

## **Discrimination, Harassment and Retaliation Prevention Policy**

*INTRODUCTORY NOTE: Sexual harassment is defined differently under federal and state law. The applicable definitions and procedures under these laws also depend on your status in the American Film Institute's ("AFI's") community as a Fellow, faculty, staff, volunteer, or third party. Non-sexual harassment based on other protected categories is also treated differently under the law and is processed under a separate policy (see the AFI Employee Handbook and/or the AFI Fellow Handbook for additional information). Please do not let the legal complexities deter you from bringing a concern to the attention of AFI's Title IX Coordinator or AFI Office of People & Culture. If you are the subject of a complaint of discrimination, harassment, or retaliation, please do not let the legal complexities deter you from asking questions about the applicable definitions and procedures that will apply to you. AFI's Title IX Coordinator or Office of People & Culture can explain which definitions and policies will apply.*

### **I. Scope**

*This policy prohibits discrimination, harassment and retaliation against AFI's employees by employees or any other persons or third parties with whom AFI's employees have contact through their employment, including applicants, students, student-employees, interns, volunteers, and independent contractors.*

*This policy also prohibits discrimination, non-sexual harassment, and retaliation against AFI's students by employees or any other persons or third parties with whom AFI's employees have contact through their employment, including applicants, students, student-employees, interns, volunteers, and independent contractors.*

*All members of AFI's community, including employees (including student-employees), students, volunteers, contractors, and vendors are responsible for carrying out this policy and AFI's Policy on Sexual Harassment Prohibited by Title IX, and AFI's Policy on Non-Title IX Sexual Harassment Against Students, and another other related anti-harassment and anti-discrimination policies.*

- **Prohibited Conduct in Employment**

*AFI prohibits harassment and discrimination against its employees on the basis of race (including hair texture and protective hair styles), ethnicity, color, religion (including religious dress and grooming practices), creed, ancestry, national origin, age, medical condition, physical or mental disability, sexual orientation, gender (including sexual harassment, gender identification, gender expression, transgender status), genetic information, marital status (including registered domestic partner status), military and veteran status, lawful change of name, Social Security Number or federal employment authorization document, receipt of Medi-Cal coverage, California driver's license with a "federal limits apply" notation, or any other characteristic protected by local, state or federal law. Discrimination or harassment on the basis of sex includes harassment or discrimination on the basis of pregnancy, childbirth, or related medical conditions, breastfeeding, and conditions related to breastfeeding.*

*AFI further prohibits retaliation. Retaliation is an adverse action that is taken because someone files a complaint or participates in this process as a witness. AFI will not retaliate, nor will it tolerate retaliation, against individuals who make good faith reports about discrimination, harassment or retaliation in the workplace, whether internally or to an outside agency, or who participate in any workplace investigation under this policy.*

*This policy applies to Prohibited Conduct in employment that occurs:*

- *In the workplace (including the remote workplace during working time) or anywhere on AFI's property while employees are working;*
- *Off-campus, if the Prohibited Conduct occurred in connection with an AFI work event, activity, program, or event; or*
- *Off-campus, if the off-duty Prohibited Conduct by a supervisor has or reasonably may have the effect of creating a hostile work environment for an employee.*

### **Definition of Harassment in Employment**

*Harassment in employment means any unwelcome behavior that is reasonably regarded as offensive that is based on a protected category listed above that:*

1. *Sufficiently offends, humiliates, distresses, or intrudes upon its victim, so as to disrupt the victim's emotional tranquility in the workplace, or*
2. *Affects the victim's ability to perform the job as usual, or*
3. *Otherwise interferes with and undermines the victim's personal sense of well-being.*

*A single incident of harassing conduct may create a hostile work environment if the harassing conduct has unreasonably interfered with the victim's work performance or created an intimidating, hostile, or offensive work environment.*

*Whether or not the person meant to give offense or believed their comments or conduct were welcome is not significant. Rather, the policy is violated when other individuals, whether recipients or mere observers, are actually offended by comments or conduct based on any protected category and the conduct is considered offensive by a reasonable person.*

*Examples of conduct based on a protected category that may constitute harassing conduct may include, but are not limited to:*

- *Making gestures, threats, derogatory comments, or slurs that may be reasonably regarded as offensive to individuals in a particular group*
- *Bullying behavior that is threatening, intimidating, verbally abusive or results in other disruptive actions in the workplace*
- *Displaying derogatory objects, photographs, cartoons, calendars, or posters*

