

## ANTI-DISCRIMINATION AND ANTI-HARASSMENT POLICY

### FREQUENTLY ASKED QUESTIONS

#### **WHAT IS THE PURPOSE OF THE ANTI-DISCRIMINATION AND ANTI-HARASSMENT POLICY AND THE CODE OF CONDUCT?**

The labor movement must be an inclusive place, where all people are welcome to participate free from discrimination, harassment and intimidation. The anti-discrimination and anti-harassment policy and the code of conduct embody our commitment to that goal. The anti-discrimination and anti-harassment policy covers officers and employees of central bodies who are subject to discrimination or harassment, or retaliation for speaking up against discrimination or harassment. The code of conduct covers anyone in a central body's workplace, as well as anyone who attends a central body activity, event or meeting.

#### **DOES MY CENTRAL BODY NEED TO ADOPT THEM? WHAT IF IT HAS NO STAFF?**

Yes. All central bodies must adopt both the anti-discrimination and anti-harassment policy and the code of conduct. The anti-discrimination and anti-harassment policy covers officers, along with staff, both as victim or perpetrator of discrimination or harassment. The code of conduct covers a far broader category of people. Therefore, both are relevant to all central bodies, regardless of size.

#### **DOES THE CENTRAL BODY'S EXECUTIVE BOARD HAVE TO VOTE ON ADOPTION?**

No, all central bodies must adopt the policy and the code. Executive boards may choose to confirm the adoption to show the central body's broad support for the policy and code.

#### **MUST CENTRAL BODIES ADOPT THE ANTI-DISCRIMINATION AND ANTI-HARASSMENT POLICY AND THE CODE OF CONDUCT AS IS, OR MAY THEY MAKE CHANGES?**

Central bodies are encouraged to adopt the policy and code as is, making only the minimal changes needed to fit them to the specific central body. However, if truly necessary, the policy and code may be altered as long as the changes do not reduce the protections provided in the model documents. If you feel you need to make substantive changes to the model documents, you must submit your proposed changes to the AFL-CIO for approval.

## WHAT BEHAVIORS DO THE ANTI-DISCRIMINATION AND ANTI-HARASSMENT POLICY AND THE CODE OF CONDUCT ADDRESS?

The anti-discrimination and anti-harassment policy addresses three specific types of behavior. First, it addresses **discrimination in making any decision or judgment** based on another person's race, ethnicity, religion, color, sex, age, national origin, sexual orientation, disability, gender identity or expression, ancestry, pregnancy or any other characteristic protected by law.

Second, the policy addresses **harassment, which consists of unwelcome verbal, visual or physical conduct** based on another person's race, ethnicity, religion, color, sex, age, national origin, sexual orientation, disability, gender identity or expression, ancestry, pregnancy or any other characteristic protected by law.

Third, the policy addresses **sexual harassment**, which can involve unwelcome sexual advances, requests for sexual favors, and other verbal, visual or physical conduct of a sexual nature. The model policy provides further guidance on each of these categories.

**The code of conduct addresses “unacceptable behaviors.”** Similar to the policy, the code's unacceptable behaviors include discrimination, harassment and sexual harassment. But as mentioned, the code also covers behaviors beyond those three categories. Those include, but are not limited to, harmful or offensive verbal or written comments or visual images related to race, ethnicity, religion, color, sex, age, national origin, sexual orientation, disability, gender identity or expression, ancestry, pregnancy or any other characteristic protected by law; inappropriate use of nudity and/or sexual images in work or public spaces; bullying or stalking; uninvited sexual attention or contact; physical assault (including uninvited touching or groping); and real or implied threat of physical harm. It should be noted, however, that the code of conduct is not intended to restrict free and vigorous debate. The model code of conduct provides further guidance on unacceptable behaviors.

## WHAT COMPLAINTS DOES THE ANTI-DISCRIMINATION AND ANTI-HARASSMENT POLICY COVER?

The anti-discrimination and anti-harassment policy covers complaints by central body employees, whether officers or staff, of discrimination or harassment, including sexual harassment, as defined by the policy. The discrimination or harassment does not have to be between employees; a complaint is covered by the policy as long as the victim of the discrimination or harassment is an employee.

