An Important Message Regarding Workplace Discrimination and Sexual Harassment

   Discrimination and sexual harassment are pervasive problems in the workplace, including in the legal profession. As a law school, though we (obviously) believe no student should ever have to experience sexual harassment or workplace discrimination during a summer internship, the reality is that we cannot prevent these wrongs from happening. What we can do is equip you with information and resources so that you are aware of your options if you or someone you know experiences workplace discrimination or sexual harassment. Further, we can make it explicit to you that we are here to provide guidance, support, and advice as these issues are frequently complicated, nuanced, and do not always have an obvious path forward.

This memorandum provides general information outlining steps you may take to ensure you understand your organization’s reporting framework; actions you may consider taking if you witness an incident this summer; and finally, additional actions and resources you may utilize if you are a victim of sexual assault or sexual harassment. It is not meant to comprehensively address every situation you may encounter. We encourage you to contact us or use the resources outlined in this memo if you have questions or concerns.

What should you do AT THE BEGINNING of your summer?

1. **Know the Basic Legal Framework.** Recognizing that students have varying levels of familiarity with these issues, we think it important to provide a very brief overview of the legal framework regarding sexual harassment.

   Sexual harassment is a form of sex discrimination that violates Title VII of the Civil Rights Act of 1964. It is also unlawful under Title VII to retaliate against an individual for filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or litigation. Thus, both the victim/claimant and the reporter are afforded legal protections. Title VII applies to any employer with 15 or more employees, including federal, state, and local governments. State and local laws may apply to employers with less than 15 employees.

   The [U.S. Equal Employment Opportunity Commission (EEOC)](https://www.eeoc.gov) is the agency responsible for enforcing federal laws prohibiting discrimination, including claims of sexual harassment under Title VII. The EEOC provides a number of
resources on its website including facts about sexual harassment, information on filing a claim, and an overview of the complaint process for federal employees.

2. **Know Your Organization’s Reporting Procedure.** Different organizations have different reporting structures and procedures; there is no single procedure even among similarly situated large law firms. Some employers will direct you to their human resources department; others will instruct you to report incidents to the head of the summer program; and others will tell you to report to whomever you are comfortable telling. It is important to know that while an employee of any organization may file a claim with the EEOC, federal employees’ claims must be reported pursuant to the EEOC complaint process.

If your organization’s reporting procedure is not explained to you during the orientation process, you should absolutely ask—it’s better to know now before any possible issues arise. The recruiting coordinator, hiring attorney, or a human resources professional should all be able to provide this information, but the timing and format for asking is up to you. Posing the question in a large group setting may be difficult, particularly for those students who do not identify as heterosexual males, so you should gather this information in a way that you find most comfortable.

If these topics are not covered during your orientation and you don’t know whom to ask, or are unsure how to ask—please contact Dean Kaul.

**What should you do if you WITNESS discrimination or sexual harassment during the course of your summer internship?**

This question is difficult to answer in the abstract because it depends on many individualized factors, but the following are some general and non-prescriptive suggestions that might guide your response.

1. **Be an Active Bystander.** Recognizing the limited efficacy of sexual harassment trainings—many of which are designed merely to comply with mandatory training requirements—there is an increasing trend focusing on empowering bystanders to act. As highlighted in the EEOC’s recent report on Harassment in the Workplace, sexual “[h]arassment in the workplace will not stop on its own—it’s on all of us to be part of the fight to stop workplace harassment. We cannot be complacent bystanders and expect workplace cultures to change themselves.”

Active bystanders may act during an incident (e.g., either by directly intervening or creating a distraction), after an incident (e.g., checking in with the target and making a report), or in advance of an anticipated incident (e.g., planning with...
someone more senior to intervene together should something happen). The different forms of action are sometimes referred to as the “Four Ds of Bystander Intervention.”

Given the power dynamics that exist between a summer associate/intern and an employee, directly confronting the harasser in the moment may not be the best option. While well intentioned, this may only escalate the situation and draw unwanted attention to the individual being harassed. This is particularly true if alcohol is involved.

A more effective approach can be for bystanders to defuse the situation by changing the environment. For example, a bystander might interject to change the conversation, or physically direct either the harasser or victim away from the current situation (e.g., “come with me so I can introduce you to X”). In more extreme instances, the bystander might create an actual physical distraction that ends the inappropriate conduct (e.g., accidentally spilling a water glass).

None of this is to say that individuals shouldn’t be told their conduct is inappropriate, just that doing so in the moment can present challenges.

2. **Report the Incident.** Perhaps the most important piece of advice is that you strongly consider immediately reporting claims of harassment or discrimination using the organization’s process. Don’t assume that someone else will report the individual or that you shouldn’t report the incident because you don’t think the claim rises to the level of a policy violation and/or illegal conduct on its own. For example, the harasser’s conduct could be a part of a broader pattern the organization might find actionable.

Of course, this is general advice and we certainly recognize that the decision of whether to report an incident is nuanced and complicated, particularly for victims as compared to witnesses. Victims have the right to choose to whom they speak, which resources they use, what they share, and when they share it. One important consideration that frequently influences this decision is that reports generally are not confidential. Certain managers or partners will need to be informed, and the appropriate organization representative may need to speak with the harasser about the incident. If this is a concern you have, you may wish to first ask about the limits of confidentiality in advance of making a report and then consider how much information you are willing to share and at what level of detail.

3. **Follow Up on the Report.** Privacy dictates often mean that the reporter is not informed of the precise discipline imposed by the employer, unless the employee is immediately terminated. Moreover, sometimes the full scope of the discipline
materializes only over the course of time, in the form of future bonus or elevation decisions, or in the event of a future similar report(s) by someone else. This can be frustrating for the reporter because it may seem like consequences have not been imposed.

It is appropriate after you have made a report to further inquire about the status of the report, who has been informed, whether action has been taken, and any next steps. Again, the organization may be limited in terms of what they can share with you, but it is appropriate to ask.

4. **Make a Contemporaneous Record.** Regardless of whether you make a claim or not, making a written record is a good practice. For example, you could be subsequently contacted by human resources for your recollection of an incident that someone else reported. The following are examples of questions you might answer in your record: What happened? When did it happen? Who was present? What did you hear? What did you see? Details are helpful.

**What should you do if you EXPERIENCE sexual assault or sexual harassment this summer?**

In addition to immediately reporting the incident and making a detailed contemporaneous written record, you should also consider the following additional actions:

1. Get medical attention, if needed.
2. Seek confidential support from University of Michigan resources that are available to you whether or not you wish to take action such as filing a report:
   - The Sexual Assault Prevention and Assistance Center (SAPAC) offers confidential 24/7 support: Crisis Line 734.936.3333 | sapac.umich.edu | sapac@umich.edu
   - Counseling and Psychological Services for Student (CAPS): Crisis Line 734.764.8312 | caps.umuch.edu | tdsevig@umich.edu
   - Office of the Ombuds: 734.763.3545 | ombuds.umich.edu | umstudentombuds@umich.edu
3. Preserve evidence (clothing, texts, etc.), even if you don’t want to file a report right now.
4. Report the matter to law enforcement and/or the University. Other local resources may be available to you.
What should you do if you have questions?

Call us. As noted previously, we know that these issues present difficult questions and your best option is not always obvious. We are here to help. You may reach Dean Kaul at 734.764.0546 or Dean Z at 734.764.0537.

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