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## University of Hamburg Antidiscrimination Directive

### Preamble

The University of Hamburg encourages all its members and staff to work together as equals at all levels of teaching, research, education, administration, and self-governance. It places great value on trust, cooperation, and respectful conduct. The University of Hamburg strives to protect the personal rights and individual boundaries of those working within its area of responsibility. All University of Hamburg members and staff are called upon to contribute to a work and study environment that fosters personal integrity and self-respect and does not tolerate discrimination, harassment, abuse of power, or violence. In particular, individuals charged with educational, training, and leadership tasks in teaching and research, administration and self-governance have special duty-of-care responsibilities. This directive serves to protect against discrimination, harassment, and violence. The University of Hamburg thus regulates the responsibilities and procedures with regard to sexual discrimination, harassment, and violence in its area of responsibility. The Directive describes specific measures for implementing the relevant provisions of the General Act on Equal Treatment (Allgemeines Gleichbehandlungsgesetz, AGG), the Hamburg higher education act (Hamburgisches Hochschulgesetz, HmbHG), and the Hamburg act on equal treatment for people with disabilities (Hamburgisches Gesetz zur Gleichstellung von Menschen mit Behinderung (HmbBGG) as well as the internal obligations of the University of Hamburg diversity concept.

### Section 1 Scope

- (1) This Directive applies for all University of Hamburg members and staff as defined in Section 2 of the Universität Hamburg Statutes, as well as scholarship holders, researchers pursuing a *Habilitation* (postdoctoral qualification), and auditing students.
- (2) All University of Hamburg members and staff, particularly those charged with educational, training, and leadership tasks in teaching, research, education, administration, and self-governance have a duty of care to ensure compliance with this Directive.
- (3) This Directive also applies for discrimination, harassment, or violence by or against third parties on University property, when at least one of the persons involved belongs to the group of people listed in subsection 1. Third parties include, for example, cleaning and security staff, event attendees, Studierendenwerk Hamburg, and other cooperation partners.

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## Section 2 Characteristics of discrimination and definition of terms

- (1) No one may be disadvantaged on the basis of race<sup>1</sup> or ethnic origin, gender, religion, or ideology, disability, age, or sexual identity.
- (2) The University of Hamburg extends the prohibition against discrimination to social origin and social status, family status, responsibility for children and/or caring for family members, nationality, and citizenship, as well as outward appearance.
- (3) Pursuant to subsections 1 and 2, discrimination is the unequal treatment of people based on a protection-worthy characteristic.
- (4) Direct discrimination exists if a person receives, or would receive, less beneficial treatment than another person in a similar situation.
- (5) Indirect discrimination exists if apparently neutral provisions, criteria, or processes may put persons at a particular disadvantage compared to other persons, unless the rules, criteria, or processes in question are objectively justified by a legitimate goal, and the means of achieving this goal are appropriate and necessary.
- (6) Harassment is discrimination if unwelcome behavior is intended or results in violating the dignity of a person for reason(s) stated in subsections 1 or 2, and creates an intimidating, hostile, humiliating, degrading, or offensive environment.
- (7) Sexual harassment is discrimination if unwelcome, sexualized behavior is intended or results in violating the dignity of the person affected, in particular if it creates an intimidating, hostile, humiliating, or degrading environment. This also includes unwanted sexual acts and requests for same, physical contact of a sexual nature, comments of a sexual nature, as well as unwanted showing or public exhibition of pornographic images.
- (8) Discrimination may also include bullying, stalking, or violence against individuals or groups, as well as a failure to provide reasonable accommodations for people with disabilities.

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<sup>1</sup> In the General Act on Equal Treatment (Allgemeines Gleichbehandlungsgesetz, AGG) and in EU law, the term “race” is used to create a linguistic connection to “racism” and the conduct associated with it, in order to consistently combat racist tendencies. The term “race” is particularly problematic as it presumes the existence of different human races. Race is not a biological fact, but a social construct that usually involves issues of hierarchy, value judgments, and privilege or deprivation. This process is called, among other things, *racification*.

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- Bullying is particularly evident where an individual is systematically directly or indirectly subject to repeated attacks over a longer period of time by one or more individuals without adequate reason, with the aim or effect of driving them out of university life in a study or work context. Bullying therefore means the systematic and repeated hostility, harassment, discrimination, and marginalization with the aim and effect of making the subject of bullying feel insecure, degraded, or excluded from the study or work environment.
  - Stalking refers to the intentional and repeated following and harassment of a person in such a way that their way of life is seriously impaired or their security is threatened. Stalking may consist of unwelcome phone calls and emails, unwelcome presence, following, or loitering, e.g., in front of their home, or place of work or study, or unwelcome attention.
  - Violence includes all physical activity whose purpose, intensity, and effect is intended and able to inhibit or limit another person's freedom of choice or exercise of will. The threat or prospect of violence is also sufficient.
- (9) Abuse of power is the abuse of an (actual or perceived) position of power to harm, victimize, or disadvantage a person over whom that power can be exercised for personal advantage for oneself or others.

