

# Protocol against sexual harassment and harassment based on sex or sexual orientation



Universitat Oberta  
de Catalunya

## 0. Declaration of principles

Everybody has the right to be treated with dignity and respect. The Universitat Oberta de Catalunya (Open University of Catalonia, UOC) believes that any form of gender-based violence is an attack on human dignity, a violation of fundamental rights of the people associated with the University and a serious manifestation of inequality between women and men, so it is totally unacceptable and under no circumstances can it be tolerated or concealed. The UOC thus wishes to reaffirm its respect for fundamental human rights and its priority to promote a university community and living environment that is free from any type of violence.

One of the actions defined in point 8 of the second UOC Gender Equality Plan (2011–2013) was “to disseminate the specific protocol for preventing, detecting and dealing with gender-based harassment, and review the procedure”. A protocol for internal intervention has thus been established for situations in which an episode of gender-based violence suffered by a person employed by the UOC is brought to the attention of any authority or body of the UOC. This protocol guarantees that the affected person will receive confidential and anonymous advice and support and be referred to the requested resources.

The UOC acknowledges that gender-based violence is sadly a common phenomenon in our society and that these types of behaviours are neither isolated nor rare incidents at universities. Unfortunately, the university institution does not escape this reality. However, the UOC states that as an institution, beyond generating and transmitting knowledge, it has the firm will to be a driver of change and social transformation and to help create a more just world for all.

## 1. Purpose of this protocol

The purpose of this protocol is to establish the procedure to be followed to prevent and identify cases of sexual harassment and harassment based on sex or sexual orientation and to act on them, as well as to define a plan of action with a view to eradicating such cases.

## 2. Scope

The scope is those people who are contracted to work at the UOC, regardless of the type of contract they have.

This protocol covers all situations that occur in a workplace environment (offices, business travel, training sessions, Virtual Campus, etc.). Sexual harassment and harassment based on sex or sexual orientation will not be tolerated in any of these places or circumstances.

## 3. Legal framework and definitions

Organic Law 3/2007, of 22 March, on effective equality between women and men established in **Article 48** the obligation to create a protocol to prevent and address sexual harassment and harassment based on sex or sexual orientation in companies. The philosophy behind this legal initiative is that the most effective tool to prevent the existence of such situations, which have devastating consequences for the individual and for the company, is their prevention and intervention at the earliest stages within the actual organization.

**Article 48** explicitly states that “companies must promote working conditions that prevent sexual harassment and harassment based on sex, and arbitrate specific procedures to prevent them and respond to the complaints or claims of victims. For this purpose, measures can be established that must be negotiated with employee representatives, such as preparing and distributing codes of practice, conducting information campaigns and organizing specialized courses”.

The company’s management has the responsibility to take appropriate preventive measures and integrate them into their activities and decisions in order to effectively protect staff against sexual harassment and harassment based on sex or sexual orientation, and also against bullying and mobbing. This requirement follows from the general duty contained in **Article 4.1 d)** of the amended version of the Law on the Statute of Workers and **Article 14** of Law 31/1995, of 8 November, on occupational health and safety, according to which a company’s management must guarantee a worker’s right to physical and mental integrity in “all aspects of work”.

This protocol therefore aims to be a tool to facilitate the fulfilment of this legal obligation by the UOC.

### 3.1. Legal references

#### 3.1.1. Catalan legislation

- Articles 15.2 and 40.7 and 8 of the Statute of Autonomy of Catalonia.
- Resolution 243/VI of the Parliament of Catalonia, of 11 October 2000, on non-discrimination based on sexual orientation.
- Law 3/2005, of 8 April, on adoption and guardianship, which essentially allows homosexuals to adopt.
- Law 5/2008, of April 24, on the right of women to eradicate violence against them.

#### 3.1.2. Spanish legislation

- Articles 1.1, 9.2, 14, 18.1, 35.1 and 53.2 of the Spanish Constitution.
- Articles 172, 184 and 316-318 of Organic Law 10/1995, of 23 November, of the Criminal Code.
- Article 14 of Law 31/1995, of 8 November, on occupational health and safety.
- Articles 28 and 37 of Law 62/2003, of 30 December, on fiscal, administrative and social measures.
- Law 13/2005, of 1 July, amending the Civil Code concerning the right to same-sex marriage.
- Organic Law 3/2007, of 22 March, on effective equality between women and men.
- Articles 115, 116 and 117 of Royal Legislative Decree 1/1994 of 20 June, approving the amended version of the General Law on Social Security.
- Articles 4.2 c) and e), 96.11 and 14 of Royal Legislative Decree 1/1995 of 24 March, approving the amended version of the Law on the Statute of Workers.
- Articles 8.11 and 13 of Royal Legislative Decree 5/2000, of 4 August, approving the amended version of the Law on offences and penalties in the social order.

