

**Legislative History for revised regulations on non-discrimination
(adding “gender identity/ expression”)
as revised June 9, 2009, to take effect July 1, 2009.**

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1. Explanation of legislative history.

The proposal included amendment of six University Policies, as listed below, adding the phrase “gender identity/ expression” to each. The proposal was approved by the Senior Vice President for Academic Affairs, Senior Vice President for Health Sciences, and Interim Vice President for Human Resources, as the assigned Policy Officers for the various affected Policies. The Executive Committee of the Academic Senate acting on behalf of the Senate (during summer recess), approved on June 1, 2009. The Board of Trustees approved on June 9, 2009. All revised policies were set to take effect July 1, 2009.

2. Policy 5-102 (Staff Employment Policy) Revision 8, as presented to the Board of Trustees June 9, 2009.

Policy 5-102: Staff Employment Policy

Revision 8. Effective date July 1, 2009.

I. Purpose

To outline the university's policy for employing noninstructional personnel.

II. References

[Policy 5-105](#), Employment of Relatives

[Policy 5-106](#), Equal Opportunity and Nondiscrimination Employment

[Policy 5-108](#), Transfer of Staff Members

[Policy 5-401](#), Staff Compensation

III. Definitions

Salaried personnel - persons ordinarily employed at 20 hours or more each week in positions expected to last longer than nine continuous months, or persons employed at 30 hours or more each week in positions expected to last longer than four months, and other specific groups of persons designated by Personnel Administration as holding salaried positions.

Full-time hourly rated positions (also referred to as "fulltime temporary positions") are those positions requiring 30 or more hours of work per week which are expected to last not longer than four months.

Part-time hourly rated positions (also referred to as "Parttime temporary positions") are those positions requiring 20 or more but less than 30 hours of work per week, which are expected to last not longer than nine months.

Time card positions are those positions requiring less than 20 hours of work per week which are paid on a time card basis.

IV. General Policies

A. Equal Employment Opportunity. The University of Utah is fully committed to policies of equal opportunity and nondiscrimination. Accordingly, the university pursues a vigorous program of affirmative action in all its classifications of employment in order to prevent any form of discrimination, harassment, or prejudicial treatment on the basis of race, color, religion, national origin, sex, sexual orientation, **gender identity/ expression**, age, or status as a handicapped individual, disabled veteran, or veteran of the Vietnam era. See [Policy 5-106](#).

B. Administrative Responsibilities

1. It is the responsibility of all administrative officers of the university to make decisions on staff employment matters in accordance with the policies, Procedures, and the affirmative action goals established by the university. Primary

responsibility is placed with the employing unit, subject to accountability to the president through line management channels.

2. To assist departments and organizational units in meeting university employment policy guidelines, a monitoring program administered by the Director of Personnel, in conjunction with the Director of Equal Opportunity, assures that qualified applicants are hired on the basis of their employment qualifications, that appropriate consideration is given to achieving EEO hiring goals, and that required applicant selection records are kept. Apparent deviations from policy guidelines will be called to the attention of the departmental hiring officers for resolution. If necessary, the final decision will be the responsibility of the cognizant vice president.

[Other portions not copied here—no changes are proposed to them.]

History: Renumbering: Renumbered as Policy 5-102 effective 9/15/2008, formerly known as PPM 2-2.

Revision History:

1. Current version: Revision 8:

Presented to Academic Senate (represented by Executive Committee), June 1, 2009

Approved: Board of Trustees, June 9, 2009.

Effective date: July 1, 2009.

Legislative History of Revision 8. {link}

2. Earlier versions:

Revision 7. {link} Effective dates July 26, 1983 to July 1, 2009.

3. Policy 5-106 (Equal Opportunity and Nondiscrimination Employment) Revision 8, as presented to the Board of Trustees June 9, 2009.

Policy 5-106: Equal Opportunity and Nondiscrimination Employment
Revision 8. Effective date July 1, 2009.

