection of the urine samples will allow privacy unless there is reason to believe that a particular employee may alter or substitute the specimen. Test results will be sent to UNL in a manner that will protect the confidentiality of the employee.

For alcohol Testing sites will be designated by UNL, where tests will be conducted by a certified Breath Alcohol Technician. After the employee provides an adequate amount of breath for testing, the results will be attached to and recorded on the breath alcohol test form and shown to the employee. The form will then be signed by both the technician and the employee. If the result is negative, no further testing will be required and the results will be transmitted to UNL in a confidential manner. If the result is positive, a confirmation test will be performed. Results of the confirmation test will then be attached to and recorded on test forms. Forms will be signed by both the technician and the employee and will then be sent to UNL in a manner that protects the confidentiality of the employee.

Blood alcohol testing is authorized only: 1) when a post-accident or reasonable suspicion test is required and an evidential breath testing device is not readily available; 2) when a post-accident or reasonable suspicion test is required and an evidential breath testing device suitable for confirmation testing is not readily available; or 3) when the covered employee attempts and fails to provide an adequate amount of breath.

Driver Refusal to Submit to Testing

Drivers who refuse to submit to testing or otherwise fail to cooperate in the testing for alcohol and/or controlled substances will be subject to corrective action up to and including dismissal.

Positive Test Results

Drivers who have a positive result from an alcohol and/or a controlled substance test will be subject to corrective action up to and including dismissal.

Drivers who have a positive result from an alcohol and/or a controlled substance test must be referred to UNL's Employee Assistance Program. Drivers must complete any treatment recommended by the EAP, subsequently test negative for alcohol and/or controlled substances, and submit to follow-up testing.

Referral to EAP does not necessarily mean that the driver will retain the position. The supervisor, working with the Department of Human Resources, will determine appropriate corrective action.

Other Requirements

Drivers may not perform driving responsibilities if they:

- report or return to work within four hours after using alcohol
- use or possess alcohol on the job, including during breaks and/or lunch
- have a positive result from a test for alcohol
- use alcohol during the eight hours following an accident if their involvement has not been discounted as a contributing factor in the accident or until they are tested, whichever occurs first
- report for duty or remain on duty after using or while using any controlled substance (except when the use is pursuant to the instructions of a physician who has advised the driver that the substance does not adversely affect the driver's ability to safely operate a commercial motor vehicle; drivers should inform supervisors of any therapeutic drug use)
- have a positive result from a test for controlled substances
- refuse to submit to or fail to otherwise cooperate in a test for alcohol or controlled substances as requested

A driver who engages in any conduct described above may not operate a

UNL commercial vehicle. The driver will be subject to corrective action up to and including dismissal.

Supervisory Education and Training

Supervisors must attend training sessions on the effects of the use of alcohol and controlled substances and on performance indicators of the probable use of alcohol or controlled substances. This training will assist supervisors in determining whether reasonable suspicion exists to require testing of drivers.

Driver Education and Training

Drivers must be provided educational materials that explain testing regulations and UNL's policy with regard to the regulations.

Rights and Benefits Associated with Military Leave

Statutory References

The University of Nebraska shall comply with the Uniformed Service Employment and Reemployment Rights Act of 1994 (USERRA) and Neb. Rev. Stat. Section 55-160 **et seq.** concerning the treatment of University employees with military obligations.

USERRA General Requirements

In general USERRA requires employers to grant leave to employees serving in the U.S. armed forces and the various reserve units; protects applicants and employees against discrimination on the basis of military service in the areas of hiring, job retention and advancement; provides

certain rights to reemployment upon return from leave; and extends health care and retirement plan coverage during military leave.

Nebraska Statute

In accordance with the law, the University provides fifteen workdays of paid military leave per calendar year, without regard to the specific nature of the military leave (e.g. active military duty, annual training, emergency assignment, assignments of an unspecified length). Military service beyond fifteen workdays will be charged against accrued vacation or taken without pay, as designated by the employee within a reasonable time of receiving notice of his or her leave.

At least ten days prior to the beginning of military leave, employees must submit to the department a request for leave, together with copies of official orders. Only in situations of emergency or unusual circumstances will leave be granted without the requested documents.

Employee Responsibilities

Employees serving in the military are required to provide advance notice to the University concerning their military obligations when possible and must inform the University when they plan to return to work once they have been discharged from their military duties.

Annual Training Defined

Generally defined, annual training refers to that temporary duty in which military reserve personnel engage, commonly serving one weekend per month and two consecutive weeks during the year.

