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## Policy HR006: General Misconduct

Recommended for Approval by: Eric Guiser

Eric Guiser, Senior Associate Vice President for Human Resources

Approved by: L. Lorraine Bernotsky  
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### A. Intent

Pennsylvania Western University (PennWest) seeks to create an environment in which employees are civil, collegial, respectful of individuals, and allow for the efficient operation of the university. PennWest expects all employees to conduct themselves in such a way as to contribute to this environment. The intent of this policy is to prevent improper conduct, stop and/or redress improper conduct as quickly as possible, and do so in a consistently fair manner while protecting academic freedom, the rights of employees, and advancing the mission and values of PennWest.

This policy is not intended to limit employee rights or operate in conflict with relevant collective bargaining agreements (CBAs). This policy defers to the terms and conditions of any applicable CBA, state or federal law, or regulatory policy.

Reports or complaints of sexual misconduct are covered under *Policy DE001: Sexual Misconduct Policy and Procedure* and should be directed to the Office of Equity and Title IX. Reports or complaints of discriminatory behavior based on race, color, religion, national origin, ancestry, sex, age, marital status, familial status, sexual orientation, gender identity and expression, pregnancy, genetic information, disability, status as a veteran, or any other characteristic prohibited under applicable federal or state law are covered under *Policy DE002: Non-Discrimination* and should be directed to the Office of Equity and Title IX. Reports of alleged violations of *Policy HR005: Amorous Relationships* shall be directed to the Office of Human Resources or Office of Equity and Title IX, and alleged violations of the policy shall be covered under its procedures. This policy applies to all bargaining unit and non-represented employees. This policy does not apply to student employees.

### B. Definition(s) – review first amendment rights consistent with all areas.

**Pre-Disciplinary Conference (PDC)** – A meeting where an employee is provided with an opportunity to meet with their supervisor, Human Resources and/or the President/President's designee (depending on the applicable employee group/CBA), as well as their appropriate union representative, regarding concerns/allegations that are being investigated. The

employee will have the opportunity to respond to the concerns/allegations before any decision on disciplinary action is taken. This is normally the last meeting before a decision on discipline takes place.

**Investigatory Interview** – A meeting where an employee is provided with an opportunity to meet with their supervisor and/or Human Resources (depending on the applicable employee group/CBA), as well as their appropriate union representative, regarding concerns/allegations that are being investigated. The employee will have the opportunity to respond to the concerns/allegations. This is normally a meeting before the Pre-Disciplinary Conference takes place.

**Bullying** – Any written, verbal, or physical act, or any electronic communication, directed toward a person that is intended to cause or that a reasonable person would know is likely to cause, and that actually causes, physical harm or substantial emotional distress and thereby adversely affects the ability of another person to participate in or benefit from the university's employment opportunities, or activities.

**Complainant** – An individual who has reported being or is alleged to be subjected to conduct that could constitute covered misconduct as defined under this policy.

**Cyber-bullying** – An intentional electronic act of bullying as defined above.

**Disciplinary Action** – Includes oral and written reprimands, unpaid suspensions, a letter in lieu of an unpaid suspension (depending on the applicable employee group/CBA) and termination.

**Harassment** – Behavior consisting of physical or verbal conduct that is sufficiently severe or pervasive such that it substantially interferes with an individual's employment, education or access to University programs, activities or opportunities and would detrimentally affect a reasonable person under the same circumstances. Harassment may include, but is not limited to, verbal or physical attacks, graphic or written statements, threats, or slurs. Whether the alleged conduct constitutes prohibited harassment depends on the totality of the circumstances, including the nature, frequency and duration of the conduct in question, the location and context in which it occurs, and the status of the individuals involved.

Additionally, harassment against any individual on the basis of race, sex/gender, color, age, religion, ancestry, national origin, disability, organizational affiliation, sexual orientation, gender stereotype, marital status, veteran status, or any other protected class status as defined by applicable federal, or state law is discriminatory. This includes harassing conduct affecting tangible job benefits, interfering unreasonably with an individual's work or educational performance, or creating what a reasonable person would believe is an intimidating, hostile, or offensive environment. Discriminatory Harassment is further defined and covered under Policy DE002 - Non-Discrimination Policy

**Informal Resolution** – A non-disciplinary process. When available, its intent is to solicit cooperation from the employee to adjust an employee's behavior without the University reaching a determination as to whether or not said behavior was actionable under this or other policies. Written record of an informal resolution should be forwarded to the Office of Human Resources and Senior Associate Vice President for Human Resources.

**Intimidation or the act of intimidation** – Behavior or conduct that intentionally or knowingly puts another person in fear of imminent bodily injury.

**Misconduct** – Generally, misconduct is work behavior which is disruptive in the context of having the direct effect of unreasonably impairing or destroying teamwork, productivity, or

efficiency; or behavior which falls below published ethical standards of a profession.