I. Purpose

To summarize the University's policy of equal opportunity and nondiscriminatory employment practices.

II. References

[Policy 5-001](#), Personnel Definitions

[Policy 5-118](#), Staff Employment Policy

[Policy 5-210](#), Discrimination Complaints

[Policy 6-400](#), Student Code

[Policy 6-316](#), Code of Faculty Responsibility

III. Policy

A. Equal Employment Opportunity

1. The University of Utah is an "Equal Opportunity Employer," and is fully committed to the principle of nondiscrimination in all employment-related practices and decisions, including, but not limited to, recruitment, hiring, supervision, promotion, compensation, benefits, termination, and all other practices and decisions affecting university employment status, rights, and privileges.
2. University executive, administrative, academic, and supervisory officers exercising personnel management responsibilities are required to take vigorous and appropriate action to assure that all employment-related practices and decisions are made without discrimination, harassment, or prejudicial treatment because of race, ethnicity, color, religion, national origin, sex, sexual orientation, **gender identity/ expression**, age, or status as a disabled person, disabled veteran, or veteran of the Vietnam era.
3. All employment-related practices and decisions within the University shall, to the maximum feasible extent, be instituted and administered in a fair and equitable manner, using only legally valid job-related criteria and standards, including but not limited to experience, training, education, skills, and potential for successful job performance and upward mobility.
4. All University facilities used by or available to University employees or applicants for employment shall be maintained and operated on a nonsegregated and nondiscriminatory basis.

B. Affirmative Action

1. The University will pursue a vigorous program of affirmative action in all job classifications to the extent allowed by law.
2. The University's approved Affirmative Action Program, as amended and modified yearly, shall be made available to all University personnel. The University's approved Affirmative Action Program, as amended and modified yearly, shall be made available to all University personnel. All members of the university community are expected to support the Affirmative Action Program and to further its objectives in ways consistent with University Policies and Procedures.

[Other portions not copied here—no changes are proposed to them.]

History: Renumbering: Renumbered as Policy 5-106 effective 9/15/2008, formerly known as PPM 2-6.

Revision History:

1. Current version: Revision 8:

Approved: Academic Senate (by Executive Committee), June 1, 2009

Approved: Board of Trustees, June 9, 2009

Effective date: July 1, 2009.

Legislative History of Revision 8. {link}

2. Earlier versions:

Revision 7. {link} Effective dates March 17, 2004 to July 1, 2009.

Revision 6. {link} Effective dates October 28, 1991 to March 17, 2004.

4. Policy 6-002 (The Academic Senate) Revision 26, as presented to the Board of Trustees June 9, 2009.

Policy 6-002: The Academic Senate

Revision 26. Effective date July 1, 2009.

[Other portions not copied here—no changes are proposed to them.]

Part III

SECTION 10. Consolidated Hearing Committee for Faculty Disputes (CHC)

A. Charge

1. The Consolidated Hearing Committee ("CHC") is the hearing body for grievances and complaints brought against faculty members (as defined in [\(Policy 6-316, Section 1, General Provisions\)](#) at the University of Utah or by faculty members asserting rights including appeals from retention, promotion and tenure decisions. The CHC may also choose not to hold hearings and to dismiss complaints brought before it under certain circumstances. The CHC may also seek the expertise and assistance of other committees or individuals it deems appropriate to facilitate the hearing process. The CHC functions as a panel of five faculty members constituted anew for each case. Each panel is drawn from a larger pool elected by the Academic Senate. (See VIII below).

