

SECTION 4: CONDUCT PROHIBITED UNDER THIS POLICY

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The University prohibits the following forms of conduct under this policy:

Relationship Violence, which includes domestic violence and dating violence.

Sexual Misconduct and Sexual Violence, which includes sexual assault, sexual exploitation, indecent exposure, and sexual harassment.

Other Prohibited Conduct, which includes stalking, hazing, and gender-based harassment.

Retaliation, which includes bullying and intimidation.

Conduct under this policy is prohibited regardless of the sex, sexual orientation, and/or gender identity/expression of the reporting party(s) and the responding party(s). Retaliation for reports of relationship violence or sexual misconduct, including bullying and intimidation, are prohibited under this policy. Other forms of conduct such as stalking and hazing are prohibited under this policy. Forms of complicity to any of these behaviors are also prohibited and will be adjudicated under this policy.

4.1. RELATIONSHIP VIOLENCE

Relationship violence is a broad term used by EMU to categorize types of violence other than sexual violence that occur in the context of an intimate relationship, often including emotional, psychological, physical, or fiscal abuse. Relationship violence encompasses domestic violence and dating violence (definitions provided below).

An incident of relationship violence can consist of a single act of violence or a pattern of violent acts. Incidents of relationship violence can occur separate from or in tandem with incidents of sexual misconduct.

4.1.1. DOMESTIC VIOLENCE

Domestic violence is a misdemeanor or felony crime of violence, force, or threats that results in physical injury or places a family or household member in fear of injury or harm. Family or household members may include spouses, former spouses, parents, children, grandparents, siblings, in-laws who live in the same house, people who have children together, and people who live together or have lived together in the past year. Domestic violence is committed by a current/former spouse or sexual/intimate partner of the reporting party, by a person who is living with or has lived with the reporting party as a spouse or intimate partner, or by a person with whom the reporting party shares a child in common. Depending on the local jurisdiction, certain offenses, including but not limited to rape, aggravated assault, and stalking, can be deemed domestic violence depending on the relationship of the parties involved.

4.1.2. DATING VIOLENCE

Dating violence means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the reporting party. The existence of such a relationship will be determined based on the reporting party's statement, taking into consideration the following factors: a) the length of the relationship; b) the type of relationship; and c) the frequency of interaction between the persons involved in the relationship. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include any acts covered under the definition of domestic violence.

4.2. SEXUAL MISCONDUCT

Sexual misconduct is a broad term used by EMU to refer to violence of a sexual nature. Sexual misconduct encompasses sexual assault, sexual exploitation, indecent exposure, and sexual harassment (definitions provided below). Sexual misconduct may occur through physical violence, the threat of violence, and/or coercion.

An incident of sexual misconduct can consist of a single act or a pattern of acts. Incidents of sexual misconduct can occur separate from or in tandem with incidents of relationship violence.

4.2.1. SEXUAL ASSAULT

Sexual assault is any sexual act directed against another person, without the consent of that person, including instances where that person is incapable of giving consent. Sexual assault is any offense that meets the definition of rape, fondling, incest, or statutory rape.

4.2.1.1. Rape

Rape is penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of the responding party, without the consent of the reporting party (s).

4.2.1.2. Fondling

Fondling is the touching of the private body parts of the reporting party(s) by the responding party (s) for the purpose of sexual gratification, without the consent of the reporting party(s), including instances where the reporting party(s) is incapable of giving consent because of age or because of temporary or permanent mental incapacity.

4.2.1.3. Incest

Incest is sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

4.2.1.4. Statutory Rape

Statutory rape is sexual intercourse with a person who is under the statutory age of consent.