**Preponderance of the Evidence** – The standard of proof used by PennWest when considering adverse employment actions and is evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.

**Retaliation** – Conduct taken against any individual for the purpose of interfering with any right or privilege secured by applicable civil rights law, university policy, or CBA because the individual made a report, filed a complaint, or participated or refused to participate in any manner during an investigation or hearing. Retaliation includes intimidation, threats, coercion, discrimination, or harassment. Retaliation does not include the exercise of right protected under the First Amendment, good faith actions lawfully pursued in response to an allegation of a violation of this or other policies, or charging an individual with a violation of this policy for making a materially or deliberately false statement or accusation in the course of a proceeding under this policy, provided that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

**Report** – Disclosure of possible non-compliance with laws, regulations, and/or policies.

**Reporter** – Any University Community Member who possesses a reasonable, good faith belief that possible non-compliance with laws, regulations, and/or policies has occurred and who makes a report.

**Respondent** – Any individual who has been reported to be the perpetrator of conduct that could constitute a violation of this policy.

**University Community Member** – Includes all faculty, staff, students, volunteers and administrators.

## C. Policy

PennWest expects all employees to conduct themselves at work in a manner: 1) which reflects collegiality and respect towards others and their viewpoints, even when in disagreement, 2) which is consistent with established ethical standards of their discipline or learned profession when they exist, 3) which avoids other forms of disruptive behavior intended to intimidate, demean, exploit, bully, or retaliate against others, 4) which is not in violation of an applicable CBA, 5) and which does not violate state or federal civil or criminal laws, management directives or personnel rules of the University relating to employee behavior. This applies to on campus, hybrid, and remote employees.

### **Work Rules for Employees**

The following four categories of behavior are set forth to inform all employees of examples of misconduct that could result in investigation, informal resolution, or disciplinary action as appropriate to the situation. This is not a comprehensive listing of misconduct and does not include misconduct as defined and covered under Policies *DE001: Sexual Misconduct Policy and Procedure*, *DE002: Non-Discrimination*, or *HR005: Amorous Relationships*. In the case of disciplinary action, all actions will comport with the appropriate procedures under the associated CBA.

#### Gross Misconduct

- Insubordination, which unwillingness or refusal to perform assigned duties and follow job instructions;
- Intentional falsification of University records or documents;
- Theft;

- Imperiling the safety of others through willful neglect and actions;
- Intentional destruction of University property;
- As outlined in Board of Governors Policy 1989:02: Drug Free Workplace; The unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance;
- Violation of Policy FA049: Alcohol and Drugs;
- Acts that constitute a violation of local, state, or federal law on University Property;
- Any action or creation or participation in a situation that recklessly or intentionally endangers mental or physical health;
- Bullying or harassment;
- Retaliation, as prohibited under this policy, any CBA or any other PennWest policy;
- Fighting and/or physical assault on University property while on the job;
- Intimidation;
- Any act of violence;
- Knowingly destroying or altering University records in order to avoid a lawful request under the Right-to-Know Law.

Work Performance/General Misconduct – Many of these should initially be addressed through the evaluation process. Actions that are recurring or severe enough nature would need to be addressed through this policy.

- Intentional failure to comply with University policy;
- Sleeping on the job not associated with lunch/breaks;
- Engaging in unauthorized business while on the job;
- Engaging in unauthorized childcare or care of minors during work hours, this includes while working remotely;
- Unauthorized disclosure of confidential information or records under FERPA, the Department's established policy or under Policy AC053: Confidentiality of Student Records;
- Knowingly providing false information to other state agencies, or University employees or administrators responsible for record-keeping;
- Failure to comply with health, safety requirements, rules, and regulations;
- Negligence in the performance of assigned duties;
- Failure to follow job instructions;
- Violation of FA009 Smoking Policy;
- Unauthorized or improper use of University identification or access cards.

#### Attendance and Punctuality

- As outlined by the appropriate collective bargaining agreement, Management Directive 505.7 Personnel Rules, and Management Directive 530.7 Absence Program.

#### Use of University Property

- Unauthorized or improper use of University property or equipment;
- Violations of *Policy IT001: Acceptable Use Policy*;
- Unauthorized use of University resources for personal financial or personal gain;
- Unauthorized use, lending, borrowing, or duplicating of University keys.

#### **D. Procedure(s)**

The Senior Associate Vice President for Human Resources or designee, as defined by the appropriate CBA language, will decide how a complaint under this policy will be addressed. Possible means of

addressing a complaint include:

1. Through existing collective bargaining process, particularly for issues concerning the implementation of contractual procedures;
2. Through an informal discussion with the parties involved to facilitate a resolution;
3. Through an informal mediation process guided by the Office of Human Resources;
4. Through issuance of a Memorandum of Instruction (MOI) which is a non-disciplinary action;
5. Through an investigation under this policy in compliance with the appropriate CBA language;
6. Referral to the Office of Equity and Title IX for Sexual Misconduct or Non-Discrimination allegations;
7. Rejecting the complaint due to a lack of actionable information, lack of control over the respondent, or the complaint not meeting an actionable violation of this policy.