2. In particular, the CHC is the hearing body for the following University proceedings:

- a. Any authorized and timely appeal for review following the cognizant senior vice president's ("Sr. VP's") recommendation to the president at the conclusion of a formal retention/promotion/tenure review ([Policy 6-303](#));
- b. Formal hearings of complaints of discrimination against a faculty member or an academic unit based upon race, color, religion, national origin, sex (including claims of sexual harassment), age, sexual orientation, **gender identity/ expression**, or status as a disabled individual, disabled veteran or veteran of the Vietnam era if the discrimination complaint is raised in the context of another faculty proceeding. (Otherwise, complaints of discrimination brought against

faculty, students, and staff members are heard through the OEO/AA process. ([Policy 5-210](#));

- c. Proceedings to sanction a faculty member for violations of the Code of Faculty Rights and Responsibilities, ("Faculty Code") [Policy 6-316](#) or to review an imposed administrative reprimand. [Policy 6-316, Section 6](#), Administrative Reprimand;
- d. Hearings of matters involving complaints by members of the university community (including faculty members and students) when abridgement of academic freedom is alleged;
- e. Proceedings for terminations or reductions in status of faculty members for medical reasons;
- f. Appeals of a faculty member's dismissal or reduction in status in the event of financial exigency or program discontinuance;
- g. Appeals by faculty, students, or staff of any restrictions on speech under University speech policies;
- h. Formal hearings of allegations of Research Misconduct against a faculty member pursuant to [Policy 7-001](#) (sponsored research). Formal hearings of (sponsored) research misconduct against a student, **staff member, or other individual not a faculty member are heard by the** Research Misconduct Hearing Committee. (Note: allegations of misconduct in non-sponsored research shall be filed as an allegation under the Faculty Code.

[Other portions not copied here—no changes are proposed to them.]

History: Renumbering: Renumbered as Policy 6-002 effective 9/15/2008, formerly known as PPM 9-3, and formerly as Faculty Regulations Chapter III.

Revision History:

1. Current version: Revision 26.

Approved: Academic Senate (by Executive Committee), June 1, 2009

Approved: Board of Trustees, June 9, 2009

Effective date: July 1, 2009.

Legislative History of Revision 26 {link}

Earlier versions:

Revision 25. {link} Effective dates July 1, 2009 to July 1, 2009. (Note: the effective date for Revision 26 was set as July 1, 2009, the same date previously set as the effective date for Revision 25, which had been adopted earlier in the same academic year as Revision 26 was adopted.)

Legislative history of Revision 25. {link}

Revision [24 to 16] {links}

5. Policy 6-316 (Code of Faculty Rights and Responsibilities) Revision 9, as presented to the Board of Trustees June 9, 2009.

Policy 6-316: Code of Faculty Rights and Responsibilities

Revision 9. Effective date July 1, 2009.

[Other portions not copied here—no changes are proposed to them.]

Section 4. Rules

A. General Duties

1. Faculty members must conduct themselves, in their interactions with other faculty members, administrators, staff members, students, and participants [as defined in [Policy 5-210](#)] in accordance with reasonable standards of professionalism. Examples of inappropriate behavior include but are not limited to requiring the performance of inappropriate personal services; assigning tasks for punishment rather than for educational or job-related reasons; intentional disruption of teaching, research or administrative activities; and intentional neglect of necessary communications.
2. Faculty members must not discriminate against, harass, or impose prejudicial treatment upon other faculty members, staff members, students, or participants (as that term is defined in the sexual harassment policy, [Policy 5-210](#)) because of race, color, religion, national origin, gender, sexual orientation, **gender identity/ expression**, country of citizenship, age, political beliefs, or status as a person with a disability, veteran, or because of any other criterion or characteristic that is an impermissible basis, under applicable constitutional or statutory provisions. This injunction includes decisions or recommendations concerning admissions, employment, promotion, retention, tenure, grading, and other professional matters. [For policies on discrimination and sexual harassment, see [Policies 5-106](#), [5-107](#) and [5-210](#).]
3. Faculty members must not intentionally violate current university rules and regulations.
4. Faculty members must comply with reasonable and appropriate instructions of their chair, dean, cognizant vice president, president or other authorized university officer respecting the timely performance of their essential duties.
5. Faculty members must competently perform their responsibilities as teachers and members of the faculty. Decisions related to a faculty member's competence in the areas of teaching, scholarship, responsibility, and service will be based on regulations and guidelines outlined in [Policy 6-302](#) and consistent with relevant college or departmental criteria. Competence issues related to a faculty member's medical condition will be handled under [Policy 6-002, Section 10](#).