Emergency Duty

Leave will be granted to any employee, who is a member of the National Guard or any other reserve component, ordered to active duty under emergency conditions. Should the military pay of such person be less than his/her full University pay, the University shall pay the differential while the person is in the active **emergency** service of the State.

Insurance and Retirement Benefits under USERRA

Health Insurance - Employees on military leave may continue medical and/or dental coverage for themselves and/or their dependents by paying the full cost of the premium (100%). This coverage may be continued for up to eighteen months from the date active military service began. Should the employee and/or dependents discontinue coverage, the coverage may be reinstated upon return from military service with no waiting period or exclusion for preexisting conditions.

Life Insurance - Employees on military leave may continue to participate in the group life insurance plan while on leave by paying the full premium. The Security Mutual Basic and Optional Plans, unlike many insurance programs, will cover the employee's death while on military duty; however, the Accidental Death and Dismemberment Plan does not cover claims associated with military service. Should the employee decide to discontinue any life insurance coverage, he/she may reinstate the coverage upon return to University employment without evidence of insurability.

Other Insurance - Long Term Disability coverage may not continue during military leave. Continued participation in reimbursement accounts is permitted.

Retirement Benefits - Once employment is reinstated, the employee may request retroactive participation in the basic plan, if otherwise qualified to participate. Upon paying his/her portion of the contribution

to the retirement plan, the University will make the employer's retirement plan contribution. The amounts contributed will be based on the employee's compensation had he/she continued employment with the University. The employee may also make up contributions to the SRA plan.

Employees may count military service towards the retirement plan's two years of service eligibility requirement.

Executive Memorandum No. 16: Policy for Responsible Use of University Computers and Information Systems

1. PURPOSE

It is the purpose of this Executive Memorandum to set forth the University's administrative policy and provide guidance relating to responsible use of the University's electronic information systems.

2. GENERAL

The University of Nebraska strives to maintain access for its faculty, staff, students, administrators and Regents (the "users") to local, national and international sources of information and to provide an atmosphere that encourages sharing of knowledge, the creative process and collaborative efforts within the University's educational, research and public service missions.

Access to electronic information systems at the University of Nebraska is a privilege, not a right, and must be treated as such by all users of these systems. All

users must act honestly and responsibly. Every user is responsible for the integrity of these information resources. All users must respect the rights of other computer users, respect the integrity of the physical facilities and controls, and respect all pertinent license and contractual agreements related to University information systems. All users shall act in accordance with these responsibilities, and the relevant local, state and federal laws and regulations. Failure to so conduct oneself in compliance with this Policy may result in denial of access to University information systems or other disciplinary action.

The University of Nebraska is a provider of a means to access the vast and growing amount of information available through electronic information resources. The University of Nebraska is not a regulator of the content of that information and takes no responsibility for the content of information, except for that information the University itself and those acting on its behalf create. Any persons accessing information through the University of Nebraska information systems must determine for themselves and their charges whether any source is appropriate for viewing.

Accepting any account and/or using the University of Nebraska's information systems shall constitute an agreement on behalf of the user or other individual accessing such information systems to abide and be bound by the provisions of this Policy.

The University may restrict or prohibit the use of its information systems in response to complaints presenting evidence of violations of University policies or state or federal laws. When it has been determined that there has been a violation, the University may restrict or prohibit access by an offending party to its information systems through University-owned or other computers, remove or limit access to material posted on University-owned computers or networks, and, if warranted, institute other disciplinary action.

3. DEFINITIONS

For purposes of this policy the following definitions shall apply:

- a. "Electronic communications" shall mean and include the use of information systems in the communicating or posting of information or material by way of electronic mail, bulletin boards, World Wide Web (internet), or other such electronic tools.
- b. "Information systems" shall mean and include computers, networks, servers and other similar devices that are administered by the University and for which the University is responsible. "Networks" shall mean and include video, voice and data networks, routers and storage devices.
- c. "Obscene" with respect to obscene material shall mean (1) that an average person applying contemporary community standards would find the material taken as a whole predominantly appeals to the prurient interest or a shameful or morbid interest in nudity, sex, or excretion, (2) the material depicts or describes in a patently offensive way sexual conduct specifically set out in Neb. Rev. Stat. §§ 28-807 to 28-809, as amended, and (3) the material taken as a whole lacks serious literary, artistic, political, or scientific value.

