

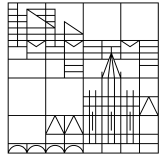
Guidelines to Combat
Discrimination and
Sexualized Violence

As of 22 September 2022

Adopted by the Senate on
14 September 2022

Equal Opportunity Office in cooperation with the Division of Legal Affairs

The German version of this document is the only *legally binding version*.
This English translation is for your convenience only.



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Preamble

The University of Konstanz stands for fair treatment and an inclusive culture. It promotes a culture of respectful discussion and communication that fosters cooperation among its members and affiliated members at all levels, characterized by equal opportunity, respect and awareness for discrimination. Discrimination and sexualized violence are a gross violation of personal rights. They create a climate of intimidation and humiliation that impairs not only a person's enjoyment of and the ability to work and study, but also the health of affected persons. The legal background is provided by the General Act on Equal Treatment (AGG) of 2006 and § 4a of the *Landeshochschulgesetz* LHG (state law on higher education). The University of Konstanz's Official Agreement on Fair and Respectful Behaviour in the Workplace, which was already taken into account in the revised version of the 2015 guidelines, is also relevant for this version. The university's mission statement, Code of Practice on Gender Equality and Code of Practice on Diversity define that it is the **university's task to counter discrimination** while responding to and promoting diversity at the university. With these guidelines, the university aims to maintain and promote a good working environment for staff and students as well as a diversity-friendly atmosphere.

1. Objectives of the guidelines

The guidelines serve to protect against and reduce discrimination, sexual harassment and violence at the University of Konstanz.

The university actively promotes a good working environment and a diversity-friendly atmosphere through concrete measures and lays out the responsibilities and procedures in case of violations. Within their area of responsibility, university members create an environment in which the protection of the personal rights **of all** members and affiliated members is ensured through responsible action.

Persons affected by discrimination and sexualized violence have a **right to get advice and file complaints**. The university strongly encourages these persons to make use of this right and to take advantage of respective support services. All university members work towards ensuring that discrimination and sexualized violence do not occur. The responsible supervisors, contact persons and representatives are committed to reducing discrimination and sexualized violence and to considering and treating such conduct as violations of the law.

2. Scope of application

These guidelines apply to all members and affiliated members of the university within the meaning of § 9 LHG. In particular, this also includes persons who are not bound to the university by employment or civil service law, such as students, external doctoral researchers and scholarship holders. The guidelines also apply to discrimination

by third parties, provided that this has been contractually agreed with them, or a corresponding requirement has been imposed as part of a decision under public law. The guidelines cover the protection of members and affiliated members during and in the course of activities for which the university is responsible or which are attributed to the university.

For protection during activities offered by the student body or Seezeit student services, the respective regulations of these entities are applicable.

3. Definition, dimensions and forms of discrimination

3.1. Definition

Discrimination is any form of unjustified disadvantage or unequal treatment experienced by individuals or groups on the basis of different perceived or ascribed characteristics (e.g. age, ethnic affiliation or disability) or characteristics that are not directly perceptible. Discrimination manifests itself in many different verbal and non-verbal forms. This applies to both the physical and the digital sphere, to any illustrations and statements in the form of an image, oral and non-verbal expression or writing.

- **Direct discrimination** means disparagement, disrespect, disregard, exclusion or violence. In accordance with these guidelines, all practices and conduct that are generally recognized as likely to degrade, insult or coerce a person are considered as forms of discrimination and sexualized violence. This includes, for example, discrimination on the basis of ascribed, assumed or actual personal characteristics mentioned in 3.2 or other individual differentiating characteristics such as appearance. Relevant discrimination occurs when a person is treated less favourably than another person is, has been or would be treated in a comparable situation on any of the grounds mentioned in 3.2. Direct discrimination on grounds of gender also occurs in the case of less favourable treatment due to pregnancy, maternity or parenthood
- **Indirect (structural) discrimination** occurs when apparently neutral regulations, criteria or procedures can place persons at a particular disadvantage compared to other persons because of their personal characteristics
- **Multiple discrimination** includes both individual/direct and structural/indirect stigmatization

Discrimination and sexualized violence that exploit a relationship of dependency at the training place, workplace or when studying, especially under threat of personal or professional disadvantages, are judged as particularly grave.

Different treatment of persons and groups of persons is permissible if appropriate and reasonable measures are taken to prevent or compensate for existing disadvantages.

3.2. Dimensions and forms of discrimination

Dimensions of discrimination include in particular sexist disparagement or disadvantage on grounds of gender, gender identity, gender expression or sexual orientation, as well as disparagement and disadvantage on grounds of racist or ethnicized ascription. Discrimination can also occur with regard to ascribed, assumed or actual characteristics such as religion or belief, disability or physical and health condition, social or economic origin or status, age, lifestyle and family models, migration and flight, as well as any other form of stigmatization.

