

# **Guidelines for dealing with cases of harassment under the Discrimination Act**

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# Contents

Background	3
The Discrimination Act	3
Obligation to investigate and take measures	3
Report and initial assessment	4
Documentation of measures during initial assessment	5
Additional measures after initial assessment	5
Report and format	6
Official document	6
Anonymous report	6
Information and assistance	6
Measures	7

# **Guidelines for dealing with cases of harassment under the Discrimination Act**

## **Background**

All employees and students at Uppsala University have a responsibility to help ensure a work environment free of all forms of harassment, sexual harassment, discrimination and reprisals.

This document provides guidelines for the University's management of suspected and reported cases of harassment, sexual harassment and reprisals against employees and/or students at the University. It sets out from the provisions of the Discrimination Act requiring investigation and measures in such cases.

## **The Discrimination Act**

The purpose of the Discrimination Act is to promote equal rights and opportunities and to combat discrimination associated with sex, ethnicity, religion or other belief, sexual orientation, disability, transgender identity or expression, and age. In principle, the Act covers all areas of society, including employment and education.<sup>1</sup>

Harassment is conduct that violates a person's dignity and that is associated with one of the grounds of discrimination: sex, transgender identity or expression, ethnicity, religion or other belief, disability, sexual orientation or age.

Sexual harassment means conduct of a sexual nature that violates someone's dignity.<sup>2</sup>

## **Obligation to investigate and take measures**

Every manager and supervisor at the University has an obligation to ensure that any harassment and sexual harassment is investigated and measures are taken to deal with it.<sup>3</sup>

If an employer becomes aware that an employee considers that they have been subjected in connection with work to harassment or sexual harassment by someone performing work or carrying out a traineeship at the employer's establishment, the employer is obliged<sup>4</sup> to investigate the circumstances surrounding the alleged harassment and, where appropriate, take the measures that can reasonably be demanded to prevent harassment in the future.

If an education provider becomes aware that a student participating in or applying to the provider's activities considers that they have been subjected in connection with these activities to harassment or sexual harassment, the education provider is obliged to investigate the circumstances surrounding the alleged harassment and, where appropriate, take the

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<sup>1</sup> Discrimination Act (2008:567), Chapter 1, Section 1.

<sup>2</sup> Discrimination Act, Chapter 1, Section 4.

<sup>3</sup> Discrimination Act, Chapter 2, Section 3.

<sup>4</sup> The University can only refrain from further investigative measures in cases where it is unequivocally clear that no harassment, sexual harassment or reprisals have occurred. See also below under the headings "Documentation of measures during initial assessment" and "Measures".

measures that can reasonably be demanded to prevent harassment in the future.<sup>5</sup> Certain decisions by the University concerning education can be appealed to the Higher Education Appeals Board on the grounds that the decision violates the prohibition of discrimination.

The obligation to investigate also applies with respect to a person carrying out a traineeship or performing work as temporary or borrowed labour.<sup>6</sup>

It follows from Chapter 2, Sections 18 and 19 of the Discrimination Act that an employee or a student may not be subjected to reprisals because the employee or student has (i) reported or called attention to the fact that someone has acted contrary to the Act, (ii) participated in an investigation under the Act, or (iii) rejected or given in to harassment or sexual harassment on the part of the employer.

The prohibition also applies in relation to a person who, with respect to the employer, (i) is enquiring about or applying for work, (ii) is applying for or carrying out a traineeship, or (iii) is available to perform work or is performing work as temporary or borrowed labour.<sup>7</sup>

### **Report and initial assessment**

An employee who feels subjected to harassment, sexual harassment or reprisals should, in the first instance, contact their line manager. In a situation where an employee feels subjected to harassment or sexual harassment by their line manager, the employee should contact the manager's superior. Other actions are described under the heading "Information and assistance".

A student who feels subjected to harassment or sexual harassment should contact the head of department/equivalent at the department to which the course director belongs. In a situation where a student feels subjected to harassment or sexual harassment by the head of department/equivalent, the student should contact that person's superior.

An employee who becomes aware of harassment or sexual harassment or reprisals against an employee or a student should immediately inform the head of department/equivalent at the employee's or student's department of the case.

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<sup>5</sup> Discrimination Act, Chapter 2, Section 7. Chapter 4, Section 18 of the Discrimination Act states the following. A decision of a university or other higher education institution for which the State is the responsible entity may, if it concerns education under the Higher Education Act (1992:1434), be appealed to the Higher Education Appeals Board on the grounds that the decision is contrary to

1. the prohibition of discrimination in Chapter 2, Section 5, if the decision concerns
  - a) admission to education,
  - b) credit for education,
  - c) deferment of studies or resumption of studies after time off from studies,
  - d) a change of supervisor,
  - e) withdrawal of a supervisor and other resources in third-cycle courses or study programmes, or
  - f) a disciplinary measure against a student,
2. the prohibition of discrimination in Chapter 1, Section 4, point 3, or
3. the prohibition of reprisals in Chapter 2, Section 19.

<sup>6</sup> Discrimination Act, Chapter 2, Section 3 and Higher Education Ordinance, Chapter 10, Section 1.

<sup>7</sup> Discrimination Act, Chapter 2, Section 18.