4. PERMITTED USE

a. **University Business Use and Limited Personal Use.** University information systems are to be used predominately for University-related business. However, personal use is permitted so long as it conforms with this Policy and does not interfere with University operations or an employee user's performance of duties as a University employee. As with permitted personal use of telephones for local calls, limited personal use of information systems does not ordinarily result in additional costs to the University and may actually result in increased efficiencies. Personal use of any University information system to access, download, print, store, forward, transmit or distribute obscene material is prohibited. **UNDER ALL CIRCUMSTANCES, PERSONAL USE BY EMPLOYEES MUST COMPLY WITH SUBSECTION b. OF THIS SECTION AND SHALL NOT CONFLICT WITH AN EMPLOYEE'S PERFORMANCE OF DUTIES AND RESPONSIBILITIES FOR THE UNIVERSITY.** Personal use may be denied when such use requires an inordinate amount of information systems resources

(e.g. storage capacity).

b. **Prior Approval Required for Personal Use for Outside Consulting, Business or Employment.** Personal use of University information systems resources or equipment by any user for personal financial gain in connection with outside (non-University) consulting, business or employment is prohibited, except as authorized for employees by Section 3.4.5 of the Bylaws of the Board of Regents. Employee personal use in conjunction with outside professional consulting, business or employment activities is permitted only when such use has been expressly authorized and approved by the University Administration or the Board of Regents, as appropriate, in accordance with the requirements of said Section 3.4.5 of the Bylaws.

5. ACCESS

Unauthorized access to information systems is prohibited. No one should use the ID or password of another; nor should anyone provide his or her ID or password to another, except in the cases necessary to facilitate computer maintenance and repairs. When any user terminates his or her relation with the University of Nebraska, his or her ID and password shall be denied further access to University computing resources.

6. MISUSE OF COMPUTERS AND NETWORK SYSTEMS

Misuse of University information systems is prohibited. Misuse includes the following:

- a. Attempting to modify or remove computer equipment, software, or peripherals without proper authorization.
- b. Accessing without proper authorization computers, software, information or networks to which the University belongs, regardless of whether the resource accessed is owned by the University or the abuse takes place from a non-University site.

- c. Taking actions, without authorization, which interfere with the access of others to information systems.
- d. Circumventing logon or other security measures.
- e. Using information systems for any illegal or unauthorized purpose.
- f. Personal use of information systems or electronic communications for non-University consulting, business or employment, except as expressly authorized pursuant to Section 3.4.5 of the Bylaws of the Board of Regents.
- g. Sending any fraudulent electronic communication.
- h. Violating any software license or copyright, including copying or redistributing copyrighted software, without the written authorization of the software owner.
- i. Using electronic communications to violate the property rights of authors and copyright owners. (Be especially aware of potential copyright infringement through the use of e-mail. See the provisions under "E-Mail" contained in this Policy.)
- j. Using electronic communications to harass or threaten users in such a way as to create an atmosphere which unreasonably interferes with the education or the employment experience. Similarly, electronic communications shall not be used to harass or threaten other information recipients, in addition to University users.
- k. Using electronic communications to disclose proprietary information without the explicit permission of the owner.
- l. Reading other users' information or files without permission.
- m. Academic dishonesty.
- n. Forging, fraudulently altering or falsifying, or otherwise misusing University or non-University records (including computerized records, permits, identification

cards, or other documents or property).

o. Using electronic communications to hoard, damage, or otherwise interfere with academic resources available electronically.

p. Using electronic communications to steal another individual's works, or otherwise misrepresent one's own work.

q. Using electronic communications to fabricate research data.

r. Launching a computer worm, computer virus or other rogue program.

s. Downloading or posting illegal, proprietary or damaging material to a University computer.

t. Transporting illegal, proprietary or damaging material across a University network.

u. Personal use of any University information system to access, download, print, store, forward, transmit or distribute obscene material.

v. Violating any state or federal law or regulation in connection with use of any information system.

7. PRIVACY

a. **User Privacy Not Guaranteed.** When University information systems are functioning properly, a user can expect the files and data he or she generates to be private information, unless the creator of the file or data takes action to reveal it to others. Users should be aware, however, that no information system is completely secure. Persons both within and outside of the University may find ways to access files. **ACCORDINGLY, THE UNIVERSITY CANNOT AND DOES NOT GUARANTEE USER PRIVACY** and users should be continuously aware of this fact.

b. **Repair and Maintenance of Equipment.** Users should be aware that on occasion duly authorized University information systems technological personnel have authority to access individual user files or data in the process of performing repair or maintenance of computing equipment the University deems is reasonably necessary, including the testing of systems in order to ensure adequate storage capacity and performance for University needs. Information systems technological personnel performing repair or maintenance of computing equipment are prohibited by law from exceeding their authority of access for repair and maintenance purposes or from making any use of individual user files or data for any purpose other than repair or maintenance services performed by them.