4.2.1.5. Examples of Sexual Assault

Examples of behavior that may constitute sexual assault include, but are not limited to, the following:

- a. engaging in sexual activity with an unconscious or semi-conscious person;
- b. engaging in sexual activity with someone who is asleep or passed out;
- c. engaging in sexual activity with someone who has said "no" or has otherwise indicated through non-verbal communication that they do not consent to sexual activity;
- d. engaging in sexual activity with someone who is vomiting, unable to stand without assistance, or has to be carried to bed;
- e. allowing another person to engage in sexual activity with your sexual partner without the partner's consent;
- f. requiring any person to perform any sexual activity as a condition of acceptance into any organization affiliated with the university;
- g. telling someone you will "out" them if they don't engage in sexual activity (e.g., threatening to disclose the person's sexual orientation without their consent);
- h. telling someone you will fail them or give them a grade different from what they deserve if they don't agree to engage in sexual activity; or
- i. facilitating or assisting in a sexual assault, including purchasing or providing alcohol or drugs to further a sexual assault.

4.2.2. SEXUAL EXPLOITATION

Sexual exploitation is purposely or knowingly doing any of the following:

- a. causing the impairment or incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give affirmative consent to sexual activity;
- b. allowing third parties to observe sexual activity from a hidden location (e.g., a closet) or through electronic means (e.g., Skype or live-streaming of images);
- c. engaging in voyeurism (e.g., watching private sexual activity without the consent of the participants or viewing another person's intimate parts [including genitalia, groin, breasts, or buttocks] in a place where that person would have a reasonable expectation of privacy);
- d. recording or photographing sexual activity and/or a person's intimate parts (including genitalia, groin, breasts, or buttocks) without affirmative consent;
- e. disseminating or posting images of private sexual activity and/or a person's intimate parts (including genitalia, groin, breasts, or buttocks) without affirmative consent;
- f. prostituting another person; or

- g. exposing another person to a sexually transmitted infection or virus without the other's knowledge.

4.2.3. INDECENT EXPOSURE

A person commits indecent exposure if that person exposes their genitals, buttocks, or breasts in any public place or in any place where there are other persons present and under circumstances in which one knows or should know that this conduct is likely to offend, affront, or alarm.

Indecent exposure, unless it is repeated and/or interferes with a student's ability to receive an education, will be resolved under EMU's student conduct policy.

4.2.4. SEXUAL HARASSMENT

Sexual harassment is a form of unlawful gender discrimination. Sexual harassment means unwelcome sexual advances, unwelcome requests for sexual favors, or other unwelcome behavior of a sexual nature. Sexual harassment violates university policy when:

1. submission to, or rejection of, such conduct is made, either explicitly or implicitly, a term or condition of a person's employment, academic standing, or participation in any university programs and/or activities; or
2. submission to or rejection of such conduct is used as the basis for university decisions affecting the individual (often referred to as "quid pro quo" harassment); or
3. such conduct creates a hostile environment. A hostile environment exists when the conduct is sufficiently severe, persistent, or pervasive that it unreasonably interferes with, limits, or deprives an individual from participating in or benefitting from the university's education or employment programs and/or activities.
 - a. Conduct must be deemed severe, persistent, or pervasive from both a subjective and an objective perspective. In evaluating whether a hostile environment exists, the university will consider the totality of known circumstances, including, but not limited to:
 - i. the frequency, nature and severity of the conduct;
 - ii. whether the conduct was physically threatening;
 - iii. the effect of the conduct on the reporting party's mental or emotional state;
 - iv. whether the conduct was directed at more than one person;
 - v. whether the conduct arose in the context of other discriminatory conduct;
 - vi. whether the conduct unreasonably interfered with the reporting party's educational or work performance and/or university programs or activities; and
 - vii. whether the conduct implicates concerns related to academic freedom or protected speech.
 - b. A hostile environment can be created by persistent or pervasive conduct or by a single or isolated incident, if sufficiently severe. The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment, particularly if the conduct is physical. A single incident of sexual assault, for example, may be sufficiently severe to constitute a hostile environment. In contrast, the perceived offensiveness of a single verbal or written expression, standing alone, is typically not sufficient to constitute a hostile environment. The conduct does not have to be directed at a specific person or persons to constitute harassment.