#### 3.1.3. European legislation

- European Charter for Equality of Women and Men in Local Life.
- European Parliament resolution on harassment at the workplace (2001/2339/[INI]).
- Committee of the European Union (2001), Violence at the Workplace. Minutes of the meeting of 3 March 2001. Document 0978/01 ES.
- European Parliament resolution on harassment at the workplace (C77E of 28 March 2002).
- Directive 2000/78/EC of the European Council. Paragraph 11 establishes a general framework for equal treatment in employment and occupation without discrimination based on sex or sexual orientation.
- Directive 2002/73/EC of the European Parliament and Council of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions. Article 2 includes definitions of harassment and point 3 of this article points out that sexual harassment is considered discrimination on the grounds of sex and is therefore prohibited.
- European Code of Conduct 1992; while not binding, it treats sexual harassment as a problem of discrimination on the grounds of sex.

### 3.2. Definitions and examples

**Sexual harassment:** Any form of verbal or physical conduct consisting in asking for favours of a sexual nature (whether for oneself or a third person) with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, degrading or offensive environment for the person concerned and causes psychological, moral and professional problems.

It should be noted that these conducts:

- are unwanted by the person who receives them,
- are of a sexual nature or have sexual connotations,
- have the purpose or effect of violating the dignity of a person and creating an intimidating, hostile, degrading, humiliating or offensive environment.

For example, and always taking into account the factor of persistence or repetition, the following conducts and actions can be considered sexual harassment:

### **Verbal**

- Using sexual blackmail.
- Threatening to upload photos or videos showing the person having sex.
- Making obscene sexual comments.
- Telling offensive sexual jokes.
- Communicating with someone in a manner that is degrading or obscene.
- Spreading rumours about a person's sex life.
- Making rude comments about a person's body or physical appearance.
- Asking a person to go out repeatedly, even though it has been made clear that these invitations are unwanted and inappropriate.
- Asking a person out on dates or to have sex, or pressuring a person into accepting them.
- Requesting sexual favours.

### **Nonverbal**

- Staring at a person's body in a sexually suggestive manner.
- Making obscene gestures.
- Displaying graphics, cartoons, drawings, photographs or internet images with sexually explicit content.
- Sending sexually offensive letters, notes or emails.

### **Physical**

- Use of inappropriate physical contact.
- Cornering a person and deliberately and unnecessarily looking for ways to be with them.
- Making deliberate and unsolicited physical contact.
- Touching sexual parts of the body intentionally or "accidentally".

**Harassment based on sex or sexual orientation:** Persistent behaviour against a person based on sex or sexual orientation with the purpose or effect of violating their professional dignity and creating an intimidating, degrading or offensive work environment. Unlike sexual harassment, there may not be any physical conduct, but instead it involves moral and psychological harassment.

It should be noted that these conducts and actions:

- are unwanted by the person who receives them,
- are related to a person's sex or sexual orientation,
- have the purpose or effect of violating the dignity of a person and creating an intimidating, hostile, degrading, humiliating or offensive environment.

For example, and always taking into account the factor of persistence or repetition, the following conducts and actions can be considered harassment based on sex or sexual orientation:

- Behaving in a discriminatory fashion.
- Addressing a person offensively.

- Ridiculing and undermining a person's skills, abilities and intellectual potential.
- Using sexist humour.
- Putting down a person's work.
- Ridiculing people who take on tasks that are traditionally carried out by the opposite sex.
- Ignoring contributions, comments or actions (excluding; not taking a person seriously).

Harassment situations are especially frequent and serious when they occur due to pregnancy and motherhood of women at all professional levels. Typically, the purpose of harassment based on sex in these cases is to force or induce the person concerned to voluntarily resign or renounce to their rights and benefits (for example, reduced hours to look after their children).

## 4. Procedure

### 4.1. Principles and guarantees

The procedure should be fast and agile, offer credibility, transparency and fairness, and protect the privacy, confidentiality and dignity of the people concerned. To this end, alphanumeric codes will be assigned at the beginning of the process to identify the parties.

In addition, the victim will be protected from an occupational health and safety perspective and measures will be taken to prevent the alleged harassment situations and to establish the precautionary actions that are deemed appropriate, considering the physical and psychological consequences arising from the situation and paying special attention to the work circumstances of the alleged victim.

The person presenting a complaint or claim is entitled to:

- Receive guarantees that the complaint or claim will be handled quickly.
- Be accompanied by a trusted person throughout the process.
- Receive guarantees that no evidence of the complaint will be recorded in the person's file if the complaint has been made in good faith.
- Receive information on the progress of the complaint.
- Receive information on the resulting corrective actions.
- Receive fair treatment.

The person accused of sexual harassment or harassment based on sex or sexual orientation is entitled to:

- Be informed of the complaint or claim.
- Receive a copy of the complaint and respond to it.
- Be accompanied by a trusted person throughout the process.
- Receive information on the progress of the complaint.
- Receive fair treatment.

### 4.2. Identification and communication of harassment situations

Identification of harassment can be determined by:

(a) Direct communication of the person affected or others:

- Communication of the employee through reference persons, either by email or phone.
- Communication of the employee through health and safety representatives and/or members of the Equality Committee.
- Communication of a third person who is a witness to the situation.

