

## **SECOND PROTOCOL FOR THE PREVENTION OF AND ACTION AGAINST SEXUAL HARASSMENT AND CYBER SEXUAL HARASSMENT, HARASSMENT BASED ON SEX, SEXUAL ORIENTATION, AND GENDER IDENTITY AND/OR EXPRESSION AT UNIVERSIDAD CARLOS III de MADRID**

### **1.- Declaration of principles/ Explanatory Memorandum**

The **Spanish Constitution** of 1978 recognizes in article 14 the fundamental right that “Spaniards are equal before the law and may not in any way be discriminated against on account of birth, race, sex, religion, opinion, or any other personal or social condition or circumstance”, and it continues in articles 15 and 18 to recognize the right to life, and physical and moral integrity (art. 15) and the right to honor, to personal and family privacy to one’s own image. (art. 18). Lastly, article 35.1 establishes that under no circumstances may a person be discriminated against in the workplace on the basis of their sex.

**Organic Law 3/2007**, March 22, for the effective equality of women and men, defines sexual harassment and harassment based on sex, and establishes in its article 62 that Public Administrations shall negotiate with workers’ legal representatives to establish a protocol for action against sexual harassment and harassment based on sex.

Universidad Carlos III de Madrid in its role of transmitting values and as an institution that respects rights and liberties and assumes the principle of equality and non-discrimination, cannot tolerate any form of harassment, and specifically those which are gathered in this protocol. The University, which must be a safe environment and exempt from any type of discrimination, after creating the Equality Unit, began with the drafting of the First Equality Plan of UC3M in April 2010. In this plan the University committed to developing a protocol for the prevention of and action against sexual harassment and harassment based on sex, which was approved in March 2013 by its Governing Board.

After approval of the Second Equality Plan on October 30, 2017, and the publication of Laws 2/2016 and 3/2016 for the Madrid Autonomous Region, regulating the rights and liberties of the LGTBI collective, it has been considered necessary to review said protocol to which harassment based on gender identity, sexual orientation and cyber sexual harassment are also incorporated.

This second protocol, applicable to the entire University Community, with the twofold purpose of prevention and action against all types of harassment gathered within it, seeks to provide professional training to the different University collectives to prevent situations and behavior that can constitute harassment.

### **2.- Regulation of reference**

#### **European regulation:**

- Directive 2006/54/EEC, July 5, of the European Parliament and of the Council on the implementation of the principle of equal opportunities and equal treatment of women and men in matters of employment and occupation.

- Directive 2011/99/EU of the European Parliament and of the Council, December 13, 2011 on the European order of protection
- Directive 2011/36/EU of the European Parliament and the Council, April 5, 2011, on preventing and combatting trafficking of human beings and protection of the victims and which substituted the Framework Decision of 2002/629/JAI of the Council
- Directive 2012/29/EU of the European Parliament and the Council, October 25, 2012, which establishes the minimum norms regarding rights, support and protection for victims of crimes, and which substitutes Framework Decision 2001/220/JAI of the Council

#### **State regulation:**

- The Spanish Constitution of 1978. Articles 9.2, 14, 18.1 and 35.1.
- Organic Law 1/2004, December 28, Measures for Comprehensive Protection against Gender Violence
- Organic Law 3/2007, March 22, for the effective equality of women and men
- Organic Law 4/2007, April 12, which modifies Organic Law 6/2001, December 21, for Universities.
- Legislative Royal Decree 2/2015, October 23, which approved the consolidated text of the Law of the Employees Statute.
- Legislative Royal Decree 5/2015, October 30, which approved the consolidated text of the Law of the Basic Statute of Public Employment.
- Legislative Royal Decree 5/2010, August 4, which approved the consolidated Text on the Infringements and Sanctions Law in the Public Order.

#### **Autonomous Region Regulation:**

- Law 2/2016, March 29, regarding Gender Identity and Expression and Social Equality and Non-Discrimination for the Autonomous Region of Madrid.
- Law 3/2016, July 22, Global Protection against LGBT-phobia and Discrimination based on Sexual Orientation and Identity in the Autonomous Region of Madrid.

#### **UC3M Regulation:**

- Second Equality Plan of Universidad Carlos III de Madrid, approved by the Governing Council on October 30, 2017.