## WHAT COMPLAINTS DOES THE CODE OF CONDUCT COVER?

As described above, the code of conduct covers a broader set of behaviors, and it also protects a broader set of individuals, than the anti-discrimination and anti-harassment policy. Anyone in a central body's workplace, or who attends one of our activities, events or meetings, who is subject to unacceptable behavior as defined by the code may file a complaint.

Under the code, employees can file complaints for unacceptable behavior other than discrimination or harassment. Additionally, **anyone—including nonemployees—can file a complaint for unacceptable behavior they experience** at an activity, event or meeting.

The question of whether the policy or the code applies in a given instance may seem confusing to you. It also may be confusing to a person who wants to file a complaint. If someone wants to file a complaint, they don't need to know whether the policy or the code pertains to their situation. When the complaint is

filed, your investigation may reveal which applies. If it remains unclear which applies, the national AFL-CIO, through its Office of General Counsel, is available to help resolve the question. Ultimately, you may not ignore a complaint simply because it may have been filed under the wrong document. If a complaint is filed under the code of conduct, but properly should have been filed under the anti-discrimination and anti-harassment policy, the central body may treat it as a complaint under the policy, and vice versa.

### **ARE OFFICERS SUBJECT TO THE ANTI-DISCRIMINATION AND ANTI-HARASSMENT POLICY AND CODE OF CONDUCT?**

Yes. Officers must comply with the provisions of the policy and the code, and also are protected by their provisions.

### **WHEN IS MY CENTRAL BODY RESPONSIBLE FOR A COMPLAINT UNDER THE CODE OF CONDUCT?**

Sometimes it may be difficult to determine which central body is responsible for a complaint. For instance, if the employee of a central labor council is subject to unacceptable behavior while attending a state federation event, you may be confused about which central body should be responsible for a complaint. This complication should not be an impediment to acting on a complaint. Either central body may accept a complaint brought to it. If the complaint may include another central body, the central bodies' designees under the code should coordinate their investigations and findings.

All central bodies are expected to respond to any complaint filed under its code of conduct. No complaint should be ignored because it is unclear whether the complaint was filed with the proper central body.

If central bodies have questions about coordination with other central bodies, they should contact the AFL-CIO.

### **THE CENTRAL BODY STAFF'S COLLECTIVE BARGAINING AGREEMENT CONTAINS AN ANTI-DISCRIMINATION AND ANTI-HARASSMENT PROVISION. DOES THE CODE OF CONDUCT AND ANTI-DISCRIMINATION AND ANTI-HARASSMENT POLICY AFFECT THAT?**

No, the anti-discrimination and anti-harassment policy and the code of conduct are intended to supplement such protections in the collective bargaining agreement, not supplant them. Central bodies certainly should inform their staff's union representative of the policy and code, and its intent to adopt them.

### **HOW SHOULD THE CENTRAL BODY PUBLICIZE ITS CODE OF CONDUCT?**

The code sets expectations for behavior in the central body's workplace, and at its activities, events and meetings, and outlines behavior that will not be tolerated. Therefore, it is imperative that the central body publicize its code of conduct.

The code itself requires that, prior to the start of any large activity, event or meeting, the central body identify for all attendees a designated person to whom any complaints may be brought. You may decide, in context, what constitutes a large activity, event or meeting. "Large" for a state federation will differ from "large" for a central labor council. However, this requirement should be interpreted in a way that best effectuates the purpose of the code.

You will have to determine how best to distribute information about the code, but the national AFL-CIO has developed some suggestions. You should distribute the code, upon adoption, to all executive board members and delegates. You should make copies of the code of conduct available at the first executive board meeting and delegate meeting following adoption, and annually after that. If possible, you should include the code on your website, if you have one. At the start of any large activity, event or meeting, you should inform attendees of the code of conduct, as well as identify the person to whom complaints should be directed.

### **WHOM SHOULD THE CENTRAL BODY DESIGNATE AS THE POINT PERSON TO RECEIVE COMPLAINTS UNDER THE POLICY AND CODE?**

The designee must be an officer, board member, delegate or staff member of the central body, and not someone assigned to the central body from outside, such as release staff or a United Way liaison. A central body may designate different individuals for the anti-discrimination and anti-harassment policy and the code of conduct. Additionally, at least one alternate person should be identified as the person to accept complaints made against the designated individual.

