

~~MEMORANDUM OF UNDERSTANDING RE DEI PROPOSALS~~

~~In March 2021, OHSU retained Covington and Burling LLP (Covington) to lead an independent and thorough investigation regarding “inequitable treatment, discrimination, harassment, bullying, or intimidation [at OHSU] based on race, color, religion, national origin, disability, age, marital status, sex (including pregnancy), sexual orientation, gender, gender identity or gender expression”, principally by assessing whether OHSU’s current policies, procedures, and practices were optimally designed to ensure that individuals are treated equitably, to prevent misconduct, and to ensure best practices. OHSU also asked Covington to address “how OHSU has handled, and how it should handle in the future, reports of inequitable treatment, discrimination, or harassment based on these protected characteristics, or based on other differences due to power dynamics, or retaliation for reporting these types of improper conduct,” including whether community members feel comfortable reporting these issues and whether they are appropriately investigated and addressed; whether existing data suggests disparities in reporting or outcomes; and whether OHSU acts in accord with best practices regarding communication of reports, investigations, and outcomes.~~

~~In December 2021, Covington completed its comprehensive investigation and issued its investigative findings and recommendations to address institutional cultural challenges (the Covington Report). Shortly after sharing Covington’s findings with its members, OHSU pledged to: (1) convene an implementation committee for Covington’s recommendations focused on planning and adoption with metrics and milestones for measuring progress that will be regularly shared with OHSU members; and (2) ensure~~

~~accountability by creating an oversight committee that will report to the OHSU President and OHSU Board of Directors.~~

~~OHSU created the Implementation and Oversight committees (the Committees), each of which began meeting in February 2022. The Oversight committee includes members from a wide group of stakeholders, including AFSCME and other unions representing employees at OHSU.~~

~~The Implementation Committee is tasked with implementing the Recommendations found in the Covington Report. The Oversight Committee is charged with reviewing, monitoring, and providing input to the Implementation committee. Given the broad authority of the Committees to address Diversity, Equity, and Inclusion (DEI) matters for the entire OHSU organization, DEI matters should be addressed by the Committees. The purpose of this MOU is to establish the process for the Committees to respond to AFSCME's DEI proposals, including proposals to change or create Article 5.UX2 (Demographic Information), new Memorandum of Understanding #UX1 (Collection of Demographic Information), 27.UX1 (Immigration Status Safety), 27.UX3 (Safety from Harassment, Discrimination and Violence), new 5.UX5 (Protected Classes); 5.UX6 (Quid Pro Quo Harassment); 5.UX7 (Racist Abuse); 5.UX8 (Sexual/Gender-Based Offensive Conduct or Harassment); 5.UX9 (Verbal Abuse); 5.UX10 (Violent Conduct); 5.UX11 (OHSU Member), and 27.X Leave for Harassment Allegations.~~

~~The Committees shall review and consider the Union's DEI proposals for adoption as OHSU policy, and shall provide the Union with a response on the Union's DEI proposals, as expeditiously as possible given the Committees' other priorities. The Committees and OHSU shall not have a continuing obligation to bargain with the Union~~

~~regarding these proposals, but the Committees shall consider the Union's feedback on the Committee's responses.~~

~~5.UX14 Reasonable Person. A hypothetical person who would approach a situation with the appropriate amount of caution and then sensibly takes action~~ As defined consistent with EEOC guidance and applicable law.

**APPENDIX**  
**Diversity, Equity, and Inclusion**

**1. Definitions [To be alphabetized in final]**

**5.UX5** ~~Protected Classes~~.Characteristic. OHSU Policy prohibits discrimination against any person because of their real or perceived “protected characteristic,” including race, color, religion, national origin, sex, sexual orientation, gender identity or expression, pregnancy (including pregnancy-related conditions), age, disability (including physical or mental disability), genetic information (including family medical history), ancestry, ~~caste~~, marital or familial status, citizenship, service in the uniformed services (all as defined in federal or state law), veteran status, expunged ~~criminal juvenile~~ record, use of leave protected by state or federal law, use of the ~~W~~worker’s compensation system, and/or any other status protected by law. ~~Refers to the groups of individuals who are protected from employment discrimination by law as defined by the U.S. Equal Employment Opportunity Commission (EEOC), Title VII, and the Oregon Bureau of Labor and Industries (BOLI).~~