[Other portions not copied here—no changes are proposed to them.]

History: Renumbering: Renumbered as Policy 6-316 effective 9/15/2008, formerly known as PPM 8-12.4, and formerly as University Regulations Chapter XII Part IV.

Revision History:

1. Current version: Revision 9:

Approved: Academic Senate (by Executive Committee), June 1, 2009

Approved: Board of Trustees, June 9, 2009

Effective date: July 1, 2009.

Legislative History of Revision 9 {link}

2. Earlier versions:

Revision 8. {link} Effective dates February 14, 2005 to July 1, 2009.

Revision [7 through 3]. {link}

**6. Policy 6-400 (Code of Student Rights and Responsibilities--“Student Code”)
Revision 7, as presented to the Board of Trustees June 9, 2009.**

Policy 6-400: Code of Student Rights and Responsibilities (“Student Code”)

Revision 7. Effective date July 1, 2009.

[Other portions not copied here—no changes are proposed to them.]

Section II: Student Bill of Rights

1. Students have certain rights as members of the University community in addition to those constitutional and statutory rights and privileges inherent from the State of Utah and the United States of America. Nothing in this document shall be construed so as to limit or abridge students’ constitutional rights. Students have the responsibility not to deny these rights to other members of the University community. Students have the additional legal rights and privileges described below and they will not be subject to discipline for the exercise of such rights and privileges.
 - A. Learning Environment. Students have a right to support and assistance from the University in maintaining a climate conducive to thinking and learning. University teaching should reflect consideration for the dignity of students and their rights as persons. Students are entitled to academic freedom and autonomy in their intellectual pursuits and development. Students have a right to be treated with courtesy and respect.
 - B. Rights in the Classroom. Students have a right to reasonable notice of the general content of the course, what will be required of them, and the criteria upon which their performance will be evaluated. Students have a right to have their performance evaluated promptly, conscientiously, without prejudice or

favoritism, and consistently with the criteria stated at the beginning of the course.

- C. **Role in Governance of the University.** Students have a right to participate in the formulation and application of University policy affecting academic and student affairs through clearly defined means, including membership on appropriate committees and administrative bodies. Students have a right to perform student evaluations of faculty members, to examine and publish the numerical results of those evaluations, and to have those evaluations considered in the retention, promotion, tenure and post-tenure reviews of faculty members.
- D. **Due Process.** Students have a right to due process in any proceeding involving the possibility of substantial sanctions. This includes a right to be heard, a right to decision and review by impartial persons or bodies, and a right to adequate notice.
- E. **Freedom from Discrimination and Sexual Harassment.** Students have a right to be free from illegal discrimination and sexual harassment. University policy prohibits discrimination, harassment or prejudicial treatment of a student because of his/her race, color, religion, national origin, sex, sexual orientation, **gender identity/ expression**, age, or status as an individual with a disability, as a disabled veteran, or as a veteran of the Vietnam era.

[Other portions not copied here—no changes are proposed to them.]

History: Renumbering: Renumbered as Policy 6-400 effective 9/15/2008, formerly known as PPM 8-10, and formerly as University Regulations Chapter X.

Revision History:

1. Current version: Revision 7.

Approved: Academic Senate (by Executive Committee), June 1, 2009

Approved: Board of Trustees, June 9, 2009

Effective date: July 1, 2009.

Legislative History of Revision 7. {link}

2. Earlier versions:

Revision 6. {link} Effective dates February 3, 2006 to July 1, 2009.