The individual or individuals designated to receive complaints under either the code or the policy should possess certain qualities. He/she should be a trusted figure at the central body, someone people will feel comfortable having a sensitive conversation with and entrusting potentially difficult information with. It should be someone in a position of authority who will be able to act on any complaint brought, regardless of whom is charged. For instance, the designee must be in a position to investigate and take required action even if the complaint is against the president or another powerful leader of the central body. The designee should be someone who would have both the time to investigate a complaint and the skills to sensitively handle such an investigation.

Ultimately, the designee should be the person who best possesses these qualities. You may feel inclined to designate a position instead of a specific person, but this may not be the best approach; when the person in that position changes, you might find the new person doesn't have the qualities needed to perform this function.

### **HOW SHOULD THE DESIGNEE HANDLE A COMPLAINT IF ONE IS RECEIVED?**

The designee's first responsibility is to ensure that a complainant is safe and not currently subject to the behavior complained about. The designee may need to quickly assess a situation and take immediate action to protect the complainant. For instance, if an attendee complains about ongoing sexual harassment during a state federation convention, the designee should quickly collect as much information as possible and, if the complaint appears to have merit, recommend immediate action that might include asking the accused to leave the convention.

Most complaints, whether under the policy or the code, likely will not require such immediate response. In that case, the designee should conduct a thorough investigation, which includes interviewing the complainant, the accused and anyone else who may have relevant information, including witnesses. In addition, the designee should collect any relevant documents. Once the investigation is complete, the designee should make a determination as to the merit of the complaint, and recommend to the central body any necessary and appropriate remedial action. The AFL-CIO will provide training for designees on their role and the investigation process.

## **IF AN INVESTIGATION SHOWS THAT A VIOLATION OF THE POLICY OR CODE OCCURRED, WHAT ACTIONS CAN THE CENTRAL BODY OR NATIONAL AFL-CIO TAKE?**

There are several actions that the central body can take if it determines that a violation of the policy or the code has occurred. Below are some potential remedies, though remedies are not limited to those suggested.

If the alleged offender is a staff member, the central body may impose discipline, including termination. The central body also may issue a warning to or expel the alleged offender from the activity, event or meeting. Additionally, where appropriate, the central body may inform the alleged offender's affiliate or employing entity of the offending behavior and complaint. Further, the central body may initiate disciplinary proceedings for those who hold a position subject to discipline by the central body or the national AFL-CIO under its Rules Governing AFL-CIO State Central Bodies/AFL-CIO Area Labor Councils and Central Labor Councils, including removal from office.

## **IS RELEASE STAFF ASSIGNED TO MY CENTRAL BODY COVERED BY THE CODE OF CONDUCT?**

Yes, anyone in the central body's workplace or attending an activity, event or meeting at the central body is covered by the code of conduct. Release staff may concurrently be covered by another entity's policy or code. If so, and a complaint is filed by a release staffer, the investigation should be coordinated as described above. Release staff also would be expected to adhere to the provisions of the code of conduct. If a complaint is made against a release staffer, there may be a need to coordinate the investigation when the release staff is covered by another entity's policy or code.

## **IS SOMEONE WITH A COMPLAINT UNDER THE ANTI-DISCRIMINATION AND ANTI-HARASSMENT POLICY OR THE CODE OF CONDUCT REQUIRED TO BRING HIS OR HER COMPLAINTS UNDER THE POLICY OR CODE PRIOR TO SEEKING OTHER FORMS OF REDRESS?**

No, the policy or code are intended to provide further protections from the behaviors addressed, not to replace existing protections. As the policy mentions, an employee may have a right to file a charge under Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or other applicable federal, state or municipal fair employment practices law. Additionally, where appropriate, law enforcement officials should be contacted. Therefore, the policy or code should not be considered as the only avenue of redress.

## **WHOM DO I CALL WITH QUESTIONS?**

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### **WHAT RESOURCES DOES THE AFL-CIO HAVE TO SUPPORT MY TEAM AND ME?**

The AFL-CIO is dedicated to the successful implementation of the anti-discrimination and anti-harassment policy and code of conduct. You should contact us directly with questions. We also will provide training for designees on handling complaints and ongoing support for a designee conducting an investigation. We also are developing a toolkit that includes resources such as best practices for implementation. And we will provide training to federation bodies to help develop a positive organizational and movement culture. If you need other resources, don't hesitate to contact us.