## **A. Definition of Sexual Harassment in Employment**

*Sexual harassment is a particular type of harassment. Certain types of sexual harassment may also be addressed by AFI's Policy on Sexual Harassment Prohibited by Title IX. If the sexual harassment is by a student, it may also be addressed by AFI's Fellow Code of Conduct.*

*Under this policy, prohibited sexual harassment can include unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature when submission to such conduct:*

- *Is made a condition of employment or employment decision (Quid Pro Quo); or*
- *Meets the definition of harassment as stated above (Hostile Work Environment).*

*Examples of conduct that may constitute prohibited sexual harassment may include but are not limited to:*

- *Unwanted physical touching;*
- *Telling sexually explicit jokes or stories;*
- *Making comments or gestures reasonably regarded as lewd or offensive;*
- *Displaying sexually suggestive objects, cartoons, or pictures;*
- *Sending sexually explicit messages by letter, notes, electronic mail, social media posting, or telephone;*
- *Making unwelcome comments reasonably regarded as offensive about a person's body, physical appearance, or clothing;*
- *Frequent use of unwelcome terms of endearment; or*
- *Repeatedly asking an individual for a date or meetings outside of working hours after they have indicated an unwillingness to go.*

*AFI also prohibits sexual assault, dating violence, domestic violence and stalking based on sex by and against its employees. If this conduct does not fall under the jurisdiction of AFI's Policy on Sexual Harassment Prohibited by Title IX, AFI's Policy on Non-Title IX Sexual Harassment Against Students, or the Student Code of Conduct AFI reserves the right to address this conduct under the procedures of this policy, using the same definitions of prohibited conduct as the Policy on Sexual Harassment Prohibited by Title IX and the AFI's Policy on Non-Title IX Sexual Harassment Against Students, and the definition of affirmative consent. In these cases, as required by the Violence Against Women Act of 1994, the parties shall be entitled to have an advisor of choice at any meetings or proceedings and to receive simultaneous notice of*

*the outcome and results and the available appeal procedures. AFI's victim's resource packet is available from the Title IX Coordinator.*

## **II. Prohibited Conduct in Educational Programs and Activities**

Harassment in educational programs and activities means any unwelcome behavior (physical, verbal, graphic, or written) based on a protected category that is reasonably regarded as offensive and is sufficiently severe, pervasive or persistent that it creates a hostile environment that denies or limits the ability of an individual to participate in or benefit from the services, activities or privileges provided by AFI. This definition does not include sexual harassment that is prohibited and defined by AFI's *Policy on Sexual Harassment Prohibited by Title IX*, and AFI's *Policy on Non-Title IX Sexual Harassment Against Students*.

### **A. Definition of Discrimination in Employment and Educational Programs and Activities**

AFI also prohibits discrimination based on a lawfully protected category. This is separate from harassment. Discrimination occurs when an employee treats different individuals differently based on protected categories while performing acts that are in the course and scope of employment of the person committing discrimination. Complaints of discrimination shall be processed under this policy.

AFI's statements of non-discrimination shall be published as required by law and shall state:

#### **1. Title IX Statement**

AFI does not discriminate based on sex in any program or activity, including in the admissions process and employment, and is prohibited from such discrimination by Title IX and 34 CFR Part 106.

Complaints of discrimination based on sex or questions about Title IX can be directed to AFI's Title IX Coordinator or to the U.S. Assistant Secretary of Education, or both. To make a report or complaint of sex discrimination or sexual harassment, or for any questions related to Title IX, please contact:

Patty Smith  
titleix@afi.com  
323.856.7622

#### **2. Section 504 Statement**

AFI does not discriminate based on disability in any program or activity, including in the admissions process and employment, and is prohibited from such discrimination by Section 504 of the Rehabilitation Act. Denial of an accommodation and disability-discrimination complaints may be filed under this policy or the Fellow Section 504 Policy.