### **3.- Conceptual framework**

Organic Law 3/2007, March 22, for the effective equality between Women and Men defines sexual harassment and harassment based on sex in the following terms (art. 7):

1.- "Notwithstanding that which is set out in Penal Code, for the purposes of this Law, any verbal or physical behavior, of a sexual nature with the purpose or effect of violating the dignity of a person, particularly when creating an intimidating, hostile, degrading, humiliating or offensive environment, constitutes sexual harassment."

2.- "Harassment based on sex is deemed to be any behavior carried out based on the sex of an individual, with the purpose or effect of violating their dignity and creating an intimidating, degrading or offensive environment."

3.- “Sexual harassment and harassment based on sex, in all cases, shall be considered discriminatory”.

4.- “The conditioning a right or expectation of a right on the acceptance of a situation constituting sexual harassment or harassment based on sex shall likewise be considered an act of discrimination for reasons of gender. Any disadvantageous treatment with regard to pregnancy, maternity, paternity or assumption of family caregiving are also protected by the application of this protocol when the requisites established in the previous section are met.”

At the same time, the following concepts must be defined:

**Cyber sexual harassment:** This type of harassment includes threats, intimidation, bullying and attacks in any form using online technology (social networks, mobile phone, internet, etc.).

**Harassment based on sexual orientation or gender identity.** Any behavior that seeks to denigrate or humiliate a person due to their sexual orientation or gender identity. (Organic Law 62/2003, December 30).

**Discriminatory harassment:** Any behavior or conduct that is based on sexual orientation, gender expression or identity, or belonging to a social group, which is carried out with the purpose and effect of violating one’s dignity and creating an intimidating, hostile, degrading, offensive and segregated environment. (Law 2/2016, March 29, Gender Identity and Expression and Social Equality and Non Discrimination of the Madrid Autonomous Region).

#### **4.- Area of Application:**

This protocol will be applied in cases in which the alleged perpetrator(s) of the harassment pertains (pertain) to any of the collectives listed as follows during their time at UC3M.

- a). - UC3M Students
- b). - UC3M Faculty and Researchers
- c). - UC3M Administrative and Services Staff

Accordingly, the alleged victim should pertain to one of the following collectives during their time at UC3M:

- a). - UC3M Students
- b). - UC3M Faculty and Researchers
- c). - UC3M Administrative and Services Staff
- d). – Any individual from an external company or entity engaged in work at UC3M

The written complaint may be presented while there is a link or affiliation with UC3M and up to six months after termination of such.

Regarding the location where the harassment is produced (the physical space), this protocol will be applied to situations or behavior engaged in at UC3M, as well as during travel, commuting or activities carried out outside UC3M but linked to academic or professional work. Additionally, it will likewise be applied to conduct occurring with the use of new technologies in the case of cyber sexual harassment.

## **5.- Entities responsible for protocol application**

The UC3M Equality Unit, its corresponding Office of the Vice-president and Commission against sexual harassment, cyber sexual harassment, harassment based on sex, , harassment based on sexual orientation and gender identity and/or expression within the environment of UC3M, will be responsible for application and monitoring of this Protocol.

## **6.- Commission against sexual harassment and cyber sexual harassment, harassment based on sex or sexual orientation, and gender identity and/or expression.**

The Commission shall be formed by the following:

a).- Ex Officio Members:

- The University Vice-president with authority in Equality or the person appointed in representation
- The Director of the Equality Unit, who shall act as Secretary
- The University Ombudsperson or adjunct
- A person from Legal Affairs (or from HR or the UC3M faculty in the area of law who is knowledgeable in the subject matter)

b).- Furthermore, according to whether the reported harassment has occurred among students, Administrative and Services Staff or Faculty and Researchers and according to which collective the alleged perpetrator belongs, incorporated into the Commission:

- If the complainant and the alleged perpetrator belong to the same collective, a representative from said collective will be incorporated (Student, Administrative Staff or Faculty and Researchers)
- If the complainant and the alleged perpetrator belong to different collectives, a representative from each of their collectives will be incorporated.