Direct forms of discrimination include:

Harassment: Harassment is discrimination when unwanted conduct related to any of the above mentioned dimensions has the purpose or effect of violating the dignity of the person concerned, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment. Instructing someone to harass another person for any of the above mentioned reasons is also considered discrimination.

- **Sexual harassment:** is discrimination if an unwanted sexualized act, including requests to do so, unwanted sexual touching, lewd remarks and unwanted showing or visible display of sexualizing and pornographic images, has the purpose or effect of violating the dignity of the person concerned, in particular if this creates an intimidating, hostile, humiliating or insulting environment (§ 3 para. 4 AGG)
- **Harassment on the grounds of ethnic origin, racist reasons or attribution:** Discrimination on the grounds of ethnic origin is unjustified disadvantage or disparagement on the basis of language, dialect, skin colour, national origin or descent

Stalking: Following or harassing persons so that their physical or mental integrity is directly or indirectly threatened and harmed to a considerable degree. Stalking refers to the repeated unlawful following, pestering, intrusive harassment, threatening and terrorizing of a person against their will, up to and including physical and psychological violence. In general, stalking is not a clearly delineated individual offence. It is rather a series of offences over a longer period of time, which can consist of criminal offences such as defamation, slander, damage to property, coercion, bodily injury as well as following/watching someone.

Sexualized violence: In common usage, all sexual acts that happen against the will of another person, happen to/with children (persons under 14 years of age) – even if the child seems to "consent" – or to people who cannot consent or refuse (because they are unconscious, for example, or cannot comprehend and evaluate the act) are called sexualized violence. It is a criminal offence to commit sexualized violence. Anyone who supports the acts or uses or disseminates photos or films of violent acts, for example, also commits an offence. Particularly serious forms are sexual coercion or rape.

4. General prohibition

Due to their disruptive and damaging effect on university operations, discrimination and sexualized violence can constitute a violation of the duties under employment law as well as civil service or higher education law and will be punished accordingly. The conduct listed under item 3.2 is prohibited.

5. Awareness raising and prevention

The University of Konstanz takes preventative measures to reduce discrimination, harassment and sexual harassment as well as sexualized violence, to raise awareness for various forms of marginalization and to empower those who face disadvantages.

5.1. Information and training opportunities

The university regularly informs its members and affiliated members about dimensions and forms of discrimination, about valuing and promoting diversity, about the university's institutional values, its Code of Practice on Diversity and its equal opportunity plan. Members and affiliated members are obligated to take note of the information and to help protect against discrimination and sexual harassment.

The university offers advice and qualification measures for all status groups to raise awareness for discrimination and empower those affected.

The university offers training in which its management staff and persons with staff responsibility can acquire and improve their skills in dealing with problems associated with discrimination and sexualized violence.

5.2. Further preventative measures

The university will make reasonable provisions within its means to further reduce potential physical and structural barriers in infrastructure, education and employment. Discrimination risks are taken into account in planning and development projects and in the development of study programmes.

At least once a year, a meeting is held between the responsible units and the entities involved to discuss preventative measures as well as developments since the last meeting.

5.3. Encouragement of affected persons

Affected persons are urged not to tolerate discrimination and sexualized violence but instead to make their disapproval unequivocally clear and actively defend themselves. Moreover, witnesses are called upon not to look away but to approach affected persons and pledge support if necessary.

6. Contact persons, representatives and other contact points

6.1. Contact persons for questions regarding sexual harassment and sexualized violence

As per § 4a para. 1 sent. 9 LHG, the Rectorate appoints one female and one male contact person for the members and affiliated members of the university for a period of three years, who are responsible for matters regarding sexual harassment and for providing advice and support in cases of sexual harassment, sexualized violence, stalking and discrimination on grounds of gender. One of these contact persons is always a member of the Equal Opportunity Office. Consultations with the contact persons are confidential. The contact persons can discuss the matter in a peer consultation, provided that anonymity is guaranteed or the affected person has consented. In the case of serious acts of violence, the contact persons should encourage the victim to contact law enforcement authorities. The contact persons can support victims in this process and also arrange internal contacts with the Human Resources Division or the Division of Legal Affairs. The contact persons are not bound by instructions and report to the Senate and the Rectorate on their work.