~~5.UX6~~ ~~Quid Pro Quo~~ Discrimination and Harassment. OHSU prohibits both discrimination and harassment. Discrimination is defined as an adverse action taken against an individual or group on the basis of the individual's or group's protected characteristic(s). An adverse action includes an action that significantly changes the terms and conditions of employment. Harassment is defined as unwelcome verbal or physical conduct based on a protected characteristic that is sufficiently severe or pervasive that it substantially interferes with an individual's employment, education or access to university programs, activities, or opportunities, and would have such an effect on a reasonable person who is similarly situated. Harassment may include, but is not limited to, verbal statements or nonverbal or physical conduct, graphic or written statements, threats, assigning duties based on gender, slurs, symbols (including symbols of racist violence such as Confederate or Nazi flags, burning crosses and nooses), microaggressions, and misgendering. Whether the alleged conduct unreasonably interferes depends on the totality of the particular circumstances, including the nature, frequency and duration of the conduct in question, the location and context in which it occurs, and the status of the individuals involved. ~~Although the injured party's perception of the offensiveness of the alleged conduct, standing alone, is not sufficient by itself to constitute harassment, consistent with trauma-informed practices, the reporting party's subjective experience is considered in all aspects of this analysis.~~ ~~Offensive harassment or other conduct, in physical, written, electronic, or verbal form, based on an individual's protected class, including but not limited to conduct in which it is suggested, either explicitly or implicitly, that submission to such conduct is a term or condition of obtaining or retaining employment, of obtaining a promotion, or of obtaining other employment-related service;~~

~~coerced submission to or rejection of such conduct is used as a factor in decisions affecting the targeted individual's employment; or such conduct interferes with the targeted individual's employment by creating an intimidating, hostile, or offensive work environment.~~

~~5.UX7~~ ~~Racist Abuse.~~ **Abusive Imagery and other Forms of Harassment.** ~~Use or display of racist imagery, including but not limited to~~ Harassment may include, but is not limited to, verbal statements or nonverbal or physical conduct, graphic or written statements, threats, slurs, and symbols used to intimidate or harass (including symbols of racist violence such as Confederate or Nazi flags, burning crosses and nooses), ~~as well as symbols used to intimidate or harass.~~ ~~by hate groups as defined by organizations such as the Southern Poverty Law Center.~~



~~5.UX8 Sexual-/Gender-Based Offensive Conduct or Harassment. Unwelcome physical, written, electronic, or verbal conduct relating to an individual's sex/gender or directed at an individual because of their sex/gender of a sexual nature (such as unwelcome sexual advances, requests for sexual favors, inappropriate sexual/pornographic imagery and sexually motivated physical contact. other verbal or physical conduct of a sexual nature)~~  
when:

- a. Submission to such conduct is made either explicitly or implicitly a term or condition of the individual's employment, academic experience or participation in any OHSU program or activity (quid pro quo); or
- b. Such conduct is sufficiently severe or pervasive that it has the effect, intended or unintended, of unreasonably interfering with an individual's work performance or it has created an intimidating, hostile or offensive environment and would have such an effect on a reasonable person. ~~Although the injured party's perception of the offensiveness of the alleged conduct, standing alone, is not sufficient by itself to constitute harassment, consistent with trauma-informed practices, the reporting party's subjective experience is considered in all aspects of this analysis.~~

~~5.UX9 Verbal Abuse. Verbal abuse is when an abuser attacks an individual's self-concept, decreasing their self-confidence and making them feel powerless. It includes but is not limited to harassment, threats, hazing, bullying, yelling and excessive scolding.~~

**Bullying.** Harmful interpersonal aggression by words or actions that humiliate, degrade, demean, intimidate, and/or threaten an individual or individuals, and which is sufficiently pervasive, persistent, and/or severe that a reasonable person would be excluded from participation in or denied the benefits of the OHSU's educational or work programs or activities. ~~Bullying includes but is not limited to hazing, and yelling and belittling. excessive scolding.~~

**5.UX10 Workplace Violence. ~~Violent Conduct.~~ Workplace ~~v~~violence is (1) Any violence; or (2) any behavior, communications, or conduct that would cause a reasonable person to fear violence. ~~Physical violence or the threat of violence, including physical, written, electronic, or verbal conduct that would cause an individual to fear violence, except in defense of oneself from physical violence if there is no other option or another or by OHSU police if deemed necessary.~~**

~~5.UX11~~ **OHSU Member. OHSU employees; students and trainees; volunteers; visiting faculty, researchers and healthcare providers; contracted employees and vendors, and others who work for or on behalf of OHSU.**