Complaints referred for consideration through the Misconduct Policy should meet the following factors:

1. There is first-hand information by the complainant or witness concerning the alleged misconduct;
2. There is sufficient detail to articulate the alleged behavior which could constitute misconduct;
3. There is the identification of specific actions which relate to the alleged misconduct;
4. The complaint is filed within a reasonable period of time of the alleged misconduct, consistent with appropriate CBA language;
5. There is an opinion that the complainant, witness, and/or supporting materials could be judged to be credible and reliable, and;
6. There is an opinion that if one were to believe the allegation, there could be a violation of a CBA, PASSHE/PennWest policy, or other type(s) of inappropriate conduct as described in this policy or other University policies, procedures, or documentation.

All employees of the University enjoy due process rights when they have been accused of misconduct. Due process requires notice and the opportunity to be heard. For Union covered faculty and staff, these rights are imbedded in their rights as public servant employees and in their respective CBAs as a fundamental element of just cause. For managers and non-represented employees, they are embedded in their rights as public servants and relevant PASSHE Board of Governors policies.

Complaints may be addressed through informal resolution. Under specific circumstances and when appropriate, the complaint should be discussed with the faculty or staff member by the appropriate supervisor/manager. When appropriate, the faculty or staff member should be afforded the opportunity to provide an explanation and/or change their behavior. Managers are required seek advice from the Office of Human Resources. When appropriate, documentation of this step can be issued via a MOI. MOIs are a non-disciplinary action, are not retained in the Official Personnel File (OPF) but are held by the supervisor/manager. If agreed to by the employee, the appropriate union will be notified.

For complaints of conflicts between employees, when appropriate, informal resolution may take the

form of mediation. Mediation allows for a facilitated dialogue between employees and/or supervisors, with a neutral third party, as assigned by the Office of Human Resources. Informal resolution through mediation is a voluntary process that complainants and respondents must agree upon, and either party can request. The Senior Associate Vice President for Human Resources will determine if a request for informal resolution through mediation is appropriate. Agreements may be withdrawn by either party.

Complaints should be in writing whenever possible. The Senior Vice President for Human Resources will determine whether a written complaint or report warrants an investigation, including following the appropriate CBA language.

All investigations of employees will comport with the relevant Collective Bargaining Agreement.

Employees identified as witnesses in an investigation can be compelled by the Office of Human Resources to participate in a witness interview. Students, whether acting as complainants or witnesses, cannot be compelled to participate in investigations under this policy. Witnesses are not provided with anonymity but shall have a reasonable expectation of privacy. Witnesses should not discuss the investigation with others, outside of their Union representative as appropriate. If witness information needs to be disclosed as part of the investigation or through a grievance process, the witness will be notified.

Respondents, who are represented employees, are permitted to have a Union representative present during investigatory interviews or any meeting that may lead to discipline. Respondents covered under a CBA are encouraged to notify their union representative.

For any alleged violation under this policy that the Senior Associate Vice President for Human Resources determines requires an investigation, the Senior Associate Vice President of Human Resources will assign an investigator to collect evidence, interview parties and witnesses, and generate an Investigative Report at the conclusion of the investigation. This process will follow all CBA requirements.

Once an investigation is completed, an Investigative Report will be completed and provided to the Senior Associate Vice President for Human Resources for review and/or provision to the appropriate decision maker as determined by the appropriate CBA. This report will provide a brief summary of the evidence collected and recommended findings for the decision maker or Senior Associate Vice President for Human Resources to consider. These reports can take the form of brief emails or formal reports, depending on the nature and severity of the alleged violation. The investigator will consult with the Senior Associate Vice President for Human Resources and University Legal Counsel to determine which Investigative Report is appropriate.

All faculty and staff are afforded due process and as such are provided with notice of charges and a pre-disciplinary conference (PDC) where they will have the opportunity to speak to the allegations prior to the issuance of any disciplinary action. Prior to, or during, the PDC all relevant evidence or information shall be reviewed in accordance with any applicable rights as afforded by a CBA.

Nothing in this policy is intended to limit or expand the rights of PennWest employees as established by an applicable CBA.

#### **E. Related policies**

BOG Policy 1989-02: Drug-Free Workplace

Management Directive 505.7 Personnel Rules

Management Directive 530.7 Absence Program

Policy FA009: Smoking on University Property

Policy FA049: Alcohol and Drugs

AC053: Confidentiality of Student Records

DE001: Sexual Misconduct Policy and Procedure

DE002: Non-Discrimination Policy

HR005: Amorous Relationships

IT001: Acceptable Use

**F. Contact Information**

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**G. Policy Review Schedule**

Reviewed as needed.