Representation for the three collectives (students, administrative staff, and faculty and researchers) will be appointed for a period of two years proposed by the corresponding entities of representation (Student Representatives and Personnel Committee or Work Councils), excepting those that leave the University or cease to belong to the collective which they represent, in which case, another person will be named to replace them. In order to avoid delays in the Commission's work due to the absence of one of the persons named, the collectives will provide a list of at least 2 and not more than 4 individuals.

All of the individuals in the Commission must have received sufficient professional training in the subject matter.

Applicable to all of the persons making up the Commission is that which is established for reasons of "abstention and disqualification" found in Law 40/2015, October 1, Legal Regime of the public sector.

## **7.- Beginning of the process: presentation of complaint or accusation**

The procedure begins automatically by agreement of the relevant entity, on its own initiative or as a consequence of a higher order, by a reasoned request from the Equality Unit or other University bodies or by the filing of a complaint.

7.1.- A complaint may be presented by:

a).- Any individual included in the area of application for the present Protocol who considers themselves to be victim of sexual harassment, cyber sexual harassment, harassment based on sex, , harassment based on sexual orientation, or gender identity and / or expression.

b).- Any member of the University Community having knowledge of a situation that could constitute one of the types of harassment included in this document. In such cases, the person who is supposedly referred to in the written complaint or accusation as the presumed victim will be immediately informed so as to ratify the accusation, and the continuance of the procedure. Otherwise, the complaint will be closed in a signed act with the individual and a member of the Equality Unit.

7.2.- Under no circumstances will an anonymous complaint be processed.

7.3.- The written complaint or accusation shall be presented to the Equality Unit on paper, according to the model found on the webpage, addressed to the Office of the Vice President with authority in matters regarding Equality, together with a sealed envelope, within which the facts considered to constitute the harassment shall be presented, the alleged perpetrator identified, together with all the corresponding documentation that the complainant considers useful for the Commission in order to study the case. To duly maintain confidentiality, it is not necessary to file the complaint through the University Registrar.

In the case in which the situation reported refers to a collective simultaneously made by one person, a collective complaint or several individual complaints can be presented, and the Commission will decide if a collective complaint or accusation is involved.

## **8.- Actions**

After receiving the written complaint or reasoned request, the corresponding Office of the Vice President with authority in matters regarding Equality, as an action previous to the start of the proceedings, will call upon the Commission in the space of ten working days upon receipt of the complaint, which can then:

a) Not initiate proceedings, if the situation described in the written complaint or accusation does not correspond to any of the types of harassment referred to in this protocol. As such, the Presidency of the Commission will communicate this to the presumed victim, and explaining its decision, will deem the actions referred to in this protocol as finalized.

b) Initiate proceedings if the conclusion drawn from the written complaint or accusation is that the described situation corresponds to one of the types of harassment referred to in this protocol.

In this case, the Office of the Vice President with authority in matters of Equality, previously consulting the corresponding members of the Commission who shall act in this matter, will present the written complaint or accusation to the alleged perpetrator, who will then have 10 working days within which to present allegations.

The Commission will be able to request reports as well as declarations from the complainant and alleged perpetrator, and from other persons who could provide information in this respect.

c) If from the written complaint or accusation, the Commission deduces the existence of a situation that does not yet constitute one of the types of harassment indicated in this protocol, but could potentially become one, the Office of the Vice President with authority in matters of Equality may propose appropriate actions to the complainant in order to seek an informal resolution to put an end to the situation reported and prevent it from happening in the future.

As a general norm, an effort is made to ensure that the complainant declares one sole time before the Commission, although a new statement may be necessary if some point needs to be cleared up. At the same time, the complainant could be present at his or her own request more than once, in order to clarify a point or provide more evidence.

The statements from the complainant, witnesses and alleged perpetrator will be transcribed, providing a copy of the same to the one making the statement, who then signs and swears to the truthfulness of such, as well as its correspondence with the testimony given.

The parties may attend in the company of other persons from the University Community. If the complainant requests it, and with the approval of the Commission, she or he may be accompanied by an individual from outside the University.

The Commission may require assessment from University services which it deems pertinent (the Psycho-pedagogical Office, Occupational Health and Safety Services, etc.). As an exception and for clearly justified causes, the Presidency of the Commission may request the intervention of an assessor external to the University Community whose costs shall be borne by UC3M.