Examples of behavior that may constitute sexual harassment, if sufficiently severe, persistent, or pervasive, include the following:

- a. calling someone by a sexually oriented or demeaning name;
- b. giving someone unwanted gifts of a sexual nature;
- c. displaying sexually suggestive materials or sending notes, email, or jokes to a person that are sexually explicit;
- d. touching someone sexually without their consent;
- e. massaging someone without permission;
- f. brushing up against someone repeatedly;
- g. continuing to ask out a person who has already said no; or
- h. exposing your private parts to another person.

[Title VII of the Civil Rights Act of 1964](#) explicitly prohibits sexual harassment against employees, including when an employee or application is exposed to unwelcome physical or verbal advances where the advances are made a condition of employment or the basis of employment decisions. Sexual harassment also occurs when the work environment interferes with job performance because of the extent of the sex-based offensive conduct and/or the hostile work environment the sex-based conduct creates.

In addition to bringing a case under EMU's Relationship Violence and Sexual Misconduct Policy, employees may also file a complaint directly with the [Equal Employment Opportunity Commission \(EEOC\)](#). Complaints must be [filed with the EEOC](#) within 180 days of the discriminatory act in order to preserve the rights of the reporting party in a court of law.

4.3. OTHER PROHIBITED CONDUCT

4.3.1. STALKING

Stalking occurs when a person engages in a course of conduct directed at a specific person under circumstances that would cause a reasonable person to fear for their safety or the safety of others, or to suffer substantial emotional distress.

Course of conduct means two or more acts, including but not limited to acts in which a responding party directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about the reporting party, or interferes with the reporting party's property.

A reasonable person means a person under similar circumstances and with similar identities to the reporting party.

Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

Stalking includes cyber-stalking, a particular form of stalking in which a responding party uses electronic media, such as the internet, social networks, blogs, cell phones, texts, or other similar devices or forms of contact.

Stalking of a sexual nature and/or stalking that interferes with a student's ability to receive an education will be resolved under the Relationship Violence and Sexual Misconduct Policy.

4.3.2. HAZING

Hazing is defined as actions which are initiated against someone's will by harassing through force, banter, ridicule, or criticism. In some cases conduct may implicate both the student disciplinary procedures and the Relationship Violence and Sexual Misconduct Policy. Hazing is an act that, as an explicit or implicit condition for initiation to, admission into, affiliation with, or continued membership in a group organization, could be seen by a reasonable person as endangering the physical health of an individual or as causing mental distress to an individual.

Hazing may include:

- a. humiliating, intimidating, or demeaning treatment;
- b. destruction or removal of public or private property;
- c. the consumption of alcohol, other drugs, or other substances;
- d. violations of university policy(s).

Hazing that involves sexual misconduct will be resolved under the Relationship Violence and Sexual Misconduct Policy. Hazing that does not involve sexual misconduct will be adjudicated under EMU's student conduct policy.

4.3.3. GENDER-BASED HARASSMENT

Gender-based harassment includes harassment based on gender, sexual orientation, gender identity, or gender expression which may include acts of aggression, intimidation, or hostility, whether verbal or non-verbal, graphic, physical, or otherwise, even if the acts do not involve conduct of a sexual nature, when the conditions outlined below are present:

- a. submission to, or rejection of, such conduct is made, either explicitly or implicitly, a term or condition of a person's employment, academic standing, or participation in any university programs and/or activities; or
- b. submission to or rejection of such conduct is used as the basis for university decisions affecting the individual (often referred to as quid pro quo harassment); or
- c. such conduct creates a hostile environment. A hostile environment exists when the conduct is sufficiently severe, persistent, or pervasive that it unreasonably interferes with, limits, or deprives an individual from participating in, or benefitting from, the university's education or employment programs and/or activities.

[Title VII of the Civil Rights Act of 1964](#) explicitly prohibits gender-based discrimination against employees on the basis of pregnancy, childbirth, or related medical conditions. In addition to bringing a case under EMU's Relationship Violence and Sexual Misconduct Policy, employees may also file a complaint directly with the [Equal Employment Opportunity Commission \(EEOC\)](#). Complaints must be [filed with the EEOC](#) within 180 days of the discriminatory act in order to preserve the rights of the reporting party in a court of law.