Complaints of disability discrimination can be directed to AFI's Section 504 Coordinator or to the U.S. Assistant Secretary of Education, or both. To make a report or complaint of discrimination please contact:

For Employees:

Patty Smith  
titleix@afi.com  
323.856.7622

For Fellows & Applicants:

Dr. Syreeta Greene  
SGreene@afi.com  
323.856.7742

Questions or complaints about Title IX or Section 504 may be directed to the assistant secretary for civil rights:

Office for Civil Rights,  
San Francisco Office  
U.S. Department of Education  
50 United Nations Plaza  
San Francisco, CA 94102  
Telephone: (415) 486-5555  
Facsimile: (415) 486-5570  
Email: [OCR.SanFrancisco@ed.gov](mailto:OCR.SanFrancisco@ed.gov)

### **3. Title VI Statement**

AFI does not discriminate based on race, color or national origin in any program or activity, including in the admissions process and employment, and is prohibited from such discrimination by Title VI. To make a report or complaint of discrimination or for any questions related to Title VI, please contact:

For Employees:

Patty Smith  
titleix@afi.com  
323.856.7622

For Fellows & Applicants:

Dr. Syreeta Greene  
SGreene@afi.com  
323.856.7742

#### **4. Age Discrimination Act of 1975 Statement**

AFI does not discriminate based on age (over 40) in any program or activity, including in the admissions process and employment and is prohibited from such discrimination by the Age Discrimination Act of 1975. To make a report or complaint of discrimination or for any questions related to the Age Discrimination Act of 1975, please contact:

For Employees:

Patty Smith  
titleix@afi.com  
323.856.7622

For Fellows & Applicants:

Dr. Syreeta Greene  
SGreene@afi.com  
323.856.7742

### **III. Reporting Prohibited Conduct**

AFI encourages individuals who believe they are subject to conduct prohibited by this policy to, whenever possible, promptly advise the offender that their behavior is unwelcome/unacceptable and request that it be discontinued. AFI recognizes that an individual may prefer to pursue the matter through an informal or formal complaint process. Any manager or supervisor who witnesses or hears about conduct prohibited by this policy must immediately report the conduct to the Director of People & Culture.

AFI encourages the prompt reporting of complaints or concerns so that rapid and constructive action can be taken. Individuals who feel they have been the victim of or witness such conduct should promptly report the complaint because early reporting and intervention have proven to be the most effective method of resolving actual or perceived incidents. However, late reporting by itself will not preclude AFI from taking appropriate remedial action.

Any good faith discrimination, harassment, or retaliation complaint or concern that is brought to AFI's attention will be reviewed and resolved, even if the complaint or concern comes to light in a manner that is not addressed as outlined in this section. Counselors working at or on behalf of AFI are confidential resources for purposes of this policy and any complaint of behavior covered by this policy that is brought to their attention is not considered notice to AFI, however, these individuals may be required to report such information as required by their licensing body.

### **IV. Procedures for Resolving Complaints of Prohibited Conduct Under This Policy**

AFI will follow the procedures set forth below to ensure prompt and equitable resolution of complaints of conduct prohibited by this policy. Certain types of sexual harassment may also be addressed by AFI's *Policy on Sexual Harassment Prohibited by Title IX* or AFI's *Policy on Non-Title IX Sexual Harassment Against Students*, If the prohibited behavior is by a student, it may also be

addressed by AFI's *Student Code of Conduct*. If reported conduct is covered under the Violence Against Women Reauthorization Act of 2013 amendments to the Clery Act, but is not included within the scope of AFI's *Policy on Sexual Harassment Prohibited by Title IX* or AFI's *Policy on Non-Title IX Sexual Harassment Against Students*, the obligations under the 2013 amendments to the Clery Act will apply.

AFI will take appropriate action in response to complaints or knowledge of such behaviors while preserving the rights of those against whom allegations have been made to receive procedural protections in the fact-finding and decision-making process. All such investigations will be conducted by qualified, impartial personnel in a manner that is fair, equitable, and timely to all parties. AFI maintains the confidentiality of such investigations to the extent possible, documents, and tracks investigations to ensure reasonable progress, and closes investigations in a reasonably timely manner.

All complaints shall be acknowledged promptly and resolved timely. Interim and remedial measures shall be considered on a case by case basis.

#### **A. Informal Complaint Process**

Individuals who believe they have been the victim of conduct prohibited by this policy or believe they have witnessed such conduct should discuss their concerns with their immediate supervisor, the Dean, the Chief Resource Officer, Director of Fellow Affairs, or the Director of People & Culture. AFI representatives will attempt to resolve the complaint. The Director of People & Culture will be informed by the supervisor when a complaint or report is received. If resolution is reached, a record of the resolution will be maintained on file in the People & Culture Department in the event the complaint moves from informal to formal. Participation in the informal complaint process is optional and not a prerequisite to filing a formal complaint.