## **9.- Support and protection measures for complainants**

If the situation is especially serious and the Commission considers it necessary for the complainant and possible witnesses not to have contact with the alleged perpetrator, support and protection measures can be proposed until the complaint or accusation is resolved to protect the interests of all those mentioned.

At any rate, the Commission shall examine each case on an individual basis in order to establish the possible measures for support that are most appropriate for each situation.

## **10.- Resolution of proceedings**

Upon viewing all the information gathered during the process together with any interviews, in the maximum span of one month after presentation of the complaint/accusation, the

Commission will prepare a proposal for Resolution of the process, which can be issued in two ways:

a).- If the Commission considers that there are sufficient indications that the harassment in the complaint has occurred, it will propose to the University Rector the opening of disciplinary proceedings against the alleged perpetrator, according to the legislation in force in each case. If the alleged perpetrator belongs to one of the companies contracted by the University, it will be transferred to its general management. At the same time, it will also be communicated to the individual in charge of said contract at the University.

b).- If the Commission considers that there are not sufficient indications that the harassment occurred, it will find so accordingly, and thus conclude the process, communicating this to the parties, regardless of later appeals that could be presented afterwards. Likewise, the Rector will be notified regarding the finalization of the process.

In all of the cases indicated, the complainant and the alleged perpetrator will be notified of the Resolution.

#### **11.-Duty of confidentiality**

All information regarding the complaints or accusations of harassment according to this Protocol will be dealt with so as to ensure the privacy of all persons involved and to maintain confidentiality throughout the entire process.

A duty of secrecy shall be required of all persons participating in the actions set out in this protocol. For such purpose, each person who forms part of the Commission, as well as the complainant, the alleged perpetrator and possible witnesses shall sign a statement of confidentiality that will remain in the power of the Equality Unit. In the case of non-compliance with this duty of confidentiality, it will be considered a serious infraction with a corresponding sanction.

At any rate, in this case, it is in accordance to that established in Organic Law 3/2018, December 5 regarding Protection of Personal Data and guarantee of digital rights, as well as in Regulation (EU) 2016/679 of the European Parliament and Council, April 27, 2016, in relation to the protection of individuals in matters regarding the treatment of personal data and the free circulation of said data and which repealed Directive 95/46/EC (General Regulation on data protection).

#### **12.- General considerations**

a).- The proceeding established in this Protocol is of a voluntary nature, as it is not necessary to undertake it in order to initiate legal actions which are deemed pertinent through an administrative or judicial office.

The opening of disciplinary proceedings, lawsuits, or legal complaints before the applicable jurisdiction shall lead to immediate filing away of any of the proceedings set out in this protocol.

b).- The University may adopt measures which it considers appropriate in the case in which a false harassment claim has been made, including opening disciplinary proceedings.

c).- All of the University Community is required to collaborate in the investigation and the processes undertaken in relation to the actions set out in this protocol.

d).- With respect to possible objections or abstentions of the persons named to act in the informal resolution or for the Commission, it shall be in accordance to that which is set out in articles 23 and 24 of Law 40/2015 , October 1 , of the Legal System of the Public Sector.

### **13.- Policy for prevention of sexual harassment and cyber sexual harassment, and harassment based on sex, sexual orientation and gender identity and expression.**

With the objective of informing the entire University about this protocol and to raise awareness in its regard:

- The Equality Unit and the Office of the Vice-President to which it corresponds, will disseminate this protocol to all the University Community through the webpage, digital signage and by other means considered appropriate for this purpose.
- Awareness and information campaigns will be undertaken. This will include reference to this protocol in information provided to incoming students at the beginning of each academic year, and studying the possibility of having the Equality Unit present in the Welcome Day sessions.
- The protocol will be translated into English so that it can be incorporated into the International page for foreign students.
- At least one session on the protocol will be included each year in the Seminars against Gender Violence.
- The Equality Unit will organize courses and/or workshops geared towards UC3M students on the prevention of sexual harassment and cyber sexual harassment, harassment based on sex, sexual orientation and gender identity and expression.
- At the same time, the Equality Unit with the collaboration of Human Resources will organize courses geared towards UC3M Administrative Staff and Faculty and Researchers on the prevention of sexual harassment and cyber sexual harassment, harassment based on sex, sexual orientation and gender identity and expression.
- This protocol will be included together with the regulation on Equality in hiring processes for Administrative personnel.
- UC3M will adopt measures to prevent and avoid situations of harassment in accordance to what is set out in el article 24 of the Law of Occupational Health and Safety.
- Companies engaged in contracts with UC3M will be duly informed about this protocol.