4.4. RETALIATION

Retaliation is any act or attempt to retaliate against or seek retribution from any individual or group of individuals, including bullying and intimidation (defined below). Retaliation can take many forms, including continued abuse or violence, threats, and attempts at coercion. Retaliation can occur in many venues, including face-to-face or group-to-group, in content on public bulletin boards, in classroom discussions, or on social media.

Retaliation in response to the filing of a report of relationship violence and/or sexual misconduct is prohibited, including retaliation against reporting party(s), responding party(s), witnesses, advocates, or others involved in reporting, investigation, and/or adjudication procedures. Retaliation against those reporting incidents or participating in investigation or adjudication processes under the Relationship Violence and Sexual Misconduct policy will be adjudicated under this policy.

4.4.1. BULLYING

Bullying includes any intentional electronic, written, verbal, or physical act or a series of acts of physical, social, or emotional domination that cause physical or emotional harm to another student or group of students. Bullying conduct may not only cause a negative effect on individuals targeted but also on others who observe the conduct. Bullying conduct is severe, persistent, or pervasive and has the effect of doing any of the following:

- a. substantially interfering with a community member's education, employment, or full enjoyment of the university;
- b. creating a threatening or intimidating environment; or
- c. substantially disrupting the orderly operation of the university.

Anyone who attempts to use bullying to retaliate against someone who reports an incident, brings a complaint, or participates in an investigation in an attempt to influence the Title IX conduct process will be in violation of retaliation as described within this policy and will be subject to disciplinary action.

When acts of bullying occur in the context of any of the forms of conduct prohibited under this policy or when the behavior is perpetrated on the basis of sex or gender, the conduct will be resolved under the Relationship Violence and Sexual Misconduct Policy. Any other acts of bullying will be adjudicated under EMU's student conduct policy.

4.4.2. INTIMIDATION

Intimidation is any verbal, written, or electronic threat of violence or other threatening behavior directed toward another person or group that reasonably leads the person(s) or the group to fear for their physical well-being. Intimidation is prohibited and will result in disciplinary action.

Anyone who attempts to use intimidation to retaliate against someone who reports an incident, brings a complaint, or participates in an investigation in an attempt to influence the Title IX conduct process will be in violation of retaliation as described within this policy and will be subject to disciplinary action.

When acts of intimidation occur in the context of any form of conduct prohibited under this policy or when the behavior is perpetrated on the basis of sex or gender, the conduct will be resolved under the Relationship Violence and Sexual Misconduct Policy. Any other acts of intimidation will be adjudicated under EMU's student conduct policy.

4.5. COMPLICITY

Complicity is any act taken with the purpose of aiding, facilitating, protecting, promoting, or encouraging the commission of an act of relationship violence, sexual misconduct, or other forms of conduct prohibited under this policy by another person.

Anyone who is complicit in any of the prohibited acts outlined in this policy will be in violation of this policy and will be subject to disciplinary action.

4.6. VIOLATIONS OF LAW

Behavior that violates this policy may also constitute a crime under the laws of the jurisdiction in which the incident occurred. For example, the Commonwealth of Virginia criminalizes and punishes some forms of sexual assault, intimate partner violence, sexual exploitation, stalking, and physical assault. The criminal statutes that may apply in cases of physical assault and intimate partner violence are found in various sections of [Chapter 4, Articles 1 \(Homicide\) and 4 \(Assaults and Bodily Woundings\)](#), of [Title 18.2 of the Code of Virginia](#). The criminal statutes relating to sexual assault are found in [Sections 18.2-61 to 18.2-67.10 of the Code of Virginia](#). [Section 18.2-60.3 of the Code of Virginia](#) defines and identifies the penalty for criminal stalking. Finally, [Sections 18.2-386.1 and 18.2-386.2 of the Code of Virginia](#) provide for criminal penalties in some cases of sexual exploitation. This compilation of criminal statutes is not exhaustive, but is offered to notify the university community that some forms of conduct prohibited under this policy may also constitute crimes under Virginia law, which may subject a person to criminal prosecution and punishment in addition to any sanctions under this policy.