c. **Response to a Public Records Request, Administrative or Judicial Order or Request for Discovery in the Course of Litigation.** Users should be aware that the Nebraska public records statutes are very broad in their application. Certain records, such as unpublished research in progress, proprietary information, personal information in personnel and student records are protected from disclosure. However, most other University records contained in electronic form require disclosure if a public record request is made. Users should remember this when creating any electronic information, especially e-mail. Also, users should be aware that the University will comply with any lawful administrative or judicial order requiring the production of electronic files or data stored in the University's information systems, and will provide information in electronic files or data stored in the University's information systems in response to legitimate requests for discovery of evidence in litigation in which the University is involved.

d. **Response to Misuse of Computers and Network Systems.** When for reasonable cause, as such cause may be determined by the Office of the Vice President and General Counsel, it is believed that an act of misuse as defined in section 6 above has occurred, then the chief information services officer serving Central Administration or serving the relevant campus may access any account, file or other data controlled by the alleged violator and share such account information, file or other data with those persons authorized to investigate and implement sanctions in association with the misuse of the University's computer and information systems. Should any of the chief information service officers

reasonably believe that a misuse is present or imminent such that the potential for damage to the system or the information stored within it, is genuine and serious (e.g. hacking, spamming or theft), then the chief information officer may take such action as is necessary to protect the information system and the information stored in it, including the denial of access to any University or non-University user, without a determination from the Office of the Vice President and General Counsel regarding reasonable cause; provided however, that the chief information officer shall contact the Office of the Vice President and General Counsel as soon as possible to confirm that any protective actions taken were appropriate and within the parameters of this executive memorandum.

e. **Access to Information Concerning Business Operations.** Employees regularly carry out the business functions of the University using the University's information systems. Business records, inquiries and correspondence are often stored such that individuals may control the access to particular information stored within the University's information system. Should any employee become unavailable, be incapacitated due to illness or other reasons, or refuse to provide the information necessary to carry out the employee's job responsibilities in a reasonably timely manner, then following consultation with and approval by the Office of the Vice President and General Counsel, the chief information officer of Central Administration or of the relevant campus may access the employee's records in order to carry out University business operations on behalf of the unavailable or uncooperative employee.

8. E-MAIL

a. **Applicability.** ALL POLICIES STATED HEREIN ARE APPLICABLE TO E-MAIL. E-mail should reflect careful, professional and courteous drafting—particularly since it is easily forwarded to others. Never assume that only the addressee will read your e-mail. Be careful about attachments and broad publication messages. Copyright laws and license agreements also apply to e-mail.

b. **E-mail Retention.** E-mail messages should be deleted once the information

contained in them is no longer useful. When e-mail communications are sent, the e-mail information is stored in one or more backup files for the purposes of "disaster recovery", i.e. inadvertent or mistaken deletions, system failures. In order to provide for the recovery of deleted e-mail, while maintaining efficient use of storage capabilities, e-mail information on backup files shall be retained for a period of time not to exceed seven days.

9. WEB PAGES

The Central Administration and each University campus may establish standards for those Web Pages considered to be "official" pages of the University. All official Web Pages shall contain the administrative unit's logo in the header and footer in order to identify it as an official University of Nebraska Web Page. No other Web Pages shall be allowed to use University of Nebraska logos without the express permission of the University.

Originators of all Web Pages using information systems associated with the University shall comply with University policies and are responsible for complying with all federal, state and local laws and regulations, including copyright laws, obscenity laws, laws relating to libel, slander and defamation, and laws relating to piracy of software.

The persons creating a Web Page are responsible for the accuracy of the information contained in the Web Page. Content should be reviewed on a timely basis to assure continued accuracy. Web Pages should include a phone number or e-mail address of the person to whom questions/comments may be addressed, as well as the most recent revision date.

10. NOTIFICATION

This Policy shall be published in all employee and faculty handbooks and student catalogs, and placed on the World Wide Web in order to fully notify users of its existence.

11. APPLICATION AND ENFORCEMENT

This Policy applies to all administrative units of the University of Nebraska. The Central Administration and each University campus is encouraged to provide supplemental policy guidance, consistent with this Policy, designed to implement the provisions herein.

Each University campus shall be responsible for enforcing this Policy in a manner best suited to its own organization. It is expected that enforcement will require cooperation between such departments as computer systems administration, human resources, affirmative action, academic affairs and student affairs. Prior to any denial of access or other disciplinary action, a user shall be provided with such due process as may be recommended by the University's Office of the General Counsel.

Revised and dated August 28, 2001

L. Dennis Smith, Ph.D.
President

Note: Red text indicates a policy addition (August 2001). [Previous version of the policy.](#)

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If you would like more information about the department of Human Resources, visit the [Human Resources website](#) or call 402-472-3101.

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