Revision 5. {link} Effective dates May 10, 2004 to February 3, 2006

Revision [4 and 3] {links}

7. Policy 6-404 (Undergraduate Admission) Revision 14, as presented to the Board of Trustees June 9, 2009.

Policy 6-404: Undergraduate Admission

Revision 14. Effective date July 1, 2009.

[Other portions not copied here—no changes are proposed to them.]

Section 10. Evaluation of Admissions Criteria

It shall be the responsibility of the Credits and Admissions Committee and the Admissions Office to conduct regular and periodic research and review of the admissions criteria to insure that no student is denied admission because of policies, procedures or criteria that may discriminate on the basis of gender, **gender identity/ expression**, race, color, religion, national origin, age or status as handicapped individual, disabled veteran or veteran of the Viet Nam era.

History: Renumbering: Renumbered as Policy 6-404 effective 9/15/2008, formerly known as PPM 9-6, and formerly as Faculty Regulations Chapter VI.

Revision History:

1. Current version: Revision 14:

Approved: Academic Senate (by Executive Committee), June 1, 2009

Approved: Board of Trustees June 9, 2009

Effective date: July 1, 2009.

Legislative History of Revision 14 {link}

2. Earlier versions:

Revision 13{link}. Effective dates May 16, 2005 to July 1, 2009

Revision [12 to 8] {links}.

8. Memorandum to Sr. VP.

Senate Executive Committee – June 1, 2009

TO: Senior Vice Presidents David Pershing and Lorris Betz
Interim Vice President for Human Resources Joan Gines

FROM: Vice President for Student Affairs Barbara Snyder
Associate Vice President for Human Resources, OEO/AA Tom Loveridge
Associate Vice President for Faculty Susan Olson
Associate Vice President for Health Sciences Richard Sperry
Associate Vice President for Equity & Diversity Octavio Villalpando

DATE: May 22, 2009

NON-DISCRIMINATION POLICY – ADDITION OF GENDER IDENTITY AND GENDER EXPRESSION

Policies addressing non-discrimination span multiple areas at the University, including but not limited to Human Resources, Student Affairs, Academic Affairs, and Health Sciences. We hereby propose an amendment to the six provisions in policy (attached) where the university's commitment to non-discrimination is formally stated in two Human Resources policies (5-102 and 5-106), the Faculty Code (6-316) and the Consolidated Hearing Committee policy (6-002), the Student Code (6-400), and the Undergraduate Admissions policy (6-404). The proposal is to add "gender identity/expression" to the existing list of protected classifications of university employees, students, and applicants.

Definitions: Simplistically stated, gender identity is a person's internal sense of his or her own gender while gender expression is a person's outward display of gender characteristics. The Human Rights Campaign Foundation defines gender identity as a person's innate, deeply felt psychological identification as male or female, which may or may not correspond to the person's body or assigned sex at birth, as listed on a person's birth certificate, and gender expression as all external characteristics and behaviors that are socially defined as either masculine or feminine, such as dress, mannerisms, physical characteristics and speech patterns.

"Transgender" is the umbrella term for a person whose gender identity or gender presentation falls outside of the stereotypical gender norms. These definitions differ from "sexual orientation," which "refers to an individual's physical and emotional attraction to the same and/or opposite gender. Unlike sexual orientation, which refers to *who we love (or are attracted to)*, gender identity refers to *who we are.*" (Hudson & Johnson, 2006).

Rationale: The U.S. Supreme Court's watershed decision In *Price Waterhouse v. Hopkins* (1989) resulted in the expansion of the definition of "sex" under Title VII to include socially expected gender stereotypes. A female in senior management was denied partnership because her employer felt that she should "walk more femininely, talk

more femininely, dress more femininely, wear make-up, her hair styled, and wear jewelry.” This case, as do subsequent cases, illustrates the potential for discrimination against people whose behavior is perceived as outside the gender stereotypic norm.