6.2. Contact persons for anti-discrimination

For the members and affiliated members of the university, the Rectorate appoints a contact person for anti-discrimination and a deputy for three years as per § 4a para. 2 LHG. The contact person for anti-discrimination at the University of Konstanz is responsible for the prevention of structural discrimination and for advising, accompanying and supporting those affected by discrimination. All dimensions and forms of discrimination mentioned under item 3 are to be taken into account. Consultations with the contact person for anti-discrimination are confidential. In carrying out their function, the contact person for anti-discrimination is supported by the Equal Opportunity Office, which provides anti-discrimination advice. Persons who experience or perceive discrimination at the University of Konstanz can contact the respective persons responsible directly for initial, follow-up or referral consultations. These persons/units can coordinate with the contact person for anti-discrimination and discuss further steps with them, provided that the affected persons agree or this is done anonymously. The contact person and the deputy are not bound by instructions. They report to the Senate and the Rectorate on their work.

6.3. Further officials

The university appoints other contact persons to support specific groups of people:

- Representative for students with disabilities and chronic illnesses (§ 2 para. 3 LHG in conjunction with § 13 para. 5 of the university constitution (Grundordnung - GO))
- For the interests of staff with severe disabilities: a representative (inclusion representative as per § 181 book IX of the German social code (SGB))
- The persons affected also elect a person of trust as per § 95 book IX of the SGB (Representative for persons with disabilities)

6.4. Further consultation services and responsible persons within the university

In addition to the advice provided by the contact person for anti-discrimination in the Equal Opportunity Office, those affected can also contact the Equal Opportunity Representative for academic staff and their deputies, the Equal Opportunity Representative for non-academic staff and their deputy, the Staff Council, the director of Human Resources and contact persons in Human Resources as well as all persons with managerial functions.

Direct superiors also have a responsibility to take incidents seriously, to accept information about them and, if necessary, to refer the cases to the contact points.

There are further contact points at the university that provide advice in cases of conflict, e.g. the ombudspersons for doctoral researchers or the research ombudsperson.

6.5. Who can help outside the university?

The university cooperates with external bodies that offer advice for university members and affiliated members, e.g. with the district, the city of Konstanz, the Diakonisches Werk, the student body representatives and Seezeit student services.

6.6. Information about consultation services

The university maintains an overview of all contact points and service providers with their consultation offers on a central website (hyperlink).

7. The informal consultation procedure

A distinction is made between the informal consultation procedure and the formal complaint procedure as per the AGG (see 8). Consultations with the bodies mentioned in item 6 are confidential.

Persons who experience discrimination or sexual harassment (affected persons) as well as third parties, e.g. persons who observe an incident, can seek advice from the contact persons/units mentioned in item 6. They support those affected with clarifying their situation. The affected persons and those seeking advice must give the contact persons and other relevant persons a well-founded account of the facts that led to their perception. The university works to ensure that affected persons, their accompanying persons or observing third parties are not placed at any personal or professional disadvantage as a result of taking part in consultations. All steps should be taken in agreement with the persons seeking advice. The right of affected persons to defend themselves against discrimination and sexualized violence without the involvement of university entities either on their own or accompanied by their persons of trust remains unaffected.

The concrete advice in individual cases includes consultations on potential action and options for protection, including support with initiating the complaint procedure. If it is within their area of competence, the advising contact persons can support affected persons at their request in mediation and conciliation talks as well as in the complaint procedure. The advising contact persons clearly communicate the possibilities and limits of their services as well as the consultation process to the affected persons.

During the consultation, no findings are made about an individual offence by an accused person.

As soon as there is suspicion of a serious incident of discrimination or sexualized violence, provisional measures must be taken immediately to protect the affected person in agreement with this person and at this person's express request, irrespective of further proceedings.

8. Formal complaint procedure as per the General Act on Equal Treatment (AGG) and § 4a of the Landeshochschulgesetz (LHG) (state law on higher education) Baden-Württemberg

The formal complaint procedure is available for staff and, as per § 4a LHG, for members and affiliated members of the university who are not staff, e.g. students. It is conducted before the unit responsible for complaints which is obligated to be neutral towards all parties involved.

An implementation guide lays out more details on coordination between consulting services and the unit responsible for complaints as well as possible transitions to further legal proceedings (see item 9).

8.1 Responsibilities of the unit responsible for complaints

The AGG complaint procedure is a formal procedure that aims to clarify discrimination and harassment allegations, but not, for example, to challenge examination procedures or to clarify allegations of scientific misconduct. In the AGG complaint procedure, the duty of confidentiality can be waived under certain circumstances. In addition, the complaint procedure can also be continued against the changed will of the affected person if the Rectorate is obligated to act (e.g. by civil service law). This is not the case with anti-discrimination consultation services. It is therefore recommended that affected persons first contact the persons listed under item 6 for consultation.