A head of department/equivalent who becomes aware of a potential case of harassment, sexual harassment or reprisals within their sphere of responsibility must, without delay, make an initial assessment of the need for measures and the need to investigate the matter further. The Human Resources Division will provide support to the head of department/equivalent in this process if necessary.

The purpose of the initial assessment is primarily to investigate whether it is possible for the head of department/head of unit at the department/unit/equivalent to take the measures that are needed. If it is a matter of an isolated incident that could constitute harassment, sexual harassment or reprisals, it should normally be possible for the head of department/head of unit to manage measures, after obtaining the advice of the Human Resources Division. A head of department/equivalent can also close a matter during the initial assessment, if it is obvious that no harassment and/or discrimination has occurred. The Human Resources Division will provide support to the head of department/equivalent in this process if necessary.

### **Documentation of measures during initial assessment**

The head of department/equivalent must document the measures taken and whether they are deemed sufficient to allow the matter to be closed. Documentation can take the form of an official note, for example. The Human Resources Division will provide support to the head of department/equivalent in this process if necessary.

### **Additional measures after initial assessment**

If the measures taken are not deemed sufficient, the responsible manager must consider additional measures. In such a situation, the Human Resources Division and the Legal Affairs Division will assist the responsible manager if necessary and will consult with one another as to which should be the appropriate division to provide the manager with further support.

Sometimes an investigation by the Legal Affairs Division may be required<sup>8</sup>. The Legal Affairs Division will undertake such an investigation following a decision by the head of the Legal Affairs Division. A decision can be taken to close a legal investigation at an earlier stage, e.g. when it is obvious that an investigation will not be able to show that harassment and/or discrimination has occurred. The head of the Legal Affairs Division is also responsible for taking such decisions.

Whether or not the Legal Affairs Division investigates the matter, the head of department/equivalent is responsible for ensuring that any work environment measures or other measures in response to the incident concerned are taken. This also applies where a decision has been taken to close an investigation because it is obvious that an investigation will be unable to show that harassment and/or discrimination has occurred in a particular case. This obligation follows from the delegation of powers to the head of department/equivalent and the division of work environment responsibilities. As an employer and education provider, the University has an obligation to take measures promptly. Work environment measures or other measures taken also need to be documented, e.g. in an official note.

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<sup>8</sup> Circumstances that could indicate the need for an investigation by the Legal Affairs Division might include receipt of a report of discrimination specifying one or more grounds of discrimination or that a complex legal issue has arisen.

## **Report and format**

There are no formal requirements regarding the format of a report. To facilitate investigation, it is desirable for the report to contain the names of parties concerned and a description of the course of events, and to state whether someone considers themselves subjected to reprisals or to sexual harassment or harassment because of their sex, transgender identity or expression, ethnicity, religion or other belief, disability, sexual orientation and/or age. The description should clarify when, in what connection, in what way and by whom harassment or reprisals have taken place, and whether or not the events are work-related.

## **Official document**

A written report received by a government agency<sup>9</sup> is an official document. An official note must be drawn up on an oral report and that note then becomes an official document. Official documents must be registered. Internal documents that add factual information to the case must also be registered. When the case is closed, the contents of the file should be reviewed and unnecessary contents may be disposed of. Information in official documents may be public or classified as secret. If anyone requests access to the document, a secrecy assessment must be made. As a rule, all information in a case, including information classified as secret, comes under the parties' right of access. The Legal Affairs Division and the registrar help with questions of public access and secrecy.

## **Anonymous report**

An anonymous report means that the employer or education provider has become aware of the incident, which means there is an obligation to investigate and, where appropriate, take measures<sup>10</sup> without knowing the identity of the person making the report. An anonymous report often means that the possibility of making a full investigation is limited. In these cases, the investigation and the measures depend on the conditions for investigation. Normally, an anonymous report cannot lead to an investigation that results in sanctions against the person reported.

Note that where the identity of the person making the report is known to the University, the report cannot be regarded as anonymous.

## **Information and assistance**

Anyone desiring general information about the contents and implications of current rules concerning reports and the procedures involved in an investigation before potentially submitting a report can obtain assistance, in the first instance, from the Human Resources Division or the Legal Affairs Division.

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<sup>9</sup> A case may also be internal if, for example, it concerns harassment or sexual harassment between employees.

<sup>10</sup> Various measures can be taken in these cases to prevent future incidents.

An employee can obtain assistance from the occupational health service and can also contact a safety representative or a union representative.

A student can obtain assistance from a student/doctoral student representative, the students' unions, study counsellors and the Student Health Service.

A head of department/equivalent receives managerial support, in the first instance, from the Human Resources Division.

## **Measures**

A head of department/equivalent may find in an initial assessment that there is no reason to take further action.

If a case has been investigated by the Legal Affairs Division, the head of the Legal Affairs Division may decide, on the basis of the investigation report, to close the case or to refer it to the head of department or the Vice-Chancellor.

It is also possible for the Legal Affairs Division to decide on other measures (see above).

In certain cases, the appropriate action may be to refer the matter of individual measures against an employee to the Staff Disciplinary Board or against a student to the Disciplinary Board. This is done by decision of the Vice-Chancellor.