Under this ruling, the Office of Equal Opportunity and Affirmative Action has considered gender identity/expression as being covered by current policy under "gender discrimination" for many years. However, without listing gender identity/expression specifically in policy, the vast majority of the campus community is unlikely to be aware of this. In addition, including these terms in policy also makes an important and public statement about the University's commitment to addressing allegations of discrimination based on gender identity/expression. Benefits of feeling valued and safe at work include increased job satisfaction and performance, higher employee morale, lower turnover, and mitigating the risk of a lawsuit (Human Rights Campaign Foundation, 2004). As an institution committed to creating and maintaining a supportive, safe and inclusive environment for our students and employees, policies that protect our entire community from discrimination based on real or perceived differences are critical.

Non-discrimination policies at Universities and Colleges: Inclusion of the terms “gender identity” and “gender expression” in the policies and student codes for institutions of higher education is an increasing trend, with the majority of these additions occurring since 2005. As of April 2009, 267 colleges and universities have non-discrimination policies that include gender identity/expression. In some cases, both terms are included and in others, the term gender identity is defined to include gender expression.

When these terms are combined in policy, “gender identity” is defined as “an individual’s actual or perceived gender, including an individual’s self-image, appearance, expression, or behavior, whether or not that self-image, appearance, expression, or behavior is different from that traditionally associated with the individual’s sex at birth as being either female or male (University of Arizona Non-discrimination and Anti-Harassment Policy) or “the gender-related identity, appearance, or mannerisms or other gender-related characteristics of an individual, with or without regard to the individual’s designated sex at birth” (Employment Non-Discrimination Act, Section 3(a)(6)).

Some states have passed transgender inclusive non-discrimination policies or their courts have interpreted existing non-discrimination laws as covering transgendered people. For example, the University of Minnesota states that, following state law, it includes protection of transgender people under "sexual orientation." Public institutions in states with such laws that have not iterated these non-discrimination clauses in their policies since they are bound by state law include Washington, Colorado and New Jersey. Other institutions, located in states where similar laws have passed, such as California, Illinois, Iowa, New Mexico, Maine, Oregon, Rhode Island, Vermont, and Washington, have opted to include language in their institutional non-discrimination statement as well.

Below are a list of large public research institutions which have inclusive non-discrimination policies, the year enacted in parentheses and the language used. A complete list can be found at <http://www.transgenderlaw.org/college>

Arizona State University (2004):	gender identity
New Mexico State University (2006):	gender identity
Ohio State University (2004):	gender identity or expression
Oregon State University (2005):	gender identity or expression
Pennsylvania State University (2006):	gender identity
University of Arizona (2004):	gender identity
University of California (2004):	gender identity
University of Iowa (1996):	gender identity
University of North Carolina-CH (2008):	gender identity or gender expression
University of Oregon (2005):	gender identity, gender expression
University of Texas at Austin (2008):	gender identity and gender expression
University of Wisconsin System (2005):	gender identity or expression

References

- Hudson, E.S. & Johnson, L.T. (2006). *Gender Identity Issues: Transgender, Transsexual, and Transitioning Employees*. University of Arizona, Office of General Counsel.
- Human Rights Campaign Foundation (2004). *Transgender Issues in the Workplace*. Washington, D.C.: Human Rights Campaign Foundation.
- The Library of Congress (2007). Employment Non-Discrimination Act of 2007 (Introduced in House). Washington, D.C.
- University of Arizona Non-Discrimination Policy (2008). (<http://www.arizona.edu/uaweb/policy/non-discrimination-policy.php>)

Effective date: These changes to each of the six Policies are proposed to take effect July 1, 2009.

Attachments. Attachments follow, showing specific proposed changes for each of the six affected University Policies, which are:

- Policy 5-102. Proposed revision 8.
- Policy 5-106. Proposed revision 8.
- Policy 6-002. Proposed revision 26.
- Policy 6-316. Proposed revision 9.
- Policy 6-400. Proposed revision 7.
- Policy 6-404. Proposed revision 14.

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