#### **B. Formal Complaint Process**

Individuals who believe they have been the victim of conduct prohibited by this policy or believe they have witnessed such conduct who wish to file a formal complaint should contact the Director of People & Culture and do not need to directly complain to their immediate supervisor. If the complaint is against the Director of People & Culture, the individual should contact the President. It is helpful for the individual to submit the complaint in writing, but a written complaint is not required in order for AFI to investigate. If a Formal Complaint has already been filed under AFI's *Policy on Sexual Harassment Prohibited by Title IX*, resolution of that process shall be completed prior to the invocation of this process. Non-Title IX complaints of sexual harassment experienced by students shall be processed under AFI's *Policy on Non-Title IX Sexual Harassment Against Students*,

Any reported allegations of conduct prohibited by this policy will be reviewed promptly and impartially by qualified personnel (including external third-parties when necessary) under the direction of the Director of People & Culture, unless the report is against the Director of People & Culture, in which case the Chief Resource Officer will direct the process. When an investigation

is necessary, the investigator will conduct a fair, timely, and thorough investigation that provides all parties appropriate due process and reaches reasonable conclusions based on the evidence collected. The investigation may include individual interviews with the parties involved and, where necessary, with individuals who may have observed the alleged conduct or may have other relevant information. Confidentiality will be maintained throughout the investigation to the extent possible consistent with adequate investigation practices. This means that allegations will not be kept completely confidential and information will be disclosed to those who have legitimate need to know. The investigation process will give persons accused of prohibited conduct notice of the nature of the allegations and a meaningful opportunity to respond. The standard of proof shall be preponderance of the evidence.

After the investigation is complete, the Director of People & Culture shall recommend how AFI shall resolve the matter in terms of eliminating behavior prohibited by this policy and ensuring compliance with this policy. If a determination is made that there has been a violation of this policy, the Director of People & Culture, in consultation with the Chief Resource Officer shall take necessary steps to ensure compliance with this policy and determine what disciplinary action, if any, shall be imposed. If at the end of the investigation misconduct is found, appropriate remedial measures shall be taken. Any member of the campus community who is found to have violated this policy will be subject to corrective action. Corrective action could include required subject matter courses/development, letter(s) of reprimand, and disciplinary action up to and including termination of employment.

The Director of People & Culture is responsible for communicating and administering approved disciplinary action. All actions shall be timely and shall consider appropriate remedial actions and resolutions. The case shall be closed in a timely manner.

## **V. Appeals**

Within 10 days of receiving the written determination, either party may appeal from a determination regarding responsibility on the following grounds:

- Ground 1:** Procedural irregularity that affected the outcome of the matter;
- Ground 2:** New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
- Ground 3:** The investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

Appeals must be sent to the Director of People & Culture in writing.

### **A. Response to Appeals**

As to all appeals, the Director of People & Culture (or designee) shall:



- i. Notify the other party in writing immediately when an appeal is filed and implement appeal procedures equally for both parties;
- ii. Ensure that the decision-maker(s) for the appeal is not the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, or the investigator(s);
- iii. Ensure that the decision-maker(s) for the appeal complies with the standards set forth in this policy;
- iv. Give the non-appealing party an opportunity to submit a written statement in response to the appeal within 10 days of receiving the appeal, which shall be transmitted within 2 business days to the Appeal decision-maker(s).

#### **B. Decision on Appeal**

Within 20 days of receiving the appeal and the response, the Appeal decision-maker(s) shall issue a written decision describing the result of the appeal and the rationale for the result; and provide the written decision simultaneously to both parties. The Appeal decision-maker(s) may deny the appeal or, if the appeal ground(s) has or have been met, may return the case to the initial decision-maker(s) for reconsideration, or convene a new hearing. If a case is returned to the initial decision-maker(s), the Appeal decision-maker(s) shall identify which aspects merit further review.

#### **VI. Required Training**

Every employee upon hire and annually thereafter is required to review this policy, acknowledge they have read and understand its content. Supervisors undergo mandatory sexual harassment prevention training within six months of initial employment and biennially thereafter. Additionally, all non-supervisory employees (including temporary employees and volunteers) must complete a one-hour workplace sexual harassment prevention training within six months of their initial employment and biennially thereafter.

The Department of Fair Employment and Housing offers sexual harassment training at: <https://www.dfeh.ca.gov/shpt/>.