### **Section 3 Prohibition on discrimination**

- (1) Discrimination and abuse of power are prohibited at the University of Hamburg and in nonuniversity operational activities. They can result in a place of work or learning that is intimidating, stressful, and degrading, cause health risks, and present a massive infringement of personal rights. Discriminatory behavior may be verbal, nonverbal, or physical in form.
- (2) Discrimination and abuse of power do not require intention, motive, or premeditation; the effect of causing disadvantage is decisive.
- (3) Discrimination and abuse of power within a relationship of dependency in the work place or studies are deemed particularly serious.
- (4) A distinction must be made between discrimination causing disadvantage and positive discrimination. Different treatment through suitable and appropriate measures designed to prevent or compensate for disadvantages is permissible.

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- (5) The Directive for Protection Against Sexual Discrimination, Harassment, and Violence for the University of Hamburg as adopted by the Executive University Board applies to cases of sexual discrimination, harassment, and violence.

#### **Section 4 Preventive measures**

- (1) The University of Hamburg incorporates all suitable, required, and appropriate measures to protect and support individuals suffering from discrimination and abuse of power.
- (2) The University of Hamburg is committed to taking preventive measures to prevent disadvantages caused by one or more of the reasons listed in Section 2 subsections 1 or 2 or abuse of power. These preventative measure include, in particular:
  - announcing this Directive to all University of Hamburg staff members and their permanent display on the University's homepage
  - provision and notification of advising services for staff and students
  - regular advanced training on discrimination and abuse of power for University of Hamburg staff members, particularly those in leadership positions
  - creation of special concepts to prevent discrimination and abuses of power in teaching, e.g., by providing training for teachers, and advice for creating accessible teaching material
  - provision of practical guidelines and procedural security, including for those affected, witnesses, and supervisors, e.g., by distributing information sheets, brochures, handouts, and information on University web pages
  - consideration of risks of discrimination in planning and development projects, particularly with regard to accessibility and universal design
  - consideration of risks of discrimination in the curriculum, when developing degree programs, and in teaching conditions
  - raising awareness internally, e.g., through posters and general information on the subject

#### **Section 5 Advice and contact persons at the University of Hamburg**

- (1) The University of Hamburg provides autonomous, qualified advisory offices for employees, students, and other University of Hamburg staff and members. Individuals who are affected,

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involved, or reported to (e.g., supervisors or members of interest groups), or who have observed discrimination may contact the antidiscrimination advisory service. All discussions are strictly confidential, and may be kept anonymous on request.

- (2) In the event of sexual discrimination, harassment, or violence, consult the advisory service and contact persons in the Directive for Protection Against Sexual Discrimination, Harassment, and Violence for the University of Hamburg.
- (3) Additional points of contact for initial advice and referrals, and the related subject advisory panels include the:
  - equal opportunity representative
  - staff councils
  - staff representative for people with disabilities
  - inclusion officer
  - conflict mediators (for staff members)
  - personal counseling (for staff members)
  - psychological counseling for students
  - advice for students with disabilities and impairments
  - Equal Opportunity Unit
  - Family Office

All these discussions are strictly confidential, and may be kept anonymous on request.

- (4) Concerns may also be reported to University leadership, supervisors, deans, and HR. In the interests of the person(s) affected, they also strive to handle information confidentially. However, complete confidentiality cannot be guaranteed, as part of their duty of care for all persons listed in Section 1 may require them to name certain individuals or courses of action.

## **Section 6 Right to lodge a complaint and complaints procedure**

- (1) People affected by discrimination and abuse of power are urged to take steps against it, and not to tolerate the situation. The University of Hamburg ensures that the exercise of your right to lodge a complaint will not result in any disadvantage.
- (2) All members of the University, particularly those with managerial and/or supervisory duties, must be on the lookout for signs of discrimination, harassment, and violence, and to seek clarification from those affected in case of suspicion or contact the advisory or complaints offices.