With the consent of the Staff Council, the Rectorate appoints a competent body for formal complaint procedures as per the AGG. The procedure is regulated by the AGG and, if applicable, other legal provisions. The Division of Legal Affairs and the Human Resources Division provide information about the procedure on their websites.

Important:

- The unit responsible for complaints works independently and is not bound by instructions
- The unit acts on a written or oral complaint and keeps record of this complaint
- After the complaint has been received, the unit responsible for complaints examines the facts of the case for concreteness, significance, accuracy and possible motives, to their best judgement and taking into account plausibility aspects. The unit may obtain opinions from experts or witnesses (preliminary examination). After completing this examination, the unit responsible for complaints decides whether

the procedure is to be discontinued or whether the rector and the *Kanzler*in* (director of the university administration) are to be informed of the findings and whether and which measures are proposed for further action

- The presumption of innocence in favour of the accused persons must be respected. If an accusation proves to be unjustified, it must be ensured that the accused person suffers no disadvantage
- The final decision is communicated to the person lodging the complaint

The unit responsible for complaints submits an annual report to the Rectorate.

8.2 Closure of the formal complaint procedure

In the complaint procedure, measures and sanctions are proposed by the unit responsible for complaints. As per these guidelines, the rector or the *Kanzler*in* decides on further measures and possible consequences after consultation with the respective division, e.g. Human Resources, if staff are affected.

9. Measures and sanctions

Independently of the formal AGG complaint procedure, the following measures can be taken in cases of discrimination and sexualized violence in certain further procedures with legal relevance (see below for provisions). The measures and sanctions should make it clear that the university does not tolerate discrimination and sexualized violence in any form whatsoever. They depend on the position of the accused persons under employment, civil service or higher education law.

The following steps may be taken, depending on the accused person's position under these laws:

- Formal interview (in the event that the accused person is a professor, the rector conducts this interview or delegates it)
- Verbal or written caution
- Written warning
- Relocation or transfer to another workplace
- Exclusion from a course
- Exclusion from using university facilities
- Ban from entering university premises
- Exmatriculation
- Termination of employment contract with or without notice
- Opening of disciplinary proceedings and imposition of disciplinary measures, which can include a reprimand, penalty, placement in a lower pay group or removal from office
- Demand for prosecution filed by the rector of the university

This list does not claim to be exhaustive. Requirements and procedures for implementing individual sanctions depend specifically on the relevant provisions, such as those laid out in employment law, disciplinary law or higher education law.

The accused persons must be informed that they are free to decide whether to comment on allegations orally or in writing or not to testify to the matter and that they can avail themselves of a representative or an attorney at any time. They must also be informed that they may request individual evidence to be taken for the purpose of exoneration.

10. Anonymized evaluation

All the contact points and the units responsible for complaints at the University of Konstanz collect data on case numbers and discrimination categories in anonymized form and in compliance with all data protection regulations. The data is evaluated anonymously, which serves to ensure the quality of consultation and support services as well as to assist with the development of targeted prevention activities. To this end, all persons with managerial responsibility who are informed about incidents of discrimination or sexualized violence should forward corresponding information about these cases (in anonymized form) to the respective consultation providers or contact points for documentation and statistical evaluation.

11. Validity, entry into force

Responsibility for instigating and implementing all formal proceedings lies with the Rectorate.

The objectives set forth in these guidelines constitute part of the public image of the University of Konstanz.

The Staff Council approved the guidelines on 18 August 2022 as per § 74 (2) 1. of the *Landespersonalvertretungsgesetz* LPVG (law on state staff representation).

The Senate passed the guidelines on 14 September 2022. The German version of these guidelines comes into effect the day after its publication. They replace the guidelines of 10 June 2015 (official announcements 34/2015).

Definitions and terminology

- **Gender:** This term includes both the legal gender and the gender with which a person identifies
- **Disability:** What we understand by disability is that "a person's physical functions, mental capacities or psychological health are highly likely to deviate for more than six months from the condition typical for the respective age and the ability to participate in social life is restricted as a consequence. Persons are at risk of disability if such a restriction can be expected." § 2 para. 1 book IX of the German social code (SGB IX).

We additionally understand disability within the meaning of the UN Human Rights Convention of 2008. Within the meaning of this convention, "discrimination on the basis of disability" means any form of distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation measures

Overview of consultation services

<https://www.uni-konstanz.de/en/university/administration-and-organisation/structure-processes-and-legal-guidelines/support-and-points-of-contact/>

Note:

The German version of these guidelines was published in the *Amtliche Bekanntmachungen* (official announcements) of the University of Konstanz No. 59/2022 on 22 September 2022.