**6.1.3 2. Complaints of dDiscrimination or hHarassment.** Employees are **strongly** encouraged to file all complaints alleging discrimination or harassment of a protected status as identified above with the Employer through its Affirmative Action Equal Opportunity (AAEO) Department. Alternatively, employees may file a complaint with the Union, Integrity Department, the Human Resources Department, the employee's manager, or the appropriate state or federal agency for resolution. ~~If filed with the AAEO Department, t~~**The complaint shall be processed under the Employer's rules pertaining to discrimination complaints, including new rules on process established by the Covington Committees.** If the complaint is not satisfactorily resolved by the ~~AAEO Department's~~ **Employer's** process, it may be **grieved or** submitted to the appropriate state or federal agency for resolution. **Investigations other than those made or referred to OHSU's civil rights investigative department (currently AAEO) should not exceed sixty (60) days unless all parties agree to an extension. Requests for extensions shall not be unreasonably denied. Reports formally investigated by OHSU's civil rights investigative department (currently AAEO) shall be completed as expeditiously as possible, taking into account the due process rights of both parties. The Employer shall strive to update the Union and grievant on the progress of the investigation on a bi-weekly basis, and will meet with the union at least monthly to discuss grievances.**

~~27.UX1~~ **3. Immigration Status Safety. No OHSU member, in their capacity as an employee or using the Employer's records, shall, except as required by applicable law, report OHSU members or their families to U.S. Immigration and Customs Enforcement or U.S Customs and Border Protection or cooperate with any investigation involving these agencies.**

**Violations of this article may result in disciplinary action. ~~will be seen as a terminable offense.~~ Employees may review OHSU's immigration FAQ on O2 for more information on how to interact with an ICE officer.**

~~27.UX2~~ **34. Interim Actions Paid Administrative Leave for Harassment Allegations.** If a bargaining unit member is involved with or impacted by an allegation of harassment or discrimination on the basis of a protected characteristic, OHSU will evaluate whether interim actions, including but not limited to paid administrative leave, safety planning, or changing reporting lines, areis appropriated, and will implement such actions as necessary. Any bargaining unit OHSU member accused of harassment, discrimination or abuse shall be placed on paid administrative leave pending investigation. Any bargaining unit OHSU member who has been impacted by said harassment, discrimination or abuse shall be given the option to take paid administrative leave.

~~27.UX3~~ 45. Safety from Harassment, Discrimination and Violence.

~~27.UX3.1~~ 4.1 Employer responsibilities. The Employer shall ensure that the workplace is free from ~~offensive conduct~~ discrimination, harassment, and violence as defined in paragraph 1 (Definitions) of this Appendix ~~Section 5.UX6 (Quid Pro Quo Harassment), 5.UX7 (Racist Abuse), 5.UX8 (Sexual-/Gender-Based Offensive Conduct/Harassment), 5.UX9 (Verbal Abuse) and 5.UX10 (Violent Conduct)~~ and in accordance with federal and state regulations. The Employer will ensure that all OHSU ~~m~~Members (as defined in ~~P~~paragraph 1 of this Appendix) (~~employees, students, volunteers, contract workers, vendors~~), patients and visitors are provided with the appropriate information and training, where applicable, to comply with such regulations.

The Employer will make a good-faith effort to ~~know~~ become aware of and track incidents of harassment and discrimination and will take action in a timely manner when needed. ~~The Employer will provide the Union with a quarterly~~ monthly report with the following information: ~~the number of harassment and discrimination complaints that were submitted, the department in which the incident occurred, and the name of supervisor overseeing the department where the complaint originated. After three (3) complaints of harassment or discrimination involving the same supervisor or department, the next complaint will be escalated to OHSU's general counsel, who will authorize conduct an expansive investigation into the current complaint and into the department and supervisor(s) identified as having multiple incidents and complaints of harassment and discrimination.~~

The Employer will inform employees who ~~have experienced violence or the threat of violence~~ make a formal report ~~discrimination or harassment~~ of their right to file a



complaint with workers' compensation, (if applicable), the Oregon Bureau of Labor and Industries (BOLI) or the U.S. Equal Employment Opportunity Commission (EEOC) when applicable. While conducting an investigation into harassment and discrimination allegations, the Employer will ~~inform~~ ~~remind~~ ~~mandatory reporters~~ and all relevant parties that it is an OHSU requirement ~~expectation~~ to cooperate fully in an authorized internal investigation. ~~of the requirement to participate in the investigation.~~