(b) Identification of evidence:

- Short-term disability doctor's note.
- Management reports on professional contribution.
- Risk assessments or negative results in other types of studies, surveys, etc.
- Exit interviews.
- High turnover rate.

These are the channels that can be used by the person who suffers the harassment and makes a complaint asking for support from the institution or simply requesting information about the issue.

The person who receives the complaint and attempts to resolve the conflict is the *reference person*. The role of the reference person is key to achieving the proper implementation of the Protocol against sexual harassment and harassment based on sex or sexual orientation.

### 4.3. Initial assessment of the harassment

The first step in the assessment is taken by the reference person by conducting an interview with the person who has reported the harassment situation, with the aim of making an initial assessment of the situation (to assess the origin of the conflict and the risk to which the person may be exposed). During this interview, the person concerned will be informed of his or her rights and the possible options and actions that are available.

Based on the interview, the reference person can assess which of the following cases corresponds to the situation described:

- Conflict situation.
- Harassment (work-related or sexual).
- Psychosocial risk.
- Situation where there is no conflict requiring psychosocial intervention.

During the assessment and intervention process, the employee can request the participation of health and safety delegates and/or members of the Equality Committee.

### 4.4. Intervention process

#### 4.4.1. *Informal resolution*

The people affected in the process may reach an agreed solution with the mediation of the reference person. This involves:

- Informing the person who is accused of harassment that his or her behaviour is contrary to the rules of the institution.
- Informing the person of the consequences of maintaining the harassment attitude.
- Communicating that, although the conversation is informal and confidential, the situation will be monitored.

The Personnel Department may or may not intervene.

An informal resolution involves guaranteeing that the harassment has ended and informing both parties of the decision.

In cases in which there is an informal resolution, there will be no written record of the intervention process. However, the Personnel Department must be informed of the resolution measures agreed on to ensure they are viable and in line with the institution's policies. The Equality Committee should also be informed.

#### 4.4.2. Formal resolution

A formal resolution must be decided on if:

- The informal mediation failed to resolve the conflict.
- The severity of the incidents requires the opening of formal proceedings. In this regard, it must be kept in mind that, depending on the seriousness of the incidents, they may constitute a crime (Criminal Code, Article 184), in which case criminal proceedings must be initiated.
- The person concerned has opted against an informal resolution.

At the beginning of formal proceedings, the following people must be confidentially informed:

- Superiors involved (directly or indirectly).
- Health and Safety Committee.
- Equality Committee representative.

The following steps must be taken:

- Receipt of a formal complaint from the victim.
- Identification of the potential risk by means of a semi-structured interview with the reference person.
- Adoption of precautionary measures.
- Compilation of all available information through interviews, emails, recordings, witnesses, etc.
- Assessment of the situation by means of a report written by the reference person, with the support of the Personnel Department and members of the Equality Commission if required.
- Drafting of the action plan, validated by the Personnel Department and the person's direct superior (if required).
- Monitoring of the implementation and assessment of the measures applied by the Comprehensive Health and Safety Services, through the reference person.

The process will ensure the confidentiality of the people involved both during the resolution of the harassment situation and after it is resolved.

Administrative (labour inspection) or judicial (court) legal action can be taken to protect a person's rights, especially if due to the nature or severity of the incidents or the position of the person who created the situation, these internal resolution channels seem inappropriate or if one disagrees with the solution reached internally and when the incidents are susceptible to constitute a crime (sexual harassment is classed a crime in the Criminal Code, Article 184) then criminal proceedings must be initiated.

## 5. Disciplinary measures

If at the end of the intervention process the incidents analysed suggest they may constitute an offence, disciplinary proceedings will be launched. In the UOC's collective agreement, sexual harassment and bullying are classified as very serious offenses (Article 40).

Guarantees must be given that there will be no retaliation within the institution against those who denounce, serve as a witness, assist or participate in harassment investigations, or against those who oppose to such conduct, towards either themselves or third parties.

Notwithstanding the previous point, any complaints, allegations or statements made by third parties that prove to have been made intentionally or that are dishonest or deceitful will be grounds for disciplinary action, without prejudice to the remaining actions that may apply.

In all communications arising from sanctions, the Personnel Department will omit the name of the person who is the victim of harassment and replace it with the identification code.

The Health and Safety Committee will be informed of the final conclusions in moral and sexual harassment investigation processes, provided that disciplinary consequences are derived and it is thus authorized by the person or persons affected.

The Equality Committee will prepare an annual report on the development of communications made due to sexual harassment and harassment based on sex or sexual orientation.

## 6. Disciplinary measures

With a view to preventing harassment, the institution is committed to promoting measures to avoid them, such as:

- **Communication:** Guaranteeing that all workers at the UOC are aware of this protocol. Ensuring that all of the people involved in the organization have easy access to this protocol.
- **Responsibility:** All employees are responsible for creating a working environment in which everyone's dignity is respected. Superiors must be well aware of their duty to guarantee that no harassment occurs in their areas of responsibility.
- **Training:** With a commitment to preventing sexual harassment, this topic will be included in appropriate training programmes. These programmes will be aimed at all staff, and particularly at managers and superiors.