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- (3) Any person pursuant to Section 1 of this policy who feels discriminated against has the right to lodge a complaint to the Discrimination Complaints Office (AGG Beschwerdestelle) of the University of Hamburg. The Office for Students with Disabilities and Chronic Illnesses operates as a Discrimination Complaints Office pursuant to Section 2 subsection 1 of the Social Security Code, Book IX.
- (4) The complaints procedure serves to inform University leadership about investigating allegations and the initiation of appropriate and necessary measures against the accused person(s) or the institution where required.
- (5) The complaint may be submitted to the Discrimination Complaints Office at any time and in any form. The statutory time frames of the AGG must be observed when asserting compensation claims and damages.

The complaint must state which persons and bodies have already been approached on the matter and what action, if any, they have initiated. The complaint will be briefly processed to clarify the next steps of the process with the person affected. Special attention will be given to determining whether the process should be conducted as a formal complaint procedure under the AGG. Formal AGG procedures are available only to staff and students of the University and only in relation to the types of discrimination listed in Section 2 subsection 1 AGG.

- (6) The affected person may include a person of their trust in any discussions.
- (7) Contact persons are obliged to treat the information confidentially for the protection of the persons concerned. However, information may be disclosed only to the extent necessary to carry out the complaint procedure, as required by law, or by substantially overriding public interests (for example, to report a planned crime). Depending on the nature of the matter, HR and/or the University leadership may be brought in to examine consequences under labor law, criminal law, or University rules. The affected person will be advised in advance in such cases. The process as a whole will be discussed with the affected person.
- (8) The accused must be given the opportunity to provide an oral or written statement.
- (9) The Discrimination Complaints Office must investigate the facts, particularly to verify if this Directive and/or AGG provisions have been breached. In doing so, they must see any available evidence, and interview witnesses.

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- (10) If the Discrimination Complaints Office deems the case to be discriminatory or to involve an abuse of power based on the AGG and/or this Directive, the Office will forward the result of their investigation and a recommendation for further action, in the case of University employees to the University leadership and the HR department (Dept. 6), or, for a case involving a student, to the faculty or institution management and the Department for Studies and Teaching (Dept. 3), or to the University leadership for cases involving other individuals pursuant to Section 1. If the complaint has been made against one of the functionaries listed, the next highest office is responsible as appropriate. The recommended measures and sanctions help to orientate functionaries in the implementation of measures and sanctions.
- (11) The positions listed document all hearings and the facts of the case as determined, and inform all parties involved of the result, as far as permitted by law.
- (12) The Discrimination Complaints Office must observe strict confidentiality when documenting discrimination and abuse of power cases (including reports not proven to be cases of discrimination or abuse of power), and forward these to the Equal Opportunity Unit for evaluation.

### **Section 7 Measures and sanctions**

- (1) The immediate protection of affected person(s) must be ensured via interim measures, independently of sanctions.
- (2) The office conducting the procedure must investigate measures pursuant to civil service law, labor law, and university statutes. Measures against employees and students may include, as proportionate to the nature and gravity of the conduct:
  - a. The following measures may be brought against University of Hamburg staff:
    - personal conversations conducted by the supervisor, with reference to the prohibition against discrimination
    - reprimand
    - warning
    - transfer or redeployment to another place of work
    - ordinary or extraordinary termination (for employees) or initiation of disciplinary proceedings (for civil servants)
    - revocation of the authorization to use the title of professor in accordance with Section 17 HmbHG
    - revocation of the teaching contract

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- the individual being banned from the premises
  - criminal charges
- b. The following measures may be brought against students and all others listed under Section 1 subsection 1 who are not employed by the University:
- personal discussions, e.g., by the office of the dean
  - reprimand
  - exclusion from classes/courses
  - exclusion from using University facilities
  - revocation of the right to use IT services
  - the individual being banned from the premises
  - withdrawal from studies
  - threatened cancellation of an existing contractual relationship
  - cancellation of an existing contractual relationship
  - criminal charges
- (3) On request from the affected person, and as far as warranted by the facts of the case as established, amicable settlement in the form of a moderated conflict resolution process, an apology, or similar, involving one of the advisory offices or contact persons listed in Section 5 where required.
- (4) If the suspicion exists of other inappropriate behavior or breach of duties by a University of Hamburg member even where no discrimination has been identified pursuant to Section 2 subsections 1 and 2, the Discrimination Complaints Office may, with the consent of the office conducting the complaint, forward the complaint to other responsible bodies. Consent is not required if the severity of the alleged breach of duty described in the facts or allegations requires consideration of disciplinary, legal, or other measures due to a possible danger to the general public or risk of repetition.

### **Section 8 Effective date**

This Directive was adopted by the Executive University Board on 30 April 2024. The University of Hamburg Antidiscrimination Directive takes effect on announcement.



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### Appendix 1: Schematic representation of the complaints procedure at the University of Hamburg