~~27.UX3.2~~ 4.2 Violations by OHSU members. It shall be a violation of this ~~policy~~ Appendix for any OHSU bargaining unit member to engage in ~~offensive, violent or harassing conduct of a written, electronic, verbal or physical nature regarding an individual's protected class status~~ discrimination or harassment as defined in paragraph 1 of this Appendix ~~Section 5.UX5 (Protected Classes) or for any other reason towards another OHSU member where OHSU work is performed.~~ Violations of the terms of this Appendix ~~policy~~ may ~~will~~ be considered just cause for disciplinary action, up to and including dismissal. Violations of OHSU's discrimination, harassment and retaliation policies, including by non-bargaining-unit members, may also be considered just cause for disciplinary action, up to and including dismissal.

~~27.UX3.3~~ 4.3 Violations by patients or visitors. OHSU will take immediate action to protect ~~the~~ a directly impacted OHSU bargaining unit member and all other impacted, or potentially impacted, OHSU members from ~~being put in additional danger by the accused offender~~ a patient or visitor exhibiting violent conduct or harassing behavior, as defined in ~~P~~paragraph 1 of this Appendix. If the Employer fails to take action to alleviate a workplace threat or assault, the impacted OHSU member shall have the right to file a formal complaint with workers' compensation, the BOLI or the EEOC as applicable.

**56. Limited Reopener.** For the limited purpose of harmonizing the language of this Appendix with revised policies established by the Covington Committees, and potentially moving language into the body of ~~the Collective Bargaining~~ **this Agreement**, **either party** ~~the Employer~~ may reopen this Appendix and only this Appendix for bargaining once per calendar year with thirty (30) days' notice to the ~~Union~~ **other party**.

LETTER OF AGREEMENT

DEI Reporting

After ratification of this Agreement and within three (3) months of the implementation of the new tracking/reporting process for cases involving harassment and discrimination (as recommended by the Covington Committees), OHSU will provide the Union with a quarterly report including the following information: the number of harassment and discrimination complaints submitted by bargaining-unit employees to OHSU's civil rights investigation department (currently AAEO), and the department where the incident occurred, and the name of the supervisor overseeing the department where the complaint originated.

**2.7 Bargaining Unit Data.** The Employer shall provide electronically to the Union the names, ~~demographic information, unique identifier, employee ID,~~ home addresses, ~~home and mobile primary and secondary~~ telephone numbers ~~(if provided by the employee), date of birth,~~ department, department code, departmental telephone number, work location, email address, campus mail code, employment status, class code, FTE, hourly rate of pay, ~~shift,~~ job title, original hire date, current hire date, salary grade, benefit eligibility, overtime waiver status, and membership status of all ~~new employees within ten (10) days of hire and of all current bargaining unit employees on a monthly basis. Employees will be given the option to decline providing demographic information to the Employer (except where required by law) or to the Union.~~ The Employer will provide the above information (except for membership status) regarding new employees within one (1) week of their hire date. ~~In addition, the Employer will provide the Union with aggregated demographic data (age, race/ethnicity, gender, preferred language) voluntarily provided by bargaining unit employees on a quarterly basis.~~

**MEMORANDUM OF UNDERSTANDING #UX1****Collection of Demographic Information**

**Within three (3) months of the ratification of this Agreement, and annually thereafter, OHSU will notify employees that they are able to enter demographic information in OHSU's Human Resources Information System, and will encourage them to do so. ~~the Employer shall begin collecting demographic information, as defined in Section 5.UX2, from new hires into the bargaining unit. The Employer shall capture this information from existing bargaining unit employees within six (6) months of ratification of this Agreement.~~**

**~~The Employer will provide the Union with aggregated demographic information (age, race, ethnicity, sex, gender identity, and preferred language) voluntarily provided by bargaining unit employees on a quarterly basis.~~**

**~~Employees will be given the option to decline providing demographic information to the Employer (except where required by law) or to the Union.~~**

**5.UX2 Demographic Information.** Refers to age, race, ethnicity, sex, gender identity, and preferred language., ~~marital status, sexual orientation, primary and secondary languages, religion, national origin, and immigration status.~~

~~5.UX3—Equity Lens. An evaluation process to assess and correct disparities among employees who perform work that requires similar knowledge, skill, effort, responsibility and working conditions in the performance of work, regardless of job description or job title.~~