- In public bidding processes undertaken by the University, in cases where it is legally applicable, a special condition for contracting could be included, with the scope and effects set out in article 202 of the Law of Public Sector Hiring, for companies that are awarded a bid to have an established protocol against harassment.

#### **14.- Period of validity, assessment and review of Protocol**

Once approved by the UC3M Governing Council with its subsequent implementation, the protocol will have a duration of four years. Nevertheless, it will continue to be in force until a new text is approved.

#### **15.- University actions outside the protocol's area of application.**

The University, through the Commission referred to in section 6 of this protocol, in order to safeguard and respect the presumption of innocence of all the affected parties, in cases where it has some knowledge of deeds or actions, which, in spite of being outside the area of application of this protocol, could be object of sexual harassment or cyber sexual harassment, or harassment based on sex, sexual orientation and gender identity and/or expression in the University, shall propose adoption of measures or actions in the University ambit which are deemed appropriate.

### **ANNEXES: DEFINITIONS, ORIENTATIVE CLASSIFICATIONS AND EXAMPLES**

Any attempt to delimit a list of conduct and behavior constituting sexual harassment, cyber sexual harassment, sexist harassment, harassment based on sexual orientation or gender identity and expression would be a fruitless task, although scientific and legal doctrine have established specific categories of sexual harassment (such as quid pro quo sexual harassment, also known as "sexual blackmail", or "environment sexual harassment") that must be known and recognized by anyone who has to carry out any preventive or corrective intervention.

Conduct or behavior constituting sexual harassment, sexist harassment, and harassment based on sexual orientation or gender identity or expression can be of different types, and it is wise to leave the possibility open for new definitions and concepts. It is worth mentioning that, different from workplace harassment, these types of harassment need not occur repeatedly in order for them to constitute harassment. For orientation purposes, we can define some situations as those included in Annexes I, II and III.

## **ANNEX I: SITUATIONS CONSTITUTING SEXUAL HARASSMENT AND HARASSMENT BASED ON SEX**

Any behavior, be it verbal, non-verbal or physical, of a sexual nature and which is unwanted by the person to whom it is directed that has the purpose or produces the effect of being a violation of their physical or psychological integrity. "At the same time, it must be highlighted, that in the case of heterosexual harassment against women, which is the majority of cases, it is also considered, in addition to being a violation of one's dignity, as discrimination based on sex. (highlighting the sexual objectification of women and indicators of gender inequality), and the sexual harassment is catalogued as gender violence".

The following conduct, among others, can constitute sexual harassment:

- Deliberate physical contact that is unwanted and unnecessary such as touching, rubbing, patting or pinching.
- Insinuating and compromising comments and observations about one's appearance or aspect.
- Looks or gestures of sexual nature that make one uncomfortable.
- Jokes of a sexual nature directly targeting a person.

In the case of **sexual blackmail**, also known as "quid pro quo sexual harassment", the alleged perpetrator holds a higher position or his or her decisions can affect the employment of work or study conditions of the person who suffers from the harassment. Among others, the following behaviors can be considered as constituting sexual harassment by sexual blackmail or quid pro quo sexual harassment:

- Offering or insinuating receipt of some type of reward for submitting to sexual demands.
- Offering or insinuating receipt of some type of reprisal for not cooperating with sexual demands.

Among others, the following conduct can constitute sexual harassment because of unwanted sexual attention:

- Reiterated invitations to initiate a sexual relationship despite having clearly rejected them.
- Deliberate physical contact that is unwanted or necessary such as touching, rubbing, patting or pinching.
- Lascivious looks or gestures that make one uncomfortable, special attention or friendliness towards a person who detects that unwanted sexual interest is behind such behavior.

### **Sexist harassment or harassment based on sex:**

Harassment based on sex, also termed sexist harassment, is defined as "any behavior based on the sex of a person, with the purpose or effect of violating their dignity and creating an intimidating, degrading and offensive environment" (Organic Law 3/2007, March 22, for effective equality of women and men prohibits sexual harassments and harassment based on sex).

The following constitute some examples:

#### **A) Verbal sexual harassment.**

- Assigning meaningless work or tasks that are impossible to carry out (irrational deadlines) to an individual based on their sex.

- Assigning workplace responsibility to an individual which is below their ability or professional category, on the sole basis of their sex.
- Ignoring contributions, comments and actions (leaving the individual out, not taking the individual seriously).
- Using sexist humor.
- Ridiculing, looking down on the abilities, skills and intellectual potential of individuals on the basis of their sex.
- Ridiculing individuals for taking on work traditionally done by a different sex (for example, in the case of a nurse or a soldier).
- Denying leave to an individual who has a right to it, in an arbitrary manner, and based on one's sex.
- Looking down on work carried out by individuals of a determined sex.
- Use degrading ways of addressing persons of a determined sex.

**B) Non-verbal sexual harassment.**

- Using gestures that produce an intimidating atmosphere.
- Sabotaging work or deliberately impeding access to appropriate means to undertake work (information, documents, equipment).
- Engaging in discriminatory behavior based on the fact of being a man or woman.

**C) Physical sexual harassment.**

- Provoking physical closeness.
- Cornering someone, deliberately and unnecessarily seeking to be alone with someone for the purpose of intimidation.
- Getting excessively close to someone.
- Using physical strength to demonstrate the superiority of one sex over another.

## **ANEXO II.- SITUATIONS THAT COULD CONSTITUTE HARASSMENT BASED ON SEXUAL ORIENTATION, OR HARASSMENT BASED ON GENDER IDENTITY AND/OR EXPRESSION.**

### **Harassment based on sexual orientation**

All conduct, and other actions, carried out towards a person based on their sexual orientation that could be considered offensive, humiliating, violent, intimidating, with the purpose or result of violating their dignity and creating a discriminatory environment.

As an example, the following behavior or actions could be evidence of harassment based on sexual orientation:

- Engaging in discriminatory behavior based on sexual orientation.
- Addressing a person in an offensive way.
- Ridiculing a person regarding their sexual orientation.
- Using homophobic, lesbophobia or biphobia humor.
- Looking down on work that someone has done based on their sexual orientation.
- Ignoring contributions, commentaries, and actions (excluding someone, not taking them seriously).
- Unequal treatment based on homosexuality, bisexuality or gender identity.
- The perception of the foregoing.

### **Harassment based on gender expression and/or identity**

Any behavior or conduct based on gender expression and/or identity with the purpose or the result of violating their dignity and creating an environment that is intimidating, hostile, degrading, offensive or segregated.

Examples of behavior or conduct:

- Refusing to call a trans person by their correct name, or deliberately using pronouns that do not correspond with the gender with which they identify.
- Expelling or questioning persons with non-regulated gender expression or identity for using a particular bathroom or changing room.
- Looking down on a person's abilities, skills and intellectual potential based on gender expression or identity.
- Using transphobic or interphobic humor-
- Ignoring or excluding contributions, comments and actions based on an individual's gender expression or identity.

### ANEXO III.- SITUATIONS THAT COULD CONSTITUTE CYBER SEXUAL HARASSMENT

Under the term cyber sexual harassment are situations that can be included in one of the preceding annexes, since cyber sexual harassment refers to the form or means of engaging in the harassment.

Examples of conduct that constitute cyber sexual harassment:

- **Online Impersonation:** with the aim of causing harm to a person, accessing their email or social media, presenting themselves as that person, and sending compromising material in their name.
- **Stalking or Bullying:** sending a person messages and or content that is denigrating to the receiver, regardless of whether it involves sensitive content regarding their privacy; monitoring the time an individual spends on social media; making repeated and unwanted phone calls; inappropriate following of social activity through messages, public comments, etc.
- **Denigration:** publishing content on webpages or on social networks that affects the image or privacy of a person; sending emails to disseminate compromising information.
- Tricking a person into sharing confidential information and/or spreading rumors.
- Publishing threats on webpages or social media.

This protocol limits itself to cyber sexual harassment situations that are related to the types of harassment gathered herein (sexual harassment, harassment based on sex, harassment based on sexual orientation, and harassment based on